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Llywodraeth Cymru
Welsh Government

Welsh Government
Consultation Document

Regulation and Inspection of Social Care (Wales) Act 2016

Phase 3 implementation – Adult Placements

Date of issue: 24 May 2018

Action required: Responses by 16 August 2018

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

Overview This consultation seeks your views on a new set of adult placement regulations to replace The Adult Placement Schemes (Wales) Regulations 2004 and The Adult Placement Schemes (Wales) (Miscellaneous Amendments) Regulations 2010. The new adult placement regulations, developed under the Regulation and Inspection of Social Care (Wales) Act 2016, will place requirements on independent and local authority adult placement scheme providers, principally under sections 27 and 28 of the 2016 Act. They will come into force in April 2019.

How to respond You can respond to this consultation by completing and returning, by midnight on the closing date, the consultation response form at the back of this document. The response should be sent to:

Legislation Implementation Branch
Social Services Directorate
Welsh Government
Crown Buildings
Cathays Park
Cardiff
CF10 3NQ

Alternatively the consultation response form is available on our website (<http://wales.gov.uk/consultations/?lang=en>) and can be returned to us, by midnight on the closing date, via e-mail to: RISCAct2016@gov.wales

Further information and related documents **Large print, Braille and alternative language versions of this document are available on request.**

The Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 – these apply to service providers and responsible individuals of care home, secure accommodation, residential family centre and domiciliary support services

http://www.legislation.gov.uk/wsi/2017/1264/pdfs/wsi_20171264_mi.pdf

Statutory Guidance for service providers and responsible individuals on meeting service standard regulations (February 2018) – this applies to service providers and responsible individuals of care home, secure accommodation, residential family centre and domiciliary support services

<https://gov.wales/docs/dhss/publications/180201statutory-guidanceen.pdf>

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

Consultation Summary Report

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

<https://beta.gov.wales/sites/default/files/consultations/2018-02/171122responses-serviceen.pdf>

Contact details

For further information:

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General Data Protection Regulations

The Welsh Government will be data controller for any personal data you provide as part of your response to the consultation. Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations. [Where the Welsh Government undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (e.g. a research organisation or a consultancy company). Any such work will only be undertaken under contract. Welsh Government's standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data.

In order to show that the consultation was carried out properly, the Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.

You should also be aware of our responsibilities under Freedom of Information legislation

If your details are published as part of the consultation response then these published reports will be retained indefinitely. Any of your data held otherwise by Welsh Government will be kept for no more than three years.

Your rights

Under the data protection legislation, you have the right:

- to be informed of the personal data holds about you and to access it
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- to (in certain circumstances) data portability to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection

For further details about the information the Welsh Government holds and its use, or if you want to exercise your rights under the GDPR, please see contact details below:

Data Protection Officer:

Welsh Government

Cathays Park

CARDIFF

CF10 3NQ

Email Address:

Data.ProtectionOfficer@gov.wales

The contact details for the Information Commissioner's Office are:

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF

Telephone: 01625 545 745 or

0303 123 1113

Website: www.ico.gov.uk

Foreword

In 2011 the Welsh Government published the white paper *Sustainable Social Services: A Framework for Action*. This set out an ambitious plan to create a new integrated and person-centred approach to social services provision in Wales.

To achieve this new approach, in the last assembly term, we made two pieces of primary legislation: the Social Services and Well-being (Wales) Act 2014 and the Regulation and Inspection of Social Care (Wales) Act 2016.

Through implementation of the 2016 Act we are establishing a new system of regulation and inspection of service providers which upholds the rights of Welsh citizens to dignified, safe and appropriate care and support.

This new system of regulation will be more robust and enable Care Inspectorate Wales, as the service regulator, to maintain an overview of the whole service an organisation is providing. It will also make it easier for service providers to register with the inspectorate and for citizens to have access to information about them.

The draft Adult Placement Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019 and their accompanying statutory guidance, set and explain the service standards that will be required of these providers from April 2019.

They are drawn from and, wherever appropriate, equate with those standards placed upon care home services, secure accommodation services, residential family centre services and domiciliary support services from April this year.

Ensuring consistency in the requirements placed on providers and responsible individuals of all regulated services is one of my main policy objectives in implementing the 2016 Act. However, I also recognise that each service has its own characteristics. Therefore, where appropriate the requirements are tailored to ensure the best fit with how services are delivered in practice, without compromising the overall standards expected.

I would like to thank you for taking the time to read this consultation document, for considering the draft Regulations and guidance and would invite you to respond as appropriate. I look forward to hearing your views.

Huw Irranca-Davies AM
Minister for Children, Older People and Social Care

1. Introduction

- 1.1. The Regulation and Inspection of Social Care (Wales) Act 2016¹ ('the 2016 Act'), which received Royal Assent on 18 January 2016, sets the new statutory framework for the regulation and inspection of social care services and also reforms the regulation of the social care workforce in Wales. It replaces relevant systems previously put in place under the Care Standards Act 2000².
- 1.2 The 2016 Act is being substantially implemented in three overlapping phases:
- **Phase 1 (2016/17)** included regulations relating to the new system of workforce regulation required by the 2016 Act. These came into force on 3 April 2017. Alongside these, Social Care Wales developed the rules and procedures which govern the process of workforce registration and regulation.
 - **Phase 2 (2017/18)** saw new systems for registration of regulated services put in place, to be operated by Care Inspectorate Wales from April 2018. This phase also included regulations and statutory guidance relating to the requirements and standards expected of service providers and responsible individuals of care homes (including children's homes), secure accommodation for children, residential family centres and domiciliary support services. These came into force on 2 April 2018.

Links to all of the phase 1 and phase 2 regulations and statutory guidance can be accessed via the SCW Information and Learning Hub:

<https://socialcare.wales/hub/riscact-regulations>

- **Phase 3 (2018/19)** is the current phase and includes development of regulations and statutory guidance relating to the requirements and standards expected of service providers and responsible individuals of adoption, fostering, adult placement and advocacy services. It is intended that these will come into force in April 2019.

This consultation forms part of Phase 3 of implementation.

- 1.3 Also within phase 3 of implementation we will be developing the requirements to be placed upon providers and responsible individuals of adoption services. We intend to consult on these elements early in the autumn, with a view to any regulations, statutory guidance and codes of practice coming into effect in spring 2019. At this time views will also be sought on the approach to regulating holiday schemes for disabled children, which currently fall to be regulated as care home services. The intention is to define this activity as a new regulated service under section 2 of the 2016 Act and to develop regulations placing proportionate requirements on the providers and responsible individuals of such services.

¹ http://www.legislation.gov.uk/anaw/2016/2/pdfs/anaw_20160002_en.pdf

² http://www.legislation.gov.uk/ukpga/2000/14/pdfs/ukpga_20000014_en.pdf

2. This consultation

- 2.1. This consultation runs from 24 May 2018 and closes at midnight on 16 August 2018.
- 2.2 This consultation seeks your views on The Adult Placements Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019 ('the draft Regulations'), which in summary:
- place new requirements on independent adult placement providers and responsible individuals under the 2016 Act
 - place the same requirements on local authority adult placement services.
- 2.3 It also seeks your views on:
- draft statutory guidance for service providers and responsible individuals of adult placement services in meeting service standards, under section 29 of the 2016 Act
 - future regulation of placement services for 16 to 17 year olds.
- 2.4 Your consultation responses will help inform our consideration of the final Regulations and statutory guidance. Our intention is to analyse the responses over the autumn and consider whether any changes may be required before laying the final Regulations towards the end of this year. We will also aim to publish the statutory guidance around the same time. All will come into effect in April 2019.

3. Adult Placement Services

Background

- 3.1 The current regulations covering adult placement services in Wales are the Adult Placement Schemes (Wales) Regulations 2004 and The Adult Placement Schemes (Wales) (Miscellaneous Amendments) Regulations 2010³. These were made under the Care Standards Act 2000, and place requirements upon local authority and independent adult placement schemes in relation to the management and conduct of the schemes and adult placement carers.

The case for change

- 3.2 A great deal has been achieved by the regulators (Care Inspectorate Wales and Social Care Wales⁴), and the wider social care sector, in pursuing the ambitions set out in the Care Standards Act 2000. This framework provided a baseline of standards, both for care and support services and for the workforce delivering them, and has undoubtedly improved public protection. It has also delivered much greater consistency, protection from abuse and exploitation, and greater exposure of sub-standard practices. Collectively, we have succeeded in raising performance and continue to use regulation and inspection to eliminate poor standards.
- 3.3 However, since that time we recognise that many things have changed within and around the sector, and have identified both the need to avoid our regulatory arrangements becoming out of date and the need to support the provision of sustainable services.
- 3.4 Our reform of the regulatory system, driven primarily through the 2016 Act, rests on five key principles:
- responsiveness to the reforms introduced by the Social Services and Well-being (Wales) Act 2014⁵ ('the 2014 Act')
 - ensuring citizens are at the heart of care and support
 - developing a coherent and consistent Welsh approach
 - tackling provider failure
 - responsiveness to new models of service and any emerging concerns over the quality of care and support services.
- 3.5 The proposals in this consultation have a significant part to play in serving and advancing this reform.

The new regulatory framework

- 3.6 Under section 27 of the 2016 Act 2016, the Welsh Ministers may by regulations impose requirements upon a service provider in relation to a regulated service; and under section 28, they may impose requirements on a responsible individual for a regulated service.

³ <http://www.legislation.gov.uk/wsi/2004/1756/contents/made>

⁴ Care Inspectorate Wales was (until January 2019) the Care and Social Services Inspectorate Wales. Social Care Wales was (until April 2016) the Care Council for Wales.

⁵ http://www.legislation.gov.uk/anaw/2014/4/pdfs/anaw_20140004_en.pdf

- 3.7 These ‘regulated services’ include adult placement services, which are defined in Schedule 1 of the 2016 Act as: ‘...a service carried on (whether or not for profit) by a local authority or other person for the purposes of placing adults with an individual in Wales under a carer agreement (and includes any arrangements for the recruitment, training and supervision of such individuals)’. ‘Carer agreement’ means an agreement for the provision by an individual of accommodation at the individual’s home together with care and support for up to three adults.
- 3.8 This means that the 2016 Act will replace the Care Standards Act 2000 in respect of requirements on local authority and independent adult placement services, and therefore new regulations are necessary.
- 3.9 The approach taken in developing the draft 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 draft 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 2014 Act. 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.

Our Proposals

- 3.10 Our overall policy intention is, so far as is practicable, to place a set of generic requirements upon providers of all ‘regulated services’ under the 2016 Act, modifying these where necessary to fit with each service. These generic requirements are set out in The Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017⁶ (‘the 2017 Regulations’), which came into force on 2 April 2018 and which apply to care home services (including children’s homes), secure accommodation for children, residential family centres and domiciliary support services. The 2017 Regulations therefore provide the policy blueprint for the draft Regulations being consulted upon here.
- 3.11 A Technical Group of adult placement service providers and stakeholders was established in order to advise on the development of the draft Regulations and statutory guidance. The Group met three times between September 2017 and March 2018 and considered the relevance of the 2017 Regulations to adult placement services.
- 3.12 For adult placement services it is also our policy intention to place the same requirements upon local authority services as upon independent adult placement

⁶ http://www.legislation.gov.uk/wsi/2017/1264/pdfs/wsi_20171264_mi.pdf

services. Under section 29 of the 2016 Act, the Welsh Ministers must publish guidance about how service providers may comply with requirements imposed by regulations under section 27, and how responsible individuals may comply with the requirements under section 28. This guidance will also apply to both local authority and independent schemes.

- 3.13 The requirements on providers will replace most of the 2004 Regulations. Our policy intention has been to draw them across into the draft Regulations so that we continue to have one consolidated set of regulations for adult placement services.
- 3.14 The National Minimum Standards for adult placement schemes⁷, published in 2004, are also replaced by a combination of requirements within the draft Regulations, supplemented by the draft statutory guidance.

The Adult Placement (Service Providers and Responsible Individuals) (Wales) Regulations 2019

3.15 In summary, the draft Regulations:

- place requirements on providers of regulated services (under section 27 of the 2016 Act);
- place requirements on designated responsible individuals (under section 28 of the 2016 Act);
- set out which breaches of the requirements on service providers and responsible individuals (under sections 27 and 28 of the 2016 Act) are to be treated as offences;
- place requirements on an appointed person in relation to service providers who are liquidated (under section 30 of the 2016 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 2016 Act).
- set out the circumstances in which the Welsh Ministers (instead of a service provider) may designate an individual to be a responsible individual.

Requirements on service providers

- 3.16 **Parts 2 to 11** 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 2016 Act. A “service provider” is a person who is registered with the Care Inspectorate Wales (CIW) to provide a regulated service.
- 3.17 **Part 2** covers general requirements on service providers about the way in which the service is provided. It includes requirements relating to the statement of purpose, arrangements for monitoring and improvement, requirements in relation to the responsible individual and in relation to the financial sustainability of the service, and requirements to provide the service in accordance with policies and procedures. An adult placement service provider or ‘service provider’ means a person carrying on an adult placement service as defined in schedule 1 of the 2016 Act.

⁷ <http://careinspectorate.wales/docs/cssiw/general/131009nmsadultplacemenen.pdf>

- 3.18 **Part 3** 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 2014 Act.
- 3.19 **Part 4** 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 the preparation of a 'carer agreement', the preparation of an 'individual placement agreement' and the preparation and review of a 'personal plan'. The intention is that the carer agreement is the overarching 'contract' between the service provider and an adult placement carer which requires both parties to undertake their roles in accordance with the policies and procedures of the service, and sets out arrangements to ensure that the premises, facilities and equipment to be used by adult placement carers are, and remain, fit for purpose.
- 3.20 The individual placement agreement is intended to be the equivalent of the adult placement agreement as set out in the 2004 Regulations and would be drawn up once it had been identified that an adult placement carer could meet the needs of a specific individual. It will include details of the placement, including the type of placement, the room to be used and the fees to be paid. Whenever practicable, the individual should be party to the agreement and be given a signed copy. There is a requirement that the service provider reviews the individual placement agreement at least once within the first year of the placement, whenever a significant alteration is made to the agreement, at the reasonable request of the individual or adult placement carer, and in any event within a year of the last review.
- 3.21 The personal plan will be similar to the existing adult plan as set out in the 2004 Regulations and will set out the specific needs and wishes of the individual seeking support and how the carer will provide the support. There is a requirement that the plan should be reviewed at least every 3 months and that this review should involve the individual and any representative.
- 3.22 The draft statutory guidance sets out the detail of how service providers may comply with these requirements.

You may wish to give the purpose and content of the agreements and the personal plan particular consideration in your response.

- 3.23 **Part 5** 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 draft 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. There is also a requirement 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 draft Regulations for individuals to receive such support as is necessary to enable them to understand the information contained in the guide.

- 3.24 **Part 6** contains requirements in relation to the standard of care and support to be provided. It includes overarching requirements which will underpin the quality of the service. It also includes requirements relating to providing information, meeting the individual's language and communication needs and ensuring that individuals are treated with respect and sensitivity.
- 3.25 **Part 7** 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. Part 7 also includes provision relating to supporting and enabling individuals to manage their own money as well as protecting them from financial abuse.

You may wish to give this particular consideration in your response.

- 3.26 **Part 8** 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. It also contains requirements in relation to supporting and developing staff, compliance with the employer's code of practice, information for staff and disciplinary procedures.
- 3.27 **Part 9** sets out requirements in relation to the support that should be in place for adult placement carers. This includes the recruitment and training of adult placement carers, effective relationships, support, training and information, and the fitness of adult placement carers.

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

- 3.28 **Part 10** covers requirements about premises, facilities and equipment. This includes the premises used for the operation of the service and the premises, facilities and equipment used by adult placement carers to meet the needs of individuals.
- 3.29 The service provider must have arrangements in place to ensure that the premises, facilities and equipment used by adult placement carers are suitable and safe for the purpose for which they are intended to be used; used in a safe way; properly maintained; kept clean to a standard which is appropriate for the purpose for which they are being used and, in the case of equipment, stored appropriately. The detail of these arrangements will be set out in the carer agreement included in Regulation 11.

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

- 3.30 **Part 11** contains miscellaneous requirements on service providers, including requirements as to the keeping of records, the making of notifications to the service regulator, conflicts of interest, complaints policy and procedures and whistleblowing. Schedule 2 sets out the records which are required to be kept and Schedule 3 sets out the specific notifications to be made.

Duties on Responsible Individuals

- 3.31 **Parts 12-16** 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 2016 Act. The eligibility requirements in section 21 of the 2016 Act ensure that the

responsible individual is both a “fit and proper person” and is also at an appropriately senior level within the organisation. Care Inspectorate Wales has issued guidance for providers in order to assist them with designating responsible individuals.

- 3.32 The intention in these regulations is to ensure that the responsible individual retains overall responsibility and accountability for fulfilling these requirements, but to distinguish between tasks which may be delegated and those which cannot be *the words “put suitable arrangements in place” have been used to provide the necessary clarity. The requirement to visit the service must be undertaken in person by the designated responsible individual.*
- 3.33 **Part 12** 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.
- 3.34 **Part 13** contains requirements on responsible individuals for ensuring the effective oversight of the service. By placing these requirements on the responsible individual, the draft 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.
- 3.35 **Part 14** 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.
- 3.36 **Part 15** sets out the requirements on the responsible individual in relation to monitoring, reviewing and improving the quality of the service provided, including making a report to the service provider. This report will form part of the provider’s annual return under section 10 of the 2016 Act.
- 3.37 **Part 16** sets out other requirements on the responsible individual, including requirements in relation to support for staff raising concerns, duty of candour and to make certain notifications to the service regulator, contained in schedule 4.

Part 17 - Offences

- 3.38 The regulations in this part are made under the powers in section 45 and 46 of the 2016 Act. They provide that a failure, by the service provider and responsible individual respectively, to comply with specified requirements in the draft 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.

- 3.39 It is worth highlighting that, although failure to comply with a particular requirement in the draft Regulations may not be an offence, a service provider's failure to comply with any of the requirements contained in regulations within Parts 2 to 11 could be grounds for cancellation of the service provider's registration under section 15 of the 2016 Act. A responsible individual's failure to comply with any of the requirements contained in regulations within Parts 12 to 16 could be grounds for the cancellation of the designation of the responsible individual under section 22.

Penalty notices

- 3.40 Whilst the draft Regulations set out which breaches of the requirements by service providers and responsible individuals are to be treated as offences, they do not make provision for penalty notices to apply. During phase 2 of implementation, The Regulated Services (Penalty Notices) (Wales) Regulations 2017⁸ established a penalty notice system, whereby Care Inspectorate Wales may issue a penalty to providers and responsible individuals of regulated services in stead of bringing proceedings for certain offences.
- 3.41 Our policy intention is to extend this to phase 3 services, therefore enabling the same penalty notice system to apply to equivalent offences for independent fostering service providers and responsible individuals. This is clearly illustrated within the table at Annex A (separate document) and your views are sought within the consultation response form at section 6 of this document.

Service providers who are liquidated etc. or who have died

- 3.42 **Part 18** places requirements on an appointed person in relation to service providers who are liquidated (under section 30 of the 2016 Act). It also sets out specific requirements which apply when a service provider who is an individual has died. In these circumstances the draft Regulations place specific notification duties on the personal representatives of the individual.

Designation of responsible individual by Welsh Ministers

- 3.43 **Part 19** 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 2016 Act.
- 3.44 The approach under the 2016 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 2016 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.

⁸ http://www.legislation.gov.uk/wsi/2017/1292/pdfs/wsi_20171292_mi.pdf

4 Potential impacts

- 4.1 To assist with the consideration of the draft Regulations we have included some indicative costs and benefits of the proposals included in this consultation. Where we have been able to we have also included some detail on the other options that have been considered during the development of the draft Regulations.

Requirements on adult placement service providers and responsible individuals under the 2016 Act

Options

- **Option one** – Replicate the provisions of the Regulated Services (Service Providers and Responsible Individuals (Wales) Regulations 2017⁹
- 4.2 Under the 2016 Act the following are listed in section 2 as regulated services:
- 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.
- 4.3 Under this option the provisions of the 2017 Regulations would apply to adult placement services in the same way that they do to other regulated services without modification.
- **Option two** – Modify the provisions of the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017
- 4.4 Adult placement services are of a clearly different nature to services which provide accommodation or domiciliary support, and so it has been necessary to consider which of the provisions should apply, which should not, and what modifications may be appropriate.
- 4.5 An exercise was undertaken, with the assistance of the Technical Group on Adult Placements to identify appropriate adaptations and modifications. The relevant provisions of the 2017 Regulations which have been modified or disapplied are listed below with some commentary. Many of the modifications have been made in order to reflect the fact that, unlike those services falling within the remit of the 2017 Regulations, adult placement service providers do not directly provide care and support.

Modified requirements

Requirements to provide the adult placement service in accordance with policies and procedures

⁹ http://www.legislation.gov.uk/wsi/2017/1264/pdfs/wsi_20171264_mi.pdf

- 4.6 There have been some minor changes made to the list of policies and procedures that an adult placement service provider must have in place in order to make these more relevant to the nature of the service being delivered.

Part 4 - Requirements on service providers as to the steps to be taken on commencement of the provision of care and support

- 4.7 Significant modifications have been made to this Part in order to reflect the nature of adult placement services. It introduces a requirement for a carer agreement and an individual placement agreement, in addition to the personal plan which features in the 2017 Regulations.

Staffing – overarching requirement

- 4.8 This regulation has been modified to reflect the specific nature of adult placement services. The provisions regarding care home services have been removed.

Part 9 Requirements on service providers as to adult placement carers

- 4.9 This Part has been added into the draft Regulations in recognition of the obligations that adult placement providers should have towards adult placement carers, and in order to ensure the continuation of existing arrangements. It covers recruitment and training of adult placement carers, effective relationships, support and information for adult placement carers and fitness of adult placement carers.

Part 10 – requirements of service providers as to premises, facilities and equipment

- 4.10 This Part has been modified to reflect the very different nature of adult placement services when compared to accommodation-based services such as a care home or secure accommodation service.

Disapplied requirements

Exceptions

- 4.11 It has not been necessary to create any exceptions to these draft Regulations.

Provider Assessment

- 4.12 The requirement for a provider assessment to be undertaken within 7 days of the provision of care and support has been removed as it was not felt to be appropriate or necessary for adult placement services.

Continuity of Care

- 4.13 The requirement for a service provider to put in place arrangements to ensure that individuals receive such continuity of care as is reasonable to meet their needs was felt to be more relevant to a care home or domiciliary support service rather than to adult placements.

Costs

- **Option one** – Replicate the provisions of the Regulated Services (Service Providers and Responsible Individuals (Wales) Regulations 2017

4.14 A detailed Explanatory Memorandum¹⁰ and Regulatory Impact Assessment was produced for the 2017 Regulations. An analysis of the indicative costs as they related to those services under the 2017 Regulations can be found within this document. Similar indicative costs may also apply to this option.

- **Option two** – Modify the provisions of the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017

4.15 Many of the costs that apply to Option one would also apply to Option two. Even though modifications have been made, the provisions within these draft Regulations mirror, to a large extent, those within the 2017 Regulations. They also preserve, to a large extent, the existing arrangements under the 2004 Regulations.

4.16 There may be some small transition costs associated with these draft Regulations in terms of the updating of policies and procedures (although these are currently kept under review), familiarisation and staff training.

Benefits

- **Option one** – Replicate the provisions of the Regulated Services (Service Providers and Responsible Individuals (Wales) Regulations 2017

4.17 Whilst, this option may have some **benefits** in terms of ensuring consistency across all regulated services under the 2016 Act, adult placement service providers do not directly provide adults with care and support, which is instead provided directly by adult placement carers.

4.18 The main risk with option one therefore was that it would seek to shoehorn adult placement services into a model of regulated service which did not reflect the true nature of adult placements – in particular the role of adult placement carers in delivering care and support to an individual.

- **Option two** – Modify the provisions of the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017

4.19 The main benefits of option two are achieving the maximum consistency as possible across all regulated services including adult placement services, whilst at the same time allowing flexibility to place requirements which fit the unique nature of adult placements.

4.20 The risk of option two is that diverging too much from the requirements in the 2017 Regulations would make it difficult for Care Inspectorate Wales to ensure consistency of quality and inspection across all regulated services. However, given the unique nature of adult placements, we believe the benefits of making the modifications we have outlined outweigh the risk associated with inconsistencies across services regulated by the 2016 Act.

4.21 Option two is therefore the preferred option for the reasons set out above.

¹⁰ <http://www.assembly.wales/laid%20documents/sub-ld11277-em/sub-ld11277-em-e.pdf>

5 Statutory Guidance

Statutory Guidance

- 5.1 The draft statutory guidance, developed under section 29 of the 2016 Act, sets out how adult placement service providers and responsible individuals may comply with the requirements imposed by Parts 2 to 16 of the 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. The guidance should not be considered exhaustive as there may be other ways in which service providers and responsible individuals can demonstrate that they meet the requirements set out in regulations. It is not intended to be standalone and therefore must be read alongside Parts 2 to 16 of the draft Regulations.
- 5.2 As with the draft Regulations, the draft statutory guidance generally follows the format and, where appropriate, the content of the statutory guidance¹¹ published in February 2018 in respect of care home, secure accommodation, residential family centre and domiciliary support services (developed within phase 2 of implementation).

¹¹ <http://gov.wales/docs/dhss/publications/180201statutory-guidanceen.pdf>

6 Future Regulation of Placement Services for 16 to 17 year olds

Background

- 6.1 Adult placements can currently only be provided to someone who is aged 18 or over. The Technical Group advised that for some young people aged 16 or 17, adult placements can provide a unique opportunity to support them whilst they transition from children's to adults services, to support them to develop independence, skills and confidence or to live in ordinary homes with families where they can form meaningful relationships. This is not currently possible under the existing legal framework, and also means that few, if any, of the essential steps needed to make an adult placement arrangement can be undertaken until the young person's 18th birthday.

Our proposals

- 6.2 We would therefore welcome views on the principle of extending adult placement schemes to include 16 and 17 year olds. If the responses to the consultation are supportive of this approach we would seek to prescribe placement services for 16 and 17 year olds as a regulated service under section 2 of the 2016 Act. We would also develop draft Regulations setting out the specific requirements to be placed on providers and responsible individuals of these services. In line with the approach taken in these draft Regulations to place a set of generic requirements upon providers of all 'regulated services' under the 2016 Act, the policy intention is that draft Regulations on placements for 16 and 17 year olds would to a large extent replicate those for adult placements, modified as necessary.

7 Consultation questions

Consultation Response Form

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

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please place a tick in the box:

PART 2: General requirements on service providers			
Are the requirements in this part of the draft Regulations right for adult placement service providers? 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"/>
Does the draft statutory guidance adequately support adult placement 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.			

PART 3: Requirements on service providers as to the steps to be taken before agreeing to provide care and support

Are the requirements in this part of the draft Regulations right for adult placement service providers? 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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Does the draft statutory guidance adequately support adult placement 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.

PART 4: Requirements on service providers as to the steps to be taken on commencement of the provision of care and support

Are the requirements in this part of the draft Regulations right for adult placement service providers? 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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Does the draft statutory guidance adequately support adult placement 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.

PART 5: Requirements on service providers as to the information to be provided to individuals on commencement of the provision of care and support

Are the requirements in this part of the draft Regulations right for adult placement service providers? 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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Does the draft statutory guidance adequately support adult placement 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.

PART 6: Requirements on service providers as to the standard of care and support to be provided

Are the requirements in this part of the draft Regulations right for adult placement service providers? 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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Does the draft statutory guidance adequately support adult placement 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.

PART 7: Requirements on service providers – safeguarding

Are the requirements in this part of the draft Regulations right for adult placement service providers? 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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Does the draft statutory guidance adequately support adult placement 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.

PART 8: Requirements on service providers as to staffing

Are the requirements in this part of the draft Regulations right for adult placement service providers? 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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Does the draft statutory guidance adequately support adult placement 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.

PART 9: Requirements on service providers as to adult placement carers

Are the requirements in this part of the draft Regulations right for adult placement service providers *and* adult placement carers? 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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Does the draft statutory guidance adequately support adult placement 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.

PART 10: Requirements on service providers as to premises, facilities and equipment

Are the requirements in this part of the draft Regulations right for adult placement service providers? 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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Does the draft statutory guidance adequately support adult placement 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.

PART 11: Other requirements on service providers

Are the requirements in this part of the draft Regulations right for adult placement service providers? 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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Does the draft statutory guidance adequately support adult placement 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.

PARTS 12 -16 : Requirements on responsible individuals

Are the requirements in this part of the draft Regulations right for adult placement service providers? 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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Does the draft statutory guidance adequately support adult placement 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.

PART 17: Offences

Is the approach taken in relation to offences within the draft Regulations 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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Penalty Notices (These are not provided for within the draft Regulations)			
Is the approach in relation to penalty notices, as illustrated at Annex A, sufficient and proportionate? Are the levels of penalty 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"/>
PART 18: Service providers who are liquidated etc. or who have died			
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"/>
PART 19: Designation of responsible individual by Welsh Ministers			
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 checked="" type="checkbox"/>

Future Regulation of Placement Services for 16 to 17 year olds

The Welsh Government is currently considering extending adult placement schemes to include 16 and 17 year olds.

Do you think adult placements would be beneficial to 16 and 17 year olds? If so, are there any particular issues which would need to be taken into consideration when developing a draft set of Regulations?

Please explain:

Other Questions

We have identified a number of costs/benefits/risks related to these draft Regulations.

Do the costs/benefits/risks referenced in this consultation document give a reasonable account of the level of impact of the draft Regulations? Are there any additional costs/benefits/risks that you feel have not been considered or identified?

Please explain:

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.

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?

Please explain:

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?

Please explain:

We would like to know your views on the effects that these proposals would have on the Welsh language, specifically on

- i) opportunities for people to use Welsh and
- ii) on treating the Welsh language no less favourably than English.

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

Please explain:

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.

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