

## Equality Impact Assessment (EIA) Template – Part 1

<b>Policy title and purpose (brief outline):</b>	<u>Regulation and Inspection of Social Care (Wales) Act 2016</u> <ul style="list-style-type: none"><li>• The Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017</li><li>• The Regulated Services (Penalty Notices) (Wales) Regulations 2017</li></ul>
<b>Name of official:</b>	<b>Chris Pickett</b>
<b>Department:</b>	<b>Health and Social Services</b>
<b>Date:</b>	<b>December 2017</b>
<b>Signature:</b>	<b>C.Pickett</b>

## **1. Please provide a brief description of the policy/decision.**

The Regulation and Inspection of Social Care (Wales) Act 2016 (“the 2016 Act”) received Royal Assent on 18 January 2016. It reforms the regulation and inspection regime for social care in Wales.

The 2016 Act provides the statutory framework for the regulation and inspection of social care services and the social care workforce in Wales. It enables the Welsh Ministers to put in place a number of items of subordinate legislation through the making of regulations, the publication of guidance and the issuing of codes of practice to support this framework and put it into practice. When fully implemented it will allow the Welsh Government to:

- reform the regulatory regime for care and support services, to ensure it is focussed on outcomes for service users;
- reform the inspection regime for local authority social services functions;
- re-name and give new powers to the Care Council for Wales; and
- reform the regulation of the social care workforce.

The two sets of Regulations and statutory guidance covered in this impact assessment were created under the following sections of the 2016 Act:

- Section 2(3) – exceptions to regulated services. These are services which, despite Schedule 1, are not to be treated as regulated services for the purposes of this Act;
- Section 21(5) - the circumstances in which the Welsh Ministers (instead of service providers) may designate a responsible individual.
- Section 27 – Regulations about regulated services;
- Section 28 – Regulations about responsible individuals;
- Section 30 – Regulations about service providers who are liquidated etc.
- Section 31 – Regulations about service providers who have died
- Section 45 – Regulations which provide for offences in the event of failure by a service provider to comply with specified requirements in regulations under section 27;
- Section 46 – Regulations which provide for offences in the event of failure by a responsible individual to comply with specified requirements in regulations under section 28.
- Section 52 – Penalty notices.

The regulations and statutory guidance being considered under this impact assessment are:

- The Regulated Services (Service Providers and Responsible Individuals)(Wales) Regulations 2017 (“The service regulations”);
- The Regulated Services (Penalty Notices) (Wales) Regulations (“the penalty notices regulations”); and
- Statutory guidance for service providers and responsible individuals on meeting service standard regulations.

The purpose of the service regulations, and supporting statutory guidance, is to ensure that providers of regulated social care services achieve the required standard of care and support so that people's wellbeing and safety is maintained. The workforce regulations are part of a package of measures that the Welsh Government are bringing forward to support the provision of high-quality care and support, through improving the terms and conditions of the workforce so that social care is seen as an attractive and valued career. When implemented alongside other work streams, including the improvement of commissioning practices, these Regulations will help to ensure that individuals who need care and support receive the quality care that they deserve.

The purpose of the penalty notices regulations is to set out the details of a penalty notice system, enabling Care and Social Services Inspectorate Wales (CSSIW), to issue a penalty notice to providers and responsible individuals of regulated services, should certain regulatory breaches occur. The intention is to create a more flexible system of regulation so that CSSIW has a full range of powers at its disposal to deal with non-compliance.

The purpose of the delineation of care and travel time regulations (within the service regulations) is to ensure that all individuals receive continuity and good quality care and support. This means making sure all people who need care and support services have visits which last as long as they have been assessed as needing. It also means that the rotas for domiciliary care workers provide them with the time to carry out the visits, so that they do not have to cut care time or "call clip" or provide care at their own expense.

Copies of the regulations will be available on the website for the National Assembly for Wales.

## **2. We have a legal duty to engage with people with protected characteristics under the Equality Act 2010 (please refer to Annex A of the EIA guidance) identified as being relevant to the policy. What steps have you taken to engage with stakeholders, both internally and externally?**

A 12 week consultation on the Parts 2 – 10 and Parts 12 to 23 of the regulations ran between 2 May and 25 July 2017. Further details on the consultation process are set out in the Regulatory Impact Assessment Annex A.

The consultation summary report and a list of respondents to the consultation can be found at:

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

### Workforce elements of the regulations

An eight week consultation on Part 11 of the regulations ran between 12 June and 7 August 2017. Further details on the consultation process are set out in the Regulatory Impact Assessment Annex B.

The consultation summary report and a list of respondents to the consultation can be found at:

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

**3. Your decisions must be based on robust evidence. What evidence base have you used? Please list the source of this evidence e.g. National Survey for Wales. Do you consider the evidence to be strong, satisfactory or weak and are there any gaps in evidence?**

These Regulations and statutory guidance have been developed based on a number of different sources:

The existing legislation in Wales and equivalent legislation in other UK countries:

The current overarching legislation is the Care Standards Act 2000. There are currently nine sets of setting-specific regulations and eleven sets of statutory National Minimum Standards in place which set out broadly the same requirements albeit with modifications in relation to specific establishments or agencies. The Act replaces this legislation and sets out a more streamlined model of regulation with a service-based approach.

The equivalent regulations in England are:

- The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014;
- The Children's Homes (England) Regulations 2015

The equivalent regulations in Scotland are the Social Work Improvement Scotland (Requirements for Care Services) Regulation 2011. The Scottish Government is currently developing new national health and social care standards which are based on human rights. It is intended that they will apply in addition to the existing requirements in regulations.

Extensive engagement with key stakeholders in the sector:

A stakeholder technical group was established to consider proposals for service regulations in phase 2. It included representatives from across the sector including provider representative bodies, voluntary organisations, the office of the Older People's Commissioner, the office of the Children's Commissioner, local authority commissioners of services, the Health and Safety Executive, the Royal College of Nursing and the Royal Pharmaceutical Society

Other background documents:

Information was drawn from a number of key documents such as:

- the Older People's Commissioner Report, A place to call home,

- the Flynn review – in search of accountability
- the Francis review
- The Competition and Market’s Authority paper, care homes market study
- The Public Policy Institute for Wales paper, the care home market in Wales – mapping the sector.

***It is important to note any opportunities you have identified that could advance or promote equality.***

**Impact**

**Please complete the next section to show how this policy / decision / practice could have an impact (positive or negative) on the protected groups under the Equality Act 2010 (refer to the EIA guidance document for more information).**

**Lack of evidence is not a reason for *not* progressing to carrying out an EIA. Please highlight any gaps in evidence that you have identified and explain how/if you intend to fill these gaps.**

**4.1 Do you think this policy / decision / practice will have a positive or negative impact on people because of their age?**

<b>Age</b>	<b>Positive</b>	<b>Negative</b>	<b>None / Negligible</b>	<b>Reasons for your decision (including evidence) / How might it impact?</b>
Younger people  <i>(Children and young people, up to 18)</i>	X			These regulations and the statutory guidance serve to safeguard people receiving care and support, and promote their well-being. They also improve the quality of regulated care and support services. Overall, the regulations will benefit all citizens using care services including those with protected characteristics, regardless of their age.
People 18-50	X			

Older people (50+)	X			
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#### 4.2 Because they are disabled?

Impairment	Positive	Negative	None / Negligible	Reason for your decision (including evidence) / How might it impact?
Visual impairment	X			<p>These regulations and the statutory guidance place requirements on providers of regulated care and support services to ensure care and support is delivered in a way which meets the specific needs of the individual.</p> <p>Individuals should expect to have their individual circumstances considered and receive care and support that promotes independence and supports them to achieve what matters to them.</p>
Hearing impairment	X			
Physically disabled	X			
Learning disability	X			
Mental health problem	X			
Other impairments issues	X			

#### 4.3 Because of their gender (man or woman)?

Gender	Positive	Negative	None / Negligible	Reason for your decision (including evidence)/ How might it impact?
Male	X			These regulations and the statutory guidance do not impose any different

Female	X			<p>requirements on individuals based on gender. However, all people who use care services will receive some benefit from the improvements that the regulations bring to care services. Overall, these regulations will benefit all citizens using care services including those with protected characteristics, regardless of gender.</p> <p>The workforce regulations will also ensure that those delivering care and support services have the same benefits regardless of their gender.</p>
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#### 4.4 Because they are transgender?

Transgender	Positive	Negative	None / Negligible	Reason for your decision (including evidence) / How might it impact?
	X			These regulations and the statutory guidance will benefit all citizens using care services including those with protected characteristics, including those who are transgender.

#### 4.5 Because of their marriage or civil partnership?

Marriage and Civil Partnership	Positive	Negative	None / Negligible	Reason for your decision (including evidence)/ How might it impact?

Marriage	X			These regulations and the statutory guidance will benefit all citizens using care services including those with protected characteristics, including those who are married or in a civil partnership.
Civil Partnership	X			

#### 4.6 Because of their pregnancy or maternity?

Pregnancy and Maternity	Positive	Negative	None / Negligible	Reason for your decision (including evidence) / How might it impact?
Pregnancy	X			These regulations and the statutory guidance will benefit all citizens using care services including those with protected characteristics, including those who are pregnant or in their maternity period.
Maternity (the period after birth)	X			

#### 4.7 Because of their race?

Race	Positive	Negative	None / Negligible	Reason for your decision (including evidence) / How might it impact?
Ethnic minority people e.g. Asian, Black,	X			These regulations and the statutory guidance will benefit all citizens using care services including those with protected characteristics, regardless of their race.
National Origin (e.g. Welsh,	X			



English)				
Asylum Seeker and Refugees	<b>X</b>			
Gypsies and Travellers	<b>X</b>			
Migrants	<b>X</b>			
Others	<b>X</b>			

#### 4.8 Because of their religion and belief or non-belief?

Religion and belief or non – belief	Positive	Negative	None / Negligible	Reason for your decision (including evidence)/ How might it impact?
Different religious groups including Muslims, Jews, Christians, Sikhs, Buddhists, Hindus, Others (please specify)	<b>X</b>			<p>These regulations and the statutory guidance will benefit all citizens using care services including those with protected characteristics, regardless of their religion, belief or non-belief.</p> <p>The service regulations and guidance in particular highlight that in delivering a service, the individual's choice is paramount. This principle is reflected across the statutory guidance, for example, in the guidance for the personal plan which sets out how plans for care ensure religious beliefs will be supported;</p>
Belief e.g. Humanists	<b>X</b>			
Non-belief	<b>X</b>			

#### 4.9 Because of their sexual orientation?

Sexual Orientation	Positive	Negative	None / Negligible	Reason for your decision (including evidence)/ How might it impact?
Gay men	X			These regulations and the statutory guidance will benefit all citizens using care services including those with protected characteristics, regardless of their sexual orientation.
Lesbians	X			
Bi-sexual	X			

**4.10 Do you think that this policy will have a positive or negative impact on people’s human rights? Please refer to point 1.4 of the EIA Annex A - Guidance for further information about Human Rights.**

Human Rights	Positive	Negative	None / Negligible	Reason for your decision (including evidence) / How might it impact?
Human Rights including Human Rights Act and UN Conventions	X			These regulations and the statutory guidance will benefit all citizens using care services including in respect of their human rights.

***If you have identified any impacts (other than negligible ones), positive or negative, on any group with protected characteristics, please complete Part 2.***

***Only if there are no or negligible positive or negative impacts should you go straight to part 2 and sign off the EIA.***



## **Equality Impact Assessment – Part 2**

### **1. Building on the evidence you gathered and considered in Part 1, please consider the following:**

#### **1.1 How could, or does, the policy help advance / promote equality of opportunity?**

For example, positive measures designed to address disadvantage and reach different communities or protected groups?

While there are no specific measures to address disadvantage and reach different communities or protected groups, having a single set of standards for the regulated services set out in the regulations will promote equality and consistency, benefitting all users of regulated services.

#### **1.2 How could / does the policy / decision help to eliminate unlawful discrimination, harassment or victimisation?**

Regulations 26 and 27 require service providers to protect individuals from abuse, neglect and improper treatment and put relevant policies and procedures in place to do this. Regulation 39 requires providers to put in place disciplinary procedures to enable the provider to take action if the conduct of a member of staff threatens the wellbeing of individuals. Regulation 65 ensures providers put a whistleblowing policy in place to raise concerns about the operation of the service or the conduct of staff.

These regulations will help to reduce the likelihood of harassment, discrimination or victimisation.

#### **1.3 How could/does the policy impact on advancing / promoting good relations and wider community cohesion?**

N/A

### **2. Strengthening the policy**

#### **2.1 If the policy is likely to have a negative effect ('adverse impact') on any of the protected groups or good relations, what are the reasons for this?**

**What practical changes/actions could help reduce or remove any negative impacts identified in Part 1?**

N/A

**2.2 If no action is to be taken to remove or mitigate negative / adverse impact, please justify why.**

**(Please remember that if you have identified unlawful discrimination (immediate or potential) as a result of the policy, the policy must be changed or revised.)**

N/A

### **3. Monitoring, evaluating and reviewing**

**How will you monitor the impact and effectiveness of the policy?**

List details of any follow-up work that will be undertaken in relation to the policy (e.g. consultations, specific monitoring etc).

The post implementation arrangements for regulations will be handled as part of a wider post implementation review of the overarching 2016 Act.

The 2016 Act makes provisions for a number of key reporting mechanisms which will offer a set of clear evidence to inform the post implementation review, and establish how successful the Act has been in achieving its aims of:

- securing the well-being of citizens; and
- improving the quality of social care.

In addition, a performance measurement framework has been developed that local authorities will be required to report against under the 2014 Act. It is anticipated that the information gathered from this additional reporting mechanisms will also contribute to the overall post implementation review of the 2016 Act and its subordinate legislation.

The results of all impact assessments where the impact is significant will be published on the Welsh Government's website.

#### 4. Declaration

**\*Please delete as appropriate:**

**The policy ~~\*does~~ / does not have a significant impact upon equality issues**

<b>Official completing the EIA</b>
Name:
Chris Pickett
Department:
Social Services
Date:
December 2017
Signature:
<i>Chris Pickett</i>
<b>Head of Division (Sign-off)</b>
Name:
Andrea Giordano
Job title and department:
Deputy Director, Social Services and Integration, HSS Group
Date:
December 2017
Signature:
Andrea Giordano
Review Date: April 2019