



Llywodraeth Cymru  
Welsh Government

IMPACT ASSESSMENT, DOCUMENT

# Regulation of special school residential services: children's rights impact assessment

A summary of the effect on children's rights of including residential special schools in regulation.

**First published:** 24 November 2023

**Last updated:** 24 November 2023

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# Policy objectives

The proposal is to bring forward regulations to bring residential special schools within the scope of regulation under the Regulation and Inspection of Social Care (Wales) Act 2016 (“the 2016 Act”), and to place requirements on providers and responsible individuals of such services.

The 2016 Act provides the statutory framework for the regulation and inspection of social care services and the regulation of the social care workforce in Wales. Schedule 1 defines the services which fall within the scope of regulation and a ‘care home service’ is defined as ‘the provision of accommodation, together with nursing or care at a place in Wales, to persons because of their vulnerability or need’. The 2016 Act provides that schools fall outside this definition unless they provide accommodation together with nursing or care for more than 295 days a year. Schools falling within this definition are regulated and inspected by Care Inspectorate Wales (CIW) as a care home service for children and are subject to requirements in the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 (as amended) and accompanying statutory guidance. The threshold of 295 days is carried over from the Care Standards Act 2000 and neither the 2016 Act nor the Care Standards Act provide the reasoning behind the 295-day threshold. The effect is to distinguish between schools which accommodate pupils only during the term time and schools where pupils’ residence extends through into the holidays.

Currently, CIW relies on powers in the Children Act 1989 (the 1989 Act) in its oversight of residential special schools which fall under the 295 days or less threshold and therefore are outside the scope of regulation as a care home service under the 2016 Act. Under the 1989 Act CIW can carry out inspection activity but has no direct powers of enforcement and cannot require the schools to register. CIW inspects these schools against National Minimum Standards (NMS) for Residential Special Schools which were issued in 2003 under section 87 of the 1989 Act. NMS are not enforceable and are focussed on achieving a

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minimum standard which is not consistent with the broader policy direction on regulation and inspection established under the 2016 Act. 'Residential special school' is not a term specifically defined in current legislation, but it is used by CIW to differentiate these schools from a special school not providing accommodation.

The proposed approach is to define the residential special schools as a new regulated service in its own right – special school residential service and it is intended to capture the current residential special schools being provided by local authorities and any potential new entrants to the market irrespective if they are maintained by a local authority.

Residential special schools provide education and accommodation between one and four school nights a week, during term time only to some of Wales's most vulnerable children. The children are aged up to 19 years old with complex, and in many cases multiple, Additional Learning Needs (ALN), such as Emotional Behavioural Disorders (EBD), Autism Spectrum Disorder (ASD), learning and physical disabilities. Residential special schools broadly provide a 24-hour curriculum to support and promote independent living through the development of appropriate social, independent, self-help and life skills.

The proposed approach recognises the differences between residential special schools where children stay at the school overnight for between one and four nights a week but live with their parents, and care home services where adults and children reside full-time. As far as is appropriate the regulations have been aligned with the regulatory requirements placed on care home services under the 2016 Act. However, not all requirements placed on care home service providers are relevant for special school residential services due to the nature and purpose of the service.

The proposed approach will bring the residential element of residential special schools into the scope of regulation under the 2016 Act. This will mean that existing services and new services will be required to register with CIW. They

will be need to meet requirements set out in regulations in relation to the quality and safety of the care and support provided. These requirements include the suitability of the service, the environment, staffing, staff training and safeguarding. The services will be inspected by CIW. The regulator has powers of enforcement under the regulatory framework.

## Gathering evidence and engaging with children and young people

In March 2022 the Independent Inquiry into Child Sexual Abuse published the investigation report **The residential schools investigation Phase 1: Music schools, residential special schools 2: Safeguarding day and boarding schools**. The Inquiry examined questions concerning sexual abuse of children in residential special schools in England and Wales. The Chief Social Care Officer for Wales and CIW gave evidence to the Inquiry. The recommendations of the Inquiry include requiring all residential special schools to be inspected against the quality standards used to regulate care homes in Wales.

As part of the **Inquiry**, the vulnerability of the children was considered alongside how best to ensure they were being safeguarded against abuse, harm, and neglect under the existing regulations. On page 68, it was highlighted that:

“ disabled children are almost three times more likely to experience sexual violence than non-disabled children, and a combination of impairment and living away from home makes them particularly vulnerable. ”

A stakeholder group was established in September 2022, including representatives from the existing four residential school services in Wales which will be regulated as special school residential services, and the relevant local authority departments including education and children’s services. The group

met four times to discuss the proposed approach to regulation based on the suite of regulations and the statutory guidance which make up the regulatory framework under the 2016 Act, and once during the consultation period to agree an approach upon on how to support the individuals using the service and their parents to contribute to the consultation. The stakeholders provided a valuable insight into the operation of residential special schools which has informed the development of draft regulations and statutory guidance for special school residential services.

A 12-week public consultation was undertaken between 15 May 2023 and 6 August 2023 on the suite of draft regulations making up the regulatory framework and accompanying statutory guidance for the special school residential services. The consultation was drawn to the attention of key stakeholders including the current residential special schools, local authorities, the Children's Commissioner for Wales, CIW, Estyn, and Social Care Wales.

## **Analysing the evidence and assessing the impact**

The [consultation response report](#) and the responses have informed our consideration of the final regulations and statutory guidance. As part of the analysis of the consultation responses, the impact of the policy on the children and young people using the service has been carefully considered.

### **Article 3 (best interests of the child)**

Article 3 says the best interests of the child must be a top priority in all decisions and actions that affect children.

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## Enhances or challenges

Enhances

### Explanation

The proposed regulations require service providers to undertake an assessment and prepare a personal plan for the individual which sets out their care and support needs and how they will be supported to achieve their personal outcomes.

## Article 2 (Non-discrimination) and Article 23 (children with a disability)

Article 2 says no child should be treated unfairly whatever their ethnicity, gender, religion, language, abilities, whatever they think or say, no matter what type of family they come from, whatever their circumstances.

Article 23 says a child with a disability has the right to live a full and decent life with dignity and, as far as possible, independence and to play an active part in the community. Governments must do all they can to support disabled children and their families.

## Enhances or challenges

Enhances

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## Explanation

The ethos of the social model of disability has been incorporated in the proposed regulations and statutory guidance. The proposed regulations require care and support to be provided in a way which protects, promotes, and maintains the safety and well-being of individuals. The proposed statutory guidance requires service providers to ensure care and support is provided in keeping with any assessment and personal plan, meets the individual's needs and support them to achieve their personal outcome in relation to their rights and entitlements.

## Article 14 (freedom of thought, belief and religion)

Article 14 says every child has the right to think and believe what they choose and also to practise their religion, as long as they are not stopping other people from enjoying their rights. Governments must respect the rights and responsibilities.

## Enhances or challenges

Enhances

## Explanation

The proposed regulations require service providers to consider the individual's views, wishes and feelings including their religious beliefs when conducting an assessment and preparing the personal plan.

## **Article 6 (life, survival and development)**

Article 6 says every child has the right to life. Governments must do all they can to ensure that children survive and develop to their full potential.

### **Enhances or challenges**

Enhances

### **Explanation**

The proposed regulations require service providers to ensure the care and support protects, promotes, and maintains the safety and well-being of individuals without compromising their rights, privacy, and dignity.

## **Article 16 (right to privacy)**

Article 16 says every child has the right to privacy. The law should protect the child's private, family and home life, including protecting children from unlawful attacks that harm their reputation.

### **Enhances or challenges**

Enhances

### **Explanation**

The proposed regulations require service providers to ensure individuals are

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treated with respect and dignity, respecting individual's privacy, right to confidentiality, and promoting autonomy and independence.

## **Article 19 (protection from violence, abuse and neglect)**

Article 19 says governments must do all they can to ensure that children are protected from all forms of violence, abuse, neglect and bad treatment by their parents or anyone else who looks after them.

### **Enhances or challenges**

Enhances

### **Explanation**

The proposed regulations require service providers to provide the service in a way which ensures that individuals are safe and protected from abuse, neglect, and improper treatment. The service provider must have up-to-date safeguarding policies and procedures in place for the prevention of abuse, neglect and improper treatment and provide the service in accordance with those policies and procedures. This includes responding to any allegation or evidence of abuse, neglect, or improper treatment.

## **Article 33 (drug abuse)**

Article 33 says governments must protect children from the illegal use of drugs and from being involved in the production or distribution of drugs.

## Enhances or challenges

Enhances

### Explanation

The service provider must have arrangements in place to ensure that medicines are stored and administered safely. They must have a policy and procedures in place in relation to the safe storage and administration of medicines and ensure the service is provided in accordance with the policy and procedures.

## Article 34 (sexual exploitation)

Article 34 says governments must protect children from all forms of sexual abuse and exploitation.

## Enhances or challenges

Enhances

### Explanation

The proposed regulations require service providers to notify the service regulator of any abuse or allegation of abuse in relation to an individual that involves the service provider and / or a member of staff and / or volunteer. Additionally, the proposed regulations require service providers to notify the service regulator any incident of sexual or criminal exploitation of an individual or suspected sexual or criminal exploitation of an individual.

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## **Article 24 (health and health services)**

Article 24 says every child has the right to the best possible health.

Governments must provide good quality health care, clean water, nutritious food, and a clean environment and education on health and well-being so that children can stay healthy. Richer countries must help poorer countries achieve this.

### **Enhances or challenges**

Enhances

### **Explanation**

The proposed regulations require service providers to have in place a policy and procedure on admissions and commencement of the service, and this must take into consideration any health or other relevant assessments. These assessments must be considered in preparing the personal plan. The service provider must put in place arrangements for individuals to be able to access treatment, advice, and other services from any health care professional, and to be supported to access such services.

## **Article 27 (adequate standard of living)**

Article 27 says every child has the right to a standard of living that is good enough to meet their physical and social needs and support their development. Governments must help families who cannot afford to provide this.

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## Enhances or challenges

Enhances

### Explanation

The proposed regulations require service providers to ensure that the premises, facilities, and equipment are suitable for the service, having regard to the statement of purpose for the service and supports individuals to achieve their personal outcomes.

The service provider is required to provide a statement of purpose at the point of registering the regulated service. It should demonstrate that the service provider fully understands the individual's care and support needs and demonstrate how, particularly through the levels and training of staff, the care routines, the environment, and links to other agencies, to promote the best possible outcomes for the people cared for.

## Article 15 (freedom of association) and Article 31 (leisure, play and culture)

Article 15 says every child has the right to meet with other children and to join groups and organisations, as long as this does not stop other people from enjoying their rights.

Article 31 says every child has the right to relax, play and take part in a wide range of cultural and artistic activities.

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## Enhances or challenges

Enhances

### Explanation

The proposed statutory guidance require that individuals are supported to have independence, choice, and control in their day-to-day life and with their personal development. This may include choosing the activities they take part in, developing and maintaining hobbies, joining community activities and volunteering.

## Article 12 (respect for the views of the child)

Article 12 says every child has the right to express their views, feelings and wishes in all matters affecting them, and to have their views considered and taken seriously. This right applies at all times, for example during immigration proceedings, housing decisions or the child's day-to-day home life.

## Enhances or challenges

Enhances

### Explanation

The proposed regulations require service providers to prepare a personal plan for the individual which sets out their care and support needs and how they will be supported to achieve their personal outcomes. In preparing the personal plan

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the service provider must consider the individual's views, wishes and feelings.

## **Article 13 (freedom of expression)**

Article 13 says every child must be free to express their thoughts and opinions and to access all kinds of information, as long as it is within the law.

### **Enhances or challenges**

Enhances

### **Explanation**

The proposed regulations require service providers to ensure individuals have the information needed to make or participate in assessments, plans, day to day decisions about the care and support provided, and how they are supported to achieve their personal outcomes. This includes availability in the appropriate language, style, presentation, and format.

## **Article 42 (knowledge of children's rights)**

Article 42 says government must make sure adults and children know about the principles and provision of the UNCRC.

### **Enhances or challenges**

Enhances

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## Explanation

The proposed statutory guidance requires service providers to ensure care and support is provided in keeping with any assessment and personal plan, meets the individual's needs and support them to achieve their personal outcome in relation to their rights and entitlements, regarding the United Nations Convention on the Rights of the Child.

## Ministerial advice and decision

The policy impact analysis has been influenced by the consultation responses, in particular the impact of the policy on the children and young people using the service, and a summary has been provided as part of the ministerial advice. A [response to the consultation has been published and is available here](#) and consideration has been given to whether any changes may be required before laying the final Regulations. The CRIA has been integrated into the ministerial advice.

## Publication of the children's rights impact assessment

The CRIA will be published on 24 November 2023 on the Welsh Government website.

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# Communicating with children and young people

During the consultation period a meeting was held with the existing residential special school providers to agree an approach upon on how to support the individuals using the service and their parents to contribute to the consultation. It was agreed the existing residential special school providers were best placed to make contact and tailor the support to enable the parents and children submit their responses, utilising the easy read version documentation where necessary. All consultation responses have informed our consideration of the final regulations and statutory guidance.

## Monitoring and review

The impact of the proposal will be monitored in conjunction with the service and workforce regulators.

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