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Llywodraeth Cymru
Welsh Government

Welsh Government
Consultation – summary of responses

Regulation and Inspection of Social Care (Wales) Act 2016

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

March 2019

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

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1.1 Introduction

The Regulation and Inspection of Social Care (Wales) Act 2016 ('the 2016 Act') received Royal Assent on 18 January 2016. It sets the new statutory framework for the regulation and inspection of social care services and reforms the regulation of the social care workforce in Wales. Therefore it replaces relevant systems previously put in place under the Care Standards Act 2000.

The 2016 Act enables the Welsh Ministers to put in place a number of items of subordinate legislation through the making of regulations, together with the publication of guidance and the issuing of codes of practice.

The *Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017*, created under the 2016 Act, place requirements on service providers and responsible individuals in providing care and support within the following regulated services:

- care home services (for both adults and children)
- secure accommodation services for children
- residential family centre services
- domiciliary support services

These Regulations came into force in April 2018 and apply to services once their application for registration with Care Inspectorate Wales has been determined.

1.2 This consultation

Following implementation of the *Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017*, minor issues were subsequently identified which required amendments to be made. These changes are set out within the draft *Regulated Services (Service Providers and Responsible Individuals) (Wales) Amendment Regulations 2019* which were the subject of this consultation.

There were 14 respondents to the consultation. All responses have been considered equally in terms of the comments received. A list of respondents is attached at Annex A.

A summary of the responses, together with the Welsh Government’s analysis and conclusions can be found at Section 2.

1.3 Next Steps

Following analysis and consideration of the consultation responses received the draft *Regulated Services (Service Providers and Responsible Individuals) (Wales) Amendment Regulations 2019* have been amended. These regulations will come into force in April 2019.

Section 2

Summary of responses received and Welsh Government response

Care home services exceptions				
1. Are the amended exceptions from registration as a care home service proposed in regulation 4 of the draft amendment regulations clear and appropriate?				
Agree 36%	Tend to agree 36%	Tend to disagree 7%	Disagree 0%	No response 21%

Summary of the amendment(s)

Regulation 4 of the draft amendment regulations changes regulation 2(i) of *the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017* in relation to care and accommodation provided to disabled children for the purposes of a holiday or recreational activity. The amendment narrowed the scope of regulation to services that provide care and accommodation *wholly or mainly* to disabled children, not to any service which may include disabled children.

Regulation 4 also creates an additional exception 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.

Summary of responses

Most respondents agreed or tended to agree with the amendment, stating that the amendments were reasonable and proportionate. Some stated they did not have sufficient knowledge of children’s services to comment. One respondent felt that clearer wording would be welcomed with regards to sibling groups.

Welsh Government response

We have considered the responses but have not identified any amendments as a consequence. However, as a result of separate policy development and stakeholder engagement we are considering options for the future regulation and oversight of services which provide residential holidays for disabled children and which are currently required to register as a care home service. The intention is to work with the sector and stakeholders to develop arrangements which are more proportionate to the scale and nature of these services. As part of the transition, services which provide residential holidays for disabled

children will, in the interim, be exempted from the requirement to register. The draft amendment regulations have therefore been adjusted to remove these services from the scope of regulation as a care home service.

The exemption for these services will be conditional upon providers of such services notifying Welsh Ministers in writing. This will assist in the collection of information in relation to the oversight and governance of such schemes while they are outside of regulation.

In terms of the exception for sibling groups, this is intended to except a person, such as a personal assistant (PA) funded by direct payments, from the scope of regulation as a care home service if a child or sibling group is cared for at that person’s house overnight for 28 days or fewer a year. The intention here is to provide additional flexibility in the way in which people use their direct payments.

Domiciliary support services exceptions				
2. Are the amended exceptions from registration as a domiciliary support service proposed in regulation 5 of the draft amendment regulations clear and appropriate? Please explain your answer within the box below.				
Agree 29%	Tend to agree 0%	Tend to disagree 14%	Disagree 43%	No response 14%

Summary of the amendment(s)

Regulation 5 excludes the provision of nursing care by a registered nurse from the scope of the definition of a domiciliary support service. It also excludes the provision of care and support by a Local Health Board to meet needs which are related to the needs of individuals for nursing care.

Summary of responses

A number of respondents disagreed with the amendment and recommended the exclusion of all NHS staff from the regulations. Other respondents were supportive of the amendments.

Welsh Government response

We have considered the responses but do not intend to broaden the exception which relates to Local Health Boards. The purpose of the amendment is to provide clarity as well as avoiding unnecessary duplication and overlap between the two inspectorates. The intention is to avoid bringing services which relate to a nursing need and which may provide an element of care and support to individuals as an incidental part of that service into the scope of regulation by CIW.

We believe that the amendment upon which we consulted will provide clarity for district nursing and community nursing teams which provide services intended to meet people’s nursing needs (and may provide care and support which is ancillary to the nursing need). NHS services fall within the oversight of Healthcare Inspectorate Wales.

However, there may be other arrangements by LHBs which will still fall within the scope of CIW regulation if they carry out activity which fits the definition of a domiciliary support service.

We do not agree that any activity carried on by LHBs or registered nurses or health care professionals should be exempt from regulation where it meets the definition of a regulated service. This would create disparity between both LA and LHB service providers and the workforce.

Registered nurses are only required to register with Social Care Wales if they are the manager of a regulated service. The amendment regulations do not alter that position.

Managers of nurses agencies				
3. Are the amended registration requirements for managers of nurses agencies proposed in regulation 8 of the draft amendment regulations clear and appropriate?				
Agree 36%	Tend to agree 7%	Tend to disagree 0%	Disagree 14%	No response 43%

Summary of the amendment(s)

Regulation 8 amends the requirements in relation to 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.

Summary of responses

Most respondents either agreed with this amendment or did not provide a response. Of those that disagreed, one misunderstood the intention of the amendment and one provided a response that did not address the question being raised.

Welsh Government response

This amendment relates to the requirement for managers of regulated services to register with Social Care Wales and makes specific provision for managers of domiciliary support services which had previously been registered as nurses agencies under the Care Standards Act by providing additional time to achieve registration.

We feel it is proportionate and reasonable to give managers of domiciliary support services, which had previously been registered as nurses agencies under the Care Standards Act, sufficient time in which to register as managers with Social Care Wales. This is because under the Care Standards Act there was no requirement for managers to register with Social Care Wales. Therefore, we intend to maintain the wording in the draft amendment regulations.

It is not the intention of the Welsh Government to require nurses working in the social care sector to register with SCW unless they are managing a regulated service. The regulations do not alter this position.

Managing a regulated service is a specific role which has additional qualification requirements, set out in SCW qualification framework:

The rationale is to promote and maintain quality for people by requiring individuals to have vocational or practice based management experience in a social care or health care setting in addition to academic experience.

Whilst concerns have been raised about the existing requirement to register with SCW as well as the Nursing and Midwifery Council being a barrier to recruitment, nurses make up a significant proportion of registered social care managers:

NMC Registration	2014	2015	2016	2017
<i>Number</i>	317	279	287	248
<i>Percentage</i>	25.3%	22%	22.7%	20.4%

As part of our commitment to professionalising the workforce we have extended registration to domiciliary care workers from April 2018 and will be mandating this from April 2020. We will be engaging with stakeholders to prepare the associated legislation including a formal consultation over the summer.

Other amendments				
4. Are the other amendments proposed in the draft amendment regulations clear and appropriate?				
Agree 29%	Tend to agree 14%	Tend to disagree 7%	Disagree 7%	No response 43%

Summary of the amendment(s)

The other amendments in the draft regulations:

- 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.

Summary of responses

Most respondents either agreed to these amendments or did not comment. Some comments related to matters addressed in other questions.

Welsh Government response

We have considered the responses to this question but do not intend to make amendments as a consequence. We do, however, intend to make some additional minor amendments to Schedule 3 of the 2017 regulations in relation to notifications to be made by the service provider. These amendments are intended to ensure the notifications reflect current best practice and use the most up-to-date terminology. They also ensure consistency with the regulations created under phase 3 of implementation of the 2016 Act, for the regulation of fostering services, adoption services and advocacy services.

We also intend to add additional requirements in relation to supporting children living in care homes and secure accommodation to manage their money. This will ensure consistency with the requirements in the *Regulated Fostering Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019*.

5. Other questions – groups with protected characteristics

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.

Question 5. 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?

Summary of responses

The majority of respondents stated either there would be no impact on groups with protected characteristics or did not comment. Some comments were not directly relevant to the question.

Welsh Government response

We have noted the responses to this question.

6. Other questions – groups with protected characteristics

Question 6. 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?

Summary of responses

The majority of respondents stated either there would be no impact on groups with protected characteristics or did not comment. Some comments were not directly relevant to the question.

Welsh Government response

We have noted the responses to this question.

7. Other questions – Welsh language

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?

Summary of responses

The majority of respondents stated either there would be no impact on the Welsh Language or did not comment. Some comments were not directly relevant to the question.

Welsh Government response

We have noted the responses to this question.

8. Other questions – Welsh Language

Question 8. 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.

Summary of responses

The majority of respondents stated either there would be no impact on the Welsh Language or did not comment. Some comments were not directly relevant to the question.

Welsh Government response

We have noted the responses to this question.

9. Other questions – general

Q9. 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 report them.

Summary of responses

Most comments reiterated points that had been made earlier, especially in relation to question 2.

Welsh Government response

We have noted the comments and have responded to these points throughout this summary.

Annex A

List of respondents

No.	Confidential Y/N		Name	Organisation / on behalf of	Type of respondent
1		N	Tessa Callaghan	Health Education and Improvement Wales	Special Health Authority
2	Y				Anonymous
3		N	Tony Sawyer	-	Individual ¹
4		N	Anna Mogie	Cardiff and Vale UHB	Health Board
5		N	Mr R W Ebley	-	Individual
6	Y				Anonymous
7		N	Nia Thomas	Betsi Cadwaladr University Health Board	Health Board
8		N	Simon Jones	Swansea Council	Local Authority
9		N	Dr Denise Shanahan	Welsh Nursing and Midwifery Statutory Advisory Committee	Representative body
10		N	Will Oliver	Hywel Dda University Health Board	Health Board
11		N	Melanie Minty	Care Forum Wales	Representative body
12		N	David Williams	On behalf of Gwent Regional Partnership Board	Regional Partnership Board
13		N	Carys James	Ceredigion County Council	Local Authority
14		N	Did not wish name to be disclosed	Royal College of Nursing	Representative body

¹ Two responses were received by the same individual. We have taken account of all comments but have treated this as one response. Where different responses were provided to the same question we have documented the most negative response.