



Llywodraeth Cymru
Welsh Government

IMPACT ASSESSMENT, DOCUMENT

Regulation of special school residential services: integrated impact assessment

A summary of the effect of including residential special schools in regulation.

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Section 1. What action is the Welsh Government considering and why?

The Regulation and Inspection of Social Care (Wales) Act 2016 (“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 of the 2016 Act defines the services which fall within the scope of regulation.

This impact assessment relates to the proposal to bring forward Regulations to bring residential special schools within the scope of regulation under the 2016 Act. The draft Regulations will prescribe special school residential services as a regulated service and place requirements on providers and responsible individuals of such services.

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 Care Inspectorate Wales (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.

Schedule 1 of the 2016 Act defines a ‘care home service’ 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 CIW as a care home service for children and are subject to requirements in the Regulated Services (Service Providers and

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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.

Residential special schools provide education and accommodation to children with 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. Children stay at the school between one and four school nights a week, during term time only. '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.

CIW relies on powers in the Children Act 1989 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 issued in 2002 under section 23(1) of the Care Standards Act 2000. NMS are not enforceable and are focussed on achieving a minimum standard which is not consistent with the broader policy direction on regulation and inspection established under the 2016 Act.

All schools in Wales, including residential special schools, are also inspected by Estyn under the Education Act 2005 and related regulations. Estyn inspections consider the well-being of pupils, (including safeguarding arrangements) and the school amenities in terms of the educational provision, but do not include the residential care and support aspects of the school.

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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 required 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.

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 or children reside full-time. The intention, therefore, is to regulate residential special schools as a new regulated service in its own right – special school residential services. 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. As the term “residential special school” is not a legally defined term we have sought to define the new regulated service to provide greater clarity and certainty.

A stakeholder group was established in September 2022, including representatives from the existing four residential special schools 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. The stakeholders provided 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. A meeting of the stakeholder group was convened during the consultation period and agreed an approach for supporting individuals using the service and their parents to contribute to the consultation.

The proposal to bring special school residential services into the scope of regulation under the 2016 Act and establish the regulatory framework includes new stand-alone regulations and amendments to existing regulations.

The draft Regulated Services (Special School Residential Services) (Wales) Regulations 2023

Section 2 of the 2016 Act lists the regulated services under the Act and Schedule 1 provides further information about the services which fall into the scope of regulation. Section 2(1)(i) is a regulation making power enabling the Welsh Ministers to prescribe other services comprising the provision of care and support in Wales as a regulated service. The Welsh Ministers intend to use this power to prescribe special school residential service as a new regulated service.

Regulations made under section 2(1)(i) will bring the special school residential service into the scope of regulation as a regulated service and require a person providing such a service to register under the 2016 Act. The draft Regulated Services (Special School Residential Services) (Wales) Regulations 2023 define the special school residential service as “the provision of accommodation together with care or nursing at a special school in Wales for pupils of the school.”

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The proposed definition is intended to capture the current maintained residential special schools being provided by local authorities and any potential new entrants to the market irrespective of provider type. The Regulations provide clarity on the meaning of special school residential service with the purpose of ensuring that boarding schools, care home services and special schools not providing accommodation are not unintentionally drawn into the definition and the scope of regulation.

Impact

The special school residential service will be brought within the scope of regulation under the 2016 Act as a regulated service. This will establish a more consistent approach to the registration, regulation, inspection, and enforcement of residential services looking after vulnerable children for short or extended periods. The service providers will be subject to registration under the 2016 Act. The regulatory regime focuses on the quality and safety of care and support, and the individual's well-being and outcomes which will have a positive impact on children staying at the service and the overall quality of service provision. This approach will ensure that CIW has the necessary powers to mandate improvements identified during inspections and to take enforcement action should services continue to fall short of the expected regulatory requirements.

Costs and savings

There are no costs or savings identified for the regulator or the sector arising from the draft Regulations defining the special school residential service.

The draft Special School Residential Service (Service Providers and Responsible Individuals) (Wales) Regulations 2024

The powers enabling these Regulations to be made are as follows:

- Section 21(5) relates to the designation of a responsible individual despite the eligibility requirements not being met.
- Section 27 enables requirements to be placed on a service provider of a regulated service.
- Section 28 enables requirements to be placed on a responsible individual of a regulated service.
- Section 30 relates to service providers who are liquidated.
- Section 31 deals with service providers who have died.
- Section 45 deals with offences relating to the failure by a service provider to comply with requirements in regulations.
- Section 46 deals with offences relating to the failure by a responsible individual to comply with requirements in regulations.

The draft Special School Residential Services (Service Providers and Responsible Individuals) (Wales) Regulations 2024 (“the 2024 Regulations”) are stand-alone regulations, adapted from the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 (as amended) which place requirements on providers and responsible individuals of regulated services, including care home services. The draft 2024 Regulations place requirements on providers and responsible individuals of special school residential services, including requirements as to the standard of care and support to be provided.

The 2024 Regulations will replace the National Minimum Standards (NMS) for Residential Special Schools made under section 23(1) of the Care Standards

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Act 2000. The NMS are not enforceable and are focussed on achieving a minimum standard which is not consistent with the broader policy direction on regulation and inspection established under the 2016 Act.

Key aspects of the 2024 Regulations are:

Responsible individuals

Section 21(5) of the 2016 Act enables the Welsh Ministers to specify the circumstances in which they, in practice CIW, the service regulator (instead of the service provider) may designate a responsible individual despite the eligibility requirements of the 2016 Act not being met. The purpose is to ensure that an otherwise competently run service, may continue without its registration being cancelled entirely where there is no-one capable of being designated as the responsible individual. Additionally, the Welsh Ministers can modify the requirements of the 2016 Act in so far as they relate to a responsible individual who is designated by the Welsh Ministers.

Regulations about regulated services

Section 27 of the 2016 Act allows the Welsh Ministers to place requirements on a service provider in relation to a regulated service, including the requirements regarding the standard of care and support to be provided by a service provider.

The 2024 Regulations place requirements on service providers in relation to the governance, suitability of the service, information about the service, environment, staffing, staff training and safeguarding. When making regulations under this section consideration must be given to the well-being of any individuals to whom care, and support will be provided.

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Regulations about responsible individuals

Section 28 of the 2016 Act allows the Welsh Ministers, through regulations, to place requirements on designated responsible individuals. Responsible individuals must meet the eligibility and fitness criteria set out in Section 21 of the 2016 Act.

The 2024 Regulations place requirements on responsible individuals in relation to the compliance, quality, and oversight of the service, and ensuring the effective management of the service (including the appointment of a manager registered with Social Care Wales). The responsible individual must visit the service in person at least every 3 months. This replicates the requirements placed on other regulated services under the 2016 Act.

Regulations about service providers who are liquidated

Section 30 of the 2016 Act requires an “appointed person” to notify the Welsh Ministers, in practice CIW, of their appointment in the event of a service provider being liquidated. An “appointed person” is defined in the 2016 Act as:

- a receiver or administrative receiver of the property of a service provider who is a body corporate or partnership
- a liquidator, provisional liquidator or administrator of a service provider who is a body corporate or a partnership
- a trustee in bankruptcy of a service provider who is an individual or a partnership.

The 2024 Regulations require an appointed person to notify the service regulator, CIW, without delay of their appointment and within 28 days of their intentions regarding the future operation of the service.

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Although existing residential special schools currently operating in Wales are provided by local authorities, the intention is to future proof the regulations in the event of new entrants to the market.

Regulations about service providers who have died

Section 31 of the 2016 Act deals with notification requirements and modifications of the application of Part 1 of the 2016 Act in the event of the death of a service provider who is an individual.

The 2024 Regulations require that the personal representatives of an individual provider who has died must notify the Welsh Ministers, in practice CIW, of the death. The Regulations allow for the personal representatives of the individual to act in the capacity of the service provider for a set period. This replicates the requirements placed on other regulated services under the 2016 Act.

Although existing residential special schools currently operating in Wales are provided by local authorities, the intention is to future proof the regulations in the event of new entrants to the market.

Offences: Failure by service providers and responsible individuals to comply with requirements in regulations

Section 45 of the 2016 Act allows the Welsh Ministers to prescribe certain breaches of the requirements of regulations made under Section 27 as offences. Section 46 of the 2016 Act allows the Welsh Ministers to prescribe certain breaches of the requirements of regulations made under Section 28 as offences. They provide that a failure, by the service provider and responsible individual respectively, to comply with specified requirements in the 2024 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

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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.

Failure to comply with a particular requirement in the 2024 Regulations may not be an offence but failure to comply with any of the requirements contained in Regulations within Parts 2 to 12 could be grounds for cancellation of the service provider's registration under section 15 of the 2016 Act; and a responsible individual's failure to comply with any of the requirements contained in Regulations within Parts 13 to 17 could be grounds for the cancellation of the designation of the responsible individual under section 22 of the 2016 Act. The 2024 Regulations replicate the requirements placed on other regulated services in regulations.

Impact

It is anticipated that bringing special school residential services into regulation will lead to an improvement in the overall quality of care and support provided.

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 required to meet requirements set out in the 2024 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.

Our stakeholder engagement provided useful insight into how the services operate in practice. They have already adopted many of the proposed requirements, but this varies between individual services. The impact of the regulations and statutory guidance will be to provide clarity and consistency in terms of the requirements placed on special school residential services.

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The four existing special school residential services are all provided by local authorities. The local authorities are already registered as providers of regulated services and will be familiar with the requirements placed on service providers and responsible individuals. The 2024 Regulations replicate the requirements placed on other regulated services under the 2016 Act and include specific requirements on the responsible individual in their oversight of the service including visiting the service.

The existing special school residential services providers will not be affected by regulations relating to a service provider being liquidated or in the event of the death of a service provider who is an individual. However, these regulations will future proof the regulatory framework for new, independent entrants to the market.

Costs and savings

The addition of the four existing special school residential services as regulated services will increase the monitoring and inspections to be undertaken by CIW. The estimated annual cost based on 2023-24 figures is £15,000 which equates to an additional 0.25 inspector. This will be a recurring cost.

There will be financial and time costs for the sector. This will include the cost of registering the manager and staff with Social Care Wales and ensuring all staff meet or are working towards the qualification requirements. The designated responsible individual is required to supervise the management of the service to ensure effective and compliant service provision. As part of the supervision the responsible individual must visit the service at least every 3 months to meet staff and children who attend the service.

The existing special school residential services will be required to review current policies and procedures to ensure compliance with the requirements within the regulations. They will also need to ensure processes and procedures are in

place to comply with the notification requirements and record keeping. It is not possible to quantify the financial or time costs as each special school residential service situation is different.

The Regulated Services (Registration) (Wales) (Amendment) Regulations 2023

Registration of special school residential services

Sections 6 and 11 of the 2016 Act set out the overarching requirements for registering to provide a regulated service, and the situations in which a service provider must make an application for variation of their registration. To register or vary a registration a regulated service key information and documentation must be provided, including the statement of purpose setting out the aims and objectives of the service and the way in which the provider will meet these aims and the needs of people in their care. Applicants are required to designate a responsible individual as part of their registration. We are proposing to amend the Regulated Services (Registration) (Wales) Regulations 2017 to apply to special school residential services.

Impact

Amending the Regulated Services (Registration) (Wales) Regulations 2017 will ensure that there is parity between providers of special school residential services and providers of care home services and other regulated services in terms of the process (including the checks, information and documentation requirements) for registering with CIW. The statement of purpose required by these regulations is integral to the system of registration, inspection and enforcement and will apply to providers of special school residential services. The requirements in these regulations will enable CIW to make an informed

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decision about the suitability of the service and the fitness of the service provider and designated responsible individual. This amendment will benefit service users by ensuring an equally robust system of service registration applies across all regulated services.

Where the service provider is a local authority, the responsible individual will be an officer of the local authority designated by the director of social services. As the four local authorities with existing residential special schools are also registered service providers they will be familiar with the process of registration and of designating a responsible individual.

Costs and savings

There will be a cost to Welsh Government, specifically for CIW as the service regulator, in extending the online system of registration to include the special school residential service and to process the registrations and variations of registration required under this option. The one-off cost is estimated to be £46,000 in 2023-24. CIW will need to develop the inspection framework and relevant guidance, and the staffing costs to undertake this work is estimated to be £4,600 in 2023-24.

There are currently four special residential school services in Wales, and all are provided by local authorities who are already registered as service providers. Existing service providers will apply for a variation of registration to add the new service to their registration. The estimated staff time for CIW to process, assess and approve a straightforward application to register a new service is 33 hours.

On this basis, the cost for CIW in registering a service provider is estimated to be £1,200 per service, a total of £4,800. This may be lower for applications by existing service providers to vary a registration by adding a new service.

The addition of the four existing special school residential services as regulated services will increase the number of inspections to be undertaken by CIW. The

estimated annual cost based on 2023-24 figures is £15,000 which equates to an additional 0.25 inspector. This will be a recurring cost.

Annual returns

Section 10 of the 2016 Act places a requirement on service providers of all regulated services to submit an annual return to the Welsh Ministers, in practice CIW, the service regulator. The annual return must contain key information about the operation of the service, as well as a statement of compliance. The 2016 Act requires the Welsh Ministers, CIW, to publish each return. We are proposing to amend the Regulated Services (Annual Returns) (Wales) Regulations 2017 to extend the requirement to produce an annual return to apply to special school residential services. This miscellaneous amendment will be dealt with alongside the Special School Residential Service (Service Providers and Responsible Individuals) (Wales) Regulations 2024.

Impact

Amending the Regulated Services (Annual Returns) (Wales) Regulations 2017 will ensure parity between providers of special school residential services and providers of care home services and other regulated services in terms of the requirement to submit an annual return, the format of the annual return, the timing of the annual return and the information to be provided in the annual return. In addition to the information required on the face of the 2016 Act, further information is required in relation to staffing, training, the service provision and accommodation.

Costs and savings

There will be a cost to Welsh Government, specifically for CIW as the service

regulator, in extending the online system for the submission of special school residential service provider annual returns. The one-off cost in 2023-24 to adapt the existing system to include special school residential services is estimated to be £3,000. The ability to set the time limit for special school residential service providers to return the annual return form to Welsh Ministers will support CIW in focussed forward planning work programmes.

There will be a cost to service providers to complete the annual return required under this option. However, by extending the existing online system most of the form will be prepopulated from the registration information and is completed via an online portal. The prescription of information to be provided and the form to be completed establishes an efficient and effective system, reducing subjectivity and ambiguity. The estimated provider staff time to complete the online form is approximately 11 hours.

Penalty Notices

Section 52 of the 2016 Act enables the Welsh Ministers to establish a system of penalty notices and to prescribe offences for which a penalty notice may be issued. The purpose of the penalty notice is to offer the recipient of the notice the opportunity to discharge any liability for the offence by paying the sum specified in the notice. We propose to amend the Regulated Services (Penalty Notices) (Wales) Regulations 2019 which apply to existing regulated services to apply to special school residential services. This miscellaneous amendment will be dealt with alongside the Special School Residential Service (Service Providers and Responsible Individuals) (Wales) Regulations 2024.

Impact

This amendment ensures CIW has a full range of powers at its disposal to deal with regulatory breaches across all regulated services. In appropriate

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circumstances CIW can opt to issue a penalty notice which sends a clear message to service providers and responsible individuals who are failing to comply with their duties.

Costs and savings

Under this option there would be costs to service providers and responsible individuals receiving penalty notices. The sums payable is set out in the existing regulations applying to other regulated services. Section 52 of the 2016 Act restricts the amount of the sum payable to two and a half times level 4 on the standard scale. Level 4 on the standard scale is currently £2,500.

CIW would continue to apply its current proportionate approach to enforcement in operating a penalty notice scheme. The frequency of issuing such fines would depend on the number of eligible breaches. Implementing a penalty notice scheme could arguably reduce the number of prosecutions brought forward by CIW, thereby contributing towards a saving in time and legal costs. Similarly, the service provider or responsible individual may opt to pay the penalty rather than go through the lengthy process of criminal proceedings.

Collaboration and involvement

The Welsh Government, in collaboration with CIW, has engaged with residential special school providers about bringing the services within the scope of regulation as special school residential services. A 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 service.

The consultation was drawn to the attention of key stakeholders including the existing residential special school providers, local authorities, the Children's

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Commissioner for Wales, CIW, Estyn, and Social Care Wales. A meeting of the stakeholder group was convened during the consultation period and an approach agreed upon on how to support the individuals using the service and their parents to contribute to the consultation.

Section 8. Conclusion

8.1 How have people most likely to be affected by the proposal been involved in developing it?

The proposal is to bring forward regulations to bring residential special schools within the scope of regulation under the 2016 Act and place requirements on providers and responsible individuals of such services. The intention is to regulate residential special schools as a new regulated service in its own right – special school residential services. There are currently four residential special schools in Wales, and all are provided by local authorities.

A stakeholder group was established in September 2022 with representatives from each of the residential special school services in Wales and from 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. At the last meeting we discussed an approach to supporting the individuals using the service and their parents to contribute to the consultation. The stakeholders provided a valuable insight into the operation of special school residential services which has been taken into consideration in the preparation of the regulations and statutory guidance.

The consultation was also drawn to the attention of key stakeholders including the Children’s Commissioner for Wales, CIW, Social Care Wales and Estyn.

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8.2 What are the most significant impacts, positive and negative?

The most significant impacts will be experienced by the four existing residential special schools by bringing the residential element of the service into the scope of regulation under the 2016 Act. The proposed approach will ensure that there is parity between providers of special school residential services and providers of care home services and other regulated services. The approach will require existing and new service providers to register with CIW. They will 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. As the regulatory regime focuses on the quality of care and support provided, an intended consequence is the continuous improvement of service provision, and this will benefit the children staying at the service and their families as well as people working at the service.

No significant negative impacts have been identified.

8.3 In light of the impacts identified, how will the proposal maximise contribution to our well-being objectives and the seven well-being goals?

Bringing special school residential services into regulation supports the delivery of the Programme for Government – Healthier and More Equal well-being goals by ensuring the regulatory framework takes a more consistent approach to the regulation of residential services for vulnerable children. It also supports the goal: A society that enables people to fulfil their potential no matter what their background or circumstances (including their socio-economic background and

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circumstances) within the National Goal of “A Healthier Wales” within the Wellbeing of Future Generations Act 2015. This is through the regulatory regime’s focus on the quality and safety of care and support, and the individual’s well-being and outcomes which will have a positive impact on children staying at the service and the overall quality of service provision.

In light of the impacts identified, how will the proposal avoid, reduce or mitigate any negative impacts?

No actions are required to avoid, remedy, or mitigate a negative impact as no negative impacts have been identified.

8.4 How will the impact of the proposal be monitored and evaluated as it progresses and when it concludes?

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

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