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Llywodraeth Cymru
Welsh Government

Welsh Government Consultation Document

Phase 2 implementation of the Regulation and Inspection of Social
Care (Wales) Act 2016

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Action required: Responses by 25 July 2017

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

Overview	This consultation seeks your views on phase 2 of implementation of the Regulation and Inspection of Social Care (Wales) Act 2016, including regulations being made to support service providers in delivering the requirements of the Act.
How to respond	<p>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:</p> <p>Legislation Implementation Branch Social Services Directorate Welsh Government Crown Buildings Cathays Park Cardiff CF10 3NQ</p> <p>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: R&ISCACT2016@wales.gsi.gov.uk</p>
Further information and related documents	<p>MS Word, Large print, Braille and alternative language versions of this document are available on request.</p> <p><i>Sustainable Social Services for Wales: A Framework for Action.</i> http://wales.gov.uk/topics/health/publications/socialcare/guidance1/service/s/?lang=en</p> <p>Independent Commission on Social Services report: http://gov.wales/docs/dhss/publications/101207visionen.pdf</p> <p>Law Commission Review of Adult Social Care Legislation: http://www.lawcom.gov.uk/project/regulation-of-health-and-social-care-professionals/</p> <p>Report of the Protection of Vulnerable Adults Project Board: www.wales.gov.uk/topics/health/publications/socialcare/reports/report/?lang=en</p> <p>Well-being Statement for People Who Need Care and Support and Carers Who Need Support: www.wales.gov.uk/topics/health/publications/socialcare/strategies/statement/?lang=en</p> <p>Regulation and Inspection White Paper http://gov.wales/consultations/healthsocialcare/support/?lang=en</p>

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Data protection

How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

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. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

The 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.

The 2016 Act establishes a new system of regulation and inspection which will uphold the rights of Welsh citizens to dignified, safe and appropriate care.

In order to achieve this we are improving the regulation of the social care workforce, helping people working in care to develop their skills and provide the best care they can. This is now overseen by Social Care Wales – the successor to the Care Council for Wales which has extended powers and responsibilities. The legislation creates a register of social care workers which is managed by Social Care Wales; this register will enable us to identify people who may abuse the trust and power associated with such an important role and stop them working in social care.

In addition we are updating the system of inspection and regulation of care providers. The new regulation and inspection regime will be stronger and will make it easier for the Care and Social Services Inspectorate Wales (CSSIW), as the service regulator, to maintain an overview of the whole service an organisation is providing. It will also make it easier for service providers to register and for citizens to have access to information about them.

The 2016 Act creates the broad approach to the new regulation and inspection regime; the detail of the system will be set out in subordinate legislation, including regulations, a code of practice and statutory guidance. The subordinate legislation is being developed over three phases. The first phase was consulted on in the summer of 2016 and the elements relating to the regulation of the workforce were implemented in April of this year. This consultation concerns the second phase of regulations. We will hold a further consultation, on the third phase, next year.

Social care touches the lives of everyone in Wales. Now, if not some point in the future you, or someone close to you, may need to use regulated services to receive care and support. This is why it is so important to get the system of regulation and inspection right and why it is vital we get your views on our proposals. I would like to thank you for taking your time to read this consultation document and look forward to hearing your views.

Rebecca Evans AM
Minister for Social Services and Public Health

Background

The Regulation and Inspection of Social Care (Wales) Act 2016 (“the 2016 Act”) was passed by the National Assembly for Wales on 24 November 2015 and received Royal Assent on 18 January 2016. It reforms the regulation and inspection regime for social care in Wales.

The 2016 Act provides the statutory framework for the regulation and inspection of social care services and the social care workforce. It enables the Welsh Ministers to put in place a number of items of subordinate legislation through the making of regulations, the publication of guidance and the issuing of codes of practice.

The evidence for change and key principles

A great deal has been achieved by regulators in Wales, principally by the Care and Social Services Inspectorate Wales (“CSSIW”) and the Care Council for Wales (“the CCW”), and also by the wider social care sector, to achieve the ambitions articulated when the Care Standards Act 2000 was implemented. The framework under that Act, whereby CSSIW and the CCW were the principal regulators, worked well for us. It gave us a baseline of standards - both for the workforce and for our care and support services - and has undoubtedly improved public protection. This has achieved much greater consistency, protection from abuse and exploitation, and greater exposure of sub-standard services. We have succeeded in raising performance and continue to use regulation and inspection to eliminate poor standards. However, since then we have recognised that many things have changed within and around the sector and identified the need to avoid our regulatory arrangements becoming out of date and restrictive.

Our reform of the system for regulation and inspection of social care under the 2016 Act therefore rests on five key principles:

1. Responsiveness to the Social Services and Well-Being (Wales) Act 2014 reforms;
2. Ensuring citizens are at the heart of care and support;
3. Developing a coherent and consistent Welsh approach;
4. Tackling provider failure; and
5. Responsiveness to new models of service and any emerging concerns over the quality of care and support services.

The proposals in this consultation have a major part to play in serving and advancing this reform.

Where are we now?

The 2016 Act will be fully implemented by April 2019. As part of this, the new system of workforce regulation established by the Act was implemented in April 2017 and is now being operated by Social Care Wales. Following on from this, the new system of service regulation and inspection established by the Act, to be conducted by CSSIW, will be implemented and operational by April 2019. However, in order to allow sufficient time for the new system to be established, some of the service regulations – outlined and tested within this consultation – will come into force in April 2018.

The statement of policy intent published when the legislation was introduced to the National Assembly in 2015 set out the broad proposals for exercising the subordinate legislation-making powers under the Act. Building upon this, regulations, codes of practice and statutory guidance under the Act are being developed within three overlapping phases.

The first phase (2016 – 2017) included the regulations required to achieve a new system of workforce regulation under the Act. It also focused on draft regulations relating to some of the key processes underpinning the new system of service regulation – these were the requirements for registration as a service provider, variation of registration, service provider annual returns, and information to be included in notifications to local authorities. The development of these draft regulations was informed by stakeholder technical groups held in February 2016 and they were consulted on in the summer of 2016. Following this, the workforce regulations were made in November/December 2016 and came into force on 3 April 2017. The service regulations within phase one will be reviewed in light of the outcomes of this consultation and will be laid before the National Assembly for Wales later this year.

In this second phase (2017 – 2018) we are principally consulting on regulations that place requirements on service providers and designated responsible individuals in providing care and support within regulated services (under sections 27 and 28 of the Act). The draft statutory guidance developed under section 29 of the Act provides further detail about how providers and responsible individuals may comply with the requirements in the regulations. These regulations are absolutely critical to the new system of service regulation and there has been a great deal of interest in them. We have worked very closely with stakeholders through technical group sessions held in the autumn of 2016 to inform their development.

We are also consulting on related regulations which will complete the core regulatory framework for service providers and responsible individuals. These include provisions which:

- set out the services which are not to be treated as regulated services for the purpose of the Act (section 2(3));
- contain notification requirements in relation to service providers who have been liquidated or, if individuals, have died (sections 30 and 31);
- set out which breaches of the requirements placed on service providers in regulations under section 27 and requirements placed on responsible individuals in regulations under section 28 will be treated as offences (sections 45 and 46);

- set out the arrangements for a penalty notice scheme (section 52).

The list of regulated services is set out in section 2(1) of the Act and definitions of these services are contained in Schedule 1 to the Act¹. They are:

- a care home service
- a secure accommodation service
- a residential family centre service
- an adoption service
- a fostering service
- an adult placement service
- an advocacy service
- a domiciliary support service.

This consultation in phase II is *only* concerned with requirements in relation to **care home services (for both adults and children), domiciliary support services, residential family centre service and secure accommodation services**.

Following feedback from stakeholders as part of the technical group sessions held in autumn 2016 the Minister for Social Services and Public Health made the decision that requirements on the remaining regulated services – adoption services, fostering services, advocacy services, and adult placement services (also known as shared lives) – would be considered as part of a third phase, to allow more time to engage with these sectors. The phase three timings should broadly mirror those for phase two a year on, so we would be expecting to consult on draft regulations and corresponding statutory guidance in the summer of 2018.

Many of the regulation-making powers in the Act are interlinked. Decisions about the content of regulations developed as part of the second phase may impact upon the detail of service-related regulations developed in the first phase. We will make information about any such changes publicly available to accompany the laying of these regulations later this year.

It is our plan that all of the regulations developed under phases one to three of implementation will be in place by April 2019, in accordance with our published policy intention.

This consultation

This consultation seeks your views on the regulations and associated statutory guidance drafted as part of the second phase and which relate to the following regulated services:

- care home services),
- domiciliary support services,
- residential family centre services, and
- secure accommodation services.

¹ <http://www.legislation.gov.uk/anaw/2016/2/schedule/1/enacted>

The documents which are the subject of this consultation are:

- *The Regulated Services (Service Providers and Responsible Individuals) Regulations 2017*
- *The Regulated Services (Penalty Notices) Regulations 2017*
- *Statutory Guidance for providers on meeting service standard regulations,*

Your consultation responses will help inform our consideration of the final regulations and guidance. Our intention is to analyse your responses over the autumn. We will then consider what changes to make before making and laying the regulations towards the end of this year.

The proposals

The Regulated Services (Service Providers and Responsible Individuals) Regulations 2017

This draft statutory instrument ('the draft Regulations') includes regulations which:

- set out exceptions that are not to be treated as a regulated service (under section 2(3) of the Act);
- place requirements on providers of regulated services (under section 27 of the Act);
- place requirements on designated responsible individuals (under section 28 of the Act);
- set out which breaches of the requirements on service providers and responsible individuals are to be treated as offences (under sections 27 and 28 of the Act);
- place requirements on an appointed person in relation to service providers who are liquidated (under section 30 of the Act);
- place requirements on a personal representative of a service provider who has died (where the service provider is an individual) (under section 31 of the Act);
- set out the circumstances in which the Welsh Ministers (instead of service providers) may designate a responsible individual (under section 21(5) of the Act).

The approach taken in developing these regulations has been to ensure that the requirements are:

- **Proportionate:** the requirements should relate to matters within the control of the service provider and responsible individual, and which will lead to an improvement in quality and practice;
- **Consistent** across all regulated services: this is not to say that "one size fits all", but that the same high standards should be applied across all services. The requirements are, therefore, necessarily high-level, with the detail about how the requirements may be complied with set out in the Statutory Guidance;
- **Focussed on outcomes for people:** the intention is for the requirements to best enable services to support people to achieve *what matters to them*, in line with the ethos of the Social Services and Well-being (Wales) Act 2014. They aim to give sufficient flexibility to providers to enable them to care for and support people in a way which puts the individual at the centre of their care.

The draft Regulations within phase two of implementation apply to the following **types of regulated services**:

- care home services ;
- domiciliary support services;
- residential family centre services;
- secure accommodation services.

We are particularly keen to ensure that the requirements set out in regulations are suitable and appropriate for the range of regulated services and age groups. We would welcome your views on whether you think there is anything missing from the requirements or whether some requirements may be superfluous.

The Statutory Guidance, created under section 29 of the Act, gives further context and detail about the ways in which providers of regulated services and responsible individuals may comply with the requirements imposed by the regulations. Service providers and responsible individuals must have regard to this guidance when providing a regulated service.

Exceptions to regulated services

Services which fall within the definition of “regulated services” set out in Schedule 1 to the Act will be required to register with the service regulator before providing the service. However, the regulations in Part 2 of the draft Regulations – made under section 2(3) of the Act - enable the Welsh Ministers to prescribe things which, despite Schedule 1, are not to be treated as a regulated service. These services would not have to register with the service regulator.

Existing legislation excludes certain matters from the scope of regulation – for example, care provided to a family member. Consistent with the intention set out in the 2016 Act, the regulations in Part 2 ensure that services which currently fall outside the scope of regulation continue to do so.

Although the exceptions set out in this part include all of those which were in the Care Standards Act 2000, there are some additional exceptions to highlight here:

1. A trust established for the purpose of providing services to meet the health or social care needs of a named individual, does not need to register as a domiciliary support service. This exception is intended for Independent User Trusts (IUT). An IUT is a mechanism for helping an individual to have better control over their care by delegating the delivery of care, as far as possible, to persons acting on behalf of the individual, instead of care being commissioned by the NHS or a social services department.
2. The provision of accommodation, together with care, where the accommodation is an institution for young offenders provided under or by virtue of section 43(1) of the Prison Act 1952, is not classified as a care home service. This is because young offenders institutions are regulated and inspected as part of the prison service.
3. For an adult, the provision of accommodation, together with nursing care, in the course of a family or personal relationship and for no commercial consideration is not a care home service. The provision of care and support for an adult in the course of a family or personal relationship and for no commercial consideration is not a regulated domiciliary support service. A family relationship is defined as including a relationship between two persons who live in the same household

and treat each other as though they were members of the same family. This could include the relationship between members of religious communities.

Requirements on service providers

Parts 3 to 13 of the draft Regulations set out the detailed requirements on providers of regulated services in relation to the standard of care and support to be provided to individuals. This relates to the regulation-making power in section 27 of the Act. A “service provider” is a person who is registered with the Care and Social Services Inspectorate Wales (CSSIW) to provide a regulated service.

Part 3 covers general requirements on the service provider about the way in which the service is provided. It includes requirements relating to the statement of purpose; arrangements for monitoring and improvement; matters relating to the designated responsible individual and requirements in relation to the financial sustainability of the service. This Part sets out matters relating to policies and procedures. It also places a ‘duty of candour’ on service providers to act in an open and transparent way.

The **statement of purpose** is central to the system of regulation and inspection being established under the 2016 Act. There will no longer be permissive conditions of registration relating to particular specialisms of care. The Statement of Purpose will be the central document which will set out the nature of the service which providers are registered to provide as well as any specialisms. Service providers will therefore be required to inform CSSIW and others about their intention to make substantial changes to the service or the way it is provided in advance of making such changes. CSSIW will use this notification to inform its decisions about the intended changes to the service. The draft Regulations contain a requirement for service providers to notify the regulator at least 28 days prior to these changes being made to the statement of purpose. The draft statutory guidance will add clarity about the kind of amendments the service regulator (CSSIW) would want to know about.

Examples of this include:

- where a service which does not provide nursing care intends to provide nursing care;
- provision of additional specialist services;
- where a specific service referred to in the statement of purpose is to be withdrawn; or
- changes to the staffing arrangements.

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

Regulation 7 sets out the core policies and procedures which must be in place for the regulated services. Some of the policies and procedures listed here are also referred to in the draft Regulated Services (Registration) (Wales) Regulations 2017² which were developed and consulted upon in Phase one.

² <https://consultations.gov.wales/consultations/phase-1-implementation-regulation-and-inspection-social-care-wales-act-2016>

Part 4 covers the steps to be taken before a service provider agrees to provide care and support to an individual. The intention here is to ensure that the service is actually suitable and able to meet the individual's needs and will be able to support the individual in achieving their personal outcomes. This determination of the suitability of the service must take into account the individual's care and support plan under section 54 or section 83 of the Social Services and Well-being (Wales) Act 2014.

Part 5 covers the steps to be taken once the service provider has made a determination and has agreed to provide care and support to an individual. This includes a requirement for a 'personal plan' setting out how the individual's needs will be met on a day-to-day basis. The intention here is to ensure that there is an accurate and up to date plan which is reviewed on a regular basis to adapt to any change in circumstances for the individual. There is also a requirement for the service provider to undertake their own assessment as to how the service can best meet the care and support needs of the individual, and how it can support the person to achieve what matters to them, taking into account the individual's views, wishes and feelings. The assessment is not intended to duplicate any assessment which may have already been undertaken by the local authority, but should be informed by any plans developed as a result of such assessments – for example, a care and support plan. The intention here is that, although an individual may have already had their care and support needs assessed (by the local authority), the provider must satisfy themselves that their service can actually care for and support the individual and consider how this will be done on a day-to-day basis.

We received a lot of comments from stakeholders in the technical group about how the requirements for an assessment and a plan will align to the current requirements on local authorities in the Social Services and Well-being (Wales) Act 2014. You may wish to give this issue particular consideration in your response.

Part 6 deals with information which must be made available about the service in the form of a written guide. The intention here is to provide clarity on the culture and ethos of the regulated service and a range of other matters. The regulations set out some of the requirements relating to the guide; for example that it must be in an appropriate language, style, presentation and format having regard to the regulated service and the individuals for whom care and support is provided. The detail of what is in the guide will depend to some extent on the nature of the regulated service and, for this reason, the approach in the regulations is not overly prescriptive. The regulations do, however, require that the guide must include information about how to raise a concern or make a complaint, as well as information about the availability of advocacy services. Further areas which should be covered in the guide are set out in the draft statutory guidance. There is also a requirement in the regulations for individuals to receive such support as is necessary to enable them to understand the information contained in the guide.

Part 6 also sets out requirements in relation to information which must be made available about the cost, as well as the terms and conditions, of the service.

Part 7 contains requirements which relate to the standard of care and support which is provided. It includes overarching requirements which will underpin the quality of the service. It also includes requirements relating to such matters as continuity of care, providing information, meeting the individual's language and communication needs and ensuring that individuals are treated with respect and sensitivity. The statutory guidance sets out the detail of how service providers may comply with these requirements. We are keen to ensure that the guidance includes sufficient detail in relation to the range of regulated services included in these draft Regulations and is relevant for children as well as adults. You may wish to give this particular consideration in your response.

This part also includes requirements in terms of how appropriate behaviour will be supported and promoted in a positive way. Again the detail is set out in the draft statutory guidance. This is an area which was of particular interest during our engagement with stakeholders. They were concerned about the terminology and tone of this section and wanted to make sure any requirements were based around an individual's rights and centred on the individual's well-being. We are keen to ensure that we have addressed these concerns. You may wish to give this particular consideration in your response.

Part 8 includes requirements which are intended to ensure individuals are safe and are protected from abuse and improper treatment. This part includes requirements relating to the use of control and restraint. The intention here is to make clear that the use of such acts is very much a last resort. Again, this is something which stakeholders were keen to ensure was described appropriately in the regulations. Stakeholders highlighted that the regulations should define what constitutes control and restraint, including in relation to the use of chemicals. They said the requirements must also take account of current national guidance. A number of stakeholders also felt that the phrase 'control and restraint' was out of date but we have not found an alternative phrase. You may wish to give this particular consideration in your response.

Part 8 also includes provision relating to supporting and enabling individuals to manage their own money as well as protecting them from financial abuse. Stakeholders were not in favour of the concept of "managing people's money" as they felt it gave the impression that it is the norm for service providers to manage money on behalf of individuals. This is not the intention. We have used the phrase "supporting individuals to manage their money" to make it clear that providers may provide such support where this is appropriate. In these circumstances there is an obvious need to ensure that the appropriate safeguards are in place. We have therefore included a requirement for there to be a clear delineation between individuals' money and that of the provider. We have also replicated an existing requirement so that, as far as practicable, people working at the service do not act as the 'agent' of an individual. We are interested in your views as to whether these requirements provide sufficient clarity for providers as well as protecting the interests of the individual.

Part 9 contains requirements which will apply only to regulated services where accommodation is provided. This includes putting arrangements in

place to enable individuals to access health and other services and for children to have a designated link worker.

Part 10 sets out the requirements relating to staffing. It contains specific requirements regarding the fitness of individuals working at the service, including volunteers and agency staff. The specific information and documentation requirements are set out in schedule 1.

There are a number of matters to be aware of here. Firstly, there would no longer be a minimum requirement in relation to registered nurses working in care homes which include nursing care. The Care Homes (Wales) Regulations 2002 required a qualified nurse to be working at all times where nursing is being provided. It was felt that removing the existing requirement to have a single nurse on duty for 24 hours a day would provide greater flexibility for service providers to have the level of cover and number of nurses actually required for the needs and well-being of the people being cared for by the service. An additional safeguard has been added which is that service providers must be able to demonstrate the way in which the types of staff and numbers of each type of staff deployed have been determined.

Secondly, the 2016 Act does not require managers to be registered with the service regulator, CSSIW. Social Care Wales is, however, required to hold a register of social care workers. These regulations require that managers appointed by responsible individuals to run a regulated service must be registered with Social Care Wales.

You may wish to give these areas particular consideration in your response.

Part 11 covers requirements about premises, facilities and equipment. Some of the requirements only apply where accommodation is provided, whereas others apply in all cases. For example, requirements for all services will include ensuring that premises used for the operation of the service have adequate facilities for the supervision of staff and the secure storage of records

For services where accommodation is provided, there is a mixture of general and specific requirements. General requirements include premises having external grounds which are accessible to, suitable for, and safe to use by, individuals, and appropriately maintained. They also include ensuring premises are accessible, adequately lit, heated and ventilated, suitably furnished and equipped, etc.

This part also contains specific requirements in relation to shared rooms, both in relation to adults and children. In the existing National Minimum Standards for Care Home Services for Older People there is a requirement for shared rooms to be phased out over time. Single rooms were expected to make up at least 85% of resident places by 2010. The intention is that progress made in this area should indeed continue. The regulations in relation to shared rooms are summarised below:

- For adults, shared rooms will only be permissible where the adult both chooses to share a room with another adult and where there is a family

relationship between the adults which existed prior to moving into the home.

- In relation to care home services for children, each child must have their own room unless:
 - the child occupying the room is already sharing with only one other child who is - except in the case of siblings - not of the opposite sex or of a significantly different age to him or her, *and*
 - if sharing a room will promote the child's well-being, is provided for in the child's care and support plan and wherever practicable is agreed with the child.

The specific requirements in relation to shared rooms – for both adults and children - apply to services with an existing registration where people are accommodated, and to new buildings and extensions. These regulations will come into force as soon as services have registered with CSSIW under the new system from April 2018

These regulations will not result in service providers immediately having to move people from shared rooms providing the occupants of the rooms choose to continue to share.

You may wish to give particular consideration to these areas in your response.

Part 12 relates to additional requirements where the premises consist of a new building, an extension, or a building which has a previous registration but is not occupied at the time of the service provider's application for registration under the new law.

Whilst the intention is for regulations to be appropriately high-level to ensure service providers have the flexibility to support people achieve their personal outcomes in a variety of ways, some requirements are more prescriptive in order to ensure an appropriate standard is maintained. There are a number of requirements in this part which relate to the provision of en-suite facilities in rooms, rooms sizes, communal space and outdoor space.

Some stakeholder feedback received in the process of developing these requirements highlighted that en-suites are sometimes redundant because individuals are not able to use them due to safety or accessibility issues. We would welcome your views on the level of flexibility which would be desirable around en-suite facilities, and whether they should be required for all rooms or just a percentage of rooms. We would also welcome your view on whether there should be a more prescriptive approach to en-suite facilities in currently registered and occupied stock, and, if so, how this might be phased in over time.

We would welcome your views as to whether the proposed minimum room sizes are sufficient.

More generally, we would also welcome your views as to whether the other requirements in Part 12 should apply across all accommodation-based

services, including currently registered and occupied stock and, if so, how this might be phased over time.

Part 13 sets out requirements as to supplies, hygiene, health and safety and medicines.

Part 14 contains miscellaneous requirements on service providers, including requirements as to the keeping of records and the making of notifications to the service regulator and other bodies. Schedule 2 sets out the records which are required to be kept and Schedule 3 sets out the specific notifications to be made. This part also contains requirements on the service provider to have a complaints policy and a whistleblowing policy in place.

Responsible Individuals

Parts 15 to 19 set out the requirements placed on responsible individuals in relation to a place in respect of which the individual is designated, in accordance with section 28 of the Act. The eligibility requirements in section 21 of the Act ensure that the responsible individual is both a “fit and proper person” and is also at an appropriately senior level within the organisation. We are aware that there is some concern amongst service providers as to who may be designated as a responsible individual consistent with section 21 of the Act and intend to clarify the position. However it is not an issue addressed within these draft Regulations.

The intention in these regulations is to ensure that the responsible individual retains overall responsibility for fulfilling these requirements, but distinguish between tasks which may be delegated and those which cannot be. For example, the responsible individual may “make arrangements for obtaining the views of the individuals who are receiving care and support” but must “visit each place in respect of which the responsible individual is designated.” Clearly, visiting the service must be undertaken by the responsible individual themselves. However, the responsible individual retains overall accountability and responsibility for the duties set out in these regulations.

Part 15 contains requirements in relation to the responsible individual’s general duty to supervise the management of the service, and the specific duties relating to appointing a fit person to manage the service, to putting arrangements in place for the management of the service when the manager is absent, and to visiting the places where the service is being provided. As noted above, they have a duty to retain overall accountability and responsibility for the service.

The intention in the Act is for another person to be appointed as manager of the service by the responsible individual. However, we are aware that there are services currently operating where the responsible individual for the service is also the manager. We received strong feedback from stakeholders that, for smaller services, it would not be financially viable or desirable for the service provider, who would therefore be the responsible individual under the Act, to appoint a separate manager. However, it would clearly be inappropriate for one person to carry out both roles in a larger organisation. For this reason, we have specified that, where a service provider is registered as an individual, and the service regulator is in agreement, the service provider may appoint themselves as the manager for the service. In these

circumstances they would need to be registered as a manager with Social Care Wales. We would welcome your views on this approach.

Part 16 contains requirements on responsible individuals for ensuring the effective oversight of the service. By placing these requirements on the responsible individual, the regulations in this part ensure that a person at an appropriately senior level in the organisation is accountable for service quality and compliance. The responsible individual is required to make reports to the service provider on the adequacy of resources and on other matters. They are also required to make arrangements for engagement with individuals and others so that their views on the quality of care and support provided can be taken into account by the service provider.

Part 17 sets out the requirements on the responsible individual for ensuring the compliance of the service with other requirements, including notification of incidents and complaints and the keeping of records. The responsible individual must also put arrangements in place for ensuring that the service provider's policies and procedures are kept up to date.

Part 18 sets out the requirements on the responsible individual in relation to monitoring, reviewing and improving the quality of care and support provided, including making a report to the service provider. This report will form part of the provider's annual return.

Part 19 sets out other requirements on the responsible individual, including requirements to make certain notifications to the service regulator, contained in schedule 4.

Offences

Part 20

The regulations in this part are made under the powers in section 45 and 46 of the Act. They provide that a failure, by the service provider and responsible individual respectively, to comply with specified requirements in the regulations is an offence. There is a further qualification which applies in the case of failure to comply with certain requirements. In these cases, the regulation provides that this is only an offence if the failure to comply results in individuals being exposed to avoidable harm or significant risk of such harm or suffering a loss of money or property as a result of theft, misuse or misappropriation.

It is worth highlighting that, although failure to comply with a particular requirement in the regulations may not be an offence, a service provider's failure to comply with any of the requirements contained in regulations within Parts 3 to 14 could be grounds for cancellation of the service provider's registration under section 15 of the Act and a responsible individual's failure to comply with any of the requirements contained in regulations within Parts 15 to 19 could be grounds for the cancellation of the designation of the responsible individual under section 22.

Service providers who are liquidated etc or who have died

Part 21 sets out specific requirements which apply when the service provider is insolvent or when a service provider who is an individual has died. In these circumstances the regulations place specific notification duties on the appointed person (in the case of insolvency) or the personal representatives (in the case of the death of a service provider who is an individual).

Designation of responsible individual by Welsh Ministers

Part 22 specifies the circumstances in which the Welsh Ministers (instead of the service provider) may designate an individual to be a responsible individual, despite the eligibility requirements of section 21(2) not being met in respect of the individual. This regulation is made under section 21(5) of the Act.

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

Statutory Guidance for service providers and responsible individuals on meeting the service standard regulations

The draft statutory guidance, developed under section 29 of the Act, sets out how providers of regulated services and responsible individuals may comply with the requirements imposed by Parts 3 to 19 of the above draft Regulations. It provides further guidance – to which service providers and responsible individuals must have regard – on how to meet the individual components of each regulation where further clarification and definition may be needed. It is necessarily high level because it is intended to apply across all types of regulated services and age groups. The guidance on individual components of each regulation should not be considered exhaustive as there may be other ways in which service providers and responsible individuals can demonstrate that they meet them. The guidance is not intended to be standalone and therefore must be read alongside Parts 3 to 19 of the draft Regulations above.

The Regulated Services (Penalty Notices) Regulations 2017

These draft Regulations have been developed under section 52 of the Act. This section gives the Welsh Ministers the power to give a penalty notice to a person instead of bringing proceedings for an offence, but only in relation to those offences that are prescribed in these draft Regulations. The draft Regulations set out the detail of how the system of penalty notices will operate.

The offences for which a penalty notice may be given and the amount of the penalty are set out in the 'prescribed offences' schedule at the back of the Regulations. The offences relate to provisions in the Act such as making false statements (section 47), failure to submit an annual return (section 48) and

failure to provide information (section 49). They also relate to offences created under section 45 and 46 of the Act in relation to a failure by registered service provider or responsible individual to comply with certain requirements of The Regulated Services (Service Providers and Responsible Individuals) Regulations 2017 (above).

Section 54 of the Act restricts the amount of the sum to be payable under a penalty notice to two and a half times level 4 on the standard scale. Level 4 on the standard scale is currently £2,500. The approach we have taken in these draft Regulations is to base the amounts of the penalty payable on multiples of 'level 4 on the standard scale'.

Consultation Response Form

Your name:	
Organisation (if applicable):	
Email / Telephone number:	
Your address:	

PART 2: EXCEPTIONS			
Q. 1. Are the proposed exceptions which have been identified in relation to regulated services appropriate? If you think there is anything missing or unnecessary, please explain within the box below.			
Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
Please explain:			

PART 3: GENERAL REQUIREMENTS			
Q. 2. Are the requirements in this part right for all service types and age groups? If you think there is anything missing or unnecessary, please explain within the box below.			
Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
Regulations: Please explain:			
Does the statutory guidance adequately support service providers in how they may comply with the requirements in this part? If you think there is anything missing or unnecessary, please explain within the box below.			
Guidance: Please explain:			

PART 4: REQUIREMENTS ON SERVICE PROVIDERS AS TO THE STEPS TO BE TAKEN BEFORE AGREEING TO PROVIDE CARE & SUPPORT

Q. 3. Are the requirements in this part right for all service types and age groups? If you think there is anything missing or unnecessary, please explain within the box below.

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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Regulations:
Please explain:

Does the statutory guidance adequately support service providers in how they may comply with the requirements in this part? If you think there is anything missing or unnecessary, please explain within the box below.

Guidance:
Please explain:

PART 5: REQUIREMENTS ON SERVICE PROVIDERS AS TO THE STEPS TO BE TAKEN ON COMMENCEMENT OF THE PROVISION OF CARE AND SUPPORT

Q. 4. Are the requirements in this part right for all service types and age groups? If you think there is anything missing or unnecessary, please explain within the box below.

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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Regulations:
Please explain:

Does the statutory guidance adequately support service providers in how they may comply with the requirements in this part? If you think there is anything missing or unnecessary, please explain within the box below.

Guidance:
Please explain:

PART 6: REQUIREMENTS ON SERVICE PROVIDERS AS TO THE INFORMATION TO BE PROVIDED TO INDIVIDUALS ON COMMENCEMENT OF THE PROVISION OF CARE & SUPPORT

Q. 5. Are the requirements in this part right for all service types and age groups? If you think there is anything missing or unnecessary, please explain within the box below.

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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Regulations:
Please explain:

Does the statutory guidance adequately support service providers in how they may comply with the requirements in this part? If you think there is anything missing or unnecessary, please explain within the box below.

Guidance:
Please explain:

PART 7: REQUIREMENTS ON SERVICE PROVIDERS AS TO THE STANDARD OF CARE AND SUPPORT TO BE PROVIDED

Q. 6. Are the requirements in this part right for all service types and age groups? If you think there is anything missing or unnecessary, please explain within the box below.

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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Regulations:
Please explain:

Does the statutory guidance adequately support service providers in how they may comply with the requirements in this part? If you think there is anything missing or unnecessary, please explain within the box below.

Guidance:
Please explain:

PART 8: REQUIREMENTS ON SERVICE PROVIDERS - SAFEGUARDING

Q.7. Are the requirements in this part right for all service types and age groups? If you think there is anything missing or unnecessary, please explain within the box below.

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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Regulations:
Please explain:

Does the statutory guidance adequately support service providers in how they may comply with the requirements in this part? If you think there is anything missing or unnecessary, please explain within the box below.

Guidance:
Please explain:

PART 9: REQUIREMENTS ON SERVICE PROVIDERS WHICH ONLY APPLY WHERE ACCOMMODATION IS PROVIDED

Q.8. Are the requirements in this part right for all service types and age groups? If you think there is anything missing or unnecessary, please explain within the box below.

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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Regulations:
Please explain:

Does the statutory guidance adequately support service providers in how they may comply with the requirements in this part? If you think there is anything missing or unnecessary, please explain within the box below.

Guidance:
Please explain:

PART 10: REQUIREMENTS ON SERVICE PROVIDERS AS TO STAFFING

Q.9. Are the requirements in this part right for all service types and age groups? If you think there is anything missing or unnecessary, please explain within the box below.

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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Regulations:
Please explain:

Does the statutory guidance adequately support service providers in how they may comply with the requirements in this part? If you think there is anything missing or unnecessary, please explain within the box below.

Guidance:
Please explain:

PART 11: REQUIREMENTS ON SERVICE PROVIDERS AS TO PREMISES, FACILITIES AND EQUIPMENT

Q.10. Are the requirements in this part right for all service types and age groups? If you think there is anything missing or unnecessary, please explain within the box below.

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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Regulations:
Please explain:

Does the statutory guidance adequately support service providers in how they may comply with the requirements in this part? If you think there is anything missing or unnecessary, please explain within the box below.

Guidance:
Please explain:

PART 12: ADDITIONAL REQUIREMENTS ON SERVICE PROVIDERS IN RESPECT OF PREMISES – NEW ACCOMMODATION

Q.11. Are the requirements in this part right for all service types and age groups? Is anything missing or unnecessary?

We would welcome particular consideration as to:

- the level of flexibility which would be desirable around en-suite facilities, and whether they should be required for all rooms or just a percentage of rooms;
- whether there should be a more prescriptive approach to en-suite facilities in currently registered and occupied stock, and, if so, how this might be phased in over time;
- whether the proposed minimum room sizes are sufficient;
- whether the other requirements in Part 12 should apply to all accommodation-based regulated services, including currently registered and occupied stock and, if so, how this might be phased in over time.

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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Regulations:
Please explain:

Does the statutory guidance adequately support service providers in how they may comply with the requirements in this part? If you think there is anything missing or unnecessary, please explain within the box below.

Guidance:
Please explain:

PART 13: REQUIREMENTS ON SERVICE PROVIDERS AS TO SUPPLIES, HYGIENE, HEALTH AND SAFETY AND MEDICINES

Q.12. Are the requirements in this part right for all service types and age groups? If you think there is anything missing or unnecessary, please explain within the box below.

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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Regulations:
Please explain:

Does the statutory guidance adequately support service providers in how they may comply with the requirements in this part? If you think there is anything missing or unnecessary, please explain within the box below.

Guidance:
Please explain:

PART 14: OTHER REQUIREMENTS ON SERVICE PROVIDERS

Q.13. Are the requirements in this part right for all service types and age groups? If you think there is anything missing or unnecessary, please explain within the box below.

Agree <input type="checkbox"/>	Tend to agree <input checked="" type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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Regulations:
Please explain:

Does the statutory guidance adequately support service providers in how they may comply with the requirements in this part? If you think there is anything missing or unnecessary, please explain within the box below.

Guidance:
Please explain:

PART 15: REQUIREMENTS ON RESPONSIBLE INDIVIDUALS

Q.14. Are the requirements in this part right for all service types and age groups? If you think there is anything missing or unnecessary, please explain within the box below.

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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Regulations:
Please explain:

Does the statutory guidance adequately support service providers in how they may comply with the requirements in this part? If you think there is anything missing or unnecessary, please explain within the box below.

Guidance:
Please explain:

PART 16: REQUIREMENTS ON RESPONSIBLE INDIVIDUALS

Q.15. Are the requirements in this part right for all service types and age groups? If you think there is anything missing or unnecessary, please explain within the box below.

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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Regulations:
Please explain:

Does the statutory guidance adequately support service providers and responsible individuals in how they may comply with the requirements in this part? If you think there is anything missing or unnecessary, please explain within the box below.

Guidance:
Please explain:

PART 17: REQUIREMENTS ON RESPONSIBLE INDIVIDUALS FOR ENSURING THE COMPLIANCE OF THE SERVICE

Q.16. Are the requirements in this part right for all service types and age groups? If you think there is anything missing or unnecessary, please explain within the box below.

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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Regulations:
Please explain:

Does the statutory guidance adequately support service providers and responsible individuals in how they may comply with the requirements in this part? If you think there is anything missing or unnecessary, please explain within the box below.

Guidance:
Please explain:

PART 18: REQUIREMENTS ON RESPONSIBLE INDIVIDUALS FOR MONITORING, REVIEWING AND IMPROVING THE QUALITY OF THE REGULATED SERVICE

Q.17. Are the requirements in this part right for all service types and age groups? If you think there is anything missing or unnecessary, please explain within the box below.

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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Regulations:
Please explain:

Does the statutory guidance adequately support providers and responsible individuals in how they may comply with the requirements in this part? If you think there is anything missing or unnecessary, please explain within the box below.

Guidance:
Please explain:

PART 19: OTHER REQUIREMENTS ON RESPONSIBLE INDIVIDUALS

Q.18. Are the requirements in this part right for all service types and age groups? Is anything missing or unnecessary?

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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Regulations:
Please explain:

Does the statutory guidance adequately support providers and responsible individuals in how they may comply with the requirements in this part? If you think there is anything missing or unnecessary, please explain within the box below.

Guidance:
Please explain:

PART 20: OFFENCES

Q.19. Is the approach taken in relation to offences sufficient and proportionate? If not, please explain below.

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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Please explain:

PART 21 SERVICE PROVIDERS WHO ARE LIQUIDATED ETC OR WHO HAVE DIED

Q.20. Are the requirements placed on appointed persons and personal representatives reasonable? If not, please explain below.

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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Please explain:

PART 22: REGULATIONS UNDER SECTION 21(5) – DESIGNATION OF RESPONSIBLE INDIVIDUAL BY WELSH MINISTERS

Q.21. Are the circumstances in which responsible individuals may be designated by the Welsh Ministers, rather than the service provider, sufficient and appropriate? If not, please explain below.

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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Please explain:

The Regulated Services (Penalty Notices) Regulations 2017

Q.22. Is the approach in relation to penalty notices sufficient and proportionate? Are the levels of penalty set out in the draft regulations appropriate? If not, please explain below.

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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Please explain:

Other Questions

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.

Q23. 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?

Q24. 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?

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.

Q25. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Q26. 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.**

Q27. We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to tell us about them.

Responses to consultations may be made public – on the internet or in a report. If you would prefer your response to be kept confidential, please enter YES in the box.

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