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Llywodraeth Cymru
Welsh Government

Welsh Government
Consultation – summary of response

Advocacy Services Regulations

Implementing a new regulatory framework

December 2018

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

Overview

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

WG34724 - Phase 3 implementation of the Regulation and Inspection of Social Care (Wales) Act 2016 – Advocacy services.

The consultation was published on 24 May 2018 and closed on 16 August 2018. 19 responses were received from a range of stakeholder and interested parties.

Action Required

For information only.

Further information

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Additional copies

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

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

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

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Section 1

1.1 Introduction

The Regulation and Inspection of Social Care (Wales) Act 2016¹ ('the 2016 Act') received Royal Assent on 18 January 2016. It sets the new statutory framework for the regulation and inspection of social care services and reforms the regulation of the social care workforce in Wales. Therefore it replaces relevant systems previously put in place under the Care Standards Act 2000².

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

- **Phase 1 (2016/17)** included regulations relating to the new system of workforce regulation required by the Act. These came into force on 3 April 2017. Alongside these, Social Care Wales developed the rules and procedures which govern the process of workforce registration and regulation.
- **Phase 2 (2017/18)** saw new systems for registration of regulated services put in place and operated by Care Inspectorate Wales from April 2018. This phase also included regulations and statutory guidance relating to the requirements and standards expected of service providers and responsible individuals of care homes (including children's homes), secure accommodation for children, residential family centres and domiciliary support services. These came into force on 2 April 2018.

Links to all of the phase 1 and phase 2 regulations and statutory guidance can be accessed via the Social Care Wales Information and Learning Hub³:

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

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

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

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

1.2 The context for change

Advocacy services in Wales are currently unregulated.

The Children and Young People's Committee of the National Assembly for Wales reported in 2008 raising a number of concerns about the quality and quantity of advocacy services for children and young people and their importance following the Waterhouse report, *Lost in Care*⁴, published in 2000. A review conducted by the Committee in 2010 recommended the immediate publication of statutory guidance.

The Children's Commissioner for Wales published a report on independent advocacy services for looked after children, care leavers and children in need in Wales⁵ in 2012. The report raised a number of issues including lack of strategic leadership by Welsh Government and Local Government; lack of awareness, understanding and promotion of advocacy; lack of consistent implementation of advocacy provision and lack of scrutiny of the quality of advocacy provision and commissioning.

As part of the Welsh Government's response to the report⁶, the then Deputy Minister for Social Services committed to issuing a National Standards and Outcomes Framework for Advocacy, to encourage improvement in the quality of service provided by independent advocacy providers.

The then Cabinet Secretary for Communities and Children agreed to a 12 week public consultation on the National Independent Advocacy Standards and Outcomes Framework for Children and Young People in Wales⁷ ('the Framework'). This consultation took place between 31 March and 23 June 2017. All respondents broadly supported the principles behind the Framework, agreeing that the standards were a positive step.

Regulation under the 2016 Act

During scrutiny and passage of the Bill by the National Assembly for Wales, "advocacy services" were added, as an amendment, to the list of "regulated services" within section 2(1) of the Act, with a regulation making power in Schedule 1 to define what is meant by 'Advocacy services' for the purposes of regulation and inspection of those services, under the 2016 Act.

Our reform of the regulatory system for social care providers in Wales, driven primarily through implementation of the 2016 Act, rests on five key principles:

- responsiveness to the reforms introduced by the Social Services and Well-being (Wales) Act 2014⁸ ('the 2014 Act')
- ensuring citizens are at the heart of care and support
- developing a coherent and consistent Welsh approach
- tackling provider failure
- responsiveness to new models of service and any emerging concerns over the quality of care and support services.

⁴http://webarchive.nationalarchives.gov.uk/20130124064403/http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_134777.pdf

⁵ https://www.childcomwales.org.uk/wp-content/uploads/2016/04/Missing-Voices_E.pdf

⁶ <https://gov.wales/about/cabinet/cabinetstatements/previous-administration/2012/advocacy/?lang=en>

⁷ <https://beta.gov.wales/national-standards-and-outcomes-framework-children-and-young-people>

⁸ http://www.legislation.gov.uk/anaw/2014/4/pdfs/anaw_20140004_en.pdf

1.3 This consultation

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

- Define "advocacy services" for the purpose of the 2016 Act, which fall within the regulation and inspection regime it establishes.

At present this will be limited to:

- a) A service carried on to provide advocacy for children who make or intend to make representations which fall within section 174 of the Social Services and Well-being (Wales) Act 2014 (Representations relating to certain children etc) or
- b) A service carried on to provide advocacy for persons who make or intend to make representations which fall within section 176 of the 2014 Act (Representations relating to former looked after children etc)

where the purpose of the assistance is to represent the views of the children or persons or to assist them to represent their views in relation to their needs for care and support.

- place requirements on service providers and responsible individuals of regulated advocacy services under the 2016 Act

It also invited views on:

- draft statutory guidance for service providers and responsible individuals of regulated advocacy services on meeting service standards
- the potential inclusion of providers of other types of advocacy – including those for adults - within the registration and inspection regime, when evidence of its effect on market stability suggests that the market is sufficiently stable to accommodate this.

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

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

1.4 Consultation events

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

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

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

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

1.5 Next steps

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

Section 2

2.1 Summary of responses received and Welsh Government response

Note: Due to rounding some of the percentages they may not add up to 100% overall.

PART 1: General

Question 1: Are the proposed exceptions which have been identified in Part 1 in relation to regulated advocacy services appropriate? We would particularly welcome views on the applicability and practicality of the exceptions from regulation under this part.

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
4	5	3	1	6
21%	26%	16%	5%	32%

Summary of responses

There was broad support for the proposed exceptions, from those who specified an answer.

Many respondents felt that the Regulations and statutory guidance appropriately reflected the nature and requirements of advocacy provision, and suggestions made by the advocacy technical group. Some respondents expressed concern that the meaning of “advocacy” in draft regulation 1(4) – ‘assistance given to help a person represent their views’ does not fully align with the ethos of “advocacy services” (as defined in draft regulation 2) or the definition of Independent Professional Advocacy in the Code of Practice on Advocacy under the Social Services and Well-being (Wales) Act 2014 (‘the 2014 Act’). Some suggested that smaller services are inevitably going to struggle to comply. They felt that there is a risk that small services will not be able to afford to comply with the requirements of the Regulations and that important, local services could be lost as a result. Some commented that greater exception should be made (within draft regulation 2) for organisations and individuals providing advocacy services on a very small scale and in circumstances where a service was being provided for a number of individuals who are members of the same familial group.

Welsh Government response

The Welsh Government would suggest that the definition of “advocacy” within regulation 1 is not intended to limit or qualify the definition of Independent Professional Advocacy in the Code of Practice under the 2014 Act, nor to reflect the full range of advocacy services that may be available to individuals in a range of circumstances, but to reflect, for the purposes of these Regulations, those “advocacy services” that are to be regulated under the 2016 Act.

It is important that regulation and inspection is introduced into the advocacy sector in a proportionate and graduated way and extended to other areas of the sector when market stability is established.

The Welsh Government will broaden the exception in draft regulation 2 (Definition and exceptions) which applies where a service is provided to four or fewer persons in a 12 month period so that it expressly includes organisations as well as persons providing a service. We will also amend the Regulations to ensure that providing advocacy to a single family of siblings would not require the service provider to be regulated as if those individuals were unrelated.

PART 2: General Requirements on Service Providers

Question 2: Are the requirements in this part right for advocacy service providers?

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
1	4	1	1	12
5%	21%	5%	5%	63%

Summary of responses

Some respondents expressed concern over the coverage of the statement of purpose required under draft regulation 4 (Requirements in relation to the provision of the service). There was some confusion as to whether a statement of purpose would be required for each service provider or one for each place from which a service is provided. This could have severe implications for the practice of commissioning services on a regional basis. There was some suggestion that draft regulation 9 (Requirements to provide the service in accordance with policies and procedures) should include a requirement for an equality and diversity policy. Some expressed confusion as to how the proposed measures fit with the National Approach to Statutory Advocacy for Children and Young People and whether it is intended to duplicate, complement or replace it.

Some respondents felt it inappropriate for statutory guidance in respect of draft regulation 10 (Duty of candour) to state that advocacy service providers must work to Social Care Wales guidance on the professional duty of candour, as this would create conflicts of interest with the independence inherent in the role of the advocate. It was felt that the requirement in draft regulation 10(b) for the service provider to act in an open and transparent way with any representatives of those individuals would be problematic. The advocate may be under instruction not to reveal information to a representative. It is fundamental to the nature of adult advocacy that they should be free to maintain confidences, without conflict of interest arising. The duty of confidentiality in draft regulation 19 (Confidentiality) should therefore take precedence and it was felt that draft regulation 10(b) should not be extended, in future, to cover adult advocacy.

It was further suggested that the statutory guidance on the statement of purpose does not adequately convey what underpins the “care, competence and skill” required in draft regulation 3 (Requirements in relation to the provision of the service). It was suggested that the statement of purpose should also include the vision and values of the provider, the levels of competence and skill of the advocates employed, how the service embeds Human Rights principles and other conventions, and how service users can be involved in the governance and the development of the service.

Some respondents felt that statutory guidance on draft regulation 5 (Requirements in relation to monitoring and improvement) should require the service to state how it includes the views and opinions of people who may use the service to ensure a truly co-productive approach to service monitoring and improvement.

It was suggested that there is currently no professional regulator for advocates and no professional Code of Practice – therefore provisions within the statutory guidance on draft regulations 10 and 24 (Fitness of staff) should not be applied to advocacy services.

Welsh Government response

The Welsh Government considers that the definition of a “service”, within draft regulation 1, that it is ‘provided in relation to a particular area’ ensures that a service provider’s statement of purpose covers the geographical area for which they provide their service. In respect of an equality and diversity policy, statutory guidance makes clear that policies and procedures should be aligned to current legislation and national guidance. In addition, Regulation 18 (Respect and sensitivity) covers the requirement to treat individuals with respect and sensitivity, and guidance under that Regulation states that service providers should ensure individuals do not suffer discrimination within their service. Work on developing these regulations and statutory guidance has been informed by the development of the National Approach to Advocacy for Children and Young People. We recognise that contractual arrangements exist and standards have been established as part of the National Approach but regulation entails that these be formerly prescribed so they can be inspected against and measured.

We propose to clarify that the duty of candour cannot conflict with the duties in regulations 18 and 19 to respect the privacy of the individual using the service and intend to remove the requirement to act in an open and transparent way with service commissioners.

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

Question 3: Are the requirements in this part right for advocacy service providers? We would welcome views on any differences which may apply between advocacy and other regulated services with regard to any care and support plan which may be in place, and the role of advocacy services in identifying and meeting needs

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
1	6	2	1	9
5%	32%	11%	5%	47%

Summary of responses

Some concern was expressed that the decision on the suitability of the advocacy service should not carry with it the requirement to have regard to the individual's desired outcomes. Advocacy may be required to assist the individual to identify them and therefore it is not appropriate to have regard to desired outcomes when deciding on suitability of the service.

It was suggested that statutory guidance should note that the provider may wish to involve any representative in determining whether the service is suitable for an individual, but not before discussing this with the individual. Some considered that Part 3 was too closely aligned to the approach for traditional care and support services and did not sufficiently recognise the way in which advocacy is provided nor the way in which providers are contracted to act. Some respondents commented that requiring an advocate to undertake consultation with relevant persons and professionals before determining that the service is suitable to meet the individual's need may not be appropriate in the advocacy context and, where the individual has capacity, could only be undertaken with the individual's consent.

It was suggested that there may be a need for further guidance on the action to be taken by the provider where they deem it necessary to proceed with the service despite the objections of the child's representative? Should they, for example, keep a written record documenting the basis of their decision?

Welsh Government response

The Welsh Government agrees that as advocacy is often aimed at assisting the individual to establish their desired outcomes the requirement, before agreeing to provide regulated advocacy services, to have regard to an individual's desired outcomes should be removed from the draft Regulations.

The Welsh Government also considers it appropriate in respect of regulated advocacy services to remove from the statutory guidance any references to the need to consult with relevant persons and professionals before agreeing to provide advocacy. We consider that the requirement to have a policy and procedure in place governing the commencement of

the service will ensure that proper determination takes place as to whether the service is suitable, and any objections that a representative may have would be recorded here.

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

Question 4: Are the requirements in this part right for advocacy service providers?

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
1	6	2	1	9
5%	32%	11%	5%	47%

Summary of responses

Some respondents observed that it is not necessary (and may on occasions not be appropriate) for an advocacy provider to have a copy of a child or young person's care and support plan in order to provide advocacy. Advocacy is about ensuring that a child or young person's voice is heard and taken into account in developing or implementing a care and support plan. They recognise that the statutory guidance helpfully clarifies and expands on the draft Regulations, although it would be helpful to emphasise that it is not necessary for an advocacy provider to have a copy of a child or young person's care and support plan in order to provide advocacy.

One respondent suggested that often the outcome of advocacy is to identify the content of such a plan or to challenge it, should that be what the individual wishes. To require it on commencement of an advocacy intervention would create delays and is not necessary to an advocacy intervention which responds to the current issue raised by a child or young person.

It was suggested that the point at which the service is officially commenced is not made sufficiently clear, in particular, with regard to whether an active offer meeting, after which the individual may decline the service, constitutes the commencement of the service.

Several respondents felt that the term 'personal plan' as used in the draft Regulations may not be appropriate in an advocacy service context and may lead to confusion with other plans of a different nature.

Welsh Government response

The Welsh Government agrees that it would aid clarity for the term 'advocacy plan' to be used in the Regulations to signify the plan which is prepared by the service provider in relation to an individual.

We will remove from the statutory guidance references to the need for a service provider to take into account any care and support plan prepared for the individual when drawing up an advocacy plan (under draft regulation 12).

We consider that the requirement for the service provider to involve the individual in making the determination as regards the suitability of the service (under draft regulation 11) reflects the Active Offer of advocacy.

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

Question 5: Are the requirements in this part right for advocacy service providers?				
Agree	Tend to agree	Tend to disagree	Disagree	Not specified
3	5	2	0	9
16%	26%	11%	0%	47%

Summary of responses

There was broad support for the proposals.

Some respondents expressed concern that there were no explicit requirements in relation to the Welsh language within Part 5 of the draft Regulations.

It was suggested that draft regulation 15 (Information about the service) should reflect the contents of the Active Offer, as this sets out the information that is required to be shared with the young person at the Active Offer meeting. Service providers will comply with contractual documents as they are a commissioned service. For children’s services this will be the component parts of the National Approach. It would be sensible for requirements of the National Approach to be identical to those within the Regulations.

It was observed that the requirement for a written guide to the service makes no allowance for people of deafness. It was further suggested that, in respect of the statutory guidance, the term “placing authority” was not suitable for an advocacy service.

Welsh Government response

The Welsh Government believes that the requirement for a guide to the service to be made available in an appropriate language, style, presentation and format will ensure the needs and preferences of individuals will be accommodated.

Once the Regulations and statutory guidance come into force the National Standards and Outcomes Framework will continue to provide non-statutory good practice guidance for commissioners and providers of advocacy services. In terms of regulation, we are clear that the overall objective is to achieve some proportionality along with consistency with other regulated services under the 2016 Act. While the requirements are necessarily high level, the same high standards should be applied across all regulated services. The Welsh Government agrees that “commissioning authority” is more appropriate in respect of advocacy services than “placing authority” and will amend the statutory guidance accordingly.

PART 6: Requirements on service providers as to the standard of advocacy services to be provided

Question 6: Are the requirements in this part right for advocacy service providers? We would welcome views on the need for a confidentiality policy and any special considerations which may apply in the case of an advocacy service which are distinct from other regulated services

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
2	7	1	0	9
11%	37%	5%	0%	47%

Summary of responses

There was broad support for the proposals.

Many respondents were content that the proposals reflect the conditions under which advocacy service providers operate. Some suggested that the provisions largely reflect the National Standards and Outcomes Framework for Children and Young People or the All Wales Child Protection Procedures. Some suggested that the test of reasonableness was not sufficiently robust to address the question of meeting language and communication needs.

Welsh Government response

The statutory guidance expands upon the requirement in draft regulation 17 (Language and communication) and provides examples of the arrangements which the service provider should have in place and how their identification of an individual's communication needs should be part of their determination as to whether the service is suitable. This includes communicating with the individual in their language of need and choice.

PART 7: Requirements on service providers – Safeguarding

Question 7: Are the requirements in this part right for advocacy service providers?

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
2	5	3	0	9
11%	26%	16%	0	47%

Summary of responses

One respondent suggested that inspectors will need to receive training on advocacy to fully understand the role and responsibilities of advocacy intervention and provision. They recommended that a Level 4 City and Guilds qualification in advocacy would be appropriate. Some suggested that requiring services to be provided in a way which ensures individuals are safe does not acknowledge that adults with capacity are entitled to make their own decisions, and decide their own levels of risk. It is not the advocate's role to impose their own judgement about this or to act in the adult's best interests. While the situation with regard to children may be different, it would be appropriate, in respect of care leavers, to recognise the transition to adulthood and the developing right to make one's own decisions.

Some observed that, as drafted, the statutory guidance in respect of draft regulation 21 (Safeguarding policies and procedures) states that independent advocacy services should inform people of their right to Independent Professional Advocacy. They suggested that this has been inappropriately passported over from the phase 2 Regulations in respect of care homes and domiciliary care – in relation to advocacy services the requirement does not make sense

Welsh Government response

The Welsh Government recognises the need for inspectors to be appropriately trained to undertake the inspection and regulation of advocacy services. While such matters are outside the scope of consultation, CIW are aware of the importance of ensuring inspectors have a proficient knowledge and understanding of the advocacy sector and will work with service providers to develop its inspection framework and inspection methodology for regulated advocacy services during 2019/20.

Draft regulation 20 (Safeguarding – overarching requirement) is not intended to address one-to-one relationship between an advocate and an individual and the Welsh Government believes that the statutory guidance is sufficiently focussed on arrangements that the service provider must have in place rather than on the behaviour of individual advocates.

We will remove from the statutory guidance any suggestion that individuals are informed of their right to Independent Professional Advocacy as a service provider would only be engaged after that right had been exercised.

PART 8: Requirements on service providers as to staffing

Question 8: Are the requirements in this part right for advocacy service providers? Do you consider the requirements for managers of advocacy services to register with Social Care Wales to be proportionate and helpful in ensuring that the service is delivered effectively? Are there any additional matters which require consideration?

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
2	4	3	1	9
11%	21%	16%	5%	47%

Summary of responses

Some respondents queried references to volunteers in relation to regulated advocacy services, arguing that advocacy services provided on a voluntary basis should not be regulated.

Some respondents queried whether draft regulations 24(4)(5) and (6) (Fitness of staff) were safe or equitable in terms that if an individual is registered for annual updates with Disclosure and Barring Service the service provider must check the person's certificate at least annually, whereas if they are not, a new certificate is required every 3 years.

One respondent (Torfaen Child and Family Services) suggested that the discipline policy referred to in draft regulation 28 (Disciplinary procedures) would be better described as a Code of Conduct with clear application to volunteers.

One respondent (Carmarthenshire County Council) suggested that guidance in relation to draft regulation 28 would benefit from the addition of examples of behaviour that would be considered acceptable or unacceptable, and arrangements for a member of staff to be suspended.

Welsh Government response

The Welsh Government seeks to inspect and regulate the provision of advocacy services but recognises that volunteers may be deployed by service providers in activities other than the direct provision of advocacy. We are of the view that Disclosure and Barring Service checks, while an important element of the safeguarding landscape, do not provide a guarantee of safety. Good safeguarding working practices are of equal importance. We are conscious that further work is required around the recognition of qualifications and the Welsh Government will be working with Social Care Wales and other external partners to give effect to regulatory requirements around qualification and registration of managers.

The Welsh Government will amend the statutory guidance in relation to disciplinary procedures to clarify acceptable and unacceptable behaviour, what action will be taken if there are concerns about the behaviour of staff and the arrangements for a member of staff to be suspended (or transferred to other duties) pending consideration or investigation of an allegation of abuse or serious concern relating to the safety or well-being of individuals.

PART 9: Requirements on service providers as to premises

Question 9: Are the requirements in this part right for advocacy service providers?

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
2	6	2	0	9
11%	32%	11%	0%	47%

Summary of responses

Some respondents made comments around the meaning of “premises” in this Part, arguing that draft regulation 29 states that the premises, facilities and equipment should be suitable for the service but is not sufficiently clear about whether the service is the day to day running of the advocacy service or provision of advocacy services, which will occur in the community. Others indicated that the statutory guidance on draft regulation 30 could be construed as being too prescriptive and that assumptions must be made that managers will supervise staff in a private setting either in or off the advocacy services’ premises.

Welsh Government response

The Welsh Government believes that the definition of ‘service’ in draft regulation 1(4) makes clear that the intention of the Regulations is when reference is made to a service, is that it relates to the service delivered in a specified area. The basis upon which a service is registered is a matter for Care Inspectorate Wales but the intention to register services on an all wales basis.

We have amended statutory guidance in relation to Part 9 of the draft Regulations to make clear that the premises referred to here are not necessarily the place at which advocacy is delivered and may be, in the context of an advocacy service provider, used purely for administrative purposes. We have taken into account consultation responses on the point, considered the nature of the sector and therefore removed the requirement that premises used for the operation of the service have adequate facilities for the supervision of staff. Many have told us that the privacy of the supervision of staff is enhanced by holding such supervision off-premises, and we consider that a requirement for any premises used for the purpose of providing advocacy services to contain facilities for the supervision of staff in private would be overly prescriptive, onerous and inappropriate given the numbers of staff involved and the nature of the premises used for the operation of the service in the advocacy sector.

PART 10: Other requirements on service providers

Question 10: Are the requirements in this part right for advocacy service providers?

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
3	5	1	0	10
16%	26%	5%	0%	53%

Summary of responses

There was broad support for the proposals.

Several respondents commented that draft regulation 31 (Records) made no mention of the General Data Protection Regulation, others that the period of 15 years set out for retaining records relating to children was too long.

Some respondents felt that the wording of the statutory guidance in relation to Part 10, in respect of making records available to representatives, did not accurately reflect the confidentiality inherent in the relationship between an advocate and a service user. One suggested that notification to the service regulator of an event specified in Schedule 3 should be accompanied by information on the proposed steps being taken to address the issue.

Welsh Government response

The statutory guidance indicates that access to records and information about individuals held by service providers should be in accordance with current legal requirements. The Welsh Government considers a period of 15 years for the retention of records relating to children to be appropriate, given that the child may wish to access them as an adult.

We will amend statutory guidance in relation to Part 10 to indicate that any representative should be provided with access to any records and information about them held by service providers in accordance with current legal requirements and only with the consent of the individual. In respect of the information to be supplied along with the notification of any event in Schedule 3, the Welsh Government believes that a provision requiring information on possible remedial action may lead to a delay in notification which would be undesirable.

PARTS 11 - 15: Requirements on Responsible Individuals

Question 11: Are the requirements in this part right for advocacy services We have specified the circumstances in which the requirement for a responsible individual to appoint a manager does not apply. In these circumstances the Responsible Individual would need to be registered as a manager with Social Care Wales. We would welcome views on this and the frequency of visits and meetings the responsible individual must arrange with individuals and members of staff.

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
2	4	3	0	10
11%	21%	16%	0%	53%

Summary of responses

Some respondents felt that as draft regulation 39 restricts managers from having responsibility for more than one service, it might be helpful to clarify whether 'one service' refers to a regional contract, or national contract.

Some respondents felt, regarding the requirement on visits by the Responsible Individual to the premises from which the service is provided, that this would benefit from greater clarity around the definition of a service for the purposes of the Regulations.

Some respondents commented that the qualification requirements for this group of potential registrants have yet to be determined. Most other social care managers require a Level 5 Diploma in the Leadership and Management in Health and Social Care qualification (or equivalent), there is currently little evidence of the number of advocacy managers who hold a level 5 Diploma.

One respondent expressed concern that draft regulation 43 (Visits) was too onerous in terms of the frequency of visits required, although it was recognised that the extent of any difficulty would be dependent on the practical application of 'service', for the purposes of registration. However, another respondent considered that visits should be required more frequently than every three months.

Welsh Government response

The basis upon which a service is registered is a matter for Care Inspectorate Wales but the intention is to register services on an all wales basis. The Welsh Government confirms that regulation 39 allows a person to be appointed as manager for more than one service (but no more than two), if this is agreed with the service regulator.

The Welsh Government will prescribe transitional provision in respect of the requirement (within regulation 37) for a manager to be registered with Social Care Wales. Social Care Wales are working to scope the options for, and work required to, develop a professional regulatory approach for advocacy managers. This could include qualification availability, development or adaptation of code of professional practice and related guidance. That work is ongoing.

PART 16: Offences

Question 12: Is the approach taken in relation to offences sufficient and proportionate?

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
1	4	3	0	11
5%	21%	16%	0%	58%

Summary of responses

Some respondents felt clarification is required as to whether failing to comply is an offence, or whether it only becomes an offence when it results in avoidable harm, or risk of harm, to an individual. It was felt that language of offences and penalties may be off putting and would deter potential providers from entering the market. Some elements were felt to be severe. Others felt that while it is important that there are consequences for poor service delivery, the list of possible offences was thought disproportionate for a newly regulated service such as advocacy.

Welsh Government response

The Welsh Government agrees it is important that there are consequences for poor service delivery. For regulation to be meaningful and to contribute to the maintenance of quality standards there must be the potential for consequences for service providers and responsible individuals if they fail to comply with regulation. Provisions regarding avoidable harm, risk of harm, and theft, misuse or appropriation of money or property are included so that those Regulations which impinge most directly upon the service provided to individuals can be treated with due rigour.

We recognise that this is a newly regulated sector and market stability is a factor. Care Inspectorate Wales' Securing Improvement and Enforcement policy⁹, sets out the overarching approach to enforcement as the service regulator, including the principles and processes followed when using powers under the relevant legislation. Care Inspectorate Wales inspect against statutory requirements and take action against service providers where these requirements are not being met. The policy states that:

'Where appropriate to do so, we operate a graduated approach to secure improvement and enforcement in line with our enforcement principles. Where we have concerns or have identified non-compliance (i.e. not meeting the requirements of the law) we take action to secure the required improvement. However where we identify serious, multiple or persistent

⁹ <https://careinspectorate.wales/sites/default/files/2018-06/180601-securing-improvement-enforcement-policy-en.pdf>

non-compliance, we may use our powers to restrict the provision a provider can legally deliver or ultimately, prevent the provider from operating altogether.’

This graduated approach will ensure that meeting statutory requirements remains the focus of the regulatory regime. However, where a service provider is not meeting these, action will be taken to secure improvement.

PART 16: Penalty Notices

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

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
1	4	2	1	11
5%	21%	11%	5%	58%

Summary of responses

Several respondents felt the severity of the Penalty Notices would deter entry to the market and make more difficult the task of finding people to be Responsible Individuals.

Welsh Government response

The Welsh Government recognises that this is a newly regulated sector and has adopted an approach which, while ensuring that high standards are achieved and maintained for all regulated services, seeks to introduce regulation in a way which will protect and support the market for the provision of regulated advocacy services.

The purpose of the penalty notice is to offer the recipient the opportunity to discharge liability for conviction for the offence by paying a penalty. The penalty amounts reflect the severity of the offences and are intended to act as a deterrent to breaching the regulations. We recognise the importance of implementing a penalty notices system which is consistent and fair, and the intention is for penalty notices to be issued proportionately.

PART 17: Service providers who are liquidated etc or who have died

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

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
2	4	1	0	12
11%	21%	5%	0%	63%

Summary of responses

There were few written responses to this question.

One response suggested that if the deceased held the role of service provider and manager and was, as such, required to register with Social Care Wales, why would the personal representative not be required to register even though they would be acting in the same capacity and may have been granted permission to run the service for up to a year. They asked, 'what would happen if there were questions about their fitness to practise during this time?'

Welsh Government response

The Welsh Government notes that the personal representative may only act for 28 days without the agreement of the service regulator. While the personal representative is not required to register with Social Care Wales we would expect the service regulator to view any extension beyond 28 days with an eye to fitness to practice. All the other requirements set by these Regulations would remain in place, ensuring the quality of the service is maintained during an exceptional period.

PART 18: Regulations under section 21(5) – Designation of Responsible Individual by Welsh Ministers

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

Agree	Tend to agree	Tend to disagree	Disagree	Not specified
2	4	1	0	12
11%	21%	5%	0%	63%

Summary of responses

Very few substantive comments were received in relation to this Part of the Regulations. Some raised issues such as insurance arrangements for the responsible individuals.

Welsh Government response

We do not propose to make any amendments to this regulation.

Insurance arrangements for responsible individuals are operational matters for service providers.

2.2 Additional questions

Question 16: Do the costs/benefits/risks referenced in this consultation document give a reasonable account of the level of impact of the draft Regulations? Are there any additional costs/benefits/risks that you feel have not been considered or identified?’

Summary of responses

Some respondents commented that additional risks and demands associated with the inspection and regulation regime may lead to a risk that service providers will cease to operate and that potential providers will be put off from providing a service. Others suggested that costs for advocacy service managers, associated with undertaking the qualifications required by Social Care Wales for registration, may be prohibitive. One respondent suggested that advocacy services do not have sufficient funding, within their current Service Level Agreements or commissioning arrangements, to fulfil all of the requirements and duties set out in the Regulations. Concern was expressed as to the effect that the demands of complying with the duties will have on small voluntary led organisations, which are often community-based and provide vital services for people in their local authority.

One respondent welcomed the regulation of advocacy services and had called for it during the passage of the Bill. They stated their belief that regulation of advocacy services protects and recognises the professional advocacy role and will help uphold independent provision of support for vulnerable children across Wales. They expressed the view that in the children’s statutory advocacy sector, many professionals would also welcome the status and recognition of professional service that regulation brings with it.

Welsh Government response

The regulation of advocacy services has arisen from a recognition of the importance of the role that advocacy can play in helping individuals express their wishes and desires. It is intended to aid the provision of effective support for vulnerable children across Wales. Regulation and inspection of advocacy services has been mandated by the National Assembly for Wales, through the Act. Work is being undertaken with Social Care Wales to identify suitable qualifications for advocacy service managers and the costs of existing qualifications will be considered as part of that process.

Regulation will be extended to other advocacy services when market conditions indicate. New regulations extending to adult services would require a new impact assessment and consultation prior to their introduction.

Question 17: Do you think that the proposals in this consultation will have any positive impacts on groups with protected characteristics? If so, which and why/why not?

Do you think that the proposals in this consultation will have any negative impacts on groups with protected characteristics?

Summary of responses

Very few responses to this question were received. One of the issues raised was to note the work already being undertaken by advocacy providers on awareness and understanding of advocacy provision for all groups. It was also agreed that it should prove beneficial to regulate to establish standards against which advocacy providers will be regulated and to which they will have a duty to comply.

One respondent suggested that the requirement in draft 18, for the service provider to ensure that individuals should be treated with respect and sensitivity, is useful and should be formally monitored.

Welsh Government response

Regulations, codes of practice and statutory guidance are all underpinned by the principles set out in the 2014 Act which contains an overarching duty, within section 6(2)(c), that any person exercising a function under the Act must have regard to the characteristics of culture and belief of the individual.

The principles of the Well-being of Future Generations (Wales) Act 2015 ('the 2015 Act') are about improving the social, economic, environmental and cultural well-being of Wales. To make sure we are working towards the same vision, the 2015 Act puts in place seven well-being goals, one of them being "A more equal Wales" ensuring a society that enables people to fulfil their potential no matter what their background or circumstances. This has been considered throughout the implementation of the 2016 Act.

Compliance with the Regulations will be subject to inspection and, where necessary, proportionate enforcement action. The Welsh Government does not consider additional formal mechanisms to monitor compliance with any of the regulations would be appropriate in that context.

Question 18: We would like to know your views on the effects that these proposals would have on the Welsh language, specifically on

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

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

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

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

Summary of responses

Only two narrative responses were received in respect of potential effects on the Welsh language. It was felt that Welsh language provision should be specifically addressed in the Regulations and that this element should be strengthened. It was also queried why the draft Regulations do not expressly require all information to be provided in both Welsh and English.

Welsh Government response

These Regulations have been subject to a Welsh Language Assessment as part of the Integrated Impact Assessment process.

The Regulations are intended to support ‘More than just words....’ the Strategic Framework for Welsh Language Services in Health, Social Services and Social Care 2016-2019. The strategy is built on the values that all individuals should be treated with dignity and respect and should receive accurate assessments and appropriate care. The strategy highlights the importance of receiving care in one’s first language, stating “the use of the Welsh language is not just a matter of choice but also a matter of need. It is especially important for many vulnerable people and their families who need to access services in their first language, such as older people suffering from dementia or stroke who may lose their second language or very young children who may only speak Welsh”.

We have incorporated these principles into the Regulations, mainly under the requirement for providers to take reasonable steps to meet the language needs of individuals (draft regulation 17). In relation to the Welsh language, this means that service providers deliver or work towards actively offering a service in the Welsh language to individuals whose first language is Welsh. In relation to information for individuals, there is a requirement for the guide to the service to be in an appropriate language, style, presentation and format, having

regard to the statement of purpose for the service (draft regulation 15(2)(b)). The requirements in the Regulations also support one of the core principles in the 2014 Act, to enable people to have a stronger voice in, and greater control over, the provision of care and support services to them.

Question 19: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to tell us about them

Summary of responses

Several responses were received to this question. Some suggested that the slight differences between the contractual and monitoring arrangements for children and adult advocacy services will need to be reflected in any future expansion of the regulatory regime, as will the provisions of the National Approach to Statutory Advocacy. It was suggested that separate regulations or sections within the guidance are required for children's and adults' advocacy services, to reflect any divergences or differences.

It was also suggested that as advocacy is not currently a regulated service it may be preferable to introduce on a phased basis.

Another respondent suggested that it will be essential for inspectors to have advocacy experience in order to effectively inspect services.

It was further observed that the need to amend and update policies and procedures and to make notifications to regulators will be onerous for service providers. Any duplication with the provisions of the National Approach should also be avoided.

Welsh Government response

The Welsh Government notes that regulation and inspection of advocacy services has been mandated by the National Assembly for Wales and that regulation must be meaningful. We are intending to implement this in a proportionate and effective manner, starting with children's statutory advocacy. Extension of advocacy regulation to other areas of the sector will be undertaken only when market conditions indicate and will be subject to further consultation. The provisions of the National Approach are crucial in how we envisage the delivery of advocacy services for the people of Wales. It is the clear outcome of this consultation, previous consultations and involvement with the sector, that regulation of the sector would be best introduced in a proportionate manner.

The Welsh Government and regulators are conscious that advocacy is a newly regulated sector. However, it is important that regulations and guidance allow for regulation and inspection to maintain and improve standards and delivery as mandated by the National Assembly for Wales.

Annex A – List of respondents

No	Confidential Y / N	Organisation/On behalf of
1.	✓	National Deaf Children's Society Cymru
2.	✓	Carers Wales
3.	✓	Individual
4.	✓	Children's Commissioner for Wales
5.	✓	Social Care Wales
6.	✓	Flintshire County Council
7.	✓	Tros Gynnal Plant Cymru
8.	✓	ProMo-Cymru
9.	✓	Cardiff Third Sector Council
10.	✓	National Youth Advocacy Service
11.	✓	Older People's Commissioner for Wales
12.	✓	Age Cymru
13.	✓	None given
14.	✓	Torfaen County Borough Council
15.	✓	
16.	✓	Voices from Care Cymru
17.	✓	Carmarthenshire County Council
18.	✓	National Development Team for Inclusion
19.	✓	ADSS Cymru and WLGA