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Llywodraeth Cymru
Welsh Government

Welsh Government
Consultation Document

Regulation and Inspection of Social Care (Wales) Act 2016

Phase 3 implementation – Regulated Advocacy Services

Date of issue: 24 May 2018

Action required: Responses by 16 August 2018

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Overview This consultation seeks your views new regulations which specify the type of advocacy services to be regulated under the regulation and Inspection of Social Care (Wales) Act 2016 and place requirements on service providers and responsible individuals for those services. They will come into force in April 2019.

How to respond You can respond to this consultation by completing and returning, by midnight on the closing date, the consultation response form at the back of this document. The response should be sent to:

Legislation Implementation Branch
Social Services Directorate
Welsh Government
Crown Buildings
Cathays Park
Cardiff
CF10 3NQ

Alternatively the consultation response form is available on our website (<http://wales.gov.uk/consultations/?lang=en>) and can be returned to us, by midnight on the closing date, via e-mail to: RISCAct2016@gov.wales

Further information and related documents **Large print, Braille and alternative language versions of this document are available on request.**

The Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 – these apply to service providers and responsible individuals of care home, secure accommodation, residential family centre and domiciliary support services

http://www.legislation.gov.uk/wsi/2017/1264/pdfs/wsi_20171264_mi.pdf

Statutory Guidance for service providers and responsible individuals on meeting service standard regulations (February 2018) – this applies to service providers and responsible individuals of care home, secure accommodation, residential family centre and domiciliary support services

<https://gov.wales/docs/dhss/publications/180201statutory-guidanceen.pdf>

Well-being Statement for People Who Need Care and Support and Carers Who Need Support:

www.wales.gov.uk/topics/health/publications/socialcare/strategies/statement/?lang=en

Code of Practice on the exercise of social services functions in relation to Advocacy under Part 10 and related parts of the Social Services and Well-being (Wales) Act 2014.

<http://gov.wales/docs/dhss/publications/151218part10en.pdf>

Missing Voices: A review of independent professional advocacy services for looked after children and young people, care leavers and children in need in Wales

https://www.childcomwales.org.uk/wp-content/uploads/2016/04/Missing-Voices_E.pdf

Consultation Summary Report
Phase 1 Implementation of the Regulation and Inspection of Social Care (Wales) Act 2016

<https://beta.gov.wales/sites/default/files/consultations/2018-01/161122responsesen.pdf>

Consultation Summary Report
Phase 2 Implementation of the Regulation and Inspection of Social Care (Wales) Act 2016

<https://beta.gov.wales/sites/default/files/consultations/2018-02/171122responses-serviceen.pdf>

Contact details

For further information:

Address: Legislation Implementation Branch
Social Services and Integration Directorate
Crown Buildings
Cathays Park
CARDIFF
CF10 3NQ

email: RISCAct2016@gov.wales

telephone: 0300 0604400

General Data Protection Regulations

The Welsh Government will be data controller for any personal data you provide as part of your response to the consultation. Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations. [Where the Welsh Government undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (e.g. a research organisation or a consultancy company). Any such work will only be undertaken under contract. Welsh Government's standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data.

In order to show that the consultation was carried out properly, the Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.

You should also be aware of our responsibilities under Freedom of Information legislation

If your details are published as part of the consultation response then these published reports will be retained indefinitely. Any of your data held otherwise by Welsh Government will be kept for no more than three years.

Your rights

Under the data protection legislation, you have the right:

- to be informed of the personal data holds about you and to access it
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- to (in certain circumstances) data portability to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection

For further details about the information the Welsh Government holds and its use, or if you want to exercise your rights under the GDPR, please see contact details below:

Data Protection Officer:
Welsh Government
Cathays Park
CARDIFF
CF10 3NQ
Email Address:
Data.ProtectionOfficer@gov.wales

The contact details for the Information Commissioner's Office are:
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Telephone: 01625 545 745 or
0303 123 1113
Website: www.ico.gov.uk

Foreword

In 2011 the Welsh Government published the white paper *Sustainable Social Services: A Framework for Action*. This set out an ambitious plan to create a new integrated and person-centred approach to social services provision in Wales.

To achieve this new approach, in the last assembly term, we made two pieces of primary legislation: the Social Services and Well-being (Wales) Act 2014 and the Regulation and Inspection of Social Care (Wales) Act 2016.

Through implementation of the 2016 Act we are establishing a new system of regulation and inspection of service providers which upholds the rights of Welsh citizens to dignified, safe and appropriate care and support.

This new system of regulation will be more robust and enable Care Inspectorate Wales, as the service regulator, to maintain an overview of the whole service an organisation is providing. It will also make it easier for service providers to register with the inspectorate and for citizens to have access to information about them.

The 2016 Act sees the regulation and inspection of advocacy services in Wales for the first time. For the present, I have decided to limit this to advocacy arranged by local authorities under their duty to assist children, looked after children and the various types of care leavers who wish to make representations in relation to their needs for care and support. I believe this is a proportionate step and an opportunity to learn from implementation of regulation in this part of the sector whilst I consider extending regulation to other forms of advocacy for those in need of care and support.

The draft Regulated Advocacy Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019 and their accompanying statutory guidance, set and explain the service standards that will be required of these providers from April 2019. They are drawn from and, wherever appropriate, equate with those standards placed upon care home services, secure accommodation services, residential family centre services and domiciliary support services from April this year.

Ensuring consistency in the requirements placed on providers and responsible individuals of all regulated services is one of my main policy objectives in implementing the 2016 Act. However, I also recognise that each service has its own characteristics. Therefore, where appropriate the requirements are tailored to ensure the best fit with how services are delivered in practice, without compromising the overall standards expected.

I would like to thank you for taking the time to read this consultation document, for considering the draft Regulations and guidance/code and would invite you to respond as appropriate. I look forward to hearing your views.

Huw Irranca-Davies AM
Minister for Children, Older People and Social Care

1. Introduction

The Regulation and Inspection of Social Care (Wales) Act 2016¹ ('the 2016 Act'), which received Royal Assent on 18 January 2016, sets the new statutory framework for the regulation and inspection of social care services and also reforms the regulation of the social care workforce in Wales. It replaces relevant systems previously put in place under the Care Standards Act 2000².

The 2016 Act provides, for the first time, for the regulation of advocacy services.

The 2016 Act is being substantially implemented in three overlapping phases:

- **Phase 1 (2016/17)** included regulations relating to the new system of workforce regulation required by the Act. These came into force on 3 April 2017. Alongside these, Social Care Wales developed the rules and procedures which govern the process of workforce registration and regulation.
- **Phase 2 (2017/18)** saw new systems for registration of regulated services put in place, to be operated by Care Inspectorate Wales from April 2018. This phase also included regulations and statutory guidance relating to the requirements and standards expected of service providers and responsible individuals of care home, secure accommodation, residential family centre and domiciliary support services. These came into force on 2 April 2018.

Links to all of the phase 1 and phase 2 regulations and statutory guidance can be accessed via the SCW Information and Learning Hub:

<https://socialcare.wales/hub/riscact-regulations>

- **Phase 3 (2018/19)** is the current phase and includes development of regulations and statutory guidance relating to the requirements and standards expected of service providers and responsible individuals of adoption, fostering, adult placement and advocacy services. It is intended that these will come into force in April 2019.

This consultation includes draft Regulations and statutory guidance in respect of regulated advocacy services.

Also within phase 3 of implementation we will be developing the requirements to be placed upon providers and responsible individuals of adoption services. We intend to consult on these elements early in the autumn, with a view to any regulations, statutory guidance and codes of practice coming into effect in spring 2019. At this time views will also be sought on the approach to regulating holiday schemes for disabled children, which currently fall to be regulated as care home services. The intention is to define this activity as a new regulated service under section 2 of the 2016 Act and to develop regulations placing proportionate requirements on the providers and responsible individuals of such services.

¹ http://www.legislation.gov.uk/anaw/2016/2/pdfs/anaw_20160002_en.pdf

² http://www.legislation.gov.uk/ukpga/2000/14/pdfs/ukpga_20000014_en.pdf

2. This consultation

This consultation runs from 24 May 2018 and closes at midnight on 16 August 2018.

This consultation seeks your views on The Regulated Advocacy Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019 ('the draft Regulations'), which in summary:

- Define the advocacy services which fall within the regulation and inspection regime of the 2016 Act;
- Place requirements on service providers and responsible individuals of regulated advocacy services under the 2016 Act

Your views are also sought on:

- Draft statutory guidance for service providers and responsible individuals of regulated advocacy services on meeting service standards, issued under section 29 of the 2016 Act;
- The potential inclusion of providers of other types of advocacy – including those for adults - within the registration and inspection regime when evidence of its effect on market stability suggests that the market is sufficiently stable to accommodate this.

Besides giving the Welsh Ministers power to specify what is meant by a regulated advocacy service, the 2016 Act requires such a service to be a service carried on for the purpose of representing the views of individuals, or assisting individuals to represent those views, in respect of matters relating to those individuals' needs for care and support: we will use this as a criterion for considering additional types of advocacy for inclusion.

Your consultation responses will help inform our consideration of the final Regulations and statutory guidance. Our intention is to analyse the responses over the autumn and consider whether any changes may be required before laying the final Regulations towards the end of this year. We will also aim to publish the statutory guidance around the same time. All will come into effect in April 2019.

3. Background to regulatory reform

The case for wider regulatory reform

A great deal has been achieved by the regulators (Care Inspectorate Wales and Social Care Wales³), and the wider social care sector, in pursuing the ambitions set

³ Care Inspectorate Wales was (until January 2019) the Care and Social Services Inspectorate Wales. Social Care Wales was (until April 2016) the Care Council for Wales.

out in the Care Standards Act 2000. This framework provided a baseline of standards, both for care and support services and for the workforce delivering them, and has undoubtedly improved public protection. It has also delivered much greater consistency, protection from abuse and exploitation, and greater exposure of sub-standard practices. Collectively, we have succeeded in raising performance and continue to use regulation and inspection to eliminate poor standards.

However, since that time we recognise that many things have changed within and around the sector, and have identified both the need to avoid our regulatory arrangements becoming out of date and the need to support the provision of sustainable services.

Our reform of the regulatory system, driven primarily through the 2016 Act, rests on five key principles:

- responsiveness to the reforms introduced by the Social Services and Well-being (Wales) Act 2014⁴ ('the 2014 Act')
- ensuring citizens are at the heart of care and support
- developing a coherent and consistent Welsh approach
- tackling provider failure
- responsiveness to new models of service and any emerging concerns over the quality of care and support services.

Independent Professional Advocacy - National Standards and Outcomes Framework for Children and Young People

A report by the Children's Commissioner for Wales⁵, published in 2012, highlighted a number of areas to address in order to improve the provision of advocacy for children and young people. These included a lack of strategic leadership shown by national and local government; lack of awareness, understanding and promotion of advocacy for young people; lack of consistent implementation of advocacy provision across Wales and a lack of scrutiny of the quality of advocacy provision and commissioning practices.

In response, the Welsh Government committed to developing and issuing a National Standards and Outcomes Framework for Children and Young People, to replace the National Standards for the Provision of Children's Advocacy Services (2003)⁶. In order to encourage improvement in the quality of service provided by independent advocacy providers there needed to be a shared and agreed framework that providers deliver to, and that advocacy commissioners use to ensure high quality advocacy services are in place for children and young people. This framework was consulted upon in spring 2017⁷.

4 http://www.legislation.gov.uk/anaw/2014/4/pdfs/anaw_20140004_en.pdf

5 Missing Voices: A review of independent professional advocacy services for looked after children and young people, care leavers and children in need in Wales https://www.childcomwales.org.uk/wp-content/uploads/2016/04/Missing-Voices_E.pdf

6 <http://www.wales.nhs.uk/sites3/Documents/441/Advocacy%20Standards-e.pdf>

7 <https://beta.gov.wales/national-standards-and-outcomes-framework-children-and-young-people>

Building on this a Technical Group, made up of advocacy providers and stakeholders, was established following the enactment of the 2014 Act, in order to:

- finalise the National Standards and Outcomes Framework
- revise (where necessary) the Part 10 Code of Practice on Advocacy⁸ issued in December 2015, under the 2014 Act
- contribute to the development of Regulations and statutory guidance required under the 2016 Act.

This work concluded in early 2018 and has aimed to ensure there is sufficient alignment between the standards to be placed on regulated advocacy services under the 2016 Act and those under the National Standards and Outcomes Framework. As a result, there will be greater clarity for both local authorities (as service commissioners) and advocacy providers. Once the Regulations and statutory guidance made under the 2016 Act come into effect the National Standards and Outcomes Framework will provide non-statutory good practice guidance for commissioners and providers of advocacy services

Defining advocacy services to be regulated

In response to a question on the definition of **advocacy services** to be regulated, within the **phase one implementation consultation**, overall feedback focused on the potential impacts on long-standing arrangements, on existing providers who may be deterred from offering Independent Professional Advocacy services and of any additional costs to providers.

It was clearly articulated that front-line provision should not be placed at risk because of available capacity being taken up dealing with administrative requirements. This was seen to be particularly important for lone or small-scale providers as it may limit their ability to deal with referrals and manage their caseload.

There was recognition that the proposed approach of only registering Independent Professional Advocates will help commissioners design and issue contracts. However, there was also a perceived danger that long-standing local arrangements might suffer with providers who are not currently able to offer a full Independent Professional Advocacy service, even though they continue to offer valuable preventative services, exiting the market.

The phase one consultation and its summary report can be accessed here:

<https://beta.gov.wales/phase-1-implementation-regulation-and-inspection-social-care-wales-act-2016>

The proposals in this consultation play a significant part in serving and advancing reform of advocacy services.

⁸ This code of practice relates to the exercise, by local authorities, of their social services functions in relation to advocacy, under the 2014 Act
<https://gov.wales/docs/dhss/publications/151218part10en.pdf>

4. Regulation of Advocacy Services

Advocacy in all its forms seeks to ensure that people, particularly those who are most vulnerable in society, are able to:

- Express their views and concerns.
- Access information and services.
- Defend and promote their rights and responsibilities.
- Explore choices and options

Legislative background

Advocacy services in Wales are currently unregulated.

Under Part 10 of the 2014 Act **local authorities** have a duty to make arrangements for the provision of assistance to looked after children, former looked after children, and children who have needs for care and support. This assistance must include assistance by way of representation. This essentially replicated and replaced the duty within section 26A of the Children Act 1989.

In addition the Part 10 Code of Practice on Advocacy, issued under the 2014 Act, set out requirements for local authorities to:-

- a) ensure that access to advocacy services and support is available to enable individuals to engage and participate when local authorities are exercising statutory duties in relation to them; and
- b) to arrange an independent professional advocate to facilitate the involvement of individuals in certain circumstances.

The code states that local authorities must arrange for the provision of an independent professional advocate when a person can only overcome barriers to participate fully in the assessment, care and support planning, review and safeguarding processes with assistance from an appropriate individual, but there is no appropriate individual available.

For the purposes of this consultation, we describe this assistance as children's statutory advocacy.

New statutory framework

Under section 27 of the 2016 Act, the Welsh Ministers may by regulations impose requirements upon a **service provider** in relation to a regulated service; and under section 28, they may impose requirements on a responsible individual for a regulated service.

These 'regulated services' include advocacy services, which are defined within the draft Regulated Advocacy Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019 ('the draft Regulations') as:

- (a) A service carried on to provide advocacy for children who make or intend to make representations which fall within section 174 of the 2014 Act⁹
(Representations relating to certain children etc)
- (b) A service carried on to provide advocacy for persons who make or intend to make representations which fall within section 176 of the 2014 Act¹⁰
(Representations relating to former looked after children etc)

where the purpose of the assistance is to represent the views of the children or persons or to assist them to represent their views in relation to their needs for care and support. Advocacy means assistance given to a help a person represent their views.

The Social Services and Well-being (Wales) Act 2014

Although not covered by this consultation, we also intend to make regulations under Section 178¹¹ of the 2014 Act which apply to the arrangements for the provision of assistance to a person making representations under s174 and s176 of the 2014 Act, including where those representations are further considered under s177.

Regulations made under these powers will apply to representations made by children and young people about a range of the local authority's social services functions which affect children. The Regulations will make provision about the categories of persons who, under the local authority's arrangements, may not provide assistance to the person. This will essentially replicate the provisions within the Advocacy Services and Representations Procedure (Children) (Amendment) Regulations 2004 and align with the Part 10 Code of Practice.

The intended effect is that a local authority may not, under arrangements made for the provision of assistance to those people making representations under s174 and s176, 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
- Is employed by the authority

⁹ <https://www.legislation.gov.uk/anaw/2014/4/section/174>

¹⁰ <https://www.legislation.gov.uk/anaw/2014/4/section/176>

¹¹ <https://www.legislation.gov.uk/anaw/2014/4/section/178>

5. The proposals

Overview

Our overall policy intention is to place a set of generic requirements upon providers of all 'regulated services' under the 2016 Act, modifying these where necessary to fit with each service.

These generic requirements were first set out in The Regulated Services (Service Providers and Responsible Individual) (Wales) Regulations 2017¹² ('the 2017 Regulations'), which came into force on 2 April 2018 and which apply to care home services (adults' and children's), secure accommodation (for children), residential family centres and domiciliary support services. The 2017 Regulations therefore provide the policy blueprint for the draft Regulations being consulted upon here.

For advocacy services it is also our policy intention to:

- Define advocacy services for the purposes of the 2016 Act which fall within the regulation and inspection regime it establishes. We intend initially that it be limited to those services which must statutorily be provided by local authorities under the 2014 Act for looked after children, care leavers and children in need of care and support (children's statutory advocacy).
- Set the standards against which advocacy services will be regulated and inspected under the 2016 Act. These will be drafted to be applicable to people in receipt of different types of advocacy services, so as to make clear an expectation that regulation be extended when market stability allows.

The Approach

The approach taken in developing the draft Regulations has been to ensure that the requirements are:

- **Proportionate:** the requirements should relate to matters within the control of the service provider and responsible individual, and which will lead to an improvement in quality and practice;
- **Consistent:** with other regulated services under the 2016 Act. This is not to say that "one size fits all", but that the same high standards should be applied across all services. The requirements are, therefore, necessarily high-level, with the detail about how the requirements may be complied with set out in the draft statutory guidance.
- **Focussed on outcomes for people:** the intention is for the requirements to best enable services to support people to achieve *what matters to them*, in line with the ethos of the 2014 Act.

¹² http://www.legislation.gov.uk/wsi/2017/1264/pdfs/wsi_20171264_mi.pdf

The Regulated Advocacy Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019

In summary, the draft Regulations:

- place requirements on providers of regulated advocacy services (under section 27 of the 2016 Act);
- place requirements on designated responsible individuals (under section 28 of the 2016 Act);
- set out which breaches of the requirements on service providers and responsible individuals are to be treated as offences (under sections 45 and 46 of the 2016 Act);
- place requirements on an appointed person in relation to service providers who are liquidated (under section 30 of the 2016 Act);
- place requirements on a personal representative of a service provider who has died (where the service provider is an individual) (under section 31 of the 2016 Act);
- set out the circumstances in which the Welsh Ministers (instead of a service provider) may designate an individual to be a responsible individual.

Requirements on service providers

The draft Regulations set out the requirements on service providers in relation to the standard of advocacy to be provided to individuals. This relates to the regulation-making power in section 27 of the Act. A “service provider” is a person who is registered with the Care Inspectorate Wales (CIW) to provide a regulated service.

Part 1 of the draft Regulations provides a definition for many commonly used terms for the purposes of the Regulations and defines the type of advocacy services which fall to be regulated under the 2016 Act.

We would particularly welcome views on the applicability and practicality of the exceptions from regulation under this part.

Part 2 sets out the general requirements on service providers. This includes requirements in relation to the statement of purpose, the arrangements for monitoring and improvement, the support to be provided to the responsible individual, the steps to be taken to ensure financial sustainability and the policies and procedures which must be in place.

The statement of purpose is central to the system of regulation and inspection being established under the 2016 Act. There will no longer be permissive conditions of registration relating to particular specialisms. The statement of purpose will be the central document which will set out the nature of the service which providers are registered to provide as well as any specialisms. Service providers will therefore be required to inform CIW and others about their intention to make substantial changes

to the service or the way it is provided in advance of making such changes. CIW will use this notification to inform its decisions about the intended changes to the service. The draft Regulations contain a requirement for service providers to notify the regulator at least 28 days prior to these changes being made to the statement of purpose. The draft statutory guidance will add clarity about the kind of changes the service regulator (CIW) would want to know about.

Examples of this include:

- provision of additional specialist services; or
- where a specific service referred to in the statement of purpose is to be withdrawn.

We are particularly interested in your views as to whether this requirement is reasonable and proportionate for advocacy services.

We would also welcome views on the need for a confidentiality policy and any special considerations which may apply in the case of an advocacy service which are distinct from other regulated services.

Regulation 11 in Part 3 requires providers to ascertain that their service is suitable to meet the individual's needs before providing advocacy for an individual. This determination of the suitability of the service must take into account the individual's views, wishes and feelings.

We would particularly welcome views on any differences which may apply between advocacy and other regulated services with regard to any care and support plan which may be in place, and the role of advocacy services in identifying and meeting needs.

Part 4 requires service providers to prepare a plan and keep it under review for the period that they are providing a service to an individual.

Part 5 requires providers to give each individual who uses the service a written guide as well as providing a written guide to local authorities who commission services. The intention here is to provide clarity on the culture and ethos of the regulated service and a range of other matters. The regulations set out some of the requirements relating to the guide; for example that it must be in an appropriate language, style, presentation and format having regard to the individuals for whom advocacy is provided. The regulations require that the guide must include information about how to raise a concern or make a complaint. There is also a requirement in the regulations for individuals to receive such support as is necessary to enable them to understand the information contained in the guide.

Part 6 contains requirements which relate to the standard of service which is provided. It includes overarching requirements which will underpin the quality of the service. It also includes requirements relating to such matters as providing information, meeting the individual's language and communication needs and ensuring that individuals are treated with respect and sensitivity, and confidentiality.

Part 7 includes requirements which are intended to ensure individuals are safe and are protected from abuse and improper treatment.

Part 8 requires service providers to only utilise staff or volunteers to work, volunteer or carry out relevant duties who are fit to do so and prescribes what fitness means for these purposes. The specific information and documentation requirements are set out in Schedule

Part 8 also sets out the registration requirements to be placed upon advocacy service managers.

We would welcome comments on whether these are thought to be proportionate to the provision of regulated advocacy services and any additional matters which require consideration.

Part 9 requires providers to have premises which are fit for purpose, for example, ensuring that premises used for the operation of the service have adequate facilities for the supervision of staff and the secure storage of records.

Part 10 contains miscellaneous requirements on service providers, including requirements as to the keeping of records and the making of notifications to the service regulator and other bodies. Schedule 2 sets out the records which are required to be kept and Schedule 3 sets out the specific notifications to be made. This part also contains requirements on the service provider to have a complaints policy and a whistleblowing policy in place.

Responsible Individuals

Parts 11-15 set out the requirements which apply to responsible individuals. These include the duty to appoint a manager for the service, to supervise the management of the service, to ensure compliance with regulatory requirements and to monitor, review and improve the quality of the service.

The intention in these draft Regulations is that the responsible individual retains overall responsibility and accountability for fulfilling these requirements and to distinguish between tasks which may be delegated and those which cannot be. The words “put suitable arrangements in place” have been used to provide the necessary clarity. We have specified the circumstances in which the requirement for a responsible individual to appoint a manager does not apply. In these circumstances the responsible individual would need to be registered as a manager with Social Care Wales. We would welcome your views on this approach.

We would further welcome views on the frequency of visits and meetings the responsible individual must arrange with individuals and members of staff.

Part 16 - Offences

The regulations in this part are made under the powers in section 45 and 46 of the 2016 Act. They provide that a failure, by the service provider and responsible individual respectively, to comply with specified requirements in the draft Regulations is an offence. There is a further qualification which applies in the case of failure to

comply with certain requirements. In these cases, the regulation provides that this is only an offence if the failure to comply results in individuals being exposed to avoidable harm or significant risk of such harm or suffering a loss of money or property as a result of theft, misuse or misappropriation.

It is worth highlighting that, although failure to comply with a particular requirement in the draft Regulations may not be an offence, a service provider's failure to comply with any of the requirements contained in regulations within Parts 2 to 10 could be grounds for cancellation of the service provider's registration under section 15 of the 2016 Act. A responsible individual's failure to comply with any of the requirements contained in regulations within Parts 11 to 15 could be grounds for the cancellation of the designation of the responsible individual under section 22.

Penalty notices

Whilst the draft Regulations set out which breaches of the requirements by service providers and responsible individuals are to be treated as offences, they do not make provision for penalty notices to apply. During phase 2 of implementation, The Regulated Services (Penalty Notices) (Wales) Regulations 2017¹³ established a penalty notice system, whereby Care Inspectorate Wales may issue a penalty to providers and responsible individuals of regulated services in stead of bringing proceedings for certain offences.

Our policy intention is to extend this to phase 3 services, therefore enabling the same penalty notice system to apply to equivalent offences for independent fostering service providers and responsible individuals. This is clearly illustrated within the table at Annex A (separate document) and your views are sought within the consultation response form at section 6 of this document.

Part 17 sets out specific requirements which apply when the service provider is insolvent or when a service provider who is an individual has died. In these circumstances the regulations place specific notification duties on the appointed person (in the case of insolvency) or the personal representatives (in the case of the death of a service provider who is an individual

Part 18 specifies the circumstances in which the Welsh Ministers (instead of the service provider) may designate an individual to be a responsible individual, despite the eligibility requirements of section 21(2) not being met in respect of the individual. This regulation is made under section 21(5) of the Act.

The approach under the Act is that responsibility for designating a responsible individual should rest firmly with the service provider. If there is an eligible - as well as fit and proper - person who meets the requirements set out in the Act the service provider is expected to designate that person as the responsible individual unless there are exceptional circumstances. These circumstances are set out in the draft regulations.

¹³ http://www.legislation.gov.uk/wsi/2017/1292/pdfs/wsi_20171292_mi.pdf

6. Potential impacts

To assist with the consideration of the draft Regulations we have included some indicative costs and benefits of the proposals included in this consultation. Where we have been able to we have also included some detail on the other options that have been considered during the development of the draft Regulations.

Definition of advocacy services for the purposes of the 2016 Act

Regulate children's statutory advocacy: statutory services under the Social Services and Well-being (Wales) Act 2014

A Technical Group of advocacy providers and stakeholders was established with the aim of advising on the development of regulations and statutory guidance under the 2016 Act. The Group agreed that the opportunity for transitional arrangements should be explored as part of implementation. It was agreed that providers of children's statutory advocacy, because of their historic partnership of delivering with local government, were more likely to be in a strong position to respond to the registration and inspection requirements. Longer-term timelines could be considered for other advocacy service providers subject to there being a clear timeline and expectation that providers are "working towards full registration". There was some concern that the definition of 'advocacy service' should reference the 2014 Act so as to limit the opportunity for confusion with mental health or mental capacity advocacy. The Group reflected the importance of ensuring that the drive for greater access to advocacy services should reflect realistic expectations and not undermine and unsettle stability. It also provides an opportunity to work towards the development of a specific framework with SCW for qualification induction and training.

Accordingly, the approach set out in the draft regulations focuses on children's statutory advocacy, but allows for the extension of the regulatory framework to providers of advocacy for adults and those children who do not fall within the scope of section 178 of the Social Services and Well-being (Wales) Act 2014 (the 2014 Act) at the point where there is clearer evidence of the impact that regulations and inspection under the 2016 Act will have on providers.

Costs

Costs to CIW

There will be a small marginal cost to CIW to extend their IT system to include advocacy service providers as proposed. Additionally there will be recurring IT maintenance costs, however these are also expected to be small.

Costs to Applicants

There are currently two service providers commissioned by local authorities to provide services regulated under this proposed approach. The majority of the information required to register should be readily available to the applicant as it forms part of standard business planning. Some additional information will need to be sought and collating and entering this information would take approximately **a day** for the average provider. The form will be filled out by someone relatively senior.

Estimating that they are paid £15 an hour this would mean a cost of £120. Therefore we estimate the total cost to applicants of registering at £240.

Benefits

The key benefit of this approach is that it is appropriate, targeted and proportionate, and that the information and documentation provided will give CIW the ability to make a full and informed decision as to whether an applicant is fit to manage a service. This enhances CIW's ability to ensure poor providers are not registered and as such protects people using the services. This approach has been developed with the Technical Group on Advocacy and as a result of responses to consultation on Phase one of the implementation of the 2016 Act, which indicated concern amongst stakeholders that requiring the full current range of advocacy services to register under phase 3 will deter market entry and result in additional costs.

Risks

The main risk of this approach is that a range of services which are providing what is described as advocacy (for example to the majority of adults) will continue to be unregulated. This is not a new risk but a continuation of the situation that pertains. However, the regulatory standards which will apply to children's statutory advocacy providers are being drafted with the clear intention that they are more broadly applicable and that the definition is amended when it is clear that market stability would not be adversely affected by the extension of the regulatory regime.

Summary

This provides for a more graduated approach which sets high standards for the delivery of advocacy services and respects the phase 1 Act implementation consultation response which indicated that a phased implementation would limit the risk of unknown consequences. It recognises the long history of the children's sector in delivering advocacy support for looked after and other specified children and that they are well placed to lead by example.

Requirements on service providers and responsible individuals of advocacy services under the 2016 Act

Options

Option one – Replicate the provisions of the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulation 2017

Under the 2016 Act the following are listed in section 2 as regulated services:

- A care home service;
- A secure accommodation service;
- A residential family centre service;
- An adoption service;
- A fostering service;

- An adult placement service;
- An advocacy service;
- A domiciliary support service.

Advocacy services, however defined, are of a clearly different nature to services which provide accommodation, or domiciliary support and so it has been necessary to consider which of the provisions should apply, which should not, and what modifications may be appropriate so that advocacy may become a regulated service.

Under this option the provisions of the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 would apply to regulated advocacy services in the same way that they do to other regulated services without modification.

Option two – Modify the provisions of the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2016

An exercise was undertaken, with the assistance of the Technical Group on Advocacy to identify appropriate adaptations and modifications. The provisions of the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulation 2016 that are applicable to regulated advocacy services are listed below with some commentary:

General requirements on service providers – we propose that the bulk of this would be applicable to regulated advocacy services and propose adding a proviso that a regulated advocacy service must have in place a policy dealing with confidentiality issues. This reflects the particular circumstances in which information may be shared between an advocate and a service user and the fact that such sharing will often prefigure the provision of other services offering care and support. There is a need to protect both the confidentiality of the service user and the professionalism of the provider; a clear explanation of what the limits of confidentiality are is in the interests of both.

Requirements on service providers as to the steps to be taken before agreeing to provide care and support - The requirements in Part 4 of the 2017 Regulations should apply to advocacy service providers, with the deletion of 'admission' in reg 14(2). It is not our intention that an advocacy service provider should undertake its own assessment of a individual's care and support needs. We do, however, require that an advocacy provider should make an initial assessment of its ability to meet the individual's needs in terms of advocacy.

Requirements on service providers as to the steps to be taken on commencement of the provision of care and support – provisions in respect of personal plans and reviews of personal plans are less extensive reflecting the distinction whereby day to day care and support is not supplied by an advocacy service.

Requirements on service providers as to the information to be provided to individuals on commencement of the provision of care and support - We wish to replicate Part 6 with modifications reflecting the application of this provision to regulated advocacy services.

Requirements on service providers as to the standard of care and support to be provided – These provisions are effectively replicated with modifications reflecting their application to advocacy services. Less focus is placed on continuity of care and a greater focus on confidentiality as a result of this consideration.

Requirements on service providers – safeguarding – these provisions apply to regulated advocacy service providers other than those provisions more suitable to circumstances where accommodation is provided.

Requirements on service providers as to premises, facilities and equipment – we do not believe that provisions relating to facilities and equipment will be applicable to advocacy services and that the requirements as regards premises will only be applicable in respect of the overarching requirement, the supervision of staff and the secure storage of records.

Other requirements on service providers – provisions relating and notifications to records which apply explicitly to care homes do not apply. Notifications with respect to children admitted into, or discharged from, a place at which accommodation is provided to children are not required in respect of advocacy. Notification with respect to the death of a child accommodated in a secure children's home does not apply. Provisions regarding conflicts of interest are modified to remove reference to financial interests and care homes. Complaints policy and procedures and whistleblowing provisions are retained.

Requirements on responsible individuals for ensuring effective management of the service – this is replicated save for provisions relating explicitly to care homes. We have replicated, with modification, provisions regarding visits and meetings with staff and individuals for whom the service is provided but we would welcome further comment on the prescribed frequency of such visits and meetings.

Requirements on responsible individuals for monitoring, reviewing and improving the quality of the regulated service – this is modified to reflect the applicability of provisions to advocacy services.

Offences - we intend that the regulations to specify that the failure by service providers or responsible individuals to meet certain requirements are offences, as in Part 21 of the 2017 Regulations. Where these refer to the same or similar requirements under these regulations we intend to create similar offences.

Service providers who are liquidated etc or who have died – these provisions are replicated with modifications reflecting their application to advocacy services.

Requirements on responsible individuals for ensuring effective oversight of the service; Requirements on responsible individuals for ensuring compliance of the service; and Regulations under section 21(5) of the Act – these provisions are all replicated for advocacy.

Preferred Option: For the reasons set out under 'Benefits/Risks' below, option two is the preferred option.

Costs

Options one and two

Costs to CIW

The cost to CIW of providing a regulation and inspection regime under the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 is addressed in the Regulatory Impact Assessment which accompanied those Regulations (<http://www.assembly.wales/laid%20documents/sub-ld11277-em/sub-ld11277-em-e.pdf>). The marginal cost of extending this regime to advocacy services as defined is likely to be small.

Costs to Providers

Provisions under the following Parts of the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 apply to advocacy services. Under option one they are applied unmodified; modifications relevant to option two are noted in the text where appropriate.

There is clearly an interaction between the definition of an advocacy service for the purposes of these Regulations and the extent to which service providers meet, or are in a position to meet, the standards that are set out in the Regulations, even though the sector is currently unregulated. For this reason, the costs identified below are presented in a cost per provider format.

General requirements on service providers

Requirements on service providers as to the steps to be taken before agreeing to provide care and support – Provisions requiring a statement of purpose and the production of a series of policies and procedures would incur a small cost to service providers depending on the provider and the current policies and procedures they have in place.

Requirements on service providers as to the steps to be taken on commencement of the provision of care and support

No additional costs have been identified for service providers under this option.

Requirements on service providers as to the information to be provided to individuals on commencement of the provision of care and support

Provisions requiring providers to prepare a written guide to the service and a service agreement which must be shared with each individual would incur a cost to service providers. Again, this will vary dependent on the provider and the documentation they have in place.

Requirements on service providers as to the standard of care and support to be provided

The requirement to provide information in an appropriate language, style, presentation and format having regard to the individual's needs would incur a cost to service providers. The degree to which there will be a cost will be dependent on the provider and the documentation they have in place.

Requirements on service providers – safeguarding

The requirement to have policies and procedures in place for the prevention of abuse, neglect and improper treatment and for responding to any allegation or evidence would incur a small cost to service providers. This will depend on the provider and the policies and procedures they currently have in place.

Requirements on service providers as to staffing

The requirement to undertake Disclosure and Barring Service (DBS) checks would incur a cost in staff time for service providers. The costs associated with the need for a disciplinary policy and one for the support and development of staff are covered in the above paragraphs. The degree to which there will be a cost will be dependent on the provider and the arrangements they currently have in place.

Requirements on service providers as to premises, facilities and equipment

The bulk of provisions within this Part are not applicable to advocacy services and we have sought to remove those. It is expected that the need for providers to have adequate facilities for the supervision of staff and storage of records is likely to incur a small cost to most service providers.

Other requirements on service providers

The requirement to keep and maintain specified records and make the required notifications will incur a cost to service providers. The degree to which there will be a cost will be dependent on the provider and the arrangements they currently have in place.

Requirements on responsible individuals

The requirements on Responsible Individuals relate to the oversight of the service, ensuring the management is supervised, making reports on the quality of the service, adequacy of resources and other matters. The Responsible Individual must also make visits to the service in person and ensure the service is complying with other requirements, such as making notifications, recording incidents and complaints.

Some additional costs may be incurred by providers. Using the ONS data from the Annual Survey of Hours and Earnings, which states that the gross hourly earnings for managers and directors in Social Services' in 2016 was £18.86, it is estimated that, assuming RIs spend most of their working day (8 hours) at a service during

their visit, this would give a total cost of £196 per visit. This will vary as some RIs may have more than one service at different locations.

Benefits/Risks

Option one

The benefits of option one are that providers of advocacy services would be registered by CIW and regulated in accordance with standards which would apply to, as far as possible, all providers of regulated services. This would provide for clarity and consistency in the way services providing care and support are regulated but the risk is that this would not recognise the specific context in which advocacy services are provided and the related challenges.

Option two

The benefits of option two are that providers of advocacy services would be registered by CIW and regulated in accordance with standards which would apply, as far as possible, to all providers of regulated services *with relevant modifications to reflect the specific circumstances of advocacy services*. This would provide for clarity and consistency in the way services providing care and support are regulated whilst also recognise the specific context in which advocacy services are provided and the related challenges.

7. Statutory Guidance

The draft statutory guidance, developed under section 29 of the 2016 Act, sets out how providers of regulated advocacy services and responsible individuals may comply with the requirements imposed by Parts 2 to 15 of the draft Regulations. It provides further guidance – to which service providers and responsible individuals must have regard – on how to meet the individual components of each regulation where further clarification and definition may be needed. The guidance should not be considered exhaustive as there may be other ways in which service providers and responsible individuals can demonstrate that they meet the requirements set out in regulations. It is not intended to be standalone and therefore must be read alongside Parts 2 to 15 of the draft Regulations.

As with the draft Regulations, the draft statutory guidance generally follows the format and, where appropriate, the content of the statutory guidance¹⁴ published in February 2018 in respect of care home, secure accommodation, residential family centre and domiciliary support services (developed within phase 2 of implementation).

Care Inspectorate Wales will use this guidance to inform decisions about the extent to which registered providers are meeting the requirements within the regulations.

¹⁴ <http://gov.wales/docs/dhss/publications/180201statutory-guidanceen.pdf>

Is the proposed definition in Part 1 in relation to advocacy services appropriate?

If you think there is anything missing or unnecessary please explain within the box below.

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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PART 2: GENERAL REQUIREMENTS ON SERVICE PROVIDERS

Are the requirements in this part right for advocacy service providers?

If you think there is anything missing or unnecessary please explain within the box below.

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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Does the statutory guidance adequately support advocacy service providers in how they may comply with the requirements in this part?
If you think there is anything missing or unnecessary please explain within the box below.

PART 3: REQUIREMENTS ON SERVICE PROVIDERS AS TO THE STEPS TO BE TAKEN BEFORE AGREEING TO PROVIDE ADVOCACY

Are the requirements in this part right for advocacy service providers?
If you think there is anything missing or unnecessary please explain within the box below.

We would welcome views on any differences which may apply between advocacy and other regulated services with regard to any care and support plan which may be in place, and the role of advocacy services in identifying and meeting needs

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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Does the statutory guidance adequately support advocacy service providers in how they may comply with the requirements in this part?
If you think there is anything missing or unnecessary please explain within the box below.

PART 4: REQUIREMENTS ON SERVICE PROVIDERS AS TO THE STEPS TO BE TAKEN ON COMMENCEMENT OF PROVISION OF ADVOCACY

Are the requirements in this part right for advocacy service providers?
If you think there is anything missing or unnecessary please explain within the box below.

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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Does the statutory guidance adequately support advocacy service providers in how they may comply with the requirements in this part?
If you think there is anything missing or unnecessary please explain within the box below.

PART 5: REQUIREMENTS ON SERVICE PROVIDERS AS TO THE INFORMATION TO BE PROVIDED TO INDIVIDUALS ON COMMENCEMENT OF PROVISION OF ADVOCACY

Are the requirements in this part right for advocacy service providers?
If you think there is anything missing or unnecessary, please explain within the box below.

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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Does the statutory guidance adequately support advocacy service providers in how they may comply with the requirements in this part?
If you think there is anything missing or unnecessary please explain within the box below.

PART 6: REQUIREMENTS ON SERVICE PROVIDERS AS TO THE STANDARD OF ADVOCACY SERVICES TO BE PROVIDED

Are the requirements in this part right for advocacy service providers?
If you think there is anything missing or unnecessary, please explain within the box below.

We would welcome views on the need for a confidentiality policy and any special considerations which may apply in the case of an advocacy service which are distinct from other regulated services

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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Does the statutory guidance adequately support service providers in how they may comply with the requirements in this part?

If you think there is anything missing or unnecessary please explain within the box below.

PART 7: REQUIREMENTS ON SERVICE PROVIDERS - SAFEGUARDING

Are the requirements in this part right for advocacy service providers? If you think there is anything missing or unnecessary, please explain within the box below.

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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Does the statutory guidance adequately support service providers in how they may comply with the requirements in this part?

If you think there is anything missing or unnecessary please explain within the box below.

PART 8: REQUIREMENTS ON SERVICE PROVIDERS AS TO STAFFING

Are the requirements in this part right for advocacy service providers? If you think there is anything missing or unnecessary please explain within the box below.

Do you consider the requirements for managers of advocacy services to register with Social Care Wales to be proportionate and helpful in ensuring that the service is delivered effectively? Are there any additional matters which require consideration?

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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Does the statutory guidance adequately support service providers in how they may comply with the requirements in this part?

If you think there is anything missing or unnecessary please explain within the box below.

PART 9: REQUIREMENTS ON SERVICE PROVIDERS AS TO PREMISES

Are the requirements in this part right for advocacy service providers?

If you think there is anything missing or unnecessary please explain within the box below.

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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Does the statutory guidance adequately support service providers in how they may comply with the requirements in this part?

If you think there is anything missing or unnecessary please explain within the box below.

PART 10: OTHER REQUIREMENTS ON SERVICE PROVIDERS

Are the requirements in this part right for advocacy service providers?

If you think there is anything missing or unnecessary please explain within the box below.

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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Does the statutory guidance adequately support service providers in how they may comply with the requirements in this part?

If you think there is anything missing or unnecessary please explain within the box below.

PARTS 11 - 15: REQUIREMENTS ON RESPONSIBLE INDIVIDUALS

Are the requirements in this part right for advocacy services?

If you think there is anything missing or unnecessary please explain within the box below.

We have specified the circumstances in which the requirement for a responsible individual to appoint a manager does not apply. In these circumstances the Responsible Individual would need to be registered as a manager with Social Care Wales. We would welcome views on this and the frequency of visits and meetings the responsible individual must arrange with individuals and members of staff.

Agree

Tend to agree

Tend to disagree

Disagree

Does the statutory guidance adequately support service providers and Responsible Individuals in how they may comply with the requirements in this part?

If you think there is anything missing or unnecessary please explain within the box below.

PART 16: OFFENCES

Is the approach taken in relation to offences sufficient and proportionate?

If not please explain below

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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Penalty Notices (These are not provided for within the draft Regulations)

Is the approach in relation to penalty notices, as illustrated at Annex A, sufficient and proportionate? Are the levels of penalty appropriate?
If not, please explain below.

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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PART 17: SERVICE PROVIDERS WHO ARE LIQUIDATED ETC OR WHO HAVE DIED

Are the requirements placed on appointed persons and personal representatives reasonable? If not, please explain below.

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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PART 18: REGULATIONS UNDER SECTION 21(5) – DESIGNATION OF RESPONSIBLE INDIVIDUAL BY WELSH MINISTERS

Q. 18. Are the circumstances in which responsible individuals may be designated by the Welsh Ministers, rather than the service provider, sufficient and appropriate? If not, please explain below.

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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Other Questions

We have identified a number of costs/benefits/risks related to these draft Regulations.

Do the costs/benefits/risks referenced in this consultation document give a reasonable account of the level of impact of the draft Regulations? Are there any additional costs/benefits/risks that you feel have not been considered or identified?’

Please explain:

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The Welsh Government is interested in understanding whether the proposals in this consultation document will have an impact on groups with protected characteristics. Protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, and sexual orientation.

Do you think that the proposals in this consultation will have any positive impacts on groups with protected characteristics? If so, which and why/why not?

Please explain:

Do you think that the proposals in this consultation will have any negative impacts on groups with protected characteristics? If so, which and why/why not?

Please explain:

We would like to know your views on the effects that these proposals would have on the Welsh language, specifically on

- i) opportunities for people to use Welsh and
- ii) on treating the Welsh language no less favourably than English.

What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Please explain:

Please also explain how you believe the proposed policy could be formulated or changed so as to have:

- i) positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and
- ii) no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to tell us about them