

# REGULATION AND INSPECTION OF SOCIAL CARE (WALES) ACT 2016

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 1 – Regulation of Social Care Services**

#### *Chapter 2 – Registration etc. of service providers*

#### *Section 5 - Requirement to register*

24. This is the fundamental rule underpinning the regulation of care and support services. Any person providing one of the regulated services listed in section 2(1) must be registered with the Welsh Ministers. Providing one of those services when not registered is a criminal offence which is punishable by an unlimited fine or imprisonment for up to 2 years (or both) (see Section 51(1)).

#### *Section 6 -Application for registration as a service provider*

25. **Section 6** sets out the process by which a person may apply to the Welsh Ministers to become a service provider. Subsection (1)(b) requires the applicant to specify “the places at, from or in relation to which the service is to be provided”.
26. The expression “at, from or in relation to which” is intended to cover the whole gamut of ways in which a service may be delivered. “At” a place is intended to cover things like a care home service where the service is provided within particular premises. “From” is intended to cover offices where those providing the services may be based but where they travel out from there to provide a service (for example a fostering service or a domiciliary support service). A place like that may also be where people receiving the service travel to from time to time in order to receive it. “In relation to” is intended to cover the geographical areas where a service is delivered, for example, the area covered by a provider of a fostering service or domiciliary support service. For example, a person may apply to be a provider of a domiciliary support service from an office in Bridgend with the intention of providing that service in relation to the County Boroughs of Bridgend and Neath and Port Talbot.
27. Subsection (1)(c) requires a service provider to designate an individual to be registered as the responsible individual in respect of each place specified under subsection (1) (b). Section 21 limits the kinds of individuals who can be specified and once they are specified, responsible individuals will be subject to particular requirements under regulations made pursuant to section 28.

#### *Section 7 - Grant or refusal of registration as a service provider*

28. **Section 7** sets out the actions that the Welsh Ministers must take in respect of an application received in accordance with section 6. The application must be granted if the applicant fulfils the criteria in subsection (1). Subsection (1)(a)(ii) requires that

an application relating to a domiciliary support service must contain the undertaking set out in section 8 (see the explanatory note to section 8 for detail in relation to this undertaking). Subsection (1)(b) requires the applicant to be a fit and proper person and subsection (1)(c)(ii) requires each individual designated as a responsible individual to be a fit and proper person. The matters that the Welsh Ministers must have regard to when determining whether a person is fit and proper are set out in section 9.

29. In granting the application, subsection (3)(a)(i) specifies that the granting of the application must be subject to a condition specifying the places “at, from or in relation to which” the service is to be provided. This covers cases where a service provider may specify an intention to provide more than one service at, from or in relation to more than one place. The imposition of this condition makes it clear that a service can only be provided at, from or in relation to the places specified by the Welsh Ministers in this condition.
30. In other words, in determining that application, the Welsh Ministers may grant a certain aspect of the application while refusing others. For example, a provider may make an application to provide both a care home service and a domiciliary support service. In determining the application the Welsh Ministers may be of the view that the provider is not able to meet the regulatory requirements in accordance with section 27 in respect of the domiciliary support service so will only grant the application to provide a care home service and refuse the application in respect of the provision of a domiciliary care service.
31. If a provider does satisfy the requirements in respect of both types of services the Welsh Ministers must set those out as a condition of registration. Providers cannot be registered to provide any regulated service at, from or in relation to any place, the services and places must be specified as a condition of registration. Any additional service or place that the provider may seek to add in the future has to be added to that person’s registration. The mechanism by which a provider does this is by making an application to vary their registration (see section 11).
32. As with the condition about places, the Welsh Ministers might be satisfied about the individual designated as the responsible individual in relation to some of the places but not others. The registration of the service provider is intended to permit an individual to be the responsible individual only in relation to places specified on that provider’s registration certificate. Subsection 3(a)(ii) specifies that the granting of an application by the Welsh Ministers must be subject to a condition that specifies the responsible individual for each place at, from or in relation to which a service is provided. Adding a new responsible individual or making an existing responsible individual responsible for an additional location must be done by applying for the registration to be varied under section 11.
33. In addition to the mandatory conditions about places and responsible individuals, the Welsh Ministers can impose other conditions on a registration. The types of conditions that might be imposed under subsection (3)(b) include placing a restriction on the number or the age of residents at a care home service, a requirement for appropriate restrictions on staffing such as a requirement for a certain number of nursing staff, or in the case of a domiciliary support service, a restriction on accepting any new packages of care.

### ***Section 8 - Duration of domiciliary support visits***

34. **Section 8** sets out the detail of the undertaking that must be given by a person seeking to apply to become a service provider of a domiciliary support service whether that is the first and only service that they apply to provide or a subsequent service that they seek to provide by virtue of an application to vary their initial registration.
35. Subsection (1) sets out the basic undertaking that a domiciliary support service will not be provided by way of a visit which is shorter than 30 minutes unless any one of

conditions A, B and C (as set out in subsections (3), (5) and (7)) apply. Those conditions provide exceptions to the application of the undertaking.

36. Subsection (2) ensures that Condition A applies only where a local authority directly provides domiciliary support to a person or the authority commissions a registered provider to provide it because of the local authority's duty to meet the care and support needs of a person (or the authority's duty to meet the needs of a person's carer, for example where the authority provides domiciliary support in order to provide respite for a carer). Condition A does not apply to private arrangements between a person and a service provider where the person is paying the provider directly.
37. Subsection (3) sets out Condition A. The effect of this provision is that that the undertaking will not be breached if the first visit within the period of a care and support plan or a support plan is at least 30 minutes (unless Condition C applies) and the first visit by every new support worker within the same period is also at least 30 minutes. It does not mean that second and subsequent visits can be less than 30 minutes – they would still have to meet the criteria set out in sub paragraph (b) before they were permitted to be shorter. Local authorities are required to have care and support plans in place for persons who they consider to have needs for care and support (and support plans for carers who they consider to have needs) by virtue of section 54 of the 2014 Act.
38. Sub paragraph (b)(ii) is intended to ensure that tasks carried out during a visit meet the quality standards that will be set out in regulations under section 27. This ensures that no visit can be short because the tasks required have been completed to a substandard level.
39. Subsection (4) means that Condition B applies to cases where the person receiving the domiciliary support has directly made arrangements with the provider. It does not make a difference whether a person is paying privately or is paying using direct payments made to them by a local authority under sections 50 or 51 of the 2014 Act.
40. Subsection (5) sets out Condition B. Sub paragraph (a) means that the undertaking will not be breached if the shorter visit is something that the person and the provider have agreed between them. Sub paragraphs (b) and (c) are identical to those in Condition A.
41. Subsection (6) means that Condition C applies in all cases where a domiciliary support service visit is provided.
42. Subsection (7) sets out Condition C. This means that the undertaking will not be breached in circumstances where the person being visited requests that the visit comes to an end before the expiry of 30 minutes.

### ***Section 9 - Fit and proper person: relevant considerations***

43. In making a decision as to whether a person applying to be a service provider, or who currently is a service provider, is a fit and proper person subsection (2) makes it clear that the Welsh Ministers may have regard to all matters that they think appropriate. The same requirement applies when the Welsh Ministers are making a decision as to whether a person designated as a responsible individual, or who is currently a responsible individual, is a fit and proper person. In addition, subsections (4) to (8) set out evidence that the Welsh Ministers must have regard to when making their decision. This evidence includes the commission of certain offences and the giving of a caution. Evidence of association or former association with a person who has done any of the things set out in subsection (4) is also considered relevant.
44. The reliance that Welsh Ministers place on any matter they consider relevant in making a decision will be a matter of fact and degree.
45. Subsection (9) is a regulation making power for Welsh Ministers to vary the evidence to which they must have regard under this section.

### ***Section 10 - Annual return***

46. Subsection (1) requires a service provider to submit an annual return following the end of each financial year and subsection (2) sets out a list of information that must be contained within an annual return. A failure to submit an annual return within the time limit prescribed in subsection (4) is a summary offence punishable by a fine (see sections 48 and 51(2)).

### ***Section 11 - Application for variation of registration as a service provider***

47. If a service provider wants to change any of the parameters of their registration (e.g. by adding a new regulated service or a new location or changing the responsible individuals that are registered) they must apply for a variation of their registration under this section.
48. Subsection (2) is a regulation making power that allows the Welsh Ministers to set a time limit within which the service provider must apply to vary their registration to designate a new person as a responsible individual in respect of that service or a location at which that service is carried out. If a responsible individual dies or becomes incapable of performing the role or if the designation of the individual is cancelled by the Welsh Ministers in accordance with section 22 because they no longer satisfy the requirements set out in section 21 the service provider has to have another individual in place or else they would be committing an offence under section 43. It is therefore reasonable to provide for a certain period of time where there might be a gap in registering a new responsible individual. This regulation making power is intended to provide for this and may specify different time periods in different circumstances (for example, it might be reasonable to require a service provider to act quickly to find a replacement responsible individual when it has been clear for some time that the existing individual's registration was going to be cancelled. In contrast, a longer gap may be permissible when a responsible individual dies unexpectedly).
49. Subsection (3) sets out the things that must be contained within an application to vary registration. If that application is to provide a domiciliary support service then paragraph (a)(ii) requires that the application must contain the undertaking set out in section 8.

### ***Section 12 - Grant or refusal for application for variation***

50. In the event that a service provider has made an application to vary or remove a condition imposed by the Welsh Ministers under section 11(1)(b), subsection (2) makes it clear that the Welsh Ministers might decide to vary the condition in a manner that is different to that specified in the application or indeed they might impose another condition altogether (either in addition to or as a replacement for the condition set out in the application). Given the wide range of conditions that might be subject to a variation application the Welsh Ministers therefore have the power to take whatever action they consider is most appropriate in the circumstances. Otherwise the Welsh Ministers would be limited to simply granting or refusing the application on its terms and then would have to go through a separate procedure under section 13 to make any additional variation.
51. Subsection (3) ensures that the Welsh Ministers must give prior notice to a provider of whatever they propose to do in relation to an application under this section and must also give notice of the eventual decision for it to take effect (see sections 18 to 20).

### ***Section 13 - Variation without application***

52. Even if no application to vary a registration has been made, the Welsh Ministers may consider it necessary to make a variation (for example, an inspection under section 34 might have alerted the Welsh Ministers to the need for the registration to be varied).

53. This section specifies the circumstances under which Welsh Ministers are able to vary the registration of a service provider without having received an application from the service provider.
54. The ability to vary a registration allows Welsh Ministers to cancel a particular service whilst a provider is still able to provide other services or to cancel a place at, from or in relation to which a service is provided while maintaining the registration of other places.
55. For example, a provider may be registered to provide a care home service at two places, one in Cardiff and one in Swansea. The Welsh Ministers may consider that the care home service provided in Cardiff is not complying with the relevant regulatory requirements and should be cancelled. Under this regulatory regime the provider's registration may be varied to remove one place at which the care home service is provided (Cardiff) from the registration whilst retaining the other place (Swansea). This is because a provider will only be registered once in respect of all the services provided and all the places at, from or in relation to which each of those services is provided.
56. As with variations under section 11, the Welsh Ministers must first issue a notice of proposal prior to making any final decision to vary a service provider's registration.

#### ***Section 14 - Applications for cancellation of registration as a service provider***

57. This section allows for applications to be made to cancel a registration but not if the Welsh Ministers have already commenced action to cancel a provider's registration under section 15 or 23. That restriction prevents a provider from circumventing the cancellation procedures under those sections which include the Welsh Ministers setting out the grounds for cancellation. Where the Welsh Ministers have taken action to cancel a registration there may be important public interest reasons for setting out grounds for taking that action.

#### ***Section 15 - Cancellation without application***

58. **Section 15** sets out the powers of the Welsh Ministers to cancel a service provider's registration in its entirety. This could potentially mean the cancellation of several services provided at, from or in relation to several places. As this is a power, it will be for the Welsh Ministers to decide in each case whether cancellation is appropriate on whichever of the grounds listed in subsection (1) applies.
59. Subsection (4) prohibits the Welsh Ministers from being able to cancel a provider's registration unless the improvement notice procedure in sections 16 and 17 have been complied with (but that procedure does not apply to any application to urgently cancel or vary a registration made in accordance with section 23 or to a decision of the Welsh Ministers to impose urgent condition pursuant to section 24).

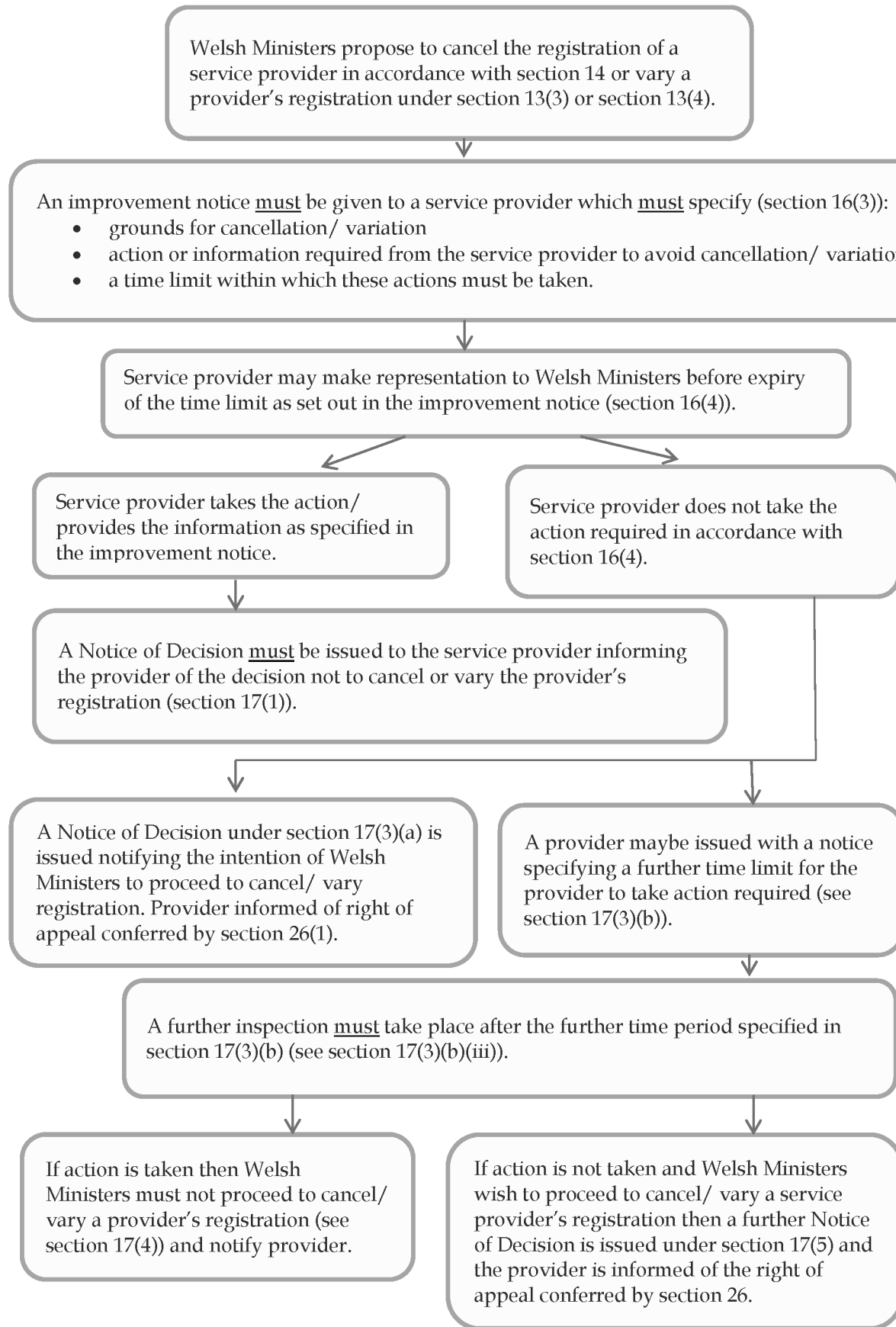
#### ***Section 16 - Improvement notices and Section 17 - notice of decision following improvement notice***

60. **Section 16** provides for a notice of intention to vary or cancel and gives the provider an opportunity to rectify things. In accordance with section 16(3)(c) an improvement notice will specify a time limit within which the actions identified as being necessary by the Welsh Ministers must be undertaken in order to avoid cancellation.
61. If the Welsh Ministers are not satisfied that the action has been taken at the end of that time limit, the Welsh Ministers are able to do one of three things. They may immediately proceed to making a decision to cancel or vary the registration. If the Welsh Ministers do this then they must issue a decision notice and explain to the provider the right of appeal conferred by section 26. In circumstances where the Welsh Ministers decide that there has been satisfactory compliance they cannot proceed to cancel and must provide a notice to the provider informing them of this.

*These notes refer to the Regulation and Inspection of Social Care  
(Wales) Act 2016 (c.2) which received Royal Assent on 18 January 2016*

62. Alternatively, there may be cases where, after the time limit has expired, the Welsh Ministers are of the view that certain actions have been taken but not all or that the actions have been taken but they are not confident that compliance with the regulatory requirements has been achieved by the provider. Section 17(3)(b) provides the Welsh Ministers with a power to specify a date following which they propose to cancel or vary if they are still not satisfied that action specified in the improvement notice has been taken. At the end of that further period, if the Welsh Ministers are of the view that there is continued non-compliance and wish to proceed to cancel they must carry out an inspection (subsection (5)). If the Welsh Ministers wish to proceed to cancel following that inspection then they must issue a decision notice to cancel or vary.
63. A provider will have a right of appeal against a decision by the Welsh Ministers to cancel or vary (see section 26).
64. The following diagram illustrates the improvement notice procedure:

## Improvement notice procedure

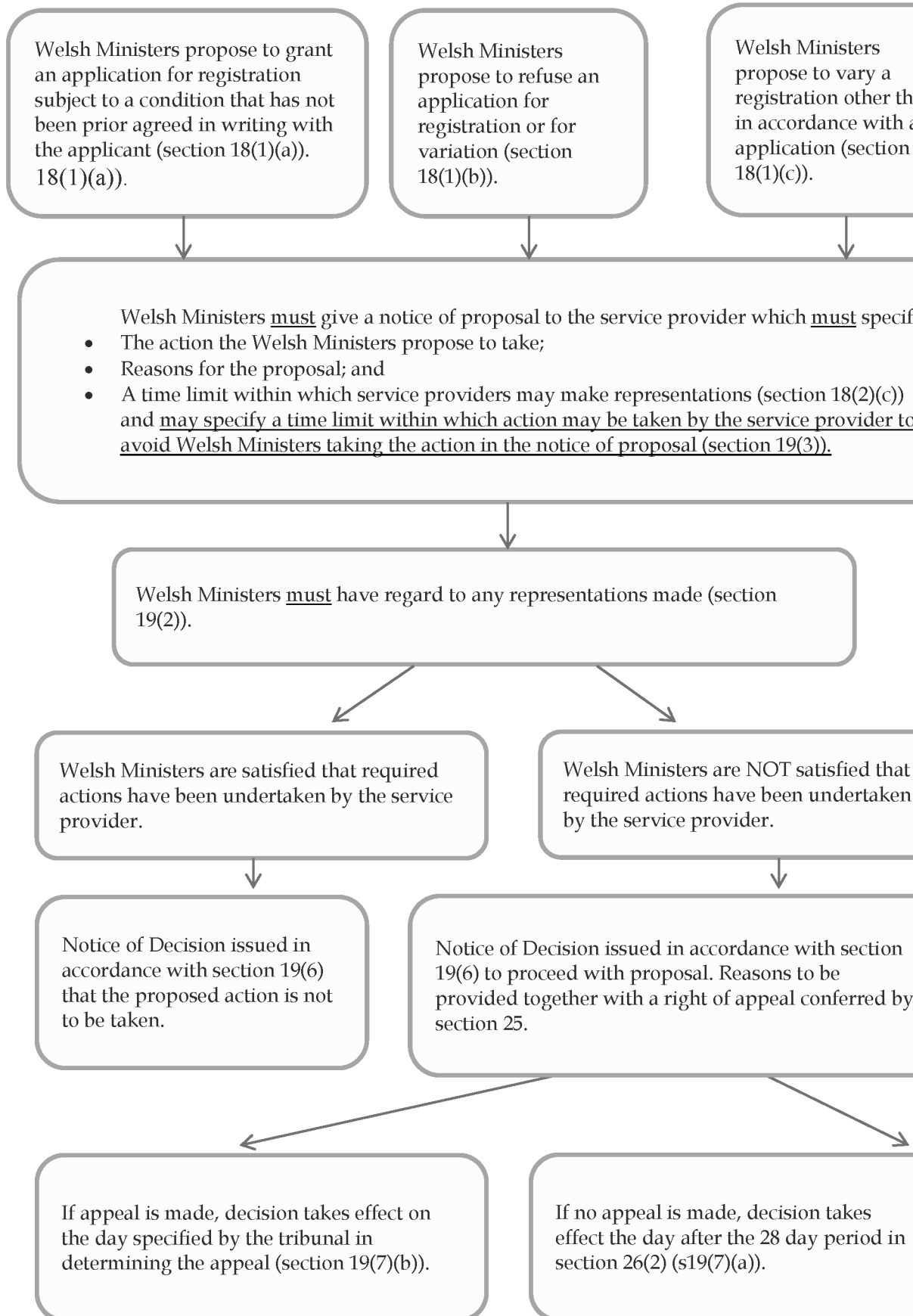


***Section 18 - Notice of proposal and Section 19 - notice of decision following notice of proposal***

65. Before making certain decisions, the Welsh Ministers are obliged to issue a notice informing the service provider of the decision they propose to take and giving the service provider the opportunity to make written representations within a certain time period, which must be at least 28 days. Such a notice can also give the provider to opportunity to rectify the situation by providing a time limit within which certain things must be done to avoid the action being taken (see section 18(3)).
66. The Welsh Ministers are obliged to consider any representations made and following this to make a decision in accordance with section 19(6).
67. The following diagram illustrates the notice of proposal procedures:



## Notice of proposal procedure



**Section 21 - Responsible individuals and Section 22 - cancellation of designation of a responsible individual**

68. Sections 7 and 21 taken together require that there must be a person appointed as a responsible individual who is designated by the provider as part of the provider's registration. Section 21 specifies that the responsible individual must satisfy certain requirements. Subsection (2) requires the responsible individual to be someone of suitable seniority within the company or organisation that is running the service.
69. The responsible individual will also have to be "fit and proper". The requirements that must be considered by Welsh Ministers in making a decision as to whether a person designated by the service provider as responsible individual is a fit and proper person to be a responsible individual or whether an existing responsible individual continues to be fit and proper are set out in section 9.
70. The responsible individual will have specific responsibilities for the service in respect of which that person is registered. Those duties will be set out in regulations made pursuant to section 28. At the time the service provider applies to be registered, the Welsh Ministers will need to be satisfied that the person designated as responsible individual is capable of performing those duties (see section 7(1)(c)). A responsible individual will need to be able to meet the requirements imposed by regulations under section 28 in relation to the type of service that the individual is to be registered as responsible individual for.
71. Section 21(4) allows the same person to be a responsible individual in respect of more than one place at, from or in relation to which a service is provided. However, this will be possible only if the Welsh Ministers can be satisfied that the person is capable of performing their duties as responsible individual in respect of each place.
72. If an individual does not meet the requirements to be a responsible individual, section 22 gives the Welsh Ministers power to cancel the designation of a responsible individual. The individual is first given an opportunity to rectify things so as to show that he or she is fit to be a responsible individual (see section 22(4)(b)).
73. By way of example, a provider may designate the same person to be the responsible individual in respect of a care home service in Cardiff and a care home service in Bangor. An example of duty that may be placed on the responsible individual in the regulations made pursuant to section 28 is a requirement to supervise the management of the service. The Welsh Ministers may consider that the same person would not be capable of supervising the management at both of those places. If, in the opinion of the Welsh Ministers, the individual is not so capable, then the provider will be required to designate a different individual for each of the places.
74. Using the same example, the Welsh Ministers may decide at the time of first registration that the same individual could demonstrate that they were able to fulfil the requirements in section 21(1) and register that individual as responsible individual in respect of the care home service provided in both Cardiff and Bangor. However, post registration, evidence may come to light that, in fact, the individual was not able to do so. For example, the supervision of the management of the care home service in Cardiff may be satisfactory but not in respect of the service provided in Bangor. The Welsh Ministers could, in accordance with section 22, cancel the registration of the responsible individual in respect of the Bangor care home service, whilst maintaining that individual's registration as the responsible individual in respect of the Cardiff care home service but they would have to give an improvement notice to the individual to give him or her the chance to rectify things before the Welsh Ministers proceed to cancellation.

***Section 23 - Urgent cancellation or variation of services or places***

75. In circumstances so severe that they require Welsh Ministers to take urgent action, section 23 provides the Welsh Ministers with the power to take action by making an application to the magistrates court to urgently cancel an entire registration or, alternatively, a place at, from or in relation to which a service is provided. Urgent action may be taken only if there is a serious risk to a person's life or physical or mental health or a risk of a person suffering from abuse or neglect.
76. One of the aims of this system of registration, and a consequence of it, is that an application to cancel the entirety of a provider's registration would not completely fail in circumstances where the criteria in section 23(2) was not met in respect of each place at, from, or in relation to which each service was being provided. For example, the Welsh Ministers might apply to cancel the registration of a provider who provides a care home service at three places. The Court may be satisfied that the criteria in section 23(2) are met in respect of two of those places but not the remaining place. Section 23 provides the Court with the power to vary the registration of the provider by removing two of the places at which the care home service was being provided whilst maintaining the registration of the care home service in respect of the remaining place as opposed to refusing the entirety of the Welsh Ministers application.
77. The improvement notice procedure in sections 16 and 17 do not apply to urgent applications (see section 15(4)).

***Section 25 - Urgent variation of registration: other conditions***

78. In a case where a person's life or physical or mental health may be at risk or where there is a risk of abuse or neglect occurring the Welsh Ministers may, under this section, urgently vary a condition of registration or impose a new condition. This is an alternative to the cancellation procedure under section 23.
79. Subsection (5) allows Welsh Ministers to further vary or withdraw a condition varied or imposed under this section. For example, information might come to light after the urgent action has been taken (whether as a result of representations made or otherwise).
80. A service provider will have the right to appeal a decision to urgently vary or impose a condition as soon as the decision is made. Upon appealing to the First Tier Tribunal, the Tribunal will have the power to make any interim order it deems appropriate. This may include suspending the effect of the decision made by the Welsh Ministers. This may be appropriate, for example, in a case where the Tribunal does not have capacity to list the matter for an immediate hearing. A decision could be suspended pending the Tribunal having the capacity to have a hearing on the issue.

***Section 26 - Appeals***

81. **Section 26** provides service providers with rights of appeal in relation to decisions made by the Welsh Ministers to cancel or vary a registration whether or not that decision is made in urgent circumstances (a responsible individual may also appeal against a decision to cancel the individual's designation (see section 22(5) and (6)). The powers of the First Tier Tribunal are wide. The Tribunal is provided with the power to confirm a decision of the Welsh Ministers, direct that the decision will not have effect or will cease to have effect if it has already. The Tribunal may also make interim orders or substitute its own decision. In substituting its own decision the Tribunal only has the power to do something that the Welsh Ministers could do.

***Section 27 - Regulations about regulated services, Section 28 -, regulations about responsible individuals and Section 29 - guidance about regulations under sections 27 and 28***

82. Regulations made pursuant to section 27 will form the basis of regulation by the Welsh Ministers. Subsection (2) requires that regulations made under subsection (1) must include requirements as to the standard of care and support that must be provided by a service provider. Subsection (3) requires that those standards will be linked to the well being outcomes statement issued by the Welsh Ministers pursuant to section 8 of the 2014 Act and have regard to the importance of the well-being of individuals who receive care and support via the regulated service in question. Regulations may also impose other requirements on providers. Some examples are: a requirement to have a manager who is “fit” together with the criteria for fitness of both manager and staff; a requirement to prepare a statement of purpose; a requirement to keep records and accounts and notifications of incidents.
83. Regulations made pursuant to section 28 will set out the duties that are to be placed on the responsible individual. Those duties may, for example, include a requirement to appoint a suitable and fit manager and to report that appointment to whatever part of the service provider’s organisation has overall control of the body (i.e. the board of directors or similar in the case of a company; to the partners in the case of a partnership or to the Director of Social Services in the case of a local authority). The regulations could also require a responsible individual to supervise the management of a service. Other examples of the requirements that may be imposed by regulations under this section are—
- requirements to check the accuracy of record keeping,
  - requirements to undertake regular inspections of places where a service is provided,
  - a requirement to complete the relevant section of the service providers annual report prepared in accordance with section 10 and to sign a declaration of truth in respect of that section of the report,
  - a requirement to report, in a timely manner any concerns the responsible individual may have about the regulated service to the board of directors, partnership or the Director of Social Services.
84. Linked to regulations under this section is the power in section 46 to make provision for failure to comply with a particular requirement in the regulations to be a criminal offence.
85. **Section 29** of the Act places a duty on providers to have regard to guidance published by the Welsh Ministers under this section .