



Llywodraeth Cymru  
Welsh Government

OPEN CONSULTATION

# Consultation document: Regulating special school residential services

Respond to possible changes in rules for special school residential services.

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# Overview

This consultation document:

- proposes to bring forward regulations to prescribe special school residential services as a regulated service under the Regulation and Inspection of Social Care (Wales) Act 2016 ('the 2016 Act') and to place requirements on providers and responsible individuals of these services
- provides draft statutory guidance for special school residential services under section 29 of the 2016 Act
- seeks views on proposals to amend the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017, as amended, to address two issues within the regulatory framework
- seeks views on proposals to create regulations under section 38 of the 2016 Act to add contact details to the register of service providers
- proposes minor amendments to [the statutory guidance for service providers and responsible individuals](#) on meeting service standard regulations for care home services, domiciliary support services, secure accommodation services and residential family centre services, created under section 29 of the 2016 Act (version 2, published April 2019)

## Background

1. The Regulation and Inspection of Social Care (Wales) Act 2016 ("the 2016 Act") was passed by the National Assembly for Wales on 24 November 2015 and received Royal Assent on 18 January 2016. It reformed the regulation and inspection regime for social care in Wales.
2. The 2016 Act aims to provide greater transparency and comparability across services in Wales, rebalance the accountability within the system so the appropriate agencies or individuals are held responsible in law, and move

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beyond an approach based on compliance towards one that reflects the quality of provision. The new system of service regulation established by the 2016 Act has been operating since providers re-registered their services with Care Inspectorate Wales (CIW) in 2017.

3. The 2016 Act builds on the success of regulation in Wales and reflects the changing world of social care. It places service quality and improvement at the heart of the regulatory regime and strengthens protection for those who need it.
4. The chapters below seek your views on:
  - proposals to bring forward regulations to prescribe special school residential services as a regulated service under the 2016 Act and to place requirements on providers and responsible individuals of these services
  - the draft statutory guidance for special school residential services under section 29 of the 2016 Act
  - proposals to amend The Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017, as amended, to address two issues within the regulatory framework; these relate to the registration and reconfiguration of 4-bedroom care homes (avoiding the additional environmental requirements such as the need to have en-suite facilities), and the regulation of local authority-run intermediate care services
  - proposals to create regulations under section 38 of the 2016 Act to add an email address and phone number for services on the register of service providers
  - minor amendments to the statutory guidance for service providers and responsible individuals on meeting service standard regulations for care homes services, domiciliary support services, secure accommodation services and residential family centre services (version 2, published April 2019) to ensure it is up to date and fit for purpose

# Ministerial foreword

“ As Deputy Minister for Social Services I published a Written Statement on 20 October 2022 acknowledging the publication of [the final report by the Independent Inquiry into Child Sexual Abuse](#).

Following the report, I made a commitment, alongside the Minister for Education and Welsh Language, to bring residential special schools in Wales into the scope of regulation under the Regulation and Inspection of Social Care (Wales) 2016 Act as a regulated service. This consultation fulfils that commitment by prescribing special school residential services as a new regulated service and bringing forward draft regulations and statutory guidance to complete the regulatory framework.

Additionally, we propose to create and amend regulations to enable Care Inspectorate Wales (CIW) to collect and publish service contact details on the register of service providers. This will ensure there is consistent information on CIW's online directory to enable members of the public to contact services, should they have any queries or concerns.

We are also proposing amendments to The Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017, as amended, to address two issues within the regulatory framework. These relate to providers registering and reconfiguring 4-bedroom care homes (avoiding having to meet the additional environmental requirements, such as having en-suite facilities), and the regulation of local authority-run intermediate care services.

Finally, we propose to make minor changes to the statutory guidance for service providers and responsible individuals on meeting service standard regulations, to ensure it is up to date and fit for purpose.

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The chapters in this document set out the context and rationale for the proposed approach, explain why we consider the need to introduce or amend legislation in these areas, and what this is intended to achieve, before seeking your views on the proposals and their likely impacts.

Through this consultation we look forward to receiving your views and observations in order to improve our system of social care regulation. ”

Julie Morgan MS  
Deputy Minister for Social Services

## Chapter 1

### **Proposal to bring forward regulations to prescribe special school residential services as a regulated service under the Regulation and Inspection of Social Care (Wales) Act 2016 (‘the 2016 Act’)**

#### **What this consultation is about**

5. This chapter seeks your views on proposals to bring forward regulations to prescribe special school residential services as a regulated service under the 2016 Act and to place requirements on providers of such services.
6. In March 2022 the independent inquiry into child sexual abuse published its report ‘**The Residential Schools Investigation Phase 1: Music Schools, Residential Special Schools Phase 2: Safeguarding and Boarding Schools**’. The inquiry examined questions concerning sexual abuse of children in residential special schools in England and Wales. The recommendations of the inquiry include requiring all residential special

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schools to be inspected against the quality standards used to regulate care homes in Wales.

7. The proposed approach recognises the differences between residential special schools and care home services. The intention, therefore, is to regulate residential special schools as a new regulated service in its own right – special school residential services. As far as is appropriate the regulations have been aligned with the regulatory requirements placed on care home services under the 2016 Act. However, not all requirements placed on care home service providers are relevant for special school residential services.
8. The term “residential special school” is not a legally defined term and therefore we have sought to define the new regulated service to provide greater clarity and certainty. This consultation seeks your views on proposed regulations to bring the new service within the existing regulatory framework and on the draft Statutory Guidance for Service Providers and Responsible Individuals of Special School Residential Services in meeting service standard regulations.
9. Your consultation responses will help inform our consideration of the final regulations and statutory guidance. Our intention is to analyse the responses over the autumn and consider whether any changes may be required before laying the final regulations towards the end of this year. Subject to being passed by the Senedd, the regulations are expected to come into force on the 31 December 2023. We intend to publish the statutory guidance at the same time.

## **What the current position is**

10. The 2016 Act provides the statutory framework for the regulation and inspection of social care services and the regulation of the social care workforce in Wales. Schedule 1 defines the services which fall within the scope of regulation.
11. Schedule 1 defines a ‘care home service’ as ‘the provision of

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accommodation, together with nursing or care at a place in Wales, to persons because of their vulnerability or need'. The 2016 Act provides that schools fall outside this definition unless they provide accommodation together with nursing or care for more than 295 days a year. Schools falling within this definition are regulated and inspected by CIW as a care home service for children and are subject to requirements in the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017, as amended, and accompanying statutory guidance. The threshold of 295 days is carried over from the Care Standards Act 2000. The effect is to distinguish between schools which accommodate pupils only during the term time which are not currently regulated by CIW and schools where pupils are accommodated for longer periods which are regulated as care home services.

12. CIW relies on powers in the Children Act 1989 ("the 1989 Act") in its oversight of existing residential special schools which fall under the 295 days or less threshold and therefore are outside the scope of regulation as a care home service under the 2016 Act. Under the 1989 Act CIW can carry out inspection activity but has no direct powers of enforcement and cannot require the schools to register. CIW inspects these schools against Residential Special Schools: National Minimum Standards (NMS) which were issued in 2002 under section 23(1) of the Care Standards Act 2000. The NMS are not enforceable and are focussed on achieving a minimum standard which is not consistent with the broader policy direction on regulation and inspection established under the 2016 Act.

## **Why we are proposing a change**

13. As recognised in the report by the independent inquiry into child sexual abuse, there are vulnerabilities associated with children accommodated in residential special schools as their additional learning needs may make them more vulnerable to abuse or exploitation. Some of these children may also require personal care, further increasing their vulnerability.



14. Bringing special school residential services within the scope of regulation under the 2016 Act as a new regulated service will establish a more consistent approach to the registration, regulation, inspection, and enforcement of services looking after vulnerable children. This approach will ensure CIW has the necessary powers to mandate improvements identified during inspections and to take enforcement action should services continue to fall short of the expected regulatory requirements.

### **What we are proposing**

15. We are proposing to bring special school residential services within the scope of regulation under the 2016 Act as a new regulated service, and to extend the existing regulatory framework to place requirements on providers and responsible individuals of such services. The approach will create new stand-alone regulations and amend existing regulations.

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

16. The draft Regulated Services (Special School Residential Services) (Wales) Regulations 2023 define the new special school residential service prescribed under section 2 of the 2016 Act as “the provision of accommodation together with care or nursing at a special school in Wales for pupils of the school”.
17. The proposed definition will capture the current residential special schools being provided by local authorities and potential new, independent entrants to the market. It aims to provide clarity and ensure that services such as boarding schools, care home services and special schools not providing accommodation are not unintentionally drawn into the definition.
18. The definition includes transitional provision with regard to references to “special education needs” and “additional learning needs”. The regulation is

expected to come into force at a time when some pupils will have statements of special educational needs.

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

19. The draft Special School Residential Services (Service Providers and Responsible Individuals) (Wales) Regulations 2023 are adapted from the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017, as amended, (“the 2017 Regulations”) which place requirements on care home services and other regulated services. The draft Regulations:

- place requirements on a service provider in relation to a regulated service and prescribe offences relating to the failure by a service provider to comply with requirements under sections 27 and 45 of the 2016 Act
- place requirements on responsible individuals and prescribe offences relating to the failure by a responsible individual to comply with requirements under sections 28 and 46 of the 2016 Act
- deal with the designation of responsible individuals by the service regulator, service providers who have been liquidated and service providers who have died under sections 21, 30 and 31 of the 2016 Act

### **Requirements on service providers**

20. Parts 2 to 12 of the draft regulations set out the detailed requirements on providers of special school residential services in relation to the standard of care and support to be provided to individuals. This uses the regulation-making power in section 27 of the 2016 Act. A “service provider” is a person who is registered with the CIW to provide a regulated service.
21. Part 2 covers general requirements on providers of special school residential

services about the way in which the service is provided. It includes requirements relating to the statement of purpose, arrangements for monitoring and improvement, requirements in relation to the responsible individual and in relation to the financial sustainability of the service, and requirements to provide the service in accordance with policies and procedures. It also places a 'duty of candour' on service providers to act in an open and transparent way.

22. Part 3 covers the steps to be taken before a service provider agrees to provide care and support to an individual. The intention here is to ensure that the service is suitable and able to meet the individual's needs and will be able to support the individual in achieving their personal outcomes. This determination of the suitability of the service must consider the individual's care and support plan under section 54 or section 83 of the Social Services and Well-being (Wales) Act 2014.
23. Part 4 covers the steps to be taken once the service provider has agreed to provide care and support to an individual. This includes a requirement for a 'personal plan' setting out how the individual's needs will be met on a day-to-day basis. The intention here is to ensure that there is an accurate and up to date plan which is reviewed on a regular basis to adapt to any change in circumstances for the individual. There is also a requirement for the service provider to undertake their own assessment as to how the service can best meet the care and support needs of the individual, and how it can support the person to achieve what matters to them, considering the individual's views, wishes and feelings. The assessment is not intended to duplicate any assessment which may have already been undertaken by the local authority but should be informed by any plans developed as a result of such assessments. The intention here is that, although an individual may have already had their care and support needs assessed (by the local authority), the provider must satisfy themselves that their service can care for and support the individual and consider how this will be done on a day-to-day basis.
24. Part 5 deals with information which must be made available about the

service in the form of a written guide. The intention here is to provide clarity on the culture and ethos of the special school residential service and a range of other matters. The draft Regulations set out some of the requirements relating to the guide, for example, it must be in an appropriate language, style, presentation and format having regard to the regulated service and the individuals for whom care and support is provided. There is also a requirement that the guide must include information about how to raise a concern or make a complaint, as well as information about the availability of advocacy services. Further areas which should be covered in the guide are set out in the draft statutory guidance. There is also a requirement in the draft regulations for individuals to receive such support as is necessary to enable them to understand the information contained in the guide.

25. Part 6 contains requirements which relate to the standard of care and support provided. It includes overarching requirements which will underpin the quality of the service. It also includes requirements relating to such matters as access to health services, continuity of care, providing information, meeting the individual's language and communication needs and ensuring that individuals are treated with respect and sensitivity. There is also the requirement that the service provider must put in place arrangements for individuals to be able to access and be supported to access health and other services, and to have a designated "link worker". You may wish to give this consideration in your response.
26. Part 7 includes requirements which are intended to ensure individuals are safe and are protected from abuse, neglect and improper treatment. This part includes requirements relating to the use of control and restraint. The intention here is to make clear that the use of such acts is very much a last resort.
27. Part 8 sets out the requirements relating to staffing. It contains specific requirements regarding the fitness of individuals working at the service, including volunteers and agency staff. The specific information and documentation requirements are set out in Schedule 1. It also contains requirements in relation to supporting and developing staff, compliance with

the employer's code of practice, information for staff and disciplinary procedures.

28. The intention is to establish transitional arrangements to ensure existing service provider managers and staff have sufficient time and support to achieve registration within a timely manner.
29. Part 9 covers requirements about premises, facilities and equipment. This includes the premises used for the operation of the service and the premises, facilities and equipment used by service providers to meet the needs of individuals.
30. Part 10 relates to additional requirements where the premises consist of a new building, an extension, or a building which has a previous registration but is not occupied at the time of the service provider's application for registration under the new regulations. Whilst the intention is for regulations to be appropriately high-level to ensure service providers have the flexibility to support people achieve their personal outcomes in a variety of ways, some requirements are more prescriptive in order to ensure an appropriate standard is maintained. There are several requirements in this part which relate to the provision of en-suite facilities in rooms, rooms sizes, communal space, outdoor space and passenger lift.
31. Part 10 does not apply to the existing premises of residential special schools currently operating in Wales and inspected by CIW, who will be registering their services as special school residential services when these regulations come into force.
32. Part 11 sets out requirements as to supplies, hygiene, health and safety and medicines.
33. 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 to be made. This part also contains requirements on the service provider to have a complaints policy and a whistleblowing policy in place.

## Duties on responsible individuals

34. The 2016 Act requires services providers to designate a responsible individual as part of their registration. Section 21 of the 2016 Act sets out who is eligible to be a responsible individual and requires that they are a “fit and proper person”. The existing residential special schools in Wales are provided by local authorities. Where the service provider is a local authority, the responsible individual will be an officer of the local authority designated by the authority’s director of social services. CIW has issued guidance for providers in order to assist them with designating responsible individuals.
35. Parts 13 to 17 set out the requirements placed on responsible individuals in relation to a place in respect of which the individual is designated, in accordance with section 28 of the 2016 Act. The responsible individual is responsible for oversight of the management, quality, safety, and governance of the service.
36. The intention in these draft regulations is to ensure that the responsible individual retains overall responsibility for fulfilling these requirements but distinguish between tasks which may be delegated and those which cannot be. For example, the responsible individual may “make arrangements for obtaining the views of the individuals who are receiving care and support” but must “visit each place in respect of which the responsible individual is designated” themselves. However, the responsible individual retains overall accountability and responsibility for the duties set out in these regulations.
37. Part 13 contains requirements in relation to the responsible individual’s general duty to supervise the management of the service and sets out specific duties relating to appointing a fit person to manage the service who is registered with Social Care Wales, to putting arrangements in place for the management of the service when the manager is absent, and to visiting the places where the service is being provided. As noted above, they retain overall accountability and responsibility for the service.
38. Part 14 contains requirements on responsible individuals for ensuring the

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

39. Part 15 sets out the requirements on the responsible individual for ensuring the compliance of the service with other requirements, including notification of incidents and complaints and the keeping of records. The responsible individual must also put arrangements in place for ensuring that the service provider's policies and procedures are kept up to date.
40. Part 16 sets out the requirements on the responsible individual in relation to monitoring, reviewing and improving the quality of the service provided, including making a report to the service provider. This report will form part of the provider's annual return under section 10 of the 2016 Act.
41. Part 17 sets out other requirements on the responsible individual, including requirements in relation to support for staff raising concerns, duty of candour and to make certain notifications to the service regulator, contained in Schedule 4.

## **Part 18 – Offences**

42. The draft regulations in this part are made under the powers in section 45 and 46 of the 2016 Act. They provide that a failure, by the service provider and responsible individual respectively, to comply with specified requirements in the regulations is an offence. There is a further qualification which applies in the case of failure to comply with certain requirements. In these cases, the regulation provides that this is only an offence if the failure to comply results in individuals being exposed to avoidable harm or significant risk of such harm or suffering a loss of money or property as a



result of theft, misuse or misappropriation.

43. It is worth highlighting that, although failure to comply with a particular requirement in the regulations may not be an offence, a service provider's failure to comply with any of the requirements contained in regulations within Parts 2 to 12 could be grounds for cancellation of the service provider's registration under section 15 of the 2016 Act; and a responsible individual's failure to comply with any of the requirements contained in regulations within Parts 13 to 17 could be grounds for the cancellation of the designation of the responsible individual under section 22 of the 2016 Act.

## **Part 19 - service providers who are liquidated and so on or who have died**

44. The draft regulations in this part set out specific requirements which apply when the service provider is insolvent or when a service provider who is an individual has died. In these circumstances the regulations place specific notification duties on the appointed person (in the case of insolvency) or the personal representatives (in the case of the death of a service provider who is an individual). Although existing residential special schools currently operating in Wales are provided by local authorities, the intention is to future proof the regulations in the event of new entrants to the market.

## **Part 20 – designation of responsible individual by Welsh Ministers**

45. The draft regulations specify the circumstances in which the Welsh Ministers (instead of the service provider) may designate an individual to be a responsible individual, despite the eligibility requirements of section 21(2) not being met in respect of the individual. This draft regulation is made under section 21(5) of the 2016 Act. The approach under the 2016 Act is that responsibility for designating a responsible individual should rest firmly with the service provider. If there is an eligible - as well as fit and proper - person who meets the requirements set out in the 2016 Act the service provider is



expected to designate that person as the responsible individual unless there are exceptional circumstances. These circumstances are set out in the draft regulations.

### **The draft Special School Residential Services (Miscellaneous Amendments) (Wales) Regulations 2023**

46. We propose to amend the substantive regulations relating to service registration, annual returns, and penalty notices applying to all existing regulated services in order to include special school residential services.

### **The Regulated Services (Registration) (Wales) Regulations 2017, as amended**

47. The Regulated Services (Registration) (Wales) Regulations 2017, as amended, set out the requirements for application for registration, and application for variation of registration as a service provider under sections 6 and 11 of the 2016 Act. The regulations state the information to be provided by the applicant to register as a service provider, information required by a service provider to vary the registration, the form of application and the time limit within which an application to vary must be made where there is no designated responsible individual.
48. We propose to amend these regulations to include special school residential services. Transitional arrangements will be established to ensure existing service providers have the time and support to achieve registration within the required timescale.

### **The Regulated Services (Annual Returns) (Wales) Regulations 2017, as amended**

49. The Regulated Services (Annual Returns) (Wales) Regulations 2017, as

amended, set out the additional information requirements to be included in a provider annual return under section 10 of the 2016 Act. This includes information about staffing, training, workforce planning, service provision and additional information where the service involves the provision of accommodation. The regulations require the return to be made online using the form provided on the Welsh Government (CIW) website and require the return to be submitted within 56 days of the end of the financial year to which it relates. We propose to amend the regulations to include special school residential services.

### **The Regulated Services (Penalty Notices) (Wales) Regulations 2019**

50. The Regulated Services (Penalty Notices) (Wales) Regulations 2019 set out the detail of the penalty notice system under section 52 of the 2016 Act and the offences which may be discharged by the service provider or responsible individual (as applicable) making payment of a sum payable under a penalty notice. We propose to amend these regulations to include special school residential services.
51. The proposal to amend the suite of regulations above to include the new special school residential service supports a consistent approach to the regulation of all regulated services.

### **Statutory guidance for service providers and responsible individuals on meeting service standard regulations**

52. The draft statutory guidance, developed under section 29 of the 2016 Act, sets out how providers of special school residential services and responsible individuals may comply with the requirements imposed by Parts 2 to 17 of the draft Special School Residential Services (Service Provider and Responsible Individuals) (Wales) Regulations 2023. It provides further guidance, to which service providers and responsible individuals must have

regard, on how to meet the individual components of each regulation where further clarification and definition may be needed. The statutory guidance is based on the existing statutory guidance for regulated services but has been tailored to reflect the nature of special school residential services. The guidance on individual components of each regulation should not be considered exhaustive as there may be other ways in which service providers and responsible individuals can demonstrate that they meet them. The guidance is not intended to be stand-alone and therefore must be read alongside Parts 2 to 17 of the draft regulations above.

## **The outcomes we expect**

53. We expect that bringing special school residential services within the scope of regulation under the 2016 Act as a regulated service in its own right will have a positive impact on the quality of services and the outcomes of individuals using those services.

## **Chapter 2:**

### **Proposed changes to The Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017, as amended (“the Service Provider Regulations”)**

#### **What this consultation is about**

54. This chapter seeks your views on proposals to amend the Service Provider Regulations to address two issues:
- the registration of four-bedroom care homes (with the advantage of avoiding

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the requirements in Part 13, such as having en-suite facilities) which are later reconfigured to add additional bedrooms

- the emergence of intermediate care services run by local authorities which fall within the definition of a care home service

## **What the current position is**

55. The service provider regulations place requirements on providers and responsible individuals of care home services, domiciliary support services, secure accommodation services and residential family centre services about the quality of care and support to be provided. We have identified two issues in relation to the operation of the regulatory framework, described below:

## **The registration of four-bedroom care home services**

56. Part 12 of the service provider regulations places general requirements about the physical standards of rooms and facilities for all accommodation-based services. This includes ensuring they are accessible, are of an adequate size and are properly maintained.
57. Part 13 of the service provider regulations sets out additional requirements about the physical standards of rooms and facilities for new or extended accommodation-based services. This includes the requirement to have en-suite bathrooms, accessible outdoor space, minimum sized bedrooms and communal space for three categories of “new premises”. These categories are summarised as follows:
- 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.
  - Category B: The premises consist of a building or buildings to which an extension is added.

- Category C: This category captures unoccupied premises which were not being used to provide a regulated service immediately prior to a service provider's registration of the service under the 2016 Act but have previously been used for that purpose at some point in the past, by another provider.
58. The purpose of Part 13 of the Service Provider Regulations is to achieve improvement in the built estate over time without destabilising the market.
59. Care homes accommodating four or fewer people do not have to meet these additional requirements. The rationale is that smaller services (usually care homes for children) are more like family homes with a homely living environment and would not have the additional facilities of larger services.

### **Why we are proposing a change**

60. Since the 2016 Act came into force, 22 providers have registered care homes as four-bedroom services and subsequently reconfigured the homes a few months later to create a fifth bedroom. This sometimes involves converting storage or communal space into a bedroom.
61. There is legal uncertainty about whether a provider applying to vary their registration to include additional places (and therefore additional bedrooms) would be caught by Part 13 of the Service Provider Regulations. This is because the provider is already registered, and the premises no longer fall within the category of new accommodation.
62. We wish to address this loophole to ensure that any additional rooms added after the registration of the service meet the requirements set out in Part 13 of the Regulations. This is comparable to the approach taken for extensions to a care home building.

### **What we are proposing**

63. We are proposing to create regulations to amend the service provider

regulations to specify that the requirements of Part 13 will apply where additional converted rooms are added after the initial registration.

64. We have not yet established a timetable for the making of these regulations. Progress on the development of this work will be communicated to the sector following the consultation.

### **What outcome we expect**

65. Amending the service provider regulations will ensure that the extended service has suitable space and facilities to meet the needs of all the individuals living at the service, in line with the original policy intention.
66. It will also provide legal clarity and certainty, reducing the risk of challenge if Care Inspectorate Wales refuses an application to vary the registration of a provider where the requirements of Part 13 have not been complied with.

## **Exemption for Local-Authority-run Intermediate Care Services**

### **What the current position is**

67. We are aware that local authorities are providing intermediate care (which includes short term accommodation) for people either stepping down from or, up to, hospital.
68. Intermediate care can be described as short-term care and support, provided free of charge for six weeks, with the aim of helping people to:
- avoid unnecessary admission to hospital
  - be as independent as possible after a hospital stay or illness
  - remain living at home if, due to illness or disability, an individual is having increasing difficulty with daily life
  - avoid moving into a residential home until they really need to
69. Where intermediate care is provided in a registered care home, this is in line

with the current regulatory framework. However, we are aware that some intermediate care services are being provided in extra care type housing, akin to a supported living arrangement. The term 'extra care' housing describes developments that comprise self-contained homes with design features and support services available to promote independent living.

70. As part of these arrangements, the care and support element of the service is provided by the local authority's registered domiciliary support service. The premises used to accommodate the individual are either owned by a housing association and leased to the local authority or owned by the local authority itself. The local authority then allocates placements within the accommodation to individual service-users without entering into individual tenancy agreements.
71. The local authority does not wish to enter into tenancy agreements with individuals. This would be complex due to the short-term nature of the service and because the person has their own home elsewhere. Entering into a new tenancy agreement can have negative consequences, such as loss of housing benefit for some individuals.
72. As both accommodation and care are being provided by the local authority under these arrangements, they currently fall within the definition of a "care home service" under the 2016 Act. Schedule 1 of the 2016 Act states: A "care home service" is the provision of accommodation, together with nursing or care at a place in Wales, to persons because of their vulnerability or need.

## **What we are proposing**

73. Section 2(3) of the 2016 Act states that the Welsh Ministers may by regulations prescribe things which, despite Schedule 1, are not to be treated as regulated services for the purposes of this Act. We wish to use the regulation-making power under section 2(3) to ensure that local authority intermediate care services are not treated as a care home service despite Schedule 1 of the 2016 Act.

74. To qualify for this exemption, we propose that:
- the service must be provided by the local authority
  - the accommodation must be owned or leased by the local authority
  - the domiciliary support element of the service is provided by the local authority's registered domiciliary support service
75. Whilst the usual timeframe for a person to use these services is around 6-8 weeks, there are sometimes challenges finding a domiciliary support package for the individual when they leave the service. This can cause people to remain in the services longer than necessary. We therefore propose to limit the service to four months per individual as this will reflect the temporary nature of the service but will be sufficient to take account of any delays.

### **Why we are proposing a change**

76. We consider that, whilst it is appropriate to continue to regulate the care and support element of these services as a domiciliary support service, we do not consider it proportionate or necessary to regulate them as a care home service.

### **The outcomes we expect**

77. Creating this exemption will ensure these services can continue to operate as domiciliary support services, which we consider to be appropriate for the level of care and support being provided.

## **Chapter 3**

### **Draft regulations to require additional information to be published on**

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## **the register of service providers**

### **What this consultation is about**

78. This chapter seeks your views on the Register of Service Providers (Prescribed Information and Miscellaneous Amendments) (Wales) Regulations 2023 (“the draft Regulations”). These Regulations make it a mandatory requirement to publish an email address and telephone number for each service on the register of service providers.

### **What the current position is**

79. Section 38 of the 2016 Act requires Welsh Ministers to maintain a register of service providers. The register of service providers informs Care Inspectorate Wales’s (CIW) online public facing directory which provides key information about regulated services in Wales to the public.
80. Section 38 (2) of the 2016 Act states that an entry in the register in respect of a service provider must show the following information:
- the regulated services that the service provider is registered to provide
  - the places at, from or in relation to which the provider is registered to provide those services
  - the name of the responsible individual registered in respect of each such place
  - the date on which the provider’s registration took effect in respect of each such regulated service and place
  - details of any other conditions imposed on the service provider’s registration
  - a summary of any inspection report relating to the service provider which has been published under section 36(3)(a)

## Why we are proposing a change

81. We have identified a gap in the information included on the register and public facing directory as it does not include both a telephone number and email address for each service. Currently, the telephone number for the service is published on CIW's public facing directory only with the provider's permission. There are a minority of providers (14%) who have refused consent for the publication of their telephone number, leading to gaps in the information included on the directory.
82. In addition to a telephone number, we wish to add a service email address to the register of service providers to give the public a choice about how to contact services, which will make contacting services more accessible (for example, for people with a hearing impairment who cannot use a telephone). Whilst CIW already requests service email addresses from providers, it must seek permission from them to publish or share this information.
83. For clarity and consistency, we intend to make it a mandatory requirement for service providers to provide a telephone number and an email address for each service to CIW, which CIW will publish on the register of service providers.

## What we are proposing

84. We are consulting on the draft Register of Service Providers (Prescribed Information and Miscellaneous Amendments) (Wales) Regulations 2023. This draft statutory instrument uses the regulation making powers under Section 38 of the 2016 Act to place an obligation on Welsh Ministers to publish an email address for the service and a telephone number for the service on the register of service providers.
85. To establish the legal basis for collecting these contact details, the draft regulations also amend the Regulated Services (Registration) (Wales) Regulations 2017, as amended ("the Registration Regulations"). This

enables CIW to gather service contact details from applicants at the point of registration.

86. Currently, the Registration Regulations require a telephone number and email address for adoption services, fostering services, adult placement services, advocacy services and domiciliary support services. However, a service email address is not currently required for accommodation-based services. The draft regulations close this gap by amending the Registration Regulations to require both a telephone number and email address for care home services, secure accommodation services and residential family centre services.
87. The Regulated Services (Annual Returns) (Wales) Regulations 2017, as amended (“the Annual Returns Regulations”) provide a vehicle for CIW to collect information from providers who have already registered their services. Service providers are required to submit an annual return to the Welsh Ministers containing key information about the service within 56 days of the end of the financial year to which the annual return relates. The draft regulations amend the Annual Returns Regulations to include the email address and telephone number for each service.
88. Part 1 of Schedule 3 of the Service Provider Regulations sets out the notifications that must be made to the service regulator for specified events, such as changes to the way in which the service is provided. The draft regulations amend this part to place a duty upon the service provider to notify CIW in the event of the telephone number or email address of the service changing.
89. Subject to being passed by the Senedd, the regulations are expected to come into force on the 31 December 2023.

## **The outcomes we expect**

90. Requiring a telephone number and email address for each service will create consistency in the information provided on the register of service providers. This will ensure members of the public and family members can contact

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services should they have any queries or concerns. It will also increase the accountability and visibility of service providers.

91. A full privacy impact assessment will be undertaken as part of these regulations. We are aware that some service email addresses provided to CIW currently contain the names of staff members working at the service. We will ensure providers have sufficient time to change their email addresses (for example, to create a generic mailbox for the service) should they wish to, before the regulations come into force.

## Chapter 4

### **Proposed amendments to the statutory guidance for service providers and responsible individuals on meeting service standard regulations (version 2, April 2019)**

#### **What this consultation is about**

92. This chapter seeks your views on updates to the statutory guidance for service providers and responsible individuals on meeting service standard regulations.

#### **What the current position is**

93. The statutory guidance for care home services, domiciliary support services, secure accommodation services and residential family centre services was first published in April 2017 following phase 2 of implementation of the 2016 Act. It was issued by the Welsh Ministers under section 29 of the 2016 Act. Separate statutory guidance documents for the other regulated services (advocacy, adoption, fostering and adult placement services) were published

in April 2019 following phase 3 of implementation. We took this opportunity to make minor amendments to the statutory guidance for care home services, domiciliary support services, secure accommodation services and residential services at this time, creating version 2 of the guidance.

94. The statutory guidance sets out how providers of regulated services and responsible individuals may comply with the requirements imposed by Parts 3 to 19 of the service provider regulations. The service provider regulations place requirements on service providers and responsible individuals in relation to the quality of care to be provided. The statutory guidance provides further guidance – to which service providers and responsible individuals must have regard – on how to meet the individual components of each regulation where further clarification and definition may be needed.

### **Why we are proposing a change**

95. It has been six years since the publication of the statutory guidance for care home services, domiciliary support services, secure accommodation services and residential family centre services, and four years since the publication of the statutory guidance for the remaining services. As the regulation and inspection regime established by the 2016 Act has had time to bed in, we consider it timely to review the statutory guidance to ensure it is up to date and fit for purpose.

### **What amendments we are proposing**

96. The statutory guidance for care home services, domiciliary support services, secure accommodation services and residential family centre services has been amended to reflect updated terminology and legislation. In particular, we have reflected the ethos of the social model of disability by updating the language, such as removing references to vulnerability or frailty where we consider this to be unnecessary or unhelpful. In relation to the requirement to

undertake a provider assessment (regulation 18), the guidance has been updated to state that the assessment is co-produced with the individual, as opposed to being completed in consultation with the individual. We have also added a specific reference to the United Nations Convention on the Rights of Persons with Disabilities, alongside the reference to the United Nations Convention on the Rights of the Child in relation to providers having regard to people's rights and entitlements.

97. We have strengthened the guidance against regulation 21 – standards of care and support to highlight the importance of independence, choice and control.
98. The guidance has been amended to emphasise the importance of providers creating a positive culture within the service. We have included further detail against regulation 6 – requirements in relation to the provision of the service, highlighting the importance of the ethos, values, attitudes and behaviours of leaders and staff members in ensuring the people they care for lead confident, inclusive and empowered lives.
99. We have reviewed and strengthened the guidance relating to Part 8 (safeguarding). We have clarified that risks may arise from within the service itself or elsewhere and have added a specific reference to the Wales Safeguarding Procedures. We have added further detail relating to fitness of staff (regulation 35). We have also included information about the Disclosure and Barring Service in the related links section of the guidance, for reference. In addition, we have clarified how the guidance relates to volunteers by being more explicit about which sections relate to staff only and which apply to both staff and volunteers.
100. We have responded to a recommendation from the All-Party Parliamentary Group on Vegetarianism and Veganism's Inquiry Report, '**Respect for Religious and Philosophical Beliefs while Eating in Care**', to strengthen care regulations and related guidance by recognising that philosophical beliefs are as important as an individual's religious beliefs or cultural background. As such, we have strengthened the guidance against regulation 18 (provider assessment) to state that, in identifying the individual's personal

preferences, the provider takes into account any religious or philosophical beliefs or cultural background.

101. We have also considered whether changes may be necessary in the context of recovery from the COVID-19 pandemic. Following feedback from the families of people living in care homes about visiting policies being changed without residents or families being notified, we have included a paragraph against regulation 12 – requirements to provide the service in accordance with policies and procedures, to state, where changes are made to policies and procedures which directly affect individuals and/or their representatives, these are communicated to individuals and any representative in a timely manner.
102. Whilst the focus of this consultation is the statutory guidance for care home services, domiciliary support services, secure accommodation services and residential family centre services, the proposed changes may also be relevant for the statutory guidance published for the other regulated services (adoption services, fostering services, advocacy services and adult placement services) when they are reviewed and updated.

## **The outcomes we expect**

103. Updating the statutory guidance will ensure it remains up to date, relevant and fit for purpose. We intend to publish the updated guidance alongside the suite of regulations described in this consultation on 31 December 2023.

## **How to respond**

You can submit your response by midnight on 6 August 2023, in any of the following ways:

- complete our online form

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- download, complete our consultation response form and email it to: [CareHomeTeam@gov.wales](mailto:CareHomeTeam@gov.wales) (please include the reference WG47196 in the subject of your email)
- download, complete our consultation response form and post to the address stated below.

## Contact details

For further information please contact the care home policy team:

By post:

Care home policy branch  
Welsh Government  
Cathays Park  
Cardiff  
CF10 3NQ

Email: [CareHomeTeam@gov.wales](mailto:CareHomeTeam@gov.wales)

## UK General Data Protection Regulation (UK GDPR)

The Welsh Government will be data controller for any personal data you provide as part of your response to the consultation. Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations.

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

You should also be aware of our responsibilities under freedom of information legislation.

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

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CARDIFF  
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The contact details for the Information Commissioner's Office are:  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire SK9 5AF  
Tel: 0303 123 1113  
[The Information Commissioner's Office's Website.](#)

## Further information and related documents

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

[The Regulation and Inspection of Social Care \(Wales\) Act 2016.](#)

[The Regulated Services \(Service Providers and Responsible Individuals\) \(Wales\) Regulations 2017.](#)

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**Statutory Guidance for Service Providers and Responsible Individuals in meeting Service Standard Regulations for care home services, domiciliary support services, secure accommodation services and residential family centre services.**

**The Register of Service Providers (Prescribed Information and Miscellaneous Amendments) (Wales) Regulations 2023**

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