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Llywodraeth Cymru  
Welsh Government

Welsh Government  
Consultation – summary of response

## Adult Placement Services Regulations

Implementing a new regulatory framework

November 2018

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

## **Overview**

This document provides a summary of the responses received by the Welsh Government to our consultation:

WG34310 – Phase 3 implementation of the Regulation and Inspection of Social Care (Wales) Act 2016 – Adult Placements.

The consultation was published on 24 May 2018 and closed on 16 August 2018. 24 responses were received from a range of stakeholder and interested parties.

## **Action Required**

For information only.

## **Further information**

Enquiries about this document should be directed to:

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

E-mail: [RISCAct2016@gov.wales](mailto:RISCAct2016@gov.wales)

## **Additional copies**

This document can be accessed from the Welsh Government's website:

<https://beta.gov.wales/adult-placement-services-regulations>

Large print, Braille and alternate language versions of this document are available on request.

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## Section 1

### 1.1 Introduction

The Regulation and Inspection of Social Care (Wales) Act 2016<sup>1</sup> ('the 2016 Act') received Royal Assent on 18 January 2016. It sets the new statutory framework for the regulation and inspection of social care services and reforms the regulation of the social care workforce in Wales. Therefore it replaces relevant systems previously put in place under the Care Standards Act 2000<sup>2</sup>.

The 2016 Act enables the Welsh Ministers to put in place a number of items of subordinate legislation through the making of regulations, together with the publication of statutory guidance and the issuing of codes of practice. This implementation work is being substantially completed within three overlapping phases:

- **Phase 1 (2016/17)** included regulations relating to the new system of workforce regulation required by the 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 and 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 Social Care Wales Information and Learning Hub<sup>3</sup>:

- **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 services, fostering services, adult placement services and advocacy services. It is intended that these will come into force in April 2019.

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<sup>1</sup> [http://www.legislation.gov.uk/anaw/2016/2/pdfs/anaw\\_20160002\\_en.pdf](http://www.legislation.gov.uk/anaw/2016/2/pdfs/anaw_20160002_en.pdf)

<sup>2</sup> [http://www.legislation.gov.uk/ukpga/2000/14/pdfs/ukpga\\_20000014\\_en.pdf](http://www.legislation.gov.uk/ukpga/2000/14/pdfs/ukpga_20000014_en.pdf)

<sup>3</sup> <https://socialcare.wales/hub/riscact-regulations>

## 1.2 The context for change

### Regulation of services under The Care Standards Act 2000

A great deal has been achieved by the regulators (Care Inspectorate Wales and Social Care Wales<sup>4</sup>), 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.

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.

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 2014<sup>5</sup> ('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.

### Regulation of adult placement services

'Adult placement services' are defined within 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). A '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.

The current regulations covering Adult Placement Schemes are The Adult Placement Schemes (Wales) Regulations 2004<sup>6</sup> and The Adult Placement Schemes (Wales) (Miscellaneous Amendments) Regulations 2010<sup>7</sup>, put in place under the Care Standards Act 2000. The new Regulations will place requirements on independent and local authority adult placement service providers (and their responsible individuals) under sections 27 and 28 of the 2016 Act.

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<sup>4</sup> 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.

<sup>5</sup> [http://www.legislation.gov.uk/anaw/2014/4/pdfs/anaw\\_20140004\\_en.pdf](http://www.legislation.gov.uk/anaw/2014/4/pdfs/anaw_20140004_en.pdf)

<sup>6</sup> <http://www.legislation.gov.uk/wsi/2004/1756/contents/made>

<sup>7</sup> <http://www.legislation.gov.uk/wsi/2010/2585/made>

### 1.3 This consultation

The consultation, which ran from 24 May to 16 August 2018, sought views on the draft Adult Placement (Service Providers and Responsible Individuals) (Wales) Regulations 2019, which in summary:

- 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);

Also consulted upon was draft statutory guidance for service providers and responsible individuals in meeting the regulatory requirements and, in principle, the future regulation of placement services for 16 to 17-year olds.

24 responses were received to the consultation. Three of these were purely narrative and therefore appear in the summary of tick box responses within this report as 'not specified'. All responses have been considered equally in terms of the comments received. A list of respondents is attached at Annex A.

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

### 1.4 Consultation events

Two consultation events were held as part of the consultation process. The events aimed to encourage stakeholders to respond and to enable those attending to:

- gain an overview of the draft legislative framework and key changes it will effect;
- check their understanding of the proposals and seek clarity, if needed;
- consider potential implications for their role and organisation

The first event was held on 16 July in Glyndwr University, Wrexham and the second event was held on 19 July in Sophia Gardens, Cardiff.

Overall, the uptake of places for the events – which covered consultations on adult placement, advocacy and fostering services – was positive, with approximately 90 attendees in total in Cardiff and 40 delegates in total in Wrexham. A range of public, private and third sector organisations were represented, including a number of service providers.

### 1.5 Next steps

The Regulations will be laid before the National Assembly for Wales in December 2018 and are scheduled for debate in January 2019. If passed by the National Assembly for Wales, they are due to come into force in April 2019.

## Section 2

### Summary of responses received and Welsh Government response

*Note: Due to rounding, percentages may not add up to 100% overall.*

#### PART 2: General requirements on service providers

Question 1: Are the requirements in this part of the draft Regulations right for adult placement service providers?				
Agree	Tend to agree	Tend to disagree	Disagree	Not specified
11	7	3	0	3
46%	29%	13%	0%	13%

#### Summary of responses and action

Over half of those who responded on the question agreed fully that the general requirements for adult placement service providers were right.

Carers Wales tended to disagree on these requirements (and those in Parts 3 - 8, 11, 12-16) on the basis that they felt more references should be made to unpaid family carers and changes should be made to ensure that there is no confusion with adult placement carers. Carers Wales suggested that the term 'adult placement carer' should be changed to 'adult placement care worker' and 'carer agreement' changed to 'adult placement carer agreement'. This is not felt to be necessary as the context for the Regulations is clear about to whom is being referred. Carers Wales also wished for the term 'representative' to be replaced with 'carer / representative'. This is also felt not to be necessary as 'representative' can reasonably include 'carer'.

The final 'tend to disagree' response was on the basis that the draft Regulations referred to 'independent service providers'. This is not the case, the general term 'service provider' is used throughout the Regulations and statutory guidance.

There were many calls to change the language in the Regulations as well as statutory guidance to reflect the nature of adult placements. It was felt that it is not merely a case of 'placing' individuals but that the language should reflect the element of choice by individuals as to which family they live with and the processes of matching for compatibility which need to be undertaken to ensure a successful arrangement. In particular, there were many representations for the Regulations to include 'Shared lives' within their title rather than 'adult placement services' to reflect that this was the term widely used for such arrangements across Wales and the UK. One opposing voice requested that this term should not be used as it was not universal. As recognised by many respondents, the Welsh Government would not be able to move away from the term 'adult placement services' at this point as this would be inconsistent with the definition set out in the Regulation and

Inspection of Social Care (Wales) Act 2016. To use another term at this point would introduce legal inconsistencies. However, where possible, Regulations and statutory guidance have been amended to refer to 'matching' and 'compatibility' rather than just 'placement', while also ensuring that the act of an individual moving to accommodation is referred to as 'placement' to avoid any misinterpretation through using a term such as 'match', for example, as a someone may be matched but not ultimately move to the accommodation.

There were a few calls for more detail to be provided within the statutory guidance on the content of the Statement of Purpose (SoP). This is not felt to be necessary as it refers to and contains a link to specific detailed guidance available from the Care Inspectorate Wales<sup>8</sup>. One respondent felt that words from the statutory guidance<sup>9</sup> relating to The Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017<sup>10</sup> ("the 2017 Regulations") could be included. The statutory guidance includes reference to the Registration Regulations and Care Inspectorate Wales' guidance on registration. There is no value in adding further detail to the statutory guidance

More clarity was also felt to be necessary as to whether an SoP is needed for each of the provider's sites. The statutory guidance has been amended to clarify this is not the case.

Some felt that reviewing the SoP annually, as set out in the guidance, was too burdensome. However, the Welsh Government feels that this is proportionate and notes that the guidance says that the SoP should merely be reviewed annually, which might not lead to amendment. In practice, where a service is well-established and stable, it is likely that the review could be relatively light touch. One respondent felt that statutory guidance for the 2017 Regulations, relating to notification of the service regulator in the light of an urgently required amendment to the SoP, should be also be included in these Regulations. This has been added.

A couple of views were expressed that timescales for providing information should be enhanced by adding the term 'promptly' to the requirement. The Welsh Government has not added the term as it was not felt to add anything in legal terms. Setting out a specific timetable was also felt not to be appropriate as this would go against the current policy direction of a more holistic approach to individual cases and trusting bodies to take the right approach in the context of an individual's identified needs and intended outcomes.

There was one request to remove the wording 'consistent with the well-being of the individual' where this appeared within the Regulations, as the respondent could not think of an example or where this would be the case. This has not been amended as the phrase is intended to offer more protection for individuals and would create an inconsistency with the regulation of other services under the 2016 Act.

Some wording in the statutory guidance for this Part was amended in response to comments that it suggested that registration of all service provider staff was a requirement, when this is not the case.

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<sup>8</sup> <https://careinspectorate.wales/sites/default/files/2018-03/180115statementofpurposeguideen.pdf>

<sup>9</sup> <https://gov.wales/docs/dhss/publications/180201statutory-guidanceen.pdf>

<sup>10</sup> [http://www.legislation.gov.uk/wsi/2017/1264/pdfs/wsi\\_20171264\\_mi.pdf](http://www.legislation.gov.uk/wsi/2017/1264/pdfs/wsi_20171264_mi.pdf)



One respondent felt that the wording of the statutory guidance suggested that action against bullying, victimisation and / or harassment only needed to be taken in relation to the duty of candour and that this should be broadened. As this refers primarily to board members, responsible individuals and members of staff it would not be appropriate to widen further as this would be straying into employment legislation. There are sufficient safeguards in other parts of the draft Regulations to protect individuals placed in services.

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

**Question 2: Are the requirements in this part of the draft Regulations right for adult placement service providers**

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
11	8	2	0	3
46%	33%	8%	0%	13%

**Summary of responses and action**

As explained in relation to Part 2, the concepts of matching and compatibility have been added to the Regulations and statutory guidance where possible in response to several comments on this aspect.

Further statutory guidance on a staged process for developing personal plans in the case of emergencies has been added to respond to concerns that these might be threatened if time pressures did not allow sufficient time to prepare personal plans.

One respondent requested a requirement that Advance Care Plans for terminally ill individuals should be taken account of in their personal plans. The Welsh Government does not feel this is necessary as it is overly specific and the requirements to take account of individual's well-being and personal needs are sufficient to cover this aspect.

There were further calls for timescales to be set for some of the processes. These have not been added for the reasons set out earlier in Part 2.

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

**Question 3: Are the requirements in this part of the draft Regulations right for adult placement service providers?**

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
7	12	2	0	3
29%	50%	8%	0%	13%

**Summary of responses and action**

A few respondents commented that a requirement to review personal plans every three months was excessive, particularly where placements were well established. The Welsh Government feels it is appropriate for there to be regular reviews of personal plans, particularly for new arrangements. However it agrees that reviews would only need to be 'light-touch' for well-established stable placements and has amended the statutory guidance accordingly.

Draft regulation 12(7) was amended in response to one suggestion to also include a representative being able to make a reasonable request to review the individual placement agreement.

The statutory guidance has been modified to clarify that the carer agreement would cover all individuals placed if there were more than one as some respondents felt that this wasn't clear.

A few commented that the wording of requirements for personal plans to set out 'how on a day-to-day basis the individual's care and support needs will be met' could be interpreted as requiring a prescriptive daily plan. This was not the intention, and the statutory guidance has been amended to clarify.

There was also a call for statutory guidance to be provided on when a service provider wants to terminate an arrangement but the individual does not wish to leave. The Welsh Government does not feel that the statutory guidance would be the best place for this type of good practice guidance as it would be very dependent on individual circumstances and local arrangements.

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

**Question 4: Are the requirements in this part of the draft Regulations right for adult placement service providers?**

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
10	9	2	0	3
42%	38%	8%	0%	13%

**Summary of responses and action**

The statutory guidance has been amended to set out that information on safeguarding should be included in the list to be provided to individuals.

There was one request for local health boards to provide translation services to support providers in developing information. This would not be appropriate as the Regulations place requirements on service providers and responsible individuals and not local health boards.

There were also requests for the written guide to be available in languages other than English or Welsh as required. The statutory guidance encourages this as it refers to 'preferred and appropriate language' rather than English or Welsh.

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

**Question 5: Are the requirements in this part of the draft Regulations right for adult placement service providers?**

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
12	7	2	0	3
50%	29%	8%	0%	13%

**Summary of responses and action**

Few comments were received on this part.

There was one request that a reference to the availability of advocacy should be included in statutory guidance, thereby mirroring that in relation to regulation 19 of the 2017 Regulations. This is already in place within draft regulation 16 (Information about the service).

## PART 7: Requirements on service providers – safeguarding

### Question 6: Are the requirements in this part of the draft Regulations right for adult placement service providers?

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
8	11	2	0	3
33%	46%	8%	0%	13%

#### Summary of responses and action

A few respondents suggested that the wording of draft regulation 24 (The appropriate use of control and restraint) and the statutory guidance relating to it, needed to be clear that control and restraint wouldn't always be required and that it should be a last resort. The statutory guidance emphasises the importance of adopting a positive approach to support an individual's behaviour, consistent with meeting the individual's needs for care and support and the well-being of other individuals for whom care and support is provided. It also makes it clear that these practices should only be used when absolutely necessary and in line with national guidance.

It was highlighted that draft regulation 24(5) was not clear on the starting point for 24 hours notification of an incident of control and restraint. Additionally it would be difficult for providers to comply with the requirement if there wasn't an additional requirement on carers to provide them with this information. The draft Regulations have been amended to require the service provider to record an incident immediately after being notified by the adult placement carer and to have a policy and procedures in place to require an adult placement carer to notify the service provider of any incident within 24 hours of its occurrence.

A new definition of 'harm' has been included in the Regulations in answer to a respondent highlighting that the definition of 'harm' previously used was inaccurate as this related only to children. For the purposes of these Regulations 'harm' will be defined as 'abuse or the impairment of (a) physical or mental health, or (b) physical, intellectual, emotional, social or behavioural development'.

## PART 8: Requirements on service providers as to staffing

### Question 7: Are the requirements in this part of the draft Regulations right for adult placement service providers?

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
12	7	2	0	3
50%	29%	8%	0%	13%

#### Summary of responses and action

A couple of respondents felt that it was anomalous that volunteers should be included within the staffing section as Part 1 of the draft Regulations excludes them from the definition of staff. The inclusion of volunteers within Part 8 ensures that the requirements relating to volunteers working at the service are clear and does not create a legal inconsistency with other regulated services.

There were also comments that volunteers should be covered by the disciplinary requirements. As there are fewer legal requirements around the recruitment and retention of volunteers, changes were made to the statutory guidance to set out that it is expected that providers would have processes in place on these aspects.

It was highlighted that some of the references to Social Care Wales statutory guidance needed to be amended as some references weren't appropriate for provider staff and could be read to suggest that registration (as a social care worker) with SCW was compulsory. The wording in the statutory guidance has been amended accordingly.

The DBS requirements were highlighted as inconsistent as some required checking every year and some every three years. The Regulations do not require amending as they reflect established practice on DBS checks and renewals.

It was suggested that providers should be required to ensure that staff demonstrated their right to work in the country. This is not felt to be necessary as there is existing UK wide legislation to prevent illegal working. Providers are required under the Regulations to ensure the fitness of any staff they employ and this includes having documentary evidence to satisfy themselves as to that person's identity.

There were also a couple of calls for more statutory guidance on what to do if there is a dispute between the local authority which has commissioned the placement and the service provider, or if support needs changing. This is more operational than is appropriate for the statutory guidance and would vary depending on individual circumstances. This aspect would best be covered in the adult carer agreement.

There was a proposal for representatives of individuals to be included in the recruitment of service provider staff and this has been included as a consideration in statutory guidance.

## PART 9: Requirements on service providers as to adult placements carers

### Question 8: Are the requirements in this part of the draft Regulations right for adult placement service providers?

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
11	7	2	0	4
46%	29%	8%	0%	17%

### Summary of responses and action

There were a couple of calls for more guidance on assessing whether the requirements on recruiting adult placement carers are sufficiently robust. However, it is not felt necessary to add to the statutory guidance on this aspect as this can be assessed through existing requirements and guidance on personal plans and the quality of care review.

One respondent felt that the term 'adult placement carer' should be replaced with 'adult placement care support worker' throughout the Regulations to ensure that there is no confusion with 'carer' and to better match wording in the 2016 Act indicating their role. The suggested amendment is not felt to be appropriate as this would make the wording of the Regulations more cumbersome. Also, the suggested term does not seem appropriate as it gives the impression of a working rather than a family / home environment. The Welsh Government considers that the regulations in this Part are sufficiently clear and do not require amendment.



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

### Question 9: Are the requirements in this part of the draft Regulations right for adult placement service providers?

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
12	8	1	0	3
50%	33%	4%	0%	13%

#### Summary of responses

A few comments were received that the statutory guidance needed to be clear that wheelchair access is only required where the individual placed has that particular need. The statutory guidance has been amended accordingly

A couple of respondents felt that the requirement for cleanliness should be removed as this was very subjective. The Welsh Government feels that this would not be appropriate. While it is agreed that there is a large amount of subjectivity in defining what is clean, to remove the requirement altogether runs the risk of allowing environments which pose real physical and mental health risks to individuals.

A couple of responses suggested that the statutory guidance about not locating short-term placements with adults in longer-term arrangements should be removed. The statutory guidance has been amended accordingly.

## PART 11: Other requirements on service providers

### Question 10: Are the requirements in this part of the draft Regulations right for adult placement service providers?

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
13	6	2	0	3
54%	25%	8%	0%	13%

#### Summary of responses and action

One respondent felt that the complaints procedure should only be in easy to read format '*where required*' as this would reduce burdens. The Regulations require that information about the service is in an appropriate language, style, presentation and format for the individuals for whom the service is provided. The statutory guidance merely provides further clarity and does not place an additional requirement as to format. Therefore no amendment is necessary

The statutory guidance for draft regulation 44 (Whistleblowing) has been amended to add protection for the carer's family, in response to proposals for this.

It was questioned whether retention of records for 3 years was a sufficient length of time. This replicates the existing requirements and is also consistent with the 2017 Regulations.

One respondent proposed that representatives should also have access to the up-to-date complaints policy. The statutory guidance has been amended accordingly.

One respondent felt that draft regulation 40 (Records) should be amended to provide greater clarity on what information should be held by carers and how the service provider can support them to keep this information relevant and safe. The Welsh Government does not feel that this is necessary as this would be covered within the carer agreement.

There were proposals for carers and representatives to have access to records and have arrangements whereby they can raise a concern. The statutory guidance has been amended accordingly.

## PARTS 12 – 16 : Requirements on responsible individuals

### Question 11: Are the requirements in this part of the draft Regulations right for adult placement service providers?

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
12	6	2	0	4
50%	25%	8%	0%	17%

#### Summary of responses and action

Social Care Wales highlighted that draft regulations (46 – Duty to appoint a manager; 47 – Fitness requirements for appointment of manager and 50 – Duty to report appointment of manager to the workforce and service regulators) included a requirement for managers to be registered with Social Care Wales, which had yet to be agreed. As this has now been agreed, with a transition period up to April 2022, the wording is appropriate.

A couple of respondents felt that the requirement in draft regulation 47(2) (linked to draft regulation 28(2) for managers – including interim managers – to have experience of delivering adult placement schemes was too stringent and would reduce the pool of available people markedly. In response, the statutory guidance relating to this has been widened so that managers could also have previously managed a ‘relevant social care service’.

The requirement for responsible individuals to visit service providers at least every 3 months was misinterpreted by several respondents as requiring visits by adult placement carers to service provider offices. This is not the case. The statutory guidance on this aspect has been amended to clarify the requirement.

Some respondents felt that requiring service providers to undertake a quality of care review every six months was too onerous. The Welsh Government considers that this requirement, which is also in place for other regulated services, will contribute to maintaining and improving the quality of adult placement services and should therefore be retained.

## PART 17: Offences

### Question 12: Is the approach taken in relation to offences within the draft Regulations sufficient and proportionate?

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
11	6	2	0	5
46%	25%	8%	0%	21%

### Penalty Notices (These are not provided for within the draft Regulations)

### Question 13: Is the approach in relation to penalty notices, as illustrated at Annex A, sufficient and proportionate? Are the levels of penalty appropriate?

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
5	7	0	0	12
21%	29%	0%	0%	50%

#### Summary of responses and action

Few comments were received on this part. The main respondent asked for clarification as to whether an offence had only been committed if an individual comes to harm, as they felt that was implied by the wording in the consultation document.

The regulations in this Part are made under the powers in section 45 and 46 of the 2016 Act. Draft regulation 64(1) and draft regulation 65(1) provide that a failure, by the service provider and responsible individual respectively, to comply with specified requirements (in 64(2) and 65(2) respectively) is an offence. However, draft regulation 64(3) provides that certain offences (specified within 64(4)) will only be committed by a service provider if the failure to comply has resulted in an individual 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.

The same respondent questioned whether the penalties could be seen as severe and commented that it would be important to get the balance right between protecting individuals and the need to ensure that service providers weren't put off continuing or entering the market.

The purpose of the penalty notice is to offer the recipient the opportunity to discharge liability for conviction for the offence by paying a penalty. This enables minor offences under the 2016 Act to be dealt with by administrative means. The penalty amounts reflect the severity of the offences and are intended to act as a deterrent to breaching the regulations. We recognise the importance of implementing a penalty notices system which is consistent and fair, and the intention is for penalty notices to be issued proportionately. CIW will be developing robust operational statutory guidance to ensure this is the case. Care Inspectorate Wales' Securing Improvement and Enforcement policy<sup>11</sup> sets out their measured approach.

<sup>11</sup> <https://careinspectorate.wales/sites/default/files/2018-06/180601-securing-improvement-enforcement-policy-en.pdf>

## PART 18: Service providers who are liquidated etc. or who have died

### Question 14: Are the requirements placed on appointed persons and personal representatives reasonable?

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
10	5	1	0	8
42%	21%	4%	0%	33%

#### Summary of responses

Only one respondent provided substantive comments on this aspect, suggesting that more information could be provided on the kind of people that might be deemed unsuitable for the role.

Section 30 of the 2016 Act specifies who may be an 'appointed person'. The regulation-making powers in sections 30 and 31 of the 2016 Act allow the Welsh Ministers to place requirements on an appointed person or personal representative.

## PART 19: Designation of responsible individual by Welsh Ministers

**Question 15: Are the circumstances in which responsible individuals may be designated by the Welsh Ministers, rather than the services provider, sufficient and appropriate?**

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
5	4	1	3	11
21%	17%	4%	13%	46%

### Summary of responses

Very few comments were received on this and those who disagreed felt that more clarification could be provided on when the Welsh Ministers might designate a responsible individual.

We do not propose to make any amendments to this regulation. The Welsh Ministers would only exercise these powers in the exceptional circumstances set out in the regulation. The 2016 Act requires that the service provider must designate a responsible individual in respect of each place at, from or in relation to which a regulated service is carried on. A regulated service may be cancelled where there is no designated responsible individual. The 2016 Act also sets out eligibility and fitness criteria for a responsible individual. The intention here is to enable the service regulator, at the request of the service provider or person acting as the service provider, to designate a responsible individual who does not meet the eligibility requirements set out in section 21(2) of the Act where there are exceptional circumstances. Any person designated as responsible individual by the service regulator would still need to meet the fitness requirements set out in section 9 of the 2016 Act. This would allow an otherwise well-run service to avoid having its registration cancelled and therefore continue to operate whilst the situation is regularised and until an individual who does meet both the eligibility and fitness requirements is designated as responsible individual on a permanent basis.

## Future regulation of placement services for 16 to 17 year olds

**Question 16: 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?**

### Summary of responses

19 out of the 24 respondents felt that regulation of adult placement services should be extended to 16 to 17-year olds with the remaining five not expressing a view either way. The common view was that this would aid the transition of individuals from childhood to adulthood. It would avoid the current situation whereby individuals experience an abrupt change when they reach the age of 18 and a new placement can only be sought at that time with potential delay and anxiety for individuals.

The difficulties that young people with learning disability are well documented (including the Children's Commissioner for Wales' *'Don't Hold Back'*<sup>12</sup> report) and any approach to improve transition was seen as welcome. Extending the age downwards would allow adult placement services to work with individuals to identify a suitable placement and prepare them for the change over a longer period. It would also allow short stays with the new family to be undertaken to slowly get individuals used to their new home. Several offered the view that new arrangements would be particularly useful for those individuals who wished and were able to become independent at an earlier stage.

In terms of practical considerations, several highlighted the need to ensure that an adult placement at age 16-17 should extend beyond age 18 and should not merely be an extra move for an individual. Consideration also needed to be given as to how payment for carers of 16-17 year olds related to foster carer payments to ensure there was no duplication. It was highlighted that it would be important to ensure that there were mechanisms in place to ensure that any ongoing financial commitments for an individual from age 18 needed to be considered in making a placement at an earlier age. There were also calls to ensure that additional safeguards were put in place, to involve representatives more extensively, and to ensure that any new legislation and training of individuals took account of the United Nations Convention on the Rights of the Child and the Rights of Young Persons and Children (Wales) Measure 2011<sup>13</sup>.

It was highlighted that any group brought together to consider new legislation would need to include specific representation from those organisations currently working with vulnerable 16 to 17 year olds.

### Welsh Government response

Given the level of positive response, the Welsh Government will consider in more detail the practical considerations in introducing further legislation to include services for 16 to 17 year olds, including costs, timings and key considerations.

<sup>12</sup> <https://www.childcomwales.org.uk/wp-content/uploads/2018/07/Dont-Hold-Back.pdf>

<sup>13</sup> Rights of Young Persons and Children (Wales) Measure 2011.

[http://www.legislation.gov.uk/mwa/2011/2/pdfs/mwa\\_20110002\\_mi.pdf](http://www.legislation.gov.uk/mwa/2011/2/pdfs/mwa_20110002_mi.pdf)

## 2.2 Additional questions

**Question 17: 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?’**

### **Summary of responses**

Only eight respondents offered views on these aspects. Three felt that although there would be some additional burden in preparing new or amended required documentation this would improve communication and practice. Two further respondents simply responded that a reasonable account of the impact had been given. Only one respondent felt that there was insufficient detail provided in the consultation document.

### **Welsh Government response**

Given the generally positive response from those who commented, and lack of any significant concerns, the Welsh Government is content that it has adequately summarised the anticipated impact of the Regulations.



**Question 18: 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?**

**Do you think that the proposals in this consultation will have any negative impacts on groups with protected characteristics? If so, which and why/why not?**

### **Summary of responses**

Of the 10 respondents who offered a view on this aspect, 6 felt that the draft Regulations had the potential to positively impact on people with learning disabilities, through aspects such as an increased focus on well-being outcomes and reducing the amount and burden of bureaucracy. Three other responses were neutral or mentioned potential positive and negative impacts. The only wholly negative response expressed concerns that new burdens or the perception thereof might reduce the number of people willing to share their homes with others.

### **Welsh Government response**

Given the largely positive response, the Welsh Government is satisfied that, overall, the Regulations will have a positive impact on the lives of people with learning disability.

**Question 19: 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 also explain how you believe the proposed policy could be formulated or changed so as to have:**

**i) positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and**

**ii) no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.**

### **Summary of responses**

Only nine respondents addressed this question. Two respondents felt that the draft Regulations could have a positive impact, either on people who use Welsh as their first language or because they may increase the provision of service in the medium of Welsh. Four respondents felt that the impact would be neutral. The remaining 3 responses offered general views. These included ensuring that the issue was addressed in population assessments<sup>14</sup> and regional workforce development plans and the recruitment challenges posed if there was a requirement to provide a service in Welsh across all areas

### **Welsh Government response**

The Welsh Government is satisfied that the Regulations will not have a negative impact on the Welsh language and there is scope for them to be beneficial, particularly for individuals whose first language is Welsh.

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<sup>14</sup> These are required of local authorities and their relevant partners under Section 14 of the 2014 Act

## Annex A – List of respondents

No	Confidential		Organisation/On behalf of
	Y	N	
1.		✓	Carers Wales
2.		✓	Individual
3.		✓	Individual
4.		✓	Ategi
5.	✓		
6.	✓		
7.		✓	Caerphilly County Borough Council
8.		✓	Children's Commissioner for Wales
9.		✓	Social Care Wales
10.		✓	Flintshire County Council Social Services
11.		✓	Shared Lives Plus
12.		✓	Children in Wales
13.		✓	Denbighshire County Council
14.		✓	Powys County Council
15.		✓	Swansea Council
16.		✓	BASW Cymru
17.		✓	Cardiff Third Sector Council
18.		✓	Marie Curie
19.		✓	Older People's Commissioner for Wales
20.		✓	West Wales Shared Lives
21.		✓	Carmarthenshire County Council
22.		✓	Cardiff and Vale local authorities
23.		✓	ADSS Cymru and WLGA
24.		✓	Ceredigion County Council