

Draft Regulations laid before Senedd Cymru under section 187(2)(b), (f), (j) and (k) of the Regulation and Inspection of Social Care (Wales) Act 2016, for approval by resolution of Senedd Cymru.

DRAFT WELSH STATUTORY
INSTRUMENTS

2023 No. (W.)

SOCIAL CARE, WALES

**The Special School Residential
Services (Service Providers and
Responsible Individuals) (Wales)
Regulations 2023**

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Regulated Services (Special School Residential Services) (Wales) Regulations 2023 prescribe a special school residential service as a type of regulated service which is regulated under Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 so that persons providing this type of service are required to register under that Act.

In accordance with powers in section 27 of the Act, these Regulations impose requirements on providers of a special school residential service, including requirements as to the standard of care and support to be provided.

In accordance with powers in section 28 of the Act, these Regulations impose requirements on responsible individuals in relation to a place in respect of which the individual is designated.

These Regulations also provide for offences in the event of failure by a service provider or a responsible individual to comply with specified requirements.

Guidance has been published about how service providers and responsible individuals may comply with the requirements imposed by these Regulations (including how providers may meet any standards for the provision of a special school residential service) and section 29 of the Act requires service providers and responsible individuals to have regard to this guidance.

As well as placing requirements on service providers, these Regulations also place requirements on other persons: on the “appointed person” in the event of the insolvency of the service provider and on the personal representatives of the deceased in the event of the death of a service provider who is an individual.

Part 1 of the Regulations contains definitions of certain terms used in the Regulations.

Part 2 covers general requirements on the service provider as to the way the service is provided, including requirements in relation to the statement of purpose, the arrangements for monitoring and improvement, the support to be provided to the responsible individual, the steps to be taken to ensure the financial sustainability of the service and the policies and procedures which must be in place.

Part 3 covers the requirements as to the steps to be taken before the service provider agrees to provide care and support to an individual. A service provider must not agree to provide care and support unless they have first determined that the service is suitable to meet the individual’s needs. Regulation 10 sets out the steps that must be taken and the matters which must be taken into account when making this determination. Where there is no local authority care and support plan in place, the steps to be taken include carrying out an assessment of the individual’s needs.

Part 4 covers the requirements as to the steps to be taken once the service provider has agreed to provide care and support to an individual. Before the commencement of such provision, the provider must prepare an initial personal plan which, among other things, sets out how on a day-to-day basis the individual’s needs will be met. Within 7 days of the commencement of the provision, the service provider must carry out a detailed assessment of how the individual’s care and support needs can best be met and this assessment then prompts a review of the initial personal plan, which will usually lead to a more comprehensive plan being prepared.

Part 4 also makes provision for the review of personal plans and the keeping and sharing of records of the personal plan.

Part 5 deals with the requirements as to the information to be provided to individuals on the commencement of the provision of care and support. Regulation 15 requires that this information must be in the form of a written guide and sets out detailed requirements about the guide, including its contents and format. More detail of the information it is expected the guide would usually contain is in the guidance issued under section 29 of the Act.

Part 6 contains requirements as to the standard of care and support to be provided. These include overarching requirements as well as more detailed requirements relating to continuity of care, the provision of information, meeting individual's language and communication needs and treating individuals with respect and sensitivity.

Part 7 contains specific requirements in relation to ensuring individuals are safe and protected from abuse, neglect and improper treatment. As well as requiring policies and procedures to be in place in relation to safeguarding the appropriate use of control and restraint, the regulations in this Part place specific requirements as to the action to be taken in the event of an allegation or evidence of abuse.

Part 8 contains requirements as to staffing, which include general requirements as to the deployment of sufficient numbers of staff together with specific requirements as to the deployment of registered nurses to work at a care home service in certain circumstances.

Part 8 also contains specific requirements as to the fitness of individuals working at the service. These requirements apply not just to employees but extend also to volunteers and to other persons working at the service, which would include agency staff. The fitness requirements include a requirement for specific information and documents to be available, as set out in Schedule 1. Persons employed to manage the regulated service must be registered with Social Care Wales, the workforce regulator. Persons employed to work in roles where they provide care and support to individuals must also be registered with Social Care Wales within six months of commencing their employment.

Other requirements contained in Part 8 include requirements relating to supporting and developing staff, providing information to staff and the operation of a disciplinary procedure. To ensure that employees report incidents of abuse to an appropriate person, the regulations in this Part require the provider's disciplinary procedure to provide that a failure to report would be grounds for disciplinary proceedings.

Part 9 covers requirements as to premises, facilities and equipment.

Part 10 sets out additional requirements which apply to service providers if the premises which are to be used for the provision of the service fall into one of three categories: a new or converted building; an extension to a building which is used for the purpose of providing an existing special school residential service; a building which was used for the purpose of providing a special school residential service

registered by another service provider but is unoccupied at the time of the service provider's registration.

The additional requirements in Part 10 set out more specific environmental standards, including standards as to en-suite bathrooms, room sizes and the amount of communal space.

Part 11 sets out requirements as to supplies, hygiene, health and safety and medicines. These requirements will apply to all regulated services, whether accommodation based or not.

Part 12 contains miscellaneous requirements on service providers, including requirements as to the keeping of records and the making of notifications to the service regulator and other bodies. Schedule 2 sets out the records which are required to be kept and Schedule 3 sets out the specific notifications which are required to be made.

Part 12 also contains requirements on the service provider to have a complaints policy and a whistleblowing policy in place.

Parts 13 to 17 contain the requirements imposed on responsible individuals. The regulations in these Parts are made under section 28 of the Act.

Part 13 sets out requirements on responsible individuals which relate to the effective management of the service. The responsible individual has a general duty to supervise the management of the service (regulation 57) and specific duties to appoint a fit person to manage the service (regulations 58 and 59), to put arrangements in place for the management of the service when the manager is absent (regulation 63) and to visit the places where the service is being provided (regulation 64).

Part 14 contains requirements on responsible individuals for ensuring the effective oversight of the service. By placing these requirements on the responsible individual, the regulations in this Part ensure that a person of 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 (regulation 65) and on other matters (regulation 66). The responsible individual is 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 (regulation 67).

Part 15 sets out the requirements on the responsible individual for ensuring the compliance of the service with other requirements, including requirements as to the notification of incidents and complaints (regulation

68) and the keeping of records (regulation 69). The responsible individual must also put arrangements in place for ensuring that the provider's policies and procedures are kept up to date (regulation 70).

Part 16 sets out the requirements on the responsible individual in relation to monitoring, reviewing and improving the quality of care and support provided, including making a report to the service provider.

Part 17 sets out other requirements on the responsible individual, including requirements to make certain notifications to the service regulator, contained in Schedule 4.

Part 18 deals with offences. Regulation 76 is made under the powers in section 45 of the Act and provides that failure of a service provider to comply with the requirements of specified provisions in these Regulations is an offence. There is a further qualification which applies in the case of a service provider's 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.

Regulation 77 provides that it is an offence for the responsible individual to fail to comply with the requirements of specified provisions in these Regulations. This regulation is made under section 46 of the Act.

Part 19 sets out specific requirements which apply when the service provider is insolvent or when a service provider who is an individual has died. In these circumstances, the regulations in this Part place specific notification duties on the appointed person (in the case of insolvency) or the personal representatives (in the case of the death of a service provider who is an individual). Regulation 79 enables the personal representatives to act in the capacity of the service provider and the Act is modified so that in these circumstances the personal representatives are not required to register and one of the personal representatives can be designated as the responsible individual in respect of a place where the service is provided.

Part 20 (regulation 80) specifies the circumstances in which the Welsh Ministers (instead of a service provider) may designate an individual to be a responsible individual, despite the eligibility requirements of section 21(2) of the Act not being met in respect of the individual. This regulation is made under section 21(5) of the Act.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Department of Health and Social Services, Welsh Government, Cathays Park, Cardiff CF10 3NQ and is published on www.gov.wales.

Consultation draft

Draft Regulations laid before Senedd Cymru under section 187(2)(b), (f), (j) and (k) of the Regulation and Inspection of Social Care (Wales) Act 2016, for approval by resolution of Senedd Cymru.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2023 No. (W.)

SOCIAL CARE, WALES

The Special School
Residential Services (Service
Providers and Responsible
Individuals) (Wales)
Regulations 2023

Made ***

Coming into force ***

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The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 21(5), 27, 28, 30, 31, 45, 46, 186(1) and 187(1) of the Regulation and Inspection of Social Care (Wales) Act 2016 (“the Act”) and having consulted such persons as they think appropriate, as required by sections 27(4)(a) and 28(4) of the Act.

A draft of these Regulations was laid before Senedd Cymru under section 187(2)(b), (f), (g), (j) and (k) of the Act and has been approved by a resolution of Senedd Cymru.

PART 1

General

Title, coming into force and interpretation

1.—(1) The title of these Regulations is the Special School Residential Services (Service Providers and Responsible Individuals) (Wales) Regulations 2023.

(2) These Regulations come into force on 31 December 2023.

(3) In these Regulations—

“the Act” (“y Ddeddf”) means the Regulation and Inspection of Social Care (Wales) Act 2016;

“the 2014 Act” (“Deddf 2014”) means the Social Services and Well-being (Wales) Act 2014;

“care and support plan” (“cynllun gofal a chymorth”) means a plan under section 54 or section 83 of the 2014 Act;

“child” (“plentyn”) means a person who is aged under 18;

“child who is looked after by a local authority” (“plentyn sy'n derbyn gofal gan awdurdod lleol”) has the same meaning as in section 74 of the 2014 Act;

“personal outcomes” (“canlyniadau personol”)—

(a) in relation to an adult, means the outcomes that the adult wishes to achieve in day to day life;

(b) in relation to a child, means—

- (i) the outcomes that the child wishes to achieve, or
- (ii) the outcomes that any persons with parental responsibility wish to achieve in relation to the child;

“personal plan” (“cynllun personol”) means the plan required to be prepared in accordance with regulation 11(1);

“placing authority” (“awdurdod lleoli”) means—

(a) in the case of a child who is looked after by a local authority or local authority in England, that local authority;

(b) in the case of a child who is not looked after by a local authority or local authority in England—

- (i) if the child is being provided with accommodation by a voluntary organisation, that voluntary organisation;
- (ii) if the child is accommodated in a qualifying school under arrangements made by a local authority (whether in the exercise of education functions within the meaning of section 579(1) of the Education Act 1996 or otherwise), that local authority;
- (iii) in any other case, the child's parent;

and for the purposes of this definition “qualifying school” (“ysgol gymhwysol”) means a school which is a care home service by virtue of the application of paragraph 1(3) of Schedule 1 to the Act;

“provider assessment” (“asesiad darparwr”) means the assessment which is required to be carried out by the service provider under regulation 14;

“reasonable adjustments” (“addasiadau rhesymol”) means such reasonable adjustments as would be required under the Equality Act 2010⁽¹⁾;

“registered professional” (“proffesiynolyn cofrestredig”) has the meaning given in paragraph 1 of Schedule 3 to the Health Professions Order 2001⁽²⁾;

“representative” (“cynrychiolydd”) means any person having legal authority, or the consent of the individual to act on the individual's behalf;

“service commissioner” (“comisiynydd y gwasanaeth”) means the local authority or NHS body which is responsible for making arrangements with the provider for care and support to be provided to an individual;

“service provider” (“darparwr gwasanaeth”) means a person registered as a provider of a special school residential service;

“special school residential service” has the same meaning as in the Regulated Services (Special School Residential Services) (Wales) Regulations 2023;

“staff” (“staff”) includes—

- (a) persons employed by the service provider to work at the service as an employee or a worker, and
- (b) persons engaged by the service provider under a contract for services,

but does not include persons who are allowed to work as volunteers. For the purpose of this definition,

“employee” (“cyflogai”) and “worker” (“gweithiwr”) have the same meanings as in section 230 of the Employment Rights Act 1996⁽³⁾;

“the individual” (“yr unigolyn”) means, unless the context indicates otherwise, the child or adult who is receiving care and support;

“the responsible individual” (“yr unigolyn cyfrifol”) has the same meaning as in section 21(1) of the Act;

“the service” (“y gwasanaeth”) means the special school residential service which is provided at a specified location;

For the purpose of this definition—

“specified location” (“lleoliad penodedig”) means a location specified in a condition to the service

(1) 2010 c. 15.
(2) S.I. 2002/254.
(3) 1996 c. 18.

provider's registration as a place at which the service is to be provided;

But this definition does not apply to references to “the service” (“y gwasanaeth”) in Part 19;

“the service regulator” (“y rheoleiddiwr gwasanaethau”) means the Welsh Ministers in the exercise of their regulatory functions;

“the statement of purpose” (“y datganiad o ddiben”) means the statement of purpose for the place at, from or in relation to which the service is provided;

“the workforce regulator” (“rheoleiddiwr y gweithlu”) means Social Care Wales.

PART 2

General requirements on service providers

Requirements in relation to the provision of the service

2. The service provider must ensure that the service is provided with sufficient care, competence and skill, having regard to the statement of purpose.

Requirements in relation to the statement of purpose

3.—(1) The service provider must provide the service in accordance with the statement of purpose.

(2) The service provider must—

- (a) keep the statement of purpose under review, and
- (b) where appropriate, revise the statement of purpose.

(3) Unless paragraph (4) applies, the service provider must notify the persons listed in paragraph (6) of any revision to be made to the statement of purpose at least 28 days before it is to take effect.

(4) This paragraph applies in cases where it is necessary to revise the statement of purpose with immediate effect.

(5) If paragraph (4) applies, the service provider must, without delay, notify the persons listed in paragraph (6) of any revision made to the statement of purpose.

(6) The persons who must be notified of any revision to the statement of purpose in accordance with paragraph (3) or (5) are—

- (a) the service regulator,
- (b) the individuals,
- (c) the placing authority (where relevant), and
- (d) any representative, unless it is not appropriate to do so or would be inconsistent with the well-being of an individual.

(7) The service provider must provide the up-to-date statement of purpose to any person on request, unless it is not appropriate to do so or would be inconsistent with the well-being of an individual.

Requirements in relation to monitoring and improvement

4.—(1) The service provider must ensure that there are effective arrangements in place for monitoring, reviewing and improving the quality of care and support provided by the service.

(2) Those arrangements must include arrangements for seeking the views of—

- (a) individuals,
- (b) any representatives, unless this is not appropriate or would be inconsistent with the individual's well-being,

(c) in the case of an individual who is a child who is looked after by a local authority, the placing authority,

- (d) service commissioners, and
- (e) staff,

on the quality of care and support provided by the service and how this can be improved.

(3) When making any decisions on plans for improvement of the quality of care and support provided by the service, the service provider must—

- (a) take into account the views of those persons consulted in accordance with paragraph (2), and

- (b) have regard to the quality of care report prepared by the responsible individual in accordance with regulation 71(4).

Requirements in relation to the responsible individual

5.—(1) This regulation does not apply to a service provider who is an individual.

(2) A service provider to whom this regulation applies must ensure that the person who is designated as the responsible individual—

- (a) is supported to carry out their duties effectively, and
- (b) undertakes appropriate training.

(3) In the event that the service provider has reason to believe that the responsible individual has not complied with a requirement imposed by the regulations in Parts 13 to 17, the provider must—

- (a) take such action as is necessary to ensure that the requirement is complied with, and
- (b) notify the service regulator.

(4) During any time when the responsible individual is unable to fulfil their duties, the service provider must ensure that there are arrangements in place for—

- (a) the effective management of the service,
- (b) the effective oversight of the service,
- (c) the compliance of the service with the requirements of the regulations in Parts 2 to 12, and
- (d) monitoring, reviewing and improving the quality of the care and support provided by the service.

(5) If the responsible individual is unable to fulfil their duties for a period of more than 28 days, the service provider must—

- (a) notify the service regulator, and
- (b) inform the service regulator of the interim arrangements.

Requirements in relation to the responsible individual where the service provider is an individual

6.—(1) This regulation applies where the service provider is an individual.

(2) If this regulation applies, the individual must undertake appropriate training for the proper discharge of his or her duties as the responsible individual.

(3) During any time when the individual is absent, he or she must ensure that there are arrangements in place for—

- (a) the effective management of the service,
- (b) the effective oversight of the service,
- (c) the compliance of the service with the requirements of the regulations in Parts 2 to 12, and
- (d) monitoring, reviewing and improving the quality of the care and support provided by the service.

(4) If the individual is unable to fulfil their duties as a responsible individual for a period of more than 28 days, he or she must—

- (a) notify the service regulator, and
- (b) inform the service regulator of the interim arrangements.

Requirements in relation to the financial sustainability of the service

7.—(1) The service provider must take reasonable steps to ensure that the service is financially sustainable for the purpose of achieving the aims and objectives set out in the statement of purpose.

(2) The service provider must maintain appropriate and up to date accounts for the service.

(3) The service provider must provide copies of the accounts to the Welsh Ministers within 28 days of being requested to do so.

(4) The Welsh Ministers may require accounts to be certified by an accountant.

Requirements to provide the service in accordance with policies and procedures

8.—(1) The service provider must ensure that the following policies and procedures are in place for the service—

- Admissions and commencement of the service (see Part 3, regulation 10)
- Safeguarding (see Part 7, regulation 24)
- Supporting individuals to manage their money (see Part 7, regulation 25)
- Use of control or restraint (see Part 7, regulation 26)
- Staff support and development (see Part 8, regulation 32)
- Staff discipline (see Part 8, regulation 35)
- Infection control (see Part 11, regulation 48)
- Medication (see Part 11, regulation 50)
- Complaints (see Part 12, regulation 55)

Whistleblowing (see Part 12, regulation 56)

(2) The service provider must have a policy in place on the prevention of bullying, procedures for dealing with an allegation of bullying and a procedure to be followed when **any child is absent** without permission (see regulation 24(5)).

(3) The service provider must have such other policies and procedures in place as are reasonably necessary to support the aims and objectives of the service set out in the statement of purpose.

(4) The service provider must ensure that the content of the policies and procedures which are required to be in place by virtue of paragraphs (1) to (3) is—

- (a) appropriate to the needs of individuals for whom care and support is provided,
- (b) consistent with the statement of purpose, and
- (c) kept up to date.

(5) The service provider must ensure that the service is provided in accordance with those policies and procedures.

Duty of candour

9. The service provider must act in an open and transparent way with—

- (a) individuals who are receiving care and support,
- (b) any representatives of those individuals, and
- (c) in the case of a child who is looked after by a local authority, the placing authority.

PART 3

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

Suitability of the service

10.—(1) The service provider must not provide care and support for an individual unless the service provider has determined that the service is suitable to meet the individual's care and support needs and to support the individual to achieve their personal outcomes.

(2) The service provider must have in place a policy and procedures on admissions and commencement of the service.

(3) The determination under paragraph (1) must take into account—

- (a) the individual's care and support plan,
- (b) if there is no care and support plan, the service provider's assessment under paragraph (4),
- (c) any health or other relevant assessments,
- (d) the individual's views, wishes and feelings,
- (e) any risks to the individual's well-being,
- (f) any risks to the well-being of other individuals to whom care and support is provided,
- (g) any reasonable adjustments which the service provider could make to enable the individual's care and support needs to be met, and
- (h) the service provider's policy and procedures on admissions and commencement of the service.

(4) In a case where the individual does not have a care and support plan, the service provider must—

- (a) assess the individual's care and support needs, and
- (b) identify their personal outcomes.

(5) The assessment required by paragraph (4) must be carried out by a person who—

- (a) has the skills, knowledge and competence to carry out the assessment, and
- (b) has received training in the carrying out of assessments.

(6) In making the determination in paragraph (1), the service provider must involve the individual, the placing authority (if applicable) and any representative. But the service provider is not required to involve a representative if—

- (a) the individual is an adult or a child aged 16 or over and the individual does not wish the representative to be involved, or
- (b) involving the representative would not be consistent with the individual's well-being.

PART 4

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

Personal plan

11.—(1) The service provider must prepare a plan for the individual which sets out—

- (a) how on a day to day basis the individual's care and support needs will be met,
- (b) how the individual will be supported to achieve their personal outcomes,
- (c) the steps which will be taken to mitigate any identified risks to the individual's well-being, and
- (d) the steps which will be taken to support positive risk-taking and independence, where it has been determined this is appropriate.

(2) The plan which is required to be prepared under paragraph (1) is referred to in these Regulations as a personal plan.

(3) The personal plan must be prepared prior to commencement of the provision of care and support to the individual, unless paragraph (4) applies.

(4) This paragraph applies in a case where the individual is in urgent need of care and support and there has been no time to prepare a personal plan prior to the commencement of the provision of care and support to the individual.

(5) If paragraph (4) applies, the personal plan must be prepared within 24 hours of the commencement of the provision of care and support to the individual.

(6) When preparing a personal plan, the service provider must involve the individual, the placing authority (if applicable) and any representative. But the service provider is not required to involve a representative if—

- (a) the individual is an adult or a child aged 16 or over and the individual does not wish the representative to be involved, or
- (b) involving the representative would not be consistent with the individual's well-being.

(7) In preparing the personal plan, the service provider must take into account—

- (a) the individual's care and support plan,
- (b) if there is no care and support plan, the service provider's assessment under regulation 10(4),
- (c) any health or other relevant assessments,
- (d) the individual's views, wishes and feelings,
- (e) any risks to the individual's well-being, and
- (f) any risks to the well-being of other individuals to whom care and support is provided.

Review of personal plan

12.—(1) The personal plan must be reviewed as and when required but at least every three months.

(2) In the case of a child who is looked after by a local authority, any review of the personal plan must be aligned with the reviews required to be carried out by the local authority under the Care Planning, Placement and Case Review (Wales) Regulations 2015⁽¹⁾.

(3) Reviews of a personal plan must include a review of the extent to which the individual has been able to achieve their personal outcomes.

(4) When carrying out a review under this regulation, the service provider must involve the individual, the placing authority (if applicable) and any representative. But the service provider is not required to involve a representative if—

- (a) the individual is an adult or a child aged 16 or over and the individual does not wish the representative to be involved, or
- (b) involving the representative would not be consistent with the individual's well-being.

(5) Following the completion of any review required by this regulation, the service provider must consider whether the personal plan should be revised and revise the plan as necessary.

Records of personal plans

13. The service provider must—

- (a) keep a record of—
 - (i) the personal plan and any revised plan, and
 - (ii) the outcome of any review, and
- (b) give a copy of the personal plan and any revised plan to—
 - (i) the individual,
 - (ii) any representative, unless this is not appropriate or would be inconsistent with the individual's well-being, and
- (iii) the placing authority.

(1) S.I. 2015/1818 (W. 261).

Provider assessment

14.—(1) Within 7 days of the commencement of the provision of care and support for an individual, the service provider must—

- (a) assess how the individual's care and support needs can best be met,
- (b) assess how the individual can best be supported to achieve their personal outcomes,
- (c) ascertain the individual's views, wishes and feelings,
- (d) assess any risks to the individual's well-being, and
- (e) assess any risks to the well-being of other individuals to whom care and support is provided.

(2) The assessment under paragraph (1) is referred to in these Regulations as a provider assessment.

(3) A provider assessment must be carried out by a person who—

- (a) has the skills, knowledge and competence to carry out the assessment, and
- (b) has received training in the carrying out of assessments.

(4) A provider assessment must take into account—

- (a) the individual's care and support plan, if available,
- (b) the service provider's assessment under regulation 10(4), if applicable,
- (c) any health or other relevant assessments,
- (d) the individual's views, wishes and feelings,
- (e) any risks to the individual's well-being, and
- (f) the service provider's policy and procedures on admissions and commencement of the service.

(5) When carrying out or revising a provider assessment, the service provider must involve the individual, the placing authority (if applicable) and any representative. But the service provider is not required to involve a representative if—

- (a) the individual is an adult or a child aged 16 or over and the individual does not wish the representative to be involved, or
- (b) involving the representative would not be consistent with the individual's well-being.

(6) A provider assessment must be kept under review and revised as necessary.

(7) Following the completion of the provider assessment and any revised assessment, the personal plan must be reviewed and revised as necessary.

(8) The service provider must keep a record of a provider assessment and give a copy of the assessment to the individual and any representative.

PART 5

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

Information about the service

15.—(1) The service provider must prepare a written guide to the service.

(2) The guide must be—

- (a) dated, reviewed at least annually and updated as necessary,
- (b) in an appropriate language, style, presentation and format, having regard to the statement of purpose for the service,
- (c) given to all individuals who are receiving care and support and their representatives,
- (d) in the case of child who is looked after by a local authority, given to the placing authority, and
- (e) made available to others on request, unless this is not appropriate or would be inconsistent with the well-being of an individual.

(3) The guide must contain the following information—

- (a) information about how to raise a concern or make a complaint;
- (b) information about the availability of advocacy services.

(4) The service provider must ensure that all individuals receive such support as is necessary to enable them to understand the information contained in the guide.

Service agreement

16.—(1) Where accommodation and care and support are provided to an individual by virtue of a contract with a person **other than a local authority**, the service provider must prepare a written agreement setting out—

- (a) the care and support to be provided to the individual, and
- (b) any other services to be provided to the individual.

(2) The service provider must provide a copy of the agreement to the person with whom it has contracted.

PART 6

Requirements on service providers as to the standard of care and support to be provided and as to access to health services

Standards of care and support - overarching requirements

17.—(1) The service provider must ensure that care and support is provided in a way which protects, promotes and maintains the safety and well-being of individuals.

(2) The service provider must ensure that care and support is provided to each individual in accordance with the individual's personal plan.

(3) The service provider must ensure that care and support is provided in way which—

- (a) maintains good personal and professional relationships with individuals and staff, and
- (b) encourages and assists staff to maintain good personal and professional relationships with individuals.

(4) If, as a result of a change in the individual's assessed needs, the service provider is no longer able to meet those needs, even after making any reasonable adjustments, the provider must immediately give written notification of this to the individual, any representative, the service commissioner and the placing authority.

Continuity of care

18. The service provider must put arrangements in place to ensure that individuals receive such continuity of care as is reasonable to meet their needs for care and support.

Information

19.—(1) The service provider must ensure that individuals and their representatives have the information they need to make or participate in assessments, plans and day to day decisions about the way care and support is provided to them and how they are supported to achieve their personal outcomes.

(2) Information provided must be available in the appropriate language, style, presentation and format, having regard to—

- (a) the nature of the service as described in the statement of purpose;
- (b) the level of the individual's understanding and ability to communicate.

(3) The service provider must ensure that the individual receives such support as is necessary to enable them to understand the information provided.

Language and communication

20.—(1) The service provider must take reasonable steps to meet the language needs of individuals.

(2) The service provider must ensure that the individual is provided with access to such aids and equipment as may be necessary to facilitate the individual's communication with others.

Respect and sensitivity

21.—(1) The service provider must ensure that individuals are treated with respect and sensitivity.

(2) This includes, but is not limited to—

- (a) respecting the individual's privacy and dignity;
- (b) respecting the individual's rights to confidentiality;
- (c) promoting the individual's autonomy and independence;
- (d) having regard to any relevant protected characteristics (as defined in section 4 of the Equality Act 2010⁽¹⁾) of the individual.

Access to health and other services

22.—(1) The service provider must put in place arrangements for individuals—

- (a) to be able to access treatment, advice and other services from any health care professional as necessary, and
- (b) to be supported to access such services.

(1) 2010 c. 15.

(2) The service provider must designate a member of staff to be a link worker for each individual and must ensure that the individual's link worker participates in any review involving consideration—

- (a) of the individual's educational progress, or
- (b) of any aspect of the individual's health,

whether conducted under regulations under section 102 of the 2014 Act, the Care Planning Placement and Case Review (Wales) Regulations 2015⁽¹⁾ or otherwise.

(3) In this regulation—

“health care professional” (“*proffesiynolyn gofal iechyd*”) means a person who is registered as a member of any profession to which section 60(2) of the Health Act 1999⁽²⁾ applies;

“link worker” (“*gweithiwr cyswllt*”) means a staff member of the service who is of appropriate seniority with particular responsibility for protecting and promoting the health and educational welfare of an individual and for liaison on the individual's behalf with those providing for the individual's education and healthcare needs.

PART 7

Requirements on service providers – safeguarding

Safeguarding - overarching requirement

23. The service provider must provide the service in a way which ensures that individuals are safe and are protected from abuse, neglect and improper treatment.

Safeguarding policies and procedures

24.—(1) The service provider must have policies and procedures in place—

- (a) for the prevention of abuse, neglect and improper treatment, and
- (b) for responding to any allegation or evidence of abuse, neglect or improper treatment.

(2) In this regulation, such policies and procedures are referred to as safeguarding policies and procedures.

(1) S.I. 2015/1818 (W. 261).
(2) 1999 c.

(3) The service provider must ensure that their safeguarding policies and procedures are operated effectively.

(4) In particular, where there is an allegation or evidence of abuse, neglect or improper treatment, the service provider must—

- (a) act in accordance with their safeguarding policies and procedures,
- (b) take immediate action to ensure the safety of all individuals for whom care and support is provided,
- (c) make appropriate referrals to other agencies, and
- (d) keep a record of any evidence or the substance of any allegation, any action taken and any referrals made.

(5) The service provider must have the following policies and procedures in place—

- (a) a policy on the prevention of bullying;
- (b) procedures for dealing with an allegation of bullying;
- (c) the procedure to be followed when an individual is absent without permission.

Supporting individuals to manage their money

25.—(1) The service provider must have a policy and procedures in place about supporting individuals to manage their money and must ensure that the service is provided in accordance with such policy and procedures.

(2) The policy and procedures which are required by this regulation to be in place must set out the steps to be taken—

- (a) to enable and support individuals to manage their own money and to protect individuals from financial abuse;
- (b) to ensure adequate oversight and monitoring of savings made by or on behalf of individuals including arrangements for keeping records of savings and passing on these records when the service provider ceases to provide accommodation and care and support to the individual.

(3) Where an individual's money is held by the service provider for any purpose (apart from moneys held for the purpose of paying charges payable by the individual in accordance with any agreement with the service provider), the policy and procedures required by this regulation must provide—

- (a) that the money is held in an account in the individual's name or in an account which

enables clear demarcation of each individual's money;

(b) any such account is not used in connection with the management of the service.

(4) The service provider must ensure so far as practicable that persons working at the service do not act as the agent of an individual.

The appropriate use of control and restraint

26.—(1) Care and support must not be provided in a way which includes acts intended to control or restrain an individual unless those acts—

(a) are necessary to prevent a risk of harm posed to the individual or another individual, and

(b) are a proportionate response to such a risk.

(2) Control or restraint must not be used unless it is carried out by staff who are trained in the method of control or restraint used.

(3) The service provider must have a policy on the use of control or restraint and ensure that any control or restraint used is carried out in accordance with this policy.

(4) A record of any incident in which control or restraint is used must be made within 24 hours.

(5) For the purposes of this regulation, a person controls or restrains an individual if that person—

(a) uses, or threatens to use, force to secure the doing of an act which the individual resists, or

(b) restricts the individual's liberty of movement, whether or not the individual resists, including by the use of physical, mechanical or chemical means.

Prohibition on the use of corporal punishment

27. The service provider must ensure that persons working at the service use no form of corporal punishment at any time against any individual to whom accommodation is provided.

Deprivation of liberty

28. An individual must not be deprived of their liberty for the purpose of receiving care and support without lawful authority.

Interpretation of Part 7

29. In this Part—

“abuse” (“*camdriniaeth*”) means physical, sexual, psychological, emotional or financial abuse and, in relation to a child, any other harm.

For the purposes of this definition—

(a) “financial abuse” (“*camdriniaeth ariannol*”) includes—

- (i) having money or other property stolen;
- (ii) being defrauded;
- (iii) being put under pressure in relation to money or other property;
- (iv) having money or other property misused;

“harm” (“*niwed*”) has the same meaning as in section 197(1) of the 2014 Act;

“improper treatment” (“*triniaeth amhriodol*”) includes discrimination or unlawful restraint, including inappropriate deprivation of liberty under the terms of the Mental Capacity Act 2005(1);

“neglect” (“*esgeulustod*”) has the same meaning as in section 197(1) of the 2014 Act.

PART 8

Requirements on service providers as to staffing

Staffing - overarching requirements

30.—(1) The service provider must ensure that at all times a sufficient number of suitably qualified, trained, skilled, competent and experienced staff are deployed to work at the service, having regard to—

- (a) the statement of purpose for the service;
- (b) the care and support needs of the individuals;
- (c) supporting individuals to achieve their personal outcomes;
- (d) the requirements of the regulations in Parts 2 to 12.

(2) The service provider must be able to demonstrate the way in which the determination has been made as to—

(1) 2005 c. 9.

- (a) the types of staff deployed, and
- (b) the numbers of staff of each type deployed.

(3) The service provider must ensure that arrangements are made for the support and development of staff.

(4) The service provider must ensure that the employment or engagement of any persons on a temporary basis or on a non-guaranteed hours contract does not prevent individuals receiving such continuity of care as the provider has determined in accordance with regulation 18 is reasonable to meet their needs for care and support.

(5) In paragraph (4) of this regulation, “non-guaranteed hours contract” means a contract of employment or other worker’s contract under which—

- (a) the undertaking to do work or perform services is an undertaking to do so conditionally on the employer making work or services available to the worker, and
- (b) there is no certainty that any such work or services will be made available to the worker.

Fitness of staff

31.—(1) The service provider must not—

- (a) employ a person under a contract of employment to work at the service unless that person is fit to do so;
- (b) allow a volunteer to work at the service unless that person is fit to do so;
- (c) allow any other person to work at the service in a position in which he or she may in the course of his or her duties have regular contact with individuals who are receiving care and support or with other persons who are vulnerable unless that person is fit to do so.

(2) For the purposes of paragraph (1), a person is not fit to work at the service unless—

- (a) the person is of suitable integrity and good character;
- (b) the person has the qualifications, skills, competence and experience necessary for the work he or she is to perform;
- (c) the person is able by reason of their health, after reasonable adjustments are made, of properly performing the tasks which are intrinsic to the work for which he or she is employed or engaged;
- (d) the person has provided full and satisfactory information or documentation,

as the case may be, in respect of each of the matters specified in Part 1 of Schedule 1 and this information or documentation is available at the service for inspection by the service regulator;

- (e) where the person is employed by the service provider to manage the service, the person is registered as a social care manager with Social Care Wales;
- (f) subject to paragraphs (8) and (10) of this regulation, where the person is employed by the service provider (whether as an employee or worker) other than as a manager in order to provide care and support to any person, the person is registered as a social care worker with Social Care Wales no later than the relevant date (see paragraph (8) for the meaning of "the relevant date");
- (g) subject to paragraphs (9) and (10) of this regulation, where the person is engaged under a contract for services, other than as a manager, to provide care and support to any person in connection with the service, the person is registered as a social care worker with Social Care Wales no later than the relevant date (see paragraph (9) for meaning of "the relevant date").

(3) The certificate referred to in paragraphs 2 and 3 of Schedule 1 (referred to in this regulation as a DBS certificate) must be applied for by, or on behalf of the service provider, for the purpose of assessing the suitability of a person for the post referred to in paragraph (1). But this requirement does not apply if the person working at the service is registered with the Disclosure and Barring Service update service (referred to in this regulation as the DBS update service).

(4) Where a person being considered for a post referred to in paragraph (1) is registered with the DBS update service, the service provider must check the person's DBS certificate status for the purpose of assessing the suitability of that person for that post.

(5) Where a person appointed to a post referred to in paragraph (1) is registered with the DBS update service, the service provider must check the person's DBS certificate status at least annually.

(6) Where a person appointed to a post referred to in paragraph (1) is not registered with the DBS update service, the service provider must apply for a new DBS certificate in respect of that person within three years of the issue of the certificate applied for in accordance with paragraph (3) and thereafter further such applications must be made at least every three years.

(7) If any person working at the service is no longer fit to work at the service as a result of one or more of the requirements in paragraph (2) not being met, the service provider must—

(a) take necessary and proportionate action to ensure that the relevant requirements are complied with;

(b) where appropriate, inform—

(i) the relevant regulatory or professional body;

(ii) the Disclosure and Barring Service.

(8) In paragraph (2)(f) of this regulation, “the relevant date” is either—

(a) six months from the date on which the person commenced their employment, or

(b) such later date as the service regulator may in exceptional circumstances agree.

(9) In paragraph (2)(g) of this regulation, “the relevant date” is either—

(a) six months from the date on which the person was first engaged under a contract for services to provide care and support, or

(b) such later date as the service regulator may in exceptional circumstances agree.

(10) The requirement that a person is registered as a social care worker with Social Care Wales in accordance with paragraph (2)(f) and (g), does not apply where the person is employed (whether as an employee or worker) or engaged under a contract for services to work as—

(a) a nurse, or

(b) a registered professional.

(11) In this regulation—

“the Disclosure and Barring Service” (“*y Gwasanaeth Datgelu a Gwahardd*”) and “DBS” (“GDG”) mean the body established by section 87(1) of the Protection of Freedoms Act 2012(1);

“nurse” (“*nyrs*”) means a qualified nurse or qualified midwife registered with the Nursing and Midwifery Council in accordance with article 5 of the Nursing and Midwifery Order 2001(2).

(1) 2012 c.

(2) S.I. 2002/253.

Supporting and developing staff

32.—(1) The service provider must have a policy in place for the support and development of staff.

(2) The service provider must ensure that any person working at the service (including a person allowed to work as a volunteer)—

- (a) receives an induction appropriate to their role;
- (b) is made aware of his or her own responsibilities and those of other staff;
- (c) receives appropriate supervision and appraisal;
- (d) receives core training appropriate to the work to be performed by them;
- (e) receives specialist training as appropriate;
- (f) receives support and assistance to obtain such further training as is appropriate to the work they perform.

(3) The service provider must ensure that any person employed to work at the service is supported to maintain their registration with the appropriate regulatory or occupational body.

Compliance with employer's code of practice

33. The service provider must adhere to the code of practice on the standards of conduct and practice expected of persons employing or seeking to employ social care workers, which is required to be published by Social Care Wales under section 112(1)(b) of the Act.

Information for staff

34.—(1) The service provider must ensure that all persons working at the service (including any person allowed to work as a volunteer) are provided with information about the service and the way it is provided.

(2) The service provider must ensure that there are arrangements in place to make staff aware of any codes of practice about the standards of conduct expected of social care workers, which are required to be published by Social Care Wales under section 112(1)(a) of the Act.

Disciplinary procedures

35.—(1) The service provider must put in place and operate a disciplinary procedure.

(2) The disciplinary procedure must include—

- (a) provision for the suspension, and the taking of action short of suspension, of an

employee, in the interests of the safety or well-being of people using the service;

- (b) provision that a failure on the part of an employee to report an incident of abuse, or suspected abuse, to an appropriate person, is grounds on which disciplinary proceedings may be instituted.

(3) For the purpose of paragraph (2)(b), an appropriate person is—

- (a) the service provider,
- (b) the responsible individual,
- (c) an officer of the service regulator,
- (d) an officer of the local authority for the area in which the service is provided,
- (e) in the case of an incident of abuse or suspected abuse of a child, an officer of the National Society for the Prevention of Cruelty to Children, or
- (f) a police officer.

PART 9

Requirements on service providers as to premises, facilities and equipment

Overarching requirement

36. The service provider must ensure that the premises, facilities and equipment are suitable for the service, having regard to the statement of purpose for the service.

Premises

37.—(1) The service provider must ensure that the physical design, layout and location of the premises used for the provision of the service is suitable to—

- (a) achieve the aims and objectives set out in the statement of purpose;
- (b) meet the care and support needs of the individuals;
- (c) support individuals to achieve their personal outcomes.

(2) In particular, the service provider must ensure that the premises used for the provision of the service meet the requirements of paragraphs (3) to (5) of this regulation.

(3) Premises must be—

- (a) accessible, adequately lit, heated and ventilated;
- (b) secure from unauthorised access;
- (c) suitably furnished and equipped;
- (d) of sound construction and kept in good structural repair externally and internally;
- (e) fitted and adapted as necessary, in order to meet the needs of individuals;
- (f) organised so that equipment used for the provision of the service is appropriately located;
- (g) free from hazards to the health and safety of individuals and any other persons who may be at risk, so far as is reasonably practicable;
- (h) properly maintained;
- (i) kept clean to a standard which is appropriate for the purpose for which they are being used.

(4) Premises must have bedrooms which—

- (a) include appropriate facilities to meet the care and support needs of the individual (if the room is single occupancy) or individuals (if the room is shared) occupying the bedroom;
- (b) are of an adequate size, having regard to—
 - (i) whether the room is shared or single occupancy;
 - (ii) the layout and furniture;
 - (iii) the equipment required to meet the needs of the individual (if the room is single occupancy) or individuals (if the room is shared);
 - (iv) the number of staff required to meet the needs of the individual (if the room is single occupancy) or individuals (if the room is shared);
- (c) are comfortable for the individual (if the rooms is single occupancy) or individuals (if the room is shared);
- (d) allow the individual (if the room is single occupancy) or individuals (if the room is shared) both freedom of movement and privacy.

(5) Premises must have sitting, recreational and dining space which is provided separately from the individual's own private rooms and any such space must be—

- (a) suitable and sufficient, having regard to the statement of purpose;
- (b) located so as to enable all persons using the space to access any such space easily and safely.

(6) Any communal space used for the provision of the service must be suitable for the provision of social, cultural and religious activities appropriate to the circumstances of the individuals.

(7) Suitable facilities must be provided for individuals to meet visitors in private in a space which is separate from the individual's own private rooms.

(8) Premises must have toilets, bathrooms and showers which are—

- (a) of sufficient number and of a suitable type to meet the needs of the individuals;
- (b) appropriately equipped;
- (c) located so as to enable all persons to access them easily and safely.

(9) Premises must have external grounds which are accessible, suitable for, and safe for use by, individuals and appropriately maintained.

(10) Premises must have suitable facilities for staff which must include—

- (a) suitable storage facilities, and
- (b) where appropriate, suitable sleeping accommodation and changing facilities.

Single occupancy and shared rooms

38.—(1) The service provider must ensure that all individuals are accommodated in single rooms but this requirement does not apply if the conditions in paragraph (2) are met.

(2) The conditions are—

- (a) an individual is sharing a room with no more than one other individual;
- (b) the other individual is not of the opposite sex or of a significantly different age;
- (c) sharing a room will promote the individual's well-being, is provided for in the individual's care and support plan and, wherever practicable, is agreed with the child and the child's representative.

Premises – further requirements

39. The service provider must ensure that the premises used for the operation of the service have adequate facilities for—

- (a) the supervision of staff;
- (b) the secure storage of records.

Facilities and equipment

40. The service provider must ensure that the facilities and equipment used for the provision of the service are—

- (a) suitable and safe for the purpose for which they are intended to be used;
- (b) used in a safe way;
- (c) properly maintained;
- (d) kept clean to a standard which is appropriate for the purpose for which they are being used;
- (e) stored appropriately.

PART 10

Additional requirements on service providers in respect of premises - new accommodation

Application of Part 10

41.—(1) This Part applies to service providers who are registered to provide a special school residential service and the premises used for the provision of the service fall within one of the categories in paragraph (2). But this Part does not apply if the service involves the provision of accommodation to four or fewer individuals.

(2) The categories are—

- (a) **Category A:** The premises used for the provision of the service consist of a new building or an existing building which has been converted for the purpose of providing the service, and, in either case, the building has not previously been used for the purpose of providing a special school residential service;
- (b) **Category B:** The premises consist of a building or buildings to which an extension is added and the extension is used for the purpose of providing the service at a place specified as a condition to the service provider's registration;
- (c) **Category C:** The premises consist of a building which was unoccupied immediately prior to the service provider's registration but was previously used for the purpose of providing a special school residential service at a place specified as a condition to the registration of another service provider.

(3) If this Part applies, the service provider must ensure that the requirements of regulations 42 to 46 are complied with.

Additional requirements – en-suite bathrooms

42. All bedrooms used for the provision of the service must have an en-suite bathroom which includes an accessible wash hand basin, lavatory and shower.

Additional requirements – room sizes

43.—(1) All bedrooms used for the provision of the service must have a minimum of 12 square metres of useable floor space unless paragraph (2) or (3) applies.

(2) This paragraph applies where the person living in the room has to use a wheelchair on a permanent and constant basis because of the nature of their disability.

(3) This paragraph applies where a bedroom is shared.

(4) If paragraph (2) applies, the bedroom must have a minimum of 13.5 square metres of useable floor space.

(5) If paragraph (3) applies, the bedroom must have a minimum of 16 square metres of useable floor space.

Additional requirements – communal space

44. The amount of sitting, recreational and dining space which is used for the provision of the service in accordance with regulation 37(5) must be at least—

- (a) 4.1 square metres for each individual;
- (b) 5.1 square metres for wheelchair users.

Additional requirements – outdoor space

45. The external grounds which are used for the provision of the service in accordance with regulation 37(9) must—

- (a) be accessible to individuals in wheelchairs or with other mobility problems,
- (b) have sufficient and suitable seating, and
- (c) be designed to meet the needs of all individuals including those with physical, sensory and cognitive impairments.

Additional requirements – passenger lift

46. Where the accommodation used for the provision of the service is on more than one floor and this is consistent with the statement of purpose for the service, there must be a passenger lift.

PART 11

Requirements on service providers as to supplies, hygiene, health and safety and medicines

Supplies

47. The service provider must ensure that supplies are available of a sufficient quantity and of a suitable type to deliver the service effectively and to meet the care and support needs of the individuals.

Hygiene and infection control

48.—(1) The service provider must have arrangements in place to ensure—

- (a) satisfactory standards of hygiene in the delivery of the service;
- (b) the appropriate disposal of general and clinical waste.

(2) The service provider must have policies and procedures in place for the control of infection and to minimise the spread of infection and must ensure that the service is provided in accordance with these policies and procedures.

Health and safety

49. The service provider must ensure that any risks to the health and safety of individuals are identified and reduced so far as reasonably practicable.

Medicines

50.—(1) The service provider must have arrangements in place to ensure that medicines are stored and administered safely.

(2) These arrangements must include the arrangements for—

- (a) maintaining a sufficient supply of medicines;
- (b) the effective ordering, re-ordering, recording, handling and disposal of medicines;
- (c) regular auditing of the storage and administration of medicines.

(3) The service provider must have a policy and procedures in place in relation to the safe storage and administration of medicines and must ensure that the

service is provided in accordance with this policy and these procedures.

PART 12

Other requirements on service providers

Records

51.—(1) The service provider must keep and maintain the records specified in Schedule 2 in respect of each place at which the service is provided.

(2) The service provider must—

- (a) ensure that records relating to individuals are accurate and up to date;
- (b) keep all records securely;
- (c) make arrangements for the records to continue to be kept securely in the event the service closes;
- (d) in the case of records about a child, ensure that the records are delivered to the placing authority when the service ceases to be provided in respect of the child to whom the records relate;
- (e) make the records available to the service regulator on request;
- (f) retain records relating to adults for three years from the date of the last entry;
- (g) retain records relating to children for fifteen years from the date of the last entry, unless the records are returned to the placing authority in accordance with subparagraph (d);
- (h) ensure that individuals who use the service—

(i) can have access to their records; and

(ii) are made aware they can access their records.

Notifications

52.—(1) The service provider must notify the service regulator of the events specified in Part 1 of Schedule 3.

(2) The service provider must—

- (a) notify the placing authority of the events specified in Part 2 of Schedule 3;
- (b) notify the local authority for the area in which the service is situated of the events specified in Part 3 of Schedule 3;

(c) notify the appropriate police officer of the events specified in Part 4 of Schedule 3;

(d) notify the health board in whose area the service is situated of the events specified in Part 5 of Schedule 3.

(3) The notifications required by paragraphs (1) and (2) must include details of the event.

(4) Unless otherwise stated, notifications must be made without delay and in writing.

(5) Notifications must be made in such manner and in such form as may be required by the service regulator.

Notification with respect to children admitted and discharged

53.—(1) The service provider must notify, without delay, the local authority for the area in which the service is located of every admission of a child into the accommodation and every discharge of a child from the accommodation.

(2) The service provider is not required to notify the local authority in paragraph (1) if that local authority is also the placing authority for the child in question.

(3) A notification under this regulation must be in writing and must state—

(a) the child's name and date of birth;

(b) whether the child is provided with accommodation under section 76 or 77 of the 2014 Act or, in the case a child placed by a local authority in England, whether the child is provided with accommodation under section 20 or 21 of the Children Act 1989⁽¹⁾;

(c) whether the child is subject to a care or supervision order under section 31 of the Children Act 1989;

(d) the contact details for—

(i) the child's placing authority, and

(ii) the independent reviewing officer appointed for the child's case; and

(e) whether the child has a statement of special educational needs, an individual development plan or an EHC plan and, if so, details of the local authority with responsibility for maintaining the statement of special educational needs, the individual development plan or for the EHC plan.

(4) In this regulation, “EHC plan” has the meaning given in section 37(2) (education, health and care

(1) 1989 c. 41.

plans) of the Children and Families Act 2014⁽¹⁾.

Conflicts of interest

54.—(1) The service provider must have effective arrangements in place to identify, record and manage potential conflicts of interest.

(2) The service provider must ensure that a person having a financial interest in the ownership of a special school residential service does not act as a medical practitioner for any individual for whom that service is provided.

Complaints policy and procedure

55.—(1) The service provider must have a complaints policy in place and ensure that the service is operated in accordance with that policy.

(2) The service provider must have effective arrangements in place for dealing with complaints including arrangements for—

- (a) identifying and investigating complaints;
- (b) giving an appropriate response to a person who makes a complaint, if it is reasonably practicable to contact that person;
- (c) ensuring that appropriate action is taken following an investigation;
- (d) keeping records relating to the matters in sub-paragraphs (a) to (c).

(3) The service provider must provide a summary of complaints, responses and subsequent action to the service regulator within 28 days of being requested to do so.

(4) The service provider must—

- (a) analyse information relating to complaints and concerns, and
- (b) having regard to that analysis, identify any areas for improvement.

Whistleblowing

56.—(1) The service provider must have arrangements in place to ensure that all persons working at the service (including any person allowed to work as a volunteer) are able to raise concerns about matters that may adversely affect the health, safety or well-being of individuals for whom the service is provided.

(2) These arrangements must include—

(1) 2014 c. 6.

- (a) having a whistleblowing policy in place and acting in accordance with that policy, and
 - (b) establishing arrangements to enable and support people working at the service to raise such concerns.
- (3) The provider must ensure that the arrangements required under this regulation are operated effectively.
- (4) When a concern is raised, the service provider must ensure that—
- (a) the concern is investigated;
 - (b) appropriate steps are taken following an investigation;
 - (c) a record is kept of both the above.

PART 13

Requirements on responsible individuals for ensuring effective management of the service

Supervision of management of the service

57. The responsible individual must supervise the management of the service, which includes taking the steps described in regulations 58, 63 and 64.

Duty to appoint a manager

58.—(1) The responsible individual must appoint a person to manage the service. But this requirement does not apply if the conditions in paragraph (2) or (3) apply.

- (2) The conditions are—
- (a) the service provider is an individual,
 - (b) the service provider proposes to manage the service,
 - (c) the service provider is fit to manage the service,
 - (d) the service provider is registered as a social care manager with Social Care Wales, and
 - (e) the service regulator agrees to the service provider managing the service.
- (3) The conditions are—
- (a) the service provider is a partnership, body corporate or unincorporated body,

- (b) the service provider is registered to provide a care home service, residential family centre service or special school residential service at no more than two locations or is registered to provide a domiciliary support service in relation to no more than two areas,
- (c) the service provider proposes that the individual designated as the responsible individual for the service is to be appointed to manage the service,
- (d) that individual is fit to manage the service;
- (e) that individual is registered as a social care manager with Social Care Wales, and
- (f) the service regulator agrees to that individual managing the service.

(4) For the purposes of paragraph (2)(c), the service provider is not fit to manage the service unless the requirements of regulation 31(2) (fitness of staff) are met in respect of the service provider.

(5) The duty in paragraph (1) is not discharged if the person appointed to manage the service is absent for a period of more than three months.

Fitness requirements for appointment of manager

59.—(1) The responsible individual must not appoint a person to manage the service unless that person is fit to do so.

(2) For the purposes of paragraph (1), a person is not fit to manage the service unless the requirements of regulation 31(2) (fitness of staff) are met in respect of that person.

Restrictions on appointing manager for more than one service

60.—(1) The responsible individual must not appoint a person to manage more than one service, unless paragraph (2) applies.

(2) This paragraph applies if—

- (a) the service provider has applied to the service regulator for permission to appoint a manager for more than one service, and
- (b) the service regulator is satisfied that the proposed management arrangements—
 - (i) will not have an adverse impact on the health or well-being of individuals, and
 - (ii) will provide reliable and effective oversight of each service.

Duty to report the appointment of manager to service provider

61. On the appointment of a manager in accordance with regulation 58(1), the responsible individual must give notice to the service provider of—

- (a) the name of the person appointed, and
- (b) the date on which the appointment is to take effect.

Duty to report appointment of manager to the workforce and service regulators

62.—(1) On the appointment of a manager in accordance with regulation 58(1), the responsible individual must give notice to the workforce and service regulators of—

- (a) the name, date of birth and Social Care Wales registration number of the person appointed, and
- (b) the date on which the appointment is to take effect.

(2) In a case where the service provider is an individual and the service regulator has agreed to the service provider managing the service, the service provider must give notice to the workforce regulator of—

- (a) the name, date of birth and Social Care Wales registration number of the service provider, and
- (b) the date from which the service provider is to manage the service.

Arrangements when manager is absent

63.—(1) The responsible individual must put suitable arrangements in place to ensure that the service is managed effectively at any time when there is no manager or when the manager is not present at the service.

(2) If there is no manager or the manager is not present at the service for a period of more than 28 days, the responsible individual must—

- (a) notify the service provider and the service regulator, and
- (b) inform them of the arrangements which have been put in place for the effective management of the service.

Visits

- 64.**—(1) The responsible individual must—
- (a) visit each place in respect of which the responsible individual is designated, and
 - (b) meet with staff and individuals at each such place.
- (2) The frequency of such visits and meetings is to be determined by the responsible individual having regard to the statement of purpose but must be at least every three months.

PART 14

Requirements on responsible individuals for ensuring effective oversight of the service

Oversight of adequacy of resources

- 65.**—(1) The responsible individual must report to the service provider on the adequacy of the resources available to provide the service in accordance with the requirements on service providers in **Parts 2 to 12 of these Regulations**.
- (2) Such reports must be made on a quarterly basis.
- (3) But this requirement does not apply where the service provider is an individual.

Other reports to the service provider

- 66.**—(1) The responsible individual must, without delay, report to the service provider—
- (a) any concerns about the management or provision of the service;
 - (b) any significant changes to the way the service is managed or provided;
 - (c) any concerns that the service is not being provided in accordance with the statement of purpose for the service.
- (2) But this requirement does not apply where the service provider is an individual.

Engagement with individuals and others

- 67.**—(1) The responsible individual must put suitable arrangements in place for obtaining the views of—
- (a) the individuals who are receiving care and support,
 - (b) any representatives of those individuals,

- (c) in the case of a child who is provided with accommodation, the placing authority,
- (d) service commissioners, and
- (e) staff employed at the service,

on the quality of care and support provided and how this can be improved.

(2) The responsible individual must report the views obtained to the service provider so that these views can be taken into account by the service provider when making any decisions on plans for improvement of the quality of care and support provided by the service.

PART 15

Requirements on responsible individuals for ensuring the compliance of the service

Duty to ensure there are systems in place to record incidents and complaints

68. The responsible individual must ensure that there are effective systems in place to record incidents, complaints and matters on which notifications must be made in accordance with regulations 52, 53 and 75.

Duty to ensure there are systems in place for keeping of records

69. The responsible individual must ensure that there are effective systems in place in relation to the keeping of records, which include systems for ensuring the accuracy and completeness of records which are required to be kept by regulation 51.

Duty to ensure policies and procedures are up to date

70. The responsible individual must put suitable arrangements in place to ensure that the service provider's policies and procedures are kept up to date, having regard to the statement of purpose.

PART 16

Requirements on responsible individuals for monitoring, reviewing and improving the quality of the service

Quality of care review

71.—(1) The responsible individual must put suitable arrangements in place to establish and maintain a system for monitoring, reviewing and improving the quality of care and support provided by the service.

(2) The system established under paragraph (1) must make provision for the quality of care and support to be reviewed as often as required but at least every six months.

(3) As part of any review undertaken, the responsible individual must make arrangements for—

- (a) considering the outcome of the engagement with individuals and others, as required by regulation 67;
- (b) analysing the aggregated data on incidents, notifiable incidents, safeguarding matters, whistleblowing, concerns and complaints;
- (c) reviewing any action taken in relation to complaints;
- (d) considering the outcome of any audit of the accuracy and completeness of records.

(4) On completion of a review of the quality of care and support in accordance with this regulation, the responsible individual must prepare a report to the service provider which must include—

- (a) an assessment of the standard of care and support provided, and
- (b) recommendations for the improvement of the service.

(5) But the requirement in paragraph (4) does not apply where the service provider is an individual.

Statement of compliance with the requirements as to standards of care and support

72.—(1) The responsible individual must prepare the statement required to be included in the annual return under section 10(2)(b) of the Act, in so far as it relates to the place or places in respect of which the responsible individual has been designated.

(2) When preparing the statement, the responsible individual must have regard to the assessment of the standard of care and support which is contained in a report prepared in accordance with regulation 71(4).

PART 17

Other requirements on responsible individuals

Support for staff raising concerns

73. The responsible individual must ensure that the provider's whistleblowing policy is being complied with and that the arrangements to enable and support people

working at the service to raise such concerns are being operated effectively.

Duty of candour

74. The responsible individual must act in an open and transparent way with—

- (a) individuals who are receiving care and support,
- (b) any representatives of those individuals, and
- (c) in the case of a child who is looked after by a local authority, the placing authority.

Notifications

75.—(1) The responsible individual must notify the service regulator of the events specified in **Schedule 4**.

(2) The notifications required by paragraph (1) must include details of the event.

(3) Unless otherwise stated, notifications must be made without delay and in writing.

PART 18

Offences

Offences - service providers

76.—(1) It is an offence for a service provider to fail to comply with a requirement of any of the provisions specified in paragraph (2).

(2) The provisions specified for the purposes of paragraph (1) are the provisions of regulations **3(3), 3(5), 7(3), 8(1), 8(2), 15(1), 15(2), 15(3), 16(1), 31(1), 34(1), 51(1), 51(2), 52(1), 52(2), 52(4) and 53(1)**.

(3) A service provider commits an offence if the provider fails to comply with a requirement of any of the provisions specified in paragraph (2) and such failure results in—

- (a) avoidable harm (whether of a physical or psychological nature) to an individual,
- (b) an individual being exposed to a significant risk of such harm occurring, or
- (c) in a case of theft, misuse or misappropriation of money or property, any loss by an individual of the money or property concerned.

(4) The provisions specified for the purposes of paragraph (3) are the provisions of regulations 2, 3(1), 8(5), 10(1), 10(3), 11(1), 11(3), 12(1), 12(5), 14(1), 14(6), 14(7), 17(1), 17(2), 18, 22(1), 23, 30(1), and 30(2).

Offences - responsible individuals

77.—(1) It is an offence for the responsible individual to fail to comply with a requirement of any of the provisions specified in paragraph (2).

(2) The provisions specified for the purposes of paragraph (1) are the provisions of regulations 58(1), 59(1), 62(1), 62(2), 64(1), 64(2), 65(1), 65(2), 66(1), 71(1), 72(1), 75(1) and 75(3).

PART 19

Service providers who are liquidated etc. or who have died

Appointment of liquidators etc.

78.—(1) An appointed person must—

- (a) without delay, give written notification to the service regulator of their appointment and the reasons for their appointment;
- (b) within 28 days of their appointment, notify the service regulator of their intentions regarding the future operation of the service.

(2) In this regulation—

“appointed person” (“person a benodir”) has the same meaning as in section 30 of the Act;

“the service” (“y gwasanaeth”) means the special school residential service which the service provider to which the appointment relates is registered to provide.

Death of service provider

79.—(1) Where a service provider who is an individual has died, the personal representatives of the individual must—

- (a) without delay, give written notification of the death to the service regulator;
- (b) within 28 days of the death, notify the service regulator of their intentions regarding the future operation of the service.

(2) The personal representatives of the individual may act in the capacity of the service provider for a period not exceeding 28 days or for such longer period (not exceeding one year) as the service regulator may agree.

(3) Where the personal representatives are acting in the capacity of the service provider in accordance with paragraph (2), Part 1 of the Act applies with the following modifications—

- (a) section 5 (requirement to register) does not apply;
- (b) in section 21(2) (responsible individuals) after paragraph (a) insert—

“(aa) where the personal representatives of a service provider who has died are acting in the capacity of the service provider, be one of the personal representatives;”.

(4) In this regulation, “the service” means the service which the service provider who has died was registered to provide at the time of their death.

PART 20

Regulations under section 21(5) of the Act

Designation of responsible individual by Welsh Ministers

80.—(1) The Welsh Ministers (instead of a service provider) may designate an individual to be a responsible individual, despite the requirements of section 21(2) of the Act not being met in respect of the individual, in the following circumstances—

- (a) the service provider is an individual who has died and the personal representatives of the service provider have notified the service regulator that they do not intend to make an application under section 11(1)(c) of the Act;
- (b) the service provider is an individual and they have notified the service regulator—

- (i) that they are no longer able to comply with their duties as a responsible individual, and
- (ii) the reasons for this being the case;
 - (c) the service provider is a corporate body or partnership and they have notified the service regulator—
- (i) that the individual designated by the service provider as the responsible individual is no longer able to comply with their duties as a responsible individual,
- (ii) the reasons for this being the case, and
- (iii) that there is no other individual who is eligible to be a responsible individual and who is able to comply with the duties of a responsible individual.

*Insert
Signature block*

SCHEDULE 1 Regulation 31

PART 1

Information and documents to be available in respect of persons working at the service

1. Proof of identity including a recent photograph.

2. Where required for the purposes of an exempted question in accordance with section 113A(2)(b) of the Police Act 1997⁽¹⁾, a copy of a valid criminal record certificate issued under section 113A of that Act together with, after the appointed day and where applicable, the information mentioned in section 30A(3) of the Safeguarding Vulnerable Groups Act 2006⁽²⁾ (provision of barring information on request).

3. Where required for the purposes of an exempted question asked for a prescribed purpose under section 113B(2)(b) of the Police Act 1997, a copy of a valid

(1) 1997 c. 50.
(2) 2006 c. 47.

enhanced criminal record certificate issued under section 113B of that Act together with, where applicable, suitability information relating to children (within the meaning of section 113BA(2) of that Act) or suitability information relating to vulnerable adults (within the meaning of section 113BB(2) of that Act).

4. Two written references, including a reference from the last employer, if any.

5. Where a person has previously worked in a position whose duties involved work with children or vulnerable adults, so far as reasonably practicable verification of the reason why the employment or position ended.

6. Documentary evidence of any relevant qualification.

7. Where relevant, documentary evidence of registration with Social Care Wales.

8. A full employment history, together with a satisfactory written explanation of any gaps in employment.

9. Evidence of satisfactory linguistic ability for the purposes of providing care and support to those individuals for whom the worker is to provide care and support.

10. Details of registration with or membership of any professional body.

PART 2

11. For the purposes of paragraphs 2 and 3 of Part 1 of this Schedule—

- (a) if the person to whom the certificate relates is not registered with the DBS update service, a certificate is only valid if—
 - (i) it has been issued in response to an application by the service provider in accordance with **regulation 31(3) or (6), and**
 - (ii) no more than three years have elapsed since the certificate was issued;
- (b) if the person to whom the certificate relates is registered with the DBS update service, the certificate is valid regardless of when it was issued.

Records to be kept by the service provider

1. In respect of each individual, records of—

- (a) all relevant assessments;
- (b) personal plans;
- (c) reviews of personal plans;
- (d) care and support plans;
- (e) reviews of care and support plans;

- (f) care provided, including daily records or records of specific care interventions;
- (g) correspondence, reports and records in relation to additional support provided by education, health and other allied services.

2. A record of any charges by the service provider to individuals for the provision of care and support and any additional services.

3. A record of all medicines kept in the service for each individual and the date and time on which they were administered to the individual, including any instance of refusal to take medication by the individual.

4. A record of all money or other valuables deposited by the individual for safekeeping or received on the individual's behalf, which must include a record of—

- (a) the date on which the money or valuables were deposited or received;
- (b) the date on which any money or valuables were—
 - (i) returned to the individual, or
 - (ii) used, at the request of the individual, on their behalf;
- (c) where applicable, the purpose for which the money or valuables were used;
- (d) the written acknowledgment of the return of the money or valuables.

5. A record of the following events that occur in the service—

- (a) any serious accident or injury which is significantly detrimental to the well-being of an individual;
- (b) the outbreak of infectious disease in the service;

- (c) any theft or burglary;
- (d) any safeguarding referral made in respect of an individual;
- (e) falls and consequent treatment provided to an individual;
- (f) incidence of pressure damage and of consequent treatment provided to an individual;
- (g) date and circumstances of any measures of control, restraint or discipline used on an individual.

6. A record of every fire practice, drill or test of fire equipment (including fire alarm equipment) conducted in the service and of any action taken to remedy defects in the fire equipment.

7. A record of all complaints made by individuals or their representatives or by persons working at the service about the operation of the service, and the action taken by the service provider in respect of any such complaint.

8. A record of all persons working at the service, which must include the following matters—

- (a) the person's full name, address, date of birth, qualifications and experience;
- (b) a copy of the person's birth certificate and passport (if any);
- (c) a copy of each reference obtained in respect of the person;
- (d) the dates on which the person commences and ceases to be so employed;
- (e) the position the person holds at the service, the work he or she performs and the number of hours for which he or she is employed each week;
- (f) records of disciplinary action and any other records in relation to the person's employment;
- (g) a record of the date of a DBS certificate and whether there was any action taken as a result of the content of the certificate.

9. A copy of the duty roster of persons working at the service, and a record of whether the roster was actually worked as intended.

10. A record of any furniture brought by an individual into the room occupied by him or her.

11. A record of any of the following events that occur in the service—

- (a) any fire;
- (b) unexplained or unauthorised absence of an individual including—
 - (i) the circumstances of the absence;
 - (ii) the action taken by staff;
 - (iii) the circumstances of the individual's return and the reasons given by the individual for the absence;
 - (iv) any actions taken by the service provider in consequence of the absence;
- (c) death of an individual.

12. A record of all visitors to the service, including the names of visitors and the persons they are visiting.

SCHEDULE 3 Regulation 52

PART 1

Notifications by the service provider to the service regulator

- 1.** Any revision to the statement of purpose, 28 days prior to the revised statement of purpose coming into effect.
- 2.** Service provider (individual or organisation) changes their name.
- 3.** Where the service provider is a body corporate, any change in the—
 - (a) directors,
 - (b) trustees, or
 - (c) members of the managing committee,of the body corporate.
- 4.** Where the service provider is an unincorporated body, any change in the persons who are concerned in the management and control of the body.
- 5.** Where the service provider is an individual, the appointment of a trustee in bankruptcy in relation to that individual.
- 6.** Where the service provider is a body corporate or partnership, the appointment of a receiver, manager, liquidator or provisional liquidator in relation to that body corporate or partnership.
- 7.** Where the service provider is a partnership, death of one of the partners.
- 8.** Where the service provider is a partnership, any change in the partners.

9. Expected absence of the responsible individual for 28 days or more, 7 days prior to commencement of the absence.

10. The unexpected absence of the responsible individual, no later than 7 days after the commencement of the absence.

11. Unexpected absence of the responsible individual for 28 days or more, where no prior notification has been given, immediately on the expiry of 28 days following the commencement of the absence.

12. Return from absence of the responsible individual.

13. The responsible individual ceases, or proposes to cease, being the responsible individual for the service.

14. Any abuse or allegation of abuse in relation to an individual that involves the service provider and/or a member of staff and/or a volunteer.

15. Service provider, responsible individual or appointed manager convicted of a criminal offence.

16. Any allegation of misconduct by a member of staff.

17. Any occurrence of category 3 or 4 pressure damage or unstageable pressure damage.

18. Serious accident or injury to an individual.

19. The outbreak of any infectious disease.

20. Any incident reported to the police.

21. Any events which prevent, or could prevent, the provider from continuing to provide the service safely.

22. Where accommodation is provided, the death of an individual and the circumstances.

23. Any request to a supervisory body in relation to the application of the deprivation of liberty safeguards (DOLS).

24. The premises are, or are proposed to be, significantly altered or extended.

25. Additional premises are, or are proposed, to be acquired.

26. Any proposal to change the address of the principal office, 28 days prior to the change taking place.

27. Any referral to the DBS pursuant to the Safeguarding Vulnerable Groups Act 2006.

28. Where the service provider, responsible individual or appointed manager is charged with any offence specified in the Schedule to the Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous

Provisions) Regulations 2009(1), notice of the offence charged and the place of charge.

29. Instigation and subsequent outcome of any child or adult protection enquiry involving an individual accommodated by the service.

30. Any allegation that an individual accommodated by the service has committed a serious offence.

31. Any incident of sexual or criminal exploitation of an individual or suspected sexual or criminal exploitation of an individual.

32. Any incident where an individual goes missing or has an unexplained absence.

PART 2

Notifications by the service provider to the placing authority in relation to a child who is looked after by a local authority

33. Any abuse or allegation of abuse in relation to a child accommodated by the service that involves the provider or a member of staff.

34. Serious accident, injury to or illness of a child accommodated by the service.

35. Any occurrence of a category 3 or 4 pressure ulcer, an unstageable pressure ulcer or a deep tissue injury.

36. The outbreak of any infectious disease.

37. Any incident reported to the police.

38. The death of a child accommodated by the service and the circumstances.

39. Any referral to the DBS pursuant to the Safeguarding Vulnerable Groups Act 2006.

40. An allegation that a child accommodated by the service has committed a serious offence.

41. Any incident where an accommodated child goes missing or has an unexplained absence.

42. Instigation and subsequent outcome of any child protection enquiry involving a child accommodated by the service.

43. Any incident of child sexual exploitation or suspected child exploitation.

(1) S.I. 2009/37.

PART 3

Notifications to the local authority in whose area the service is situated

44. Death of a child and the circumstances.
45. Any incident of child sexual exploitation or suspected child exploitation.
46. Any incident where an accommodated child goes missing or has an unexplained absence.

PART 4

Notifications to the appropriate police officer

47. Any incident of sexual exploitation or suspected exploitation of an individual.

PART 5

Notifications to the health board in whose area the service is situated

48. The outbreak of any infectious disease.
49. The death of an individual and the circumstances.

SCHEDULE 4 Regulation 64

Notifications by the responsible individual

1. The appointment of a manager (see regulation 58(1)).
2. The expected absence of the appointed manager for 28 days or more, 7 days prior to the commencement of the absence.
3. The unexpected absence of the appointed manager, no later than 7 days after the commencement of the absence.
4. The unexpected absence of appointed manager for 28 days or more where no prior notification has been given, immediately on the expiry of 28 days following the commencement of the absence.
5. Return from absence of appointed manager.

6. Interim arrangements where the manager is absent for longer than 28 days.

7. Someone other than the appointed manager is proposing to manage or is managing the service.

8. The appointed manager ceases, or proposes to cease, managing the service.

Consultation draft