

**EXPLANATORY MEMORANDUM TO CARE STANDARDS ACT 2000  
(NOTIFICATION) (WALES) REGULATIONS 2011**

This Explanatory Memorandum has been prepared by the Directorate of Children's 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 24.1

**Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact Care Standards Act 2000 (Notification) (Wales) Regulations 2011 and I am satisfied that the benefits outweigh any costs.

*Gwenda Thomas*

Deputy Minister for Social Services

18 January 2011

## **1. Description**

These Regulations are made under the Care Standards Act 2000 (“the Act”) and apply in relation to Wales. The Welsh Ministers are the registration authority in relation to Wales for the purposes of Part 2 of the Act. Section 30A(2) of the Act provides that the registration authority must notify all local authorities in England and Wales as soon as practicable if they take any of the actions specified in section 30A(2) against a person carrying on or managing an establishment or agency ('P') specified in section 30A(6) (children’s homes, residential family centres, fostering agencies, voluntary adoption agencies, adoption support agencies and providers of social work services).

Section 30A (3) provides for further notifications in relation to P to be sent when the registration authority becomes aware of the prescribed circumstances.

## **2. Matters of special interest to the Constitutional Affairs Committee**

None

## **3. Legislative background**

This instrument follows the Negative Procedure.

Powers created by virtue of the Children and Young Persons Act 2008 (S29) and the Health and Social Care Act 2008 (S 18) increase the range of enforcement options open to CSSIW (under the delegation of Welsh Ministers).

Section 29 of the Children and Young Persons Act 2008 inserts section 30A into the Act. In summary, section 30A requires the Welsh Ministers to provide local authorities in Wales and England with prescribed information when a decision has been taken to:

- i) adopt a proposal to cancel the registration of P;
- ii) adopt a proposal under section 17(4)(aa) or notification under 17(4)(ab) of the Act to suspend or extend the suspension of P’s registration;
- iii) bring any proceedings against P for a relevant offence which it alleged P committed in respect of the establishment or agency;
- iv) served a notice under section 22B of the Act restricting accommodation at a children’s home or a residential family centre.

The Regulations also prescribe the information which must be provided to local authorities in England and Wales by CSSIW and can be done so electronically.

## **4. Purpose & intended effect of the legislation**

Its key purpose is to have a notification procedure in place to ensure when CSSIW or Ofsted take action against a regulated establishment or agency, the responsible local authority can consider the continuing safeguards and welfare

of children who are accommodated in the establishment or being provided with a regulated service example; adoption support...

On receipt of the notification of an enforcement action from either CSSIW or Ofsted (who exercise similar functions in relation to England) local authorities will be required to review the child placement / service to consider if it is still appropriate. The Regulations will also provide CSSIW with more flexible enforcement powers, to allow for a more proportionate and responsive system that promotes early remedial action by the registered provider.

The children involved are largely those who are looked after by the local authority but can also include children accommodated away from home (under section 85 and 86 of the Children Act 1989) for health or education reasons . Through parallel English Regulations similar duties will be placed on Ofsted, the regulating body in England. English local authorities will also be required to take action upon receipt of a notice from CSSIW or Ofsted. The alignment of regulation and processes with England ensures continuity of treatment of vulnerable children placed across Welsh and English borders.

Children accommodated away from home are particularly vulnerable. The regulations will alert every local authority who has arranged the accommodation for the child or those considering placing a child in the setting subject to the enforcement action to such information about its suitability. On receipt of enforcement action the responsible authority will be required to review the child's case to ensure the placement continues to be; safe ' in the child's best interests, and meets the child's needs.

## **England**

The outlined notification procedure also applies to England and similar arrangements will be in place for England from April 2011. Care and Social Services Inspectorate Wales (CSSIW) are working closely with Ofsted to finalise arrangements for transmitting cross border notifications.

## **Process**

The regulations will be supported by statutory guidance to local authorities, regulators, inspection bodies and sectors working with children on the notification process. In addition, CSSIW will issue practice guidance to inspectors and regulated bodies / agencies on the notification process.

The Regulations provide for electronic or paper notification. Systems will be designed for electronic methods, though some paper notifications will be necessary in the meantime.

The Chief Inspector of CSSIW as part of his/her annual report will report on their enforcement actions including their discharge of duties conferred on them by these Regulations.

In Wales systems will also be in place to update the Children's Commissioning Support Resource (CCSR – a Wales placement database of providers of accommodation) of enforcement notices made to regulated settings/ bodies in Wales. The CCSR will record the enforcement action which will be evident on the database when a local authority searches for a suitable placement for a child in a Welsh setting.

## **Implementation**

It is intended that these regulations come into force on 1 April 2011. In England parallel legislation is being introduced on 1 April 2011.

## **5. Consultation**

Consultation has been undertaken; responses will be published on the Welsh Assembly Government website shortly. Details of the consultation are included in the Regulatory Impact assessment (RIA) below.

## **Regulatory Impact Assessment (RIA)**

## **6. Options**

Two options have been considered.

Option One: Making no policy change

Option Two: Implementing the 'Notification Procedure' of matters relating to person's carrying on or managing certain establishments or agencies through Regulations under section 30A of the Care Standards Act 2000.

## **7. Costs & benefits**

Option One : There are no benefits but potential (in worst case) for increased risk to children in terms of safety and welfare outcomes where they may remain accommodated in a setting that may have poor or substandard care. .

Option Two

We expect the following benefits from Option 2:

- The notification will act as a trigger for a more effective review that the placement continues to ensure children are protected remains in the best interests and meets his or her needs particularly where children are placed outside of their local authority's boundaries or cross border;
- Ensuring that lines of responsibility are clear for providing notifications and when and that all local authorities in England and Wales are aware

of any notification that is given by CSSIW (and of those issued by their English counterparts Ofsted);

- Allows local authorities in England and Wales more information so as to help ensure that they are aware of such regulatory steps when considering possible or continued placements

## **Costs**

There are financial implications arising from this legislation but they are regarded to be minimal. The main activity falls to CSSIW and Ofsted in undertaking the notifications. Local authorities have existing duties under CA 1989 to review a child case where there are any changes. The notification regulations will strengthen and bring more rigour to their duties for a particularly vulnerable group of children who are accommodated (sometimes hundred of miles) away from home. A total of £4.5m (recurring) has been made available to local authorities in Wales for the implementation of the CYP Act 2008 which includes the notification provisions in these regulations. For more information on resource to local authorities see; [www](http://www)

## **9. Consultation**

An extensive consultation was undertaken between April and July 2010 with Welsh Local Government Association, local authorities, the voluntary sector, members of the judiciary, independent fostering providers and adoption.

Respondents welcomed and agreed with the regulations and notification arrangements and emphasised the importance of timely notification to ensure prompt review of a child case and action by the regulator (CSSIW / Ofsted) to ensure quality standards of care/ service. A copy of the consultation and response report is accessible at <http://wales.gov.uk/consultations/childrenandyoungpeople/childrenandyoungpersonsact/?lang=en&status=closed>

Since the consultation the Regulations have been technically refined.

## **10. Competition Assessment**

No impact on competition was identified and as such it was not considered necessary to carry out a detailed assessment.

## **11. Post implementation review**

The Welsh Assembly Government will monitor the effectiveness of the Regulations through an annual statement provided by the Chief Inspector CSSIW in her annual report.