

Draft Regulations laid before the National Assembly for Wales under section 187(2)(d) and (f) of the Regulation and Inspection of Social Care (Wales) Act 2016, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2020 No. (W.)

SOCIAL CARE, WALES

**The Regulation and Inspection of
Social Care (Wales) Act 2016 and
Regulated Services (Miscellaneous
Amendments) Regulations 2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under the Regulation and Inspection of Social Care (Wales) Act 2016 (“the Act”).

Part 2 contains an amendment to section 9 of the Act. Section 9 of the Act concerns any decision the Welsh Ministers make about whether a service provider, a person applying to be a service provider, a responsible individual or a person to be designated as a responsible individual (hereafter collectively referred to as “a relevant person”) is a fit and proper person to be a service provider or, as the case may be, a responsible individual.

Regulation 4 amends section 9 to extend the application of subsection (6) to include any other person associated or formerly associated with a relevant person.

The effect of this amendment is to allow the Welsh Ministers to take into account evidence that any person associated or formerly associated with a relevant person has been responsible for, contributed to or facilitated misconduct or mismanagement in the provision of a regulated service in Wales or of the equivalent outside Wales.

Part 3 contains amendments to the Regulated Services (Registration) (Wales) Regulations 2017 (“the Registration Regulations”). The Registration

Regulations are made under sections 6 and 11 of the Act.

Section 6(1) of the Act sets out the information that must be contained in an application for registration as a service provider of a regulated service and enables the Welsh Ministers to prescribe additional information that must be contained in an application for registration.

Regulation 3 of the Registration Regulations specifies the additional information that is to be provided by an applicant for registration. This includes the information listed in Schedule 1 to the Registration Regulations.

Regulation 6 inserts regulation 3A into the Registration Regulations.

Regulation 3A sets out the additional information that must be provided by, in the case of a body corporate, each director, trustee, or member of the managing committee; in the case of a partnership, each partner; and in the case of an unincorporated body, each person concerned in the management and control of the body.

Regulation 8 contains a transitional provision relevant to the inserted regulation 3A.

Part 4 amends each of the following sets of Regulations (hereafter collectively referred to as “the Regulated Services Regulations”) which are made under sections 27 and 28 of the Act:

- (a) the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017,
- (b) the Adult Placement Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019,
- (c) the Regulated Advocacy Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019,
- (d) the Regulated Fostering Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019, and
- (e) the Regulated Adoption Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019.

The Regulated Services Regulations set out the regulatory requirements which apply to providers of services regulated under the Act. These are care home services, secure accommodation services, residential family centre services, domiciliary support services, adult placement services, advocacy services, fostering services and adoption services.

In each set of the Regulated Services Regulations, Schedule 3 lists the events of which the service provider must notify the service regulator, the Welsh Ministers.

Regulation 10 substitutes for paragraph 3 of Schedule 3 to each set of the Regulated Services Regulations, new paragraphs 3 and 3A.

The event listed in new paragraph 3 is any change to the persons who form part of the body constituted (formally or informally) as the decision-making body of the organisation, such as the directors, trustees or members of the managing committee of the service provider where the service provider is a body corporate.

The event listed in new paragraph 3A is any change in the persons who are concerned in the management and control of the body of the service provider where the service provider is an unincorporated body.

Part 5 amends the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 (“the 2017 Regulations”).

The 2017 Regulations set out the regulatory requirements which apply to providers of care home services, secure accommodation services, residential family centre services and domiciliary support services.

Part 10 of the 2017 Regulations contains specific requirements as to the fitness of individuals working at the service.

Regulation 13 amends regulation 35 of the 2017 Regulations.

Paragraph (a) substitutes paragraph 2(f) of regulation 35 of the 2017 Regulations which provides that where a service provider employs a person, other than as a manager to provide care and support in connection with a care home provided wholly or mainly for children, a secure accommodation service or a domiciliary support service the person must be registered as a social care worker with Social Care Wales within 6 months of commencing their employment.

Paragraph (b) inserts a new paragraph 2(g) of regulation 35 of the 2017 Regulations which provides that where a person is engaged under a contract for services (which includes agency workers), other than as manager, to provide care and support to any person in connection with a care home service provided wholly or mainly for children, a secure accommodation service or a domiciliary support service that person must be registered with Social Care Wales within 6 months of the date the person is first

engaged under a contract for services to provide such care and support.

Paragraph (d) inserts a new paragraph 11 to provide that the requirement that a person is registered with Social Care Wales in accordance with regulation 35(2)(f) and (g), does not apply where that person is employed or engaged under a contract for services to work as a nurse, or registered professional who is registered with the Health and Care Professions Council.

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

Draft Regulations laid before the National Assembly for Wales under section 187(2)(d) and (f) of the Regulation and Inspection of Social Care (Wales) Act 2016, for approval by resolution of the National Assembly for Wales.

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2020 No. (W.)

SOCIAL CARE, WALES

**The Regulation and Inspection of
Social Care (Wales) Act 2016 and
Regulated Services (Miscellaneous
Amendments) Regulations 2020**

Made

Coming into force

1 April 2020

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 6(1)(d), 9(9), 27(1) and 187(1)(b) of the Regulation and Inspection of Social Care (Wales) Act 2016 (“the Act”)(1).

The Welsh Ministers have consulted such persons as they think appropriate, as required by section 27(4)(a) of the Act and published a statement about the consultation as required by section 27(4)(b) of that Act. The Welsh Ministers have laid a copy of the statement before the National Assembly for Wales as required by section 27(5) of that Act.

A draft of these Regulations was laid before the National Assembly for Wales under section 187(2)(d) and (f) of the Act and has been approved by a resolution of the National Assembly for Wales.

(1) 2016 anaw 2; *see* the definition of “prescribed” in section 189. *See* also section 40 of the Legislation (Wales) Act 2019 (anaw 4) for provision about the procedure that applies to this instrument.

PART 1

General

Title, commencement and interpretation

2.—(1) The title of these Regulations is the Regulation and Inspection of Social Care (Wales) Act 2016 and Regulated Services (Miscellaneous Amendments) Regulations 2020.

(2) These Regulations come into force on 1 April 2020.

(3) In these Regulations—

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

“the 2017 Regulations” (“*Rheoliadau 2017*”) means the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017(1),

“the Registration Regulations” (“*y Rheoliadau Cofrestru*”) means the Regulated Services (Registration) (Wales) Regulations 2017(2),

“the Regulated Services Regulations” (“*y Rheoliadau Gwasanaethau Rheoleiddiedig*”) means—

- (a) the 2017 Regulations,
- (b) the Adult Placement Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019(3),
- (c) the Regulated Advocacy Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019(4),
- (d) the Regulated Fostering Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019(5),
- (e) the Regulated Adoption Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019(6).

(1) S.I. 2017/1264 (W. 295) as amended by S.I. 2019/757 (W. 142).

(2) S.I. 2017/1098 (W. 278) to which there are amendments not relevant to these Regulations.

(3) S.I. 2019/163 (W. 40).

(4) S.I. 2019/165 (W. 41) to which there are amendments not relevant to these Regulations.

(5) S.I. 2019/169 (W. 42).

(6) S.I. 2019/762 (W. 145).

PART 2

Amendment to the Act

Amendment to the Act

3. The Act is amended in accordance with regulation 4.

Fit and proper person: relevant considerations

4. In section 9(5)(a) after “subsection (4)” insert “or (6)”.

PART 3

Amendments to the Registration Regulations

Amendments to the Registration Regulations

5. The Registration Regulations are amended in accordance with regulations 6 and 7 and regulation 8 introduces a transitional provision.

Information to be provided by an applicant

6. After regulation 3 insert—

“**3A.**—(1) This regulation applies where the applicant, within the meaning of paragraph (a) of the definition of “applicant” in regulation 2, is an organisation.

(2) An applicant to whom this regulation applies must, in addition to the information specified in regulation 3, provide the Welsh Ministers with the information in paragraph (3).

(3) The applicant must provide, in relation to the persons listed in paragraph (4)—

(a) their full name, date of birth, home address, electronic mail address and telephone number, and

(b) the information listed in paragraphs 13 to 22 of Schedule 1.

(4) The persons in relation to whom the information in paragraph (3) must be provided are—

(a) where the organisation is a body corporate other than a local authority or Local Health Board—

(i) each person who has been appointed as a director of the body corporate,

- (ii) each person who has been appointed as a trustee of the body corporate,
- (iii) each member of the managing committee of the body corporate,
- (b) where the organisation is an unincorporated body, each person who is concerned in the management and control of the body,
- (c) where the organisation is a partnership, each partner.”

7. In Schedule 1—

- (a) in paragraph 45—
 - (i) at the end of subparagraph (b) for “.” substitute “;”,
 - (ii) after subparagraph (b) insert—
 - “(c) any person who is a member of the managing committee of the body corporate.”, and
- (b) in paragraph 48 for “application” substitute “declaration”.

Transitional provision

8. An application for registration which has been submitted in accordance with the Registration Regulations prior to the coming into force of these Regulations, is to be determined as if these Regulations had not been made.

PART 4

Amendments to the Regulated Services Regulations

Amendments to the Regulated Services Regulations

9. The Regulated Services Regulations are each amended in accordance with regulation 10.

10. In Schedule 3—

- (a) for paragraph 3 substitute—
 - “**3.** Where, on or after 1 April 2020, the service provider is a body corporate, any change in the—
 - (a) directors,
 - (b) trustees, or
 - (c) members of the managing committee, of the body corporate.

3A. Where, on or after 1 April 2020, the service provider is an unincorporated body, any change in the persons who are concerned in the management and control of the body.”

(b) in paragraph 5 for “company” substitute “body corporate”.

PART 5

Amendments to the 2017 Regulations

Amendments to the 2017 Regulations

11. The 2017 Regulations are amended in accordance with regulations 12 and 13.

Interpretation

12. In regulation 1(3), insert the following in the appropriate place—

““nurse” (*nyrs*) means a qualified nurse or qualified midwife registered with the Nursing and Midwifery Council in accordance with article 5 of the Nursing and Midwifery Order 2001(1);”;

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

Fitness of staff

13. In regulation 35—

(a) for paragraph (2)(f) substitute—

“(f) subject to paragraph (11) of this regulation, where the person is employed by the service provider (whether as an employee or worker) other than as a manager in order to provide care and support to any person in connection with—

(i) a care home service provided wholly or mainly for children,

(ii) a secure accommodation service, or

(iii) a domiciliary support service in order to provide care and support to a person referred to in

(1) S.I. 2002/253, amended by S.I. 2018/838 and S.I. 2009/1182; there are other amending instruments but none is relevant.

(2) S.I. 2002/254, to which there are amending instruments.

paragraph 8(1) of Schedule 1 to the Act,

the person is registered as a social care worker with Social Care Wales no later than the relevant date (see paragraph (8) for meaning of “the relevant date”).”

- (b) after subparagraph (f) as substituted by these Regulations insert—

“(g) subject to paragraph (11) of this regulation, where the person is engaged under a contract for services, other than as manager, to provide care and support to any person in connection with—

- (i) a care home service provided wholly or mainly to children,
- (ii) a secure accommodation service, or
- (iii) a domiciliary support service in order to provide care and support to a person referred to in paragraph 8(1) of Schedule 1 to the Act,

the person is registered as a social care worker with Social Care Wales no later than the relevant date (see paragraph (8A) for meaning of “the relevant date”).”

- (c) after paragraph (8) insert—

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

- (a) 6 months from the date a person is first engaged under a contract for services to provide care and support in connection with—
 - (i) a care home service provided wholly or mainly to children,
 - (ii) a secure accommodation service,
 - (iii) a domiciliary support service in order to provide care and support to a person referred to in paragraph 8(1) of Schedule 1 to the Act, or
- (b) such later date as the service regulator may in exceptional circumstances agree.”

- (d) after paragraph (10) insert—

“(11) The requirement that a person is registered as a social care worker with Social Care Wales in accordance with paragraph (2)(f) and (g), does not apply where the person is employed (whether as an employee or worker)

or engaged under a contract for services to work
as a—

- (a) nurse, or
- (b) registered professional.”

Name

Deputy Minister for Health and Social Services under
authority of the Minister for Health and Social
Services, one of the Welsh Ministers

Date