

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

First Delegated Legislation Committee

DRAFT ADULT SOCIAL CARE INFORMATION
(ENFORCEMENT) REGULATIONS 2022

Monday 31 October 2022

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Friday 4 November 2022

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The Committee consisted of the following Members:

Chair: SIR EDWARD LEIGH

† Baker, Duncan (<i>North Norfolk</i>) (Con)	† Qureshi, Yasmin (<i>Bolton South East</i>) (Lab)
† Benton, Scott (<i>Blackpool South</i>) (Con)	Ribeiro-Addy, Bell (<i>Streatham</i>) (Lab)
† Bridgen, Andrew (<i>North West Leicestershire</i>) (Con)	† Solloway, Amanda (<i>Lord Commissioner of His Majesty's Treasury</i>)
† Brine, Steve (<i>Winchester</i>) (Con)	† Vara, Shailesh (<i>North West Cambridgeshire</i>) (Con)
† Crabb, Stephen (<i>Preseli Pembrokeshire</i>) (Con)	† Webb, Suzanne (<i>Stourbridge</i>) (Con)
Foy, Mary Kelly (<i>City of Durham</i>) (Lab)	† Whately, Helen (<i>Minister of State, Department of Health and Social Care</i>)
† Gardiner, Barry (<i>Brent North</i>) (Lab)	
† Greenwood, Lilian (<i>Nottingham South</i>) (Lab)	Liam Laurence Smyth, <i>Committee Clerk</i>
† Gwynne, Andrew (<i>Denton and Reddish</i>) (Lab)	
Johnson, Kim (<i>Liverpool, Riverside</i>) (Lab)	
† Mangnall, Anthony (<i>Totnes</i>) (Con)	† attended the Committee

The following also attended, pursuant to Standing Order No. 118(2):

Duguid, David (<i>Banff and Buchan</i>) (Con)	Wakeford, Christian (<i>Bury South</i>) (Lab)
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First Delegated Legislation Committee

Monday 31 October 2022

[SIR EDWARD LEIGH *in the Chair*]

Draft Adult Social Care Information (Enforcement) Regulations 2022

4.30 pm

The Minister of State, Department of Health and Social Care (Helen Whately): I beg to move,

That the Committee has considered the draft Adult Social Care Information (Enforcement) Regulations 2022.

It is a pleasure to serve under your chairmanship, Sir Edward. The draft regulations allow the Secretary of State to impose a financial penalty on adult social care providers that fail to submit information required under section 277A of the Health and Social Care Act 2012, or that provide false or misleading information. In essence, the statutory instrument will ensure that the Government receive a regular, standardised and accurate set of data from providers of social care to give us an up-to-date understanding of how the care system is functioning, what problems are emerging, and where those problems are. That will mean, in turn, that the Government can support providers and the social care system as a whole to serve the care needs of the population.

To give hon. Members a bit of context, at the start of the pandemic it rapidly became clear that the centre was completely lacking in up-to-date information about the functioning of the social care system. For instance, the Government did not know how many people were receiving care, where people were receiving care or where capacity was in the system, and we lacked provider-specific information about the workforce. The Government relied on data mainly captured through aggregate annual returns from local authorities and periodic returns from the Association of Directors of Adult Social Services, supplemented by briefings from the Care Quality Commission, for instance on the state of care, and from Skills for Care on the workforce. But by the time we received that sort of information it was of little use for responding to situations on the ground. However, there was a real-time source of data known as a capacity tracker, which enabled providers to share information about their bed vacancies.

Taking a pragmatic approach to the immediate situation, I decided that we should build on the capacity tracker, and use it to collect the information that we desperately needed to give us a picture of the frontline of social care. We worked with the care sector to develop the set of data collected through the capacity tracker to give us near-real-time data about what was happening on the frontline of the system—adding, for instance, metrics on the numbers of people receiving care, workforce absences, covid testing, vaccination rates, and access for visitors. During the pandemic, completion of the capacity tracker was voluntary, albeit tied to the receipt of funding from the infection control funds distributed to care providers. It provided an enormously valuable source of

data and insights, enabling the Department of Health and Social Care to focus attention and resources where they were most needed.

Since the pandemic, most providers have continued to complete the capacity tracker, which has continued to be a valuable source of data, but with the ending of the infection control funds completion rates have declined. That is why we have taken steps to put provider data collection on a sustainable long-term footing through new powers inserted by the Health and Care Act 2022 into the Health and Social Care Act 2012. The Secretary of State now requires registered adult social care providers to submit data through the capacity tracker tool. Recognising that data collection can be onerous for care providers, we have always tried to strike the right balance between asking for important data and avoiding imposing a disproportionate burden. Specifically, in making this data collection mandatory, we have reduced its frequency from weekly to monthly, and we have removed data fields when the information was no longer critical.

Through the 2022 Act, the Government can now require that information from providers. Today's legislation will enforce that requirement through financial penalties that have been developed to ensure that the mandation of the data submission is both effective and proportionate. The draft regulations cover the amount of the penalty, the service of notices, a right to make representations, and a right to appeal to the tribunal. The draft regulations set out that the penalty will be the same as a provider's Care Quality Commission registration fee, which is scaled according to provider type and size.

It is the Government's intention that the enforcement should be used only as a last resort. A notice of intent will be given before imposing a penalty, and the provider will have a right to make representations on why it should not be imposed. Thereafter, a final decision will be taken; if it is decided to impose a penalty, a final notice will be given. The provider will then be able to appeal to the first tier tribunal. There is also provision in the draft regulations for notices to be withdrawn and for the recovery of financial penalties in the county court, and a duty to review the regulations every five years.

We need the draft regulations because we need to be able to enforce the information duties created by the Health and Care Act 2022. The Act inserted new section 277A into the Health and Social Care Act 2012, to enable the Secretary of State to require information from regulated providers of adult social care services about themselves, their activities and persons to whom they have provided care. New section 277E allows us to enforce that duty to provide information through the imposition of financial penalties. We hope—and very much expect—compliance to be the norm so that financial penalties are not required. However, a deterrent is important, and the draft regulations provide the powers to impose financial penalties if needed.

The Government's priority is to support providers to share their data wherever possible. The data required will be proportionate and providers will normally be given three months' notice of any changes to data requested, unless there are extenuating circumstances. Financial penalties are normally a last resort, for when a provider continues to be or is persistently in breach of their data obligations, despite multiple offers of support from our delivery partners.

In our data strategy, the Government have set out our vision of how data will be used to improve the health and care of the population in a safe, trusted and transparent way. Our ultimate goal is to have a health and care system that is underpinned by high-quality, readily available data, which is collected and shared appropriately with those in the sector who need it. That will improve adult social care commissioning practice and outcomes for people who are receiving care, and provide greater oversight of the sector.

4.37 pm

Andrew Gwynne (Denton and Reddish) (Lab): It is a pleasure to serve under your chairmanship, Sir Edward. I welcome the Minister back to her place in the Department of Health and Social Care. Hopefully, there will not be too many issues still on her desk from her previous time as a Minister; let us hope that those who served in between managed to clear the in-tray.

I am pleased to speak to this statutory instrument on behalf of the shadow Health and Social Care team. We see no reason to oppose the measures before us; it is sensible that adult social care providers will be required to supply the Department of Health and Social Care with important data. It is striking that prior to the pandemic there was no comprehensive national data from providers on workforce status, bed availability or the number of people in receipt of care. As the Minister said, having access to that crucial data will no doubt improve policymakers' ability to judge risk in the care system, which we know to be under significant stress. Without the requisite data, they are unable to make those detailed assessments right now.

I am reassured by what the Minister said about the data being subject to GDPR restrictions, and the fact that data will be shared appropriately with local authorities and integrated care systems. It is right that when a provider is persistently in breach of its data obligations and has not made appropriate attempts to rectify them, financial penalties will be scaled to the provider's type and size. That is common sense.

The Department of Health and Social Care has indicated that it will consider improving the accessibility of data available to providers and any opportunity to link the capacity tracker to other data sources. In her closing remarks, could the Minister provide a short update on that work and whether the capacity tracker data will be publicly available, so that the state of the social care sector can be robustly assessed in the public domain?

You will be pleased to hear, Sir Edward, that those are the remarks of the official Opposition. We do not oppose this instrument—indeed, we actively support measures to improve transparency in our social care sector.

4.39 pm

Helen Whately: I thank the hon. Member for Denton and Reddish for his welcome and his comments about this legislation; I am glad to hear that he considers it sensible and that the Opposition will not oppose it. I agree that it was striking that there was not a comprehensive dataset before the pandemic. I am glad that he sees the scaling of penalties as common sense and that he supports appropriate sharing with local authorities and integrated care boards.

The hon. Gentleman talked about the intention to improve accessibility for care providers. We absolutely want to do that as well as to link to other data sources, to ensure that multiple organisations such as the Government, the Care Quality Commission or local authorities are not asking care providers for similar but slightly different data. That would clearly not be helpful: the more we can have an “ask once” common dataset, the better. That is what we will work towards.

I am but a few days into this particular job as Health Minister, so I cannot give the hon. Gentleman the comprehensive update that he asked for, but I look forward to doing so on a future occasion. He also asked about the extent to which the data would be publicly available. The capacity tracker dataset is already published monthly. I share with him the objective of transparency; when I was care Minister previously, I worked hard to ensure that we could share the data and be transparent about what we need. I am committed to ensuring that we continue to make the data publicly available—at an appropriate level, clearly: we would not want any adverse or unintended consequences. Transparency is, as the hon. Gentleman says, very important.

In conclusion, the Government want to build a better picture of adult social care services across England so that at local, regional and national levels people in the sector have the information that they need and can use it to help them provide higher quality care and support to those who need it. For too long, very little information has been shared across the sector and there has been limited standardisation of how data is collected, shared and used. We now have the opportunity to resolve the issue. The draft regulations will ensure that we get vital information from all registered adult social care providers and that when providers do not make good on a request for data or do not have a reasonable excuse for not doing so, they are held to account. I commend the regulations to the Committee.

Question put and agreed to.

4.43 pm

Committee rose.

