



Welsh Government
Consultation Document

Regulation and Inspection of Social Care (Wales) Act
2016

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

Date of issue: 28 September 2018
Action required: Responses by 21 December 2018

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

Overview

This consultation seeks your views on a set of amendment regulations – The Regulated Services (Service Providers and Responsible Individuals) (Wales) Amendment Regulations 2019 which amend the substantive regulations - The Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017. The new regulations were developed under the Regulation and Inspection of Social Care (Wales) Act 2016 and, if approved by the National Assembly for Wales, 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>

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

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General Data Protection Regulation (GDPR)

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:
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.

New regulations, the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 (“The 2017 Regulations”) were developed last year and subsequently came into force in April 2018. These Regulations place a consistent set of requirements on care home services, domiciliary support services, residential family centre services and secure accommodation services.

Following implementation, several matters were subsequently identified which require amendments to be made to the 2017 Regulations. These relate to a number of different areas; however the need to clarify the types of activity which fall to be regulated as a care home service was a key consideration. Specifically, this includes excepting certain types of respite care provided to children, and clarifying the wording around care provided to disabled children.

These changes are set out within the draft Regulated Services (Service Providers and Responsible Individuals) (Wales) Amendment Regulations 2019 which are the subject of this consultation.

While many of these proposed amendments are relatively minor in nature, I want to ensure that people have the opportunity to consider our proposals in detail and submit feedback to ensure the proposed amendments will work in practice. In particular I want to ensure we strike the right balance between allowing the flexibility for arrangements such as respite care to operate without the full burden of being defined as a regulated service, while ensuring people’s safety is not compromised.

I would like to thank you for taking the time to read this consultation document, for considering the draft regulations and 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 past four years have seen the creation of a new legal framework for social services in Wales, with the passing of two landmark pieces of legislation. The overall aim has been to reform and consolidate social care law, in order to improve the well-being of people who need care and support and their carers.

The Social Services and Well-being (Wales) Act 2014¹ ('the 2014 Act'), which came into force on 6 April 2016, establishes a new framework that brings together and modernises the law in relation to most local authority social services in Wales. However, we recognise that adoption processes are primarily governed by The Adoption Act 1976² and The Adoption and Children Act 2002³ ('the 2002 Act').

The Regulation and Inspection of Social Care (Wales) Act 2016⁴ ('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, regulations and National Minimum Standards previously put in place under the Care Standards Act 2000⁵.

The 2016 Act is being 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 and 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 homes (including children's homes), secure accommodation for children, residential family centres 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 services, fostering services, adult placement services and advocacy services. It is intended that these will come into force in April 2019.

The draft Regulated Services (Service Providers and Responsible Individuals (Wales) Amendment Regulations 2019, the subject of this consultation, are also being taken forward as part of Phase 3 of implementation.

¹ http://www.legislation.gov.uk/anaw/2014/4/pdfs/anaw_20140004_en.pdf

² <http://www.legislation.gov.uk/ukpga/1976/36>

³ <http://www.legislation.gov.uk/ukpga/2002/38/contents>

⁴ http://www.legislation.gov.uk/anaw/2016/2/pdfs/anaw_20160002_en.pdf

⁵ http://www.legislation.gov.uk/ukpga/2000/14/pdfs/ukpga_20000014_en.pdf

Alongside the implementation, this reform of social care law in Wales is being supported by wider policy initiatives, including the Welsh Government's 'Improving Outcomes for Children' programme. This programme is overseen by a Ministerial Advisory Group of key stakeholders from local government, academia and the third sector and includes the National Adoption Service. It focuses on three key themes: reducing the numbers of children entering care; improving outcomes for children in care (including stable placements and permanency planning); and supporting care leavers to adulthood and independence.

2. This consultation

This consultation runs from 28 September 2018 and closes at midnight on 21 December 2018.

Your views are sought on The Regulated Services (Service Providers and Responsible Individuals) (Wales) Amendment Regulations 2019 ("The 2019 Regulations") which amend the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017. In summary, the 2019 Regulations:

- Amend the wording relating to disabled children in relation to care home exceptions.
- Provide an exception from registration as a care home service for small scale respite arrangements for a child or sibling group which is carried out in the carer's own home, with a restriction of up to 28 days in any 12 month period.
- Exclude the provision of nursing care by a registered nurse from the scope of the definition of a domiciliary support service.
- Amend the requirements for managers of domiciliary support services to allow those managers of nurses agencies previously registered under the Care Standards Act to not have to register with Social Care Wales until 1 April 2020.
- Remove the requirement for regulated services to make notifications and keep records in respect of illness.
- Amend the wording in relation to record keeping and notification requirements in respect of incidents of pressure damage.
- Make a minor amendment to the definition of 'Category B' accommodation based services (which consist of an extension to an existing premises).
- Make a number of minor amendments to correct typographical and layout issues.

Your consultation responses will help inform our consideration of the final Regulations. Our intention is to analyse the responses over the winter and consider whether any changes may be required before laying the Regulations before the National Assembly for Wales in spring 2019.

It is intended that the final Regulations will come into force in April 2019.

3. The need for regulatory change

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

- responsiveness to the reforms introduced by 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.

The new regulatory framework under the 2016 Act

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. Under section 28, they may impose requirements on a responsible individual for a regulated service.

These 'regulated services' include care home services, domiciliary support services, residential family centre services and secure accommodation services as defined in the 2017 Regulations.

Under section 29 of the 2016 Act the Welsh Ministers must publish statutory guidance about how providers of a regulated service may comply with requirements imposed by regulations under section 27, including how the providers may meet any standards for provision of a regulated service specified by such regulations; and about how responsible individuals for a regulated service may comply with the requirements under section 28.

The 2017 Regulations and statutory guidance made under the 2016 Act replaced requirements previously put in place under the Care Standards Act 2000 and its associated National Minimum Standards.

Approach to regulation

The approach taken in developing the 2017 Regulations was to ensure that the requirements in respect of regulated services were:

- **Proportionate:** the requirements should relate to matters within the control of the regulated adoption service provider, or their responsible individual, or the local authority adoption service provider or their service manager; and which will lead to an improvement in quality and practice.
- **Reasonably consistent** across all 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 statutory guidance. So far as possible, equivalent requirements will also be applied to local authority adoption services, supplemented a code of practice.
- **Focused 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 principles of the 2014 Act.

These principles have been maintained when developing the draft 2019 Regulations.

The need for the 2019 Regulations

The rationale for the amendments proposed in the 2019 Regulations is set out below:

Exception from scope of care home service

Wording relating to disabled children (Regulation 4)

The amendment provides clarity about activity which falls to be regulated as a care home service. The original wording was intended to replicate the exception under the Care Standards Act 2000 which recognises the vulnerability of disabled children and affords them a greater degree of regulatory protection. However, the wording used in the 2017 Regulations had the unintended consequence of drawing into the scope of regulation a wide range of arrangements involving provision of residential accommodation to children if it included the participation of even one disabled child. The draft 2019 Regulations deal with this by amending the wording to 'care provided wholly or mainly to disabled children' rather than 'accommodation is provided to a disabled child'. We consider this to be a more proportionate approach which will provide greater clarity and certainty to providers of those services.

Small scale respite care for children (Regulation 4 (c))

Providing an exception for small scale respite arrangements for a child or sibling group which is carried out in the carer's own home will provide a degree of flexibility to help facilitate the making of short respite arrangements by parents of disabled children e.g. by those who use direct payments. Without this exception carers providing care and accommodation for children for a short period in their own home would be required to register as a care home service. The restriction to 28 days in any 12 month period and to provision of accommodation in the carer's own home will help to ensure that this activity is limited to arrangements on a domestic scale. It is also consistent with the exception for adult services at regulation 2(1)(b) of the 2017 regulations. There is a similar exception in the 2017 regulations for adult services but we think it appropriate that the additional measure imposed here to limit the number of children and to limit to provision of accommodation in a carer's own home are appropriate distinctions to make for children.

We consider that the proposed amendment strikes the balance between facilitating respite arrangements, for example by those who use direct payments, while recognising the greater vulnerability of children through restrictions which are additional to those in place for adults..

Exception from scope of domiciliary support service

Provision of nursing care by a registered nurse or Local Health Board (Regulation 5)

Nurses agencies are not included as a type of regulated service under Schedule 1 of the 2016 Act. However, in implementing the 2016 Act and re-registering services it has become clear that the nature of the services being provided by some nurses agencies demand further clarity on where to draw the line for activity which falls within the scope of regulation. The amendment excludes the provision of nursing care by a registered nurse from the scope of the definition of a domiciliary support service. The amendment also excludes district nursing services from the scope of regulation as they are already regulated under NHS legislation.

However, depending upon the nature of the service provided by nurses agencies or LHBs they may still fall to be regulated as domiciliary support services under the 2016 Act. Indeed, some nurses agencies already hold a separate registration as domiciliary care agencies under the Care Standards Act 2000.

Extending Social Care Wales registration date for managers of nurses agencies (Regulation 8)

Managers of nurses agencies were not required to register with SCW under the Care Standards Act 2000. As indicated above however, some nurses agencies will be registering with Care Inspectorate Wales as domiciliary support services under the 2016 Act.

Amending the requirements for managers of domiciliary support services to allow additional time for persons previously registered as managers of nurses agencies under the Care Standards Act but who were not previously registered as managers of domiciliary care agencies is intended to provide a degree of flexibility and period of transition. This group will have until 1 April 2020 to register with SCW.

Removing notification and record keeping requirements in respect of incidents of illness (Regulations 11 and 12)

Removing the requirement for regulated services to make notifications and keep records in respect of illness recognises that people will develop serious illnesses such as cancer or dementia but not as a consequence of the quality of care provided by the regulated service.

Amending wording in respect of pressure damage (Regulation 12)

Amending the wording in relation to record keeping and notification requirements in respect of incidents of pressure damage will ensure the Regulations are consistent with the revised wording in the All Wales Tissue Viability Nurse Guidance.

Category B

Amending the wording of the definition of 'Category B' accommodation based services (which relate to a new extension to an existing building), will clarify how the additional requirements for new accommodation apply to providers who extend their premises.