

Explanatory Memorandum to the Arrangements for Assistance for Persons Making Representations Regulations (Wales) 2019

This Explanatory Memorandum has been prepared by the Department of Health and Social Services 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 Arrangements for Assistance for Persons Making Representations Regulations (Wales) 2019.

Julie Morgan AM
Deputy Minister for Health and Social Services
8 February 2019

1. Description

These Regulations specify persons or categories of persons who may not provide assistance for persons making, or intending to make, representations under sections 174 and 176 of the Social Services and Well-being (Wales) Act 2014.

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

No specific matters have been identified.

3. Legislative background

These regulations are made under section 178 of the Social Services and Well-being (Wales) Act 2014 ('the 2014 Act'), which allows the Welsh Ministers to make regulations securing that specified persons or categories of persons do not provide assistance to people making representations under sections 174 and 176 of the Act.

They are made under the negative procedure.

4. Purpose & intended effect of the legislation

This is a set of Regulations which reapplies in Wales the provisions of the Advocacy Services and Representations Procedure (Children) (Wales) Regulations 2004 ('the 2004 Regulations') which were revoked by the 2014 Act.

Regulations made under these powers apply to representations made by certain children and people about a range of the local authority's social services functions which affect children. The Regulations make provision about the categories of persons who, under the local authority's arrangements, may not provide assistance to the child or young person.

The effect is that a local authority may not allow assistance to be provided by a person who:

- Is or may be the subject of the representation
- Manages such a person
- Manages the service which is or may be the subject of the representations
- Has control over the resources allocated to such a service

This is to ensure the independence of assistance provided to individuals

making, or intending to make, representations under sections 174 and 176 of the Social Services and Well-being (Wales) Act 2014 to local authorities about the discharge of a range of duties. That is, individuals specified within section 174 or 176 (“entitled children”) to assistance. The duties owed to those individuals remain.

Provision is also made so that a local authority may not allow the assistance under these Regulations to be provided by a person if the child or young person making or intending to make representations objects to having assistance from that person. This is to ensure that, in making arrangements for advocacy for children, local authorities must listen to their views. The Regulations support the over-arching duty under section 6 of the 2014 Act that any person exercising functions under the Act must in so far as reasonably practicable, ascertain and have regard to people’s views, wishes and feelings.

The Code of Practice on Advocacy issued under Part 10 of the Social Services and Well-being (Wales) Act 2014 provides specific guidance on local authorities’ responsibilities for the provision of advice services to entitled children:-

- who are looked after or accommodated by a local authority
- who have retained entitlements, having previously been looked after and
- for whom the local authority is exercising a function under the following Parts of the Act: Parts 3 (assessment of needs); Part 4 (meeting needs); Part 5 (charging and financial assessment); Part 6 (looked after and accommodated children); and Part 7 (safeguarding); or for whom it is exercising a function under Parts 4 (care and supervision) and 5 (protection of children) of the Children Act 1989, and
- who make or intend to make a representation under sections 174 to 176 of the Act.

When a local authority becomes aware that a child or young person wants to make representations, Regulation 3 requires the local authority to provide information about advocacy services and help in obtaining the help of an advocate.

Regulation 4 requires a local authority to monitor its compliance with these requirements.

5. Consultation

Although not formally part of the consultation, the intention to introduce these Regulations was included as part of the consultation package for the draft Regulated Advocacy Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019 and associated statutory guidance which took place between 24 May 2018 and 15 August 2018.

It has also been discussed with stakeholders via the Technical Group which considered proposals for the regulation of advocacy services under the Regulation and Inspection of Social Care (Wales) Act 2016 and the Task and Finish group set up to consider updating the Code of Practice on Advocacy issued under the Social Services and Well-being (Wales) Act 2014.

The measures in this Statutory Instrument do not require consultation as the effect is to re-instate the provisions of the 2004 Regulations.

6. Regulatory Impact Assessment (RIA)

The Welsh Ministers Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to the carrying out of these Regulations.

No Regulatory Impact Assessment is considered appropriate as these Regulations make technical changes to replicate the effect of the 2004 regulations and have no major policy impact. They do not result in any increased burden for local authorities. They do not impose a burden on any other person.