

Explanatory Memorandum to:

The Children (Secure Accommodation) (Wales) (Amendments) Regulations 2018

This Explanatory Memorandum has been prepared by the Health and Social Services Department and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of:

The Children (Secure Accommodation) (Wales) (Amendments) Regulations 2018

Huw Irranca-Davies
Minister for Children and Social Care

1 February 2018

Part 1 – OVERVIEW

1. Description

Section 119 of the Social Services and Well-being (Wales) Act 2014 ('the 2014 Act') provides for Welsh local authorities and local authorities in England to place children in secure accommodation on specified welfare grounds. Section 25 of the Children Act 1989 ('the 1989 Act') makes similar provision for Welsh local authorities and local authorities in England to place children in secure accommodation in England or (following an amendment introduced by the Children and Social Work Act 2017) Scotland. The Children (Secure Accommodation) (Wales) Regulations 2015 ('the 2015 Regulations') place requirements on Welsh local authorities and local authorities in England regarding placements in secure accommodation in Wales; and also place requirements upon Welsh local authorities regarding the making of secure placements generally.

This Explanatory Memorandum relates to The Children (Secure Accommodation) (Wales) (Amendment) Regulations 2018 ('the Regulations') which carry a coming into force date of 2 April 2018.

- A number of these amendments are consequential upon changes to the 1989 Act, introduced by the Children and Social Work Act 2017. They ensure that, in the exceptional circumstances when a child from Wales is placed in a secure home in Scotland, the same safeguards apply as for placements in Wales or England.
- There are also some further technical amendments to ensure the England/Wales cross-border functionality of the regulations is clear and understandable.
- There are also amendments which are consequential upon the coming into force of relevant provisions within Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 ('the 2016 Act'), on 2 April 2018.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

No specific matters have been identified.

3. Legislative background

The powers enabling these Regulations to be made are contained in sections 87, 119(2) and (7) and 196(2) of the 2014 Act and by sections 27 and 187(1) of the 2016 Act.

4. Purpose & intended effect of the legislation

The primary purpose of these Regulations is to amend the definition of ‘secure accommodation’ in the 2015 Regulations to include secure accommodation in Scotland, so that placements of a child by a Welsh local authority in secure accommodation in Scotland are subject to the same safeguards which apply to placements in England and Wales. These amendments are consequential on the amendments made to section 25 of the 1989 Act by section 10 of, and paragraphs 1 and 2 of Schedule 1 to, the Children and Social Work Act 2017. The amendment to regulation 8 is consequential on the amendment to the definition of secure accommodation in regulation 1 and clarifies that the restriction applies in relation to placements of looked after children.

The Regulations also make technical amendments to the 2015 Regulations to ensure that they dovetail more accurately with the corresponding English regulations on secure placements (the Children (Secure Accommodation) Regulations 1991), so that there are no gaps affecting cross-border placement.

In particular:

- The amendment to regulation 4 makes clear who is able to apply for a secure accommodation order in cases which do not involve looked after children as provided for by regulation 16.
- The amendments to regulations 6 and 7 clarify that the maximum periods set in those two regulations apply to an order of the court made in relation to secure accommodation in Wales.
- The amendment to regulation 15 clarifies how the provision works for placements by English local authorities to secure accommodation in Wales.

In addition, the Regulations make amendments consequential to the coming into force of relevant provisions within Part 1 of the 2016 Act, under which secure accommodation in Wales will be regulated from 2 April 2018. This includes the repeal of section 22 of the Care Standards Act 2002 upon which regulations 9 and 12 of the 2015 Regulations depended. The Regulations remake regulations 9 and 12 under powers in section 27 of the 2016 Act. Regulation 9 requires the registered service provider of secure accommodation to notify the local authority looking after a child, within 12 hours of the placement beginning. Regulation 12 requires the registered service provider to keep certain records.

5. Consultation

These Regulations were subject to a formal 12 week consultation between 4 September and 27 November 2017.

15 responses were received overall. No changes were required to be made to the Regulations as a result of feedback from respondents. A summary of the comments that were made and the Welsh Government’s response to these is set out in the

consultation summary report published on the Welsh Government website¹ in February 2018.

There was a separate consultation in relation to the draft Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 between 2 May 2017 and 25 July 2017 in relation to the requirements which would be made on the providers of secure accommodation services under section 27 of the 2016 Act. A statement about the outcome of that consultation was published on the Welsh Government website² in November 2017 and subsequently laid before the National Assembly for Wales, in accordance with section 27(5) of that Act.

6. Regulatory Impact Assessment (RIA)

A regulatory impact assessment has not been prepared in respect of these Regulations as the amendments made will result in minor administrative changes and therefore minimal impact, or no impact, is foreseen on business, charities, voluntary or public sector bodies.

¹ <https://consultations.gov.wales/consultations/secure-accommodation-and-placements-children-out-area>

² <https://consultations.gov.wales/consultations/phase-2-implementation-regulation-and-inspection-social-care-wales-act-2016>