



Regulation and Inspection of Social Care (Wales) Act 2016

2016 anaw 2

PART 1

REGULATION OF SOCIAL CARE SERVICES

CHAPTER 7

MARKET OVERSIGHT

59 Specifying criteria for application of market oversight regime

- (1) The Welsh Ministers must by regulations specify criteria for determining whether (subject to regulations under subsection (4)) section 61 applies to a service provider in respect of regulated services.
- (2) In specifying the criteria, the Welsh Ministers must have regard to the following in particular—
 - (a) the amount of care and support provided by a service provider,
 - (b) the geographical concentration of a service provider's business, and
 - (c) the extent to which a service provider specialises in the provision of particular types of regulated service.
- (3) The Welsh Ministers must—
 - (a) at such times as they think appropriate, review the criteria for the time being specified in the regulations, and
 - (b) publish information about how the matters mentioned in subsection (2), and any other matters to which they have regard in specifying the criteria, are to be measured.
- (4) The Welsh Ministers may by regulations provide that section 61 does not apply, or applies only to the extent specified, to a specified service provider or to a service

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provider of a specified description, regardless of whether that service provider or a service provider of that description would satisfy the criteria.

- (5) The circumstances in which regulations may be made under subsection (4) include those in which the Welsh Ministers are satisfied that certain service providers are already subject to a regulatory regime comparable to that provided for by sections 61 and 62; and regulations made in such circumstances may, for example, make provision requiring specified persons to co-operate or to share information of a specified description.
- (6) Before making regulations under this section the Welsh Ministers must consult any persons they think appropriate.
- (7) But the requirement to consult does not apply to regulations which—
 - (a) amend other regulations made under this section, and
 - (b) do not, in the opinion of the Welsh Ministers, effect any substantial change in the provision made by the regulations to be amended.

60 Determining whether criteria apply to service provider

- (1) The Welsh Ministers must determine, in the case of each service provider, whether the service provider satisfies one or more of the criteria specified in regulations under section 59.
- (2) If the Welsh Ministers determine that the service provider satisfies one or more of the criteria, section 61 applies to that service provider unless, or except in so far as, regulations under section 59(4) provide that it does not apply.
- (3) Where section 61 applies to a service provider, the Welsh Ministers must inform the provider accordingly.

61 Assessment of financial sustainability of service provider

- (1) Where this section applies to a service provider, the Welsh Ministers must assess the financial sustainability of the service provider's business of carrying on regulated services.
- (2) An assessment of the financial sustainability of the service provider's business under subsection (1) must include consideration of its corporate governance.
- (3) Where the Welsh Ministers, in light of an assessment under subsection (1), think that there is a significant risk to the financial sustainability of the service provider's business, the Welsh Ministers may—
 - (a) require the service provider to develop a plan for how to mitigate or eliminate the risk, and
 - (b) arrange for, or require the service provider to arrange for, a person with appropriate professional expertise to carry out an independent review of the business.
- (4) Where the Welsh Ministers impose a requirement on a service provider under subsection (3)(a), they may also require the service provider—
 - (a) to co-operate with them in developing the plan, and
 - (b) to obtain their approval of the finalised plan.

- (5) Where the Welsh Ministers arrange for a review under subsection (3)(b), they may recover from the service provider such costs as they incur in connection with the arrangements (including such of their administrative costs in making the arrangements as they think it appropriate to recover).
- (6) The Welsh Ministers may by regulations make provision for enabling them to obtain from such persons as they think appropriate information which they believe will assist them to assess the financial sustainability of a service provider to which this section applies.
- (7) Before making regulations under subsection (6) the Welsh Ministers must consult any persons they think appropriate.
- (8) But the requirement to consult does not apply to regulations which—
 - (a) amend other regulations made under that subsection, and
 - (b) do not, in the opinion of the Welsh Ministers, effect any substantial change in the provision made by the regulations to be amended.
- (9) The Welsh Ministers may by regulations make provision about the making of the assessments required by subsection (1).

62 Informing local authorities where failure of service provider likely

- (1) This section applies where the Welsh Ministers are satisfied that a service provider to which section 61 applies is likely to become unable to provide a regulated service in respect of which it is registered because of business failure as mentioned in section 189 of the 2014 Act (provider failure: temporary duty on local authority).
- (2) The Welsh Ministers must inform the local authorities which they think will be required to carry out the duty under section 189(2) of the 2014 Act if the service provider becomes unable to provide the regulated service in question.
- (3) The Welsh Ministers may require the service provider, or such other person involved in the service provider's business as they think appropriate, to provide them with any information they think necessary or expedient to obtain for the purpose of assisting a local authority to carry out the duty under section 189(2) of the 2014 Act.
- (4) But the Welsh Ministers may not require a person to provide information if disclosure of that information is prohibited by any enactment or other rule of law.
- (5) The power to require information under subsection (3) includes—
 - (a) power to require copies of any documents or records (including medical and other personal records), and
 - (b) power to require the provision of information in legible form.

63 National market stability report

- (1) The Welsh Ministers must prepare and publish a national market stability report at such times as may be prescribed.
- (2) The Welsh Ministers must consult SCW when preparing a national market stability report and may direct SCW to jointly prepare any part of the report with them as the Welsh Ministers think appropriate.

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- (3) A national market stability report must include—
- (a) an assessment of—
 - (i) the sufficiency of care and support (within the meaning of the 2014 Act) provided in Wales during such period as may be prescribed,
 - (ii) the extent to which regulated services were provided in Wales during that prescribed period by service providers to whom section 61 applies,
 - (iii) the effect on the exercise of local authority social services functions (within the meaning of the 2014 Act) of the commissioning by local authorities of services in connection with those functions during such period as may be prescribed, and
 - (iv) any other matter relating to the provision of care and support in Wales as may be prescribed, and
 - (b) a report of any action taken by the Welsh Ministers under sections 59 to 62 during the period prescribed under paragraph (a)(i).
- (4) In preparing a market stability report the Welsh Ministers must have regard to the most recent local market stability report published by each local authority under section 144B of the 2014 Act (local market stability reports).
- (5) Before making regulations under subsection (3)(a)(iv) the Welsh Ministers must consult any persons they think appropriate.
- (6) But the requirement to consult does not apply to regulations which—
- (a) amend other regulations made under that subsection, and
 - (b) do not, in the opinion of the Welsh Ministers, effect any substantial change in the provision made by the regulations to be amended.