Regulation and Inspection of Social Care (Wales) Act 2016

2016 anaw 2

PART 1

REGULATION OF SOCIAL CARE SERVICES

CHAPTER 6

LOCAL AUTHORITY SOCIAL SERVICES

Modifications etc. (not altering text)

C1 Pt. 1 applied (with modifications) (29.4.2019) by The Regulated Advocacy Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019 (S.I. 2019/165), regs. 1(2), **58(3)**

C2 Pt. 1 applied (with modifications) (29.4.2019) by The Regulated Fostering Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019 (S.I. 2019/169), regs. 1(2), **71**

C3 Pt. 1 applied (with modifications) (29.4.2019) by The Regulated Adoption Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019 (S.I. 2019/762), regs., **57(3)**

C4 Pt. 1 applied (with modifications) (29.4.2019) by The Adult Placement Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019 (S.I. 2019/163), regs. 1(2), **67(3)**

56 Reports by local authorities and general duty of the Welsh Ministers

(1) After section 144 of the 2014 Act (directors of social services) insert—

“**144A Annual reports**

(1) As soon as is reasonably practicable after the end of a financial year, a local authority must prepare and publish an annual report about the exercise of the social services functions of the authority in respect of that year.

Changes to legislation: *There are currently no known outstanding effects for the Regulation and Inspection of Social Care (Wales) Act 2016, CHAPTER 6. (See end of Document for details)*

(2) The annual report must include—

(a) details of how the authority has exercised its social services functions during the financial year, including details of the extent to which the authority has—

(i) acted in accordance with requirements imposed on local authorities by a code issued under section 9 (codes to help achieve outcomes in relation to well-being),

(ii) acted in accordance with any relevant requirements contained in a code issued under section 145 (codes about the exercise of social services functions), and

(iii) had regard to any relevant guidelines in a code issued under section 145, and

(b) such other information as may be prescribed by regulations.

(3) The details provided under subsection (2)(a)(ii) must state how the authority has satisfied any requirements contained in a code relating to assessing the needs of an individual in accordance with Part 3 and meeting needs under Part 4.

(4) An annual report must be in such form as may be prescribed by regulations.

(5) A local authority must send a copy of a published annual report to the Welsh Ministers.

(6) In this section, “financial year” means the period of one year beginning on 1 April and ending on 31 March.

144B Local market stability reports

(1) A local authority must prepare and publish a local market stability report at such times as may be prescribed by regulations.

(2) A local market stability report must include—

(a) an assessment of—

(i) the sufficiency of provision of care and support in the local authority area during such period as may be prescribed by regulations;

(ii) the extent to which regulated services were provided in the local authority area during that prescribed period by service providers to whom section 61 of the Regulation and Inspection of Social Care (Wales) Act 2016 (assessment by the Welsh Ministers of financial sustainability of service provider) applies;

(iii) any other matter relating to the provision of regulated services in the local authority area as may be prescribed by regulations;

(iv) the effect on the exercise of the local authority's social services functions of the commissioning by the authority of any services in connection with those functions during such period as may be prescribed by regulations;

(b) a report of any action taken by the local authority during the period prescribed under paragraph (a)(i) in pursuance of its duty under

section 189(2) (temporary duty to meet needs in the case of a provider failure).

(3) A local market stability report must be in such form as may be prescribed by regulations.

(4) In preparing a local market stability report, a local authority must—

(a) take account of—

(i) the assessment it has most recently published under section 14 (needs assessments), and

(ii) the plan it has most recently published under section 14A following the assessment, and

(b) consult with each Local Health Board with which it carried out the assessment.

(5) A local authority must send a copy of a published local market stability report to the Welsh Ministers.

(6) Before making regulations under subsection (2)(a)(iii) the Welsh Ministers must consult any persons they think appropriate.

(7) But the requirement to consult does not apply to regulations which—

(a) amend other regulations made under that subsection, and

(b) do not, in the opinion of the Welsh Ministers, effect any substantial change in the provision made by the regulations to be amended.

(8) In this section—

(a) "service provider" has the meaning given by section 3(1)(c) of the Regulation and Inspection of Social Care (Wales) Act 2016;

(b) "regulated service" has the meaning given by section 2(1) of that Act.

General duty of the Welsh Ministers

144C General duty of the Welsh Ministers

In exercising functions under this Part the Welsh Ministers must seek to promote and maintain high standards in the provision of local authority social services functions."

(2) In section 196(6) of the 2014 Act (regulations made only if draft approved by resolution of the National Assembly for Wales), after paragraph (c) insert—

"(d) the first regulations made under section 144A(2)(b);".

Commencement Information

I1 S. 56(1) in force at 4.9.2017 for specified purposes by S.I. 2017/846, **art. 2(a)**

I2 S. 56(1) in force at 29.4.2019 for specified purposes by S.I. 2019/864, **art. 2(3)(b)**

I3 S. 56(1) in force at 23.2.2021 for specified purposes by S.I. 2021/181, **art. 2(a)**

I4 S. 56(2) in force at 4.9.2017 by S.I. 2017/846, **art. 2(b)**

Changes to legislation: *There are currently no known outstanding effects for the Regulation and Inspection of Social Care (Wales) Act 2016, CHAPTER 6. (See end of Document for details)*

57 Reviews, investigations and inspections

(1) After section 149 of the 2014 Act (directions to require compliance with codes of practice) insert—

"Reviews

149A Reviews of studies and research

(1) The Welsh Ministers may review—
- (a) studies and research undertaken by others in relation to the exercise of the social services functions of local authorities in Wales,
- (b) the methods used in such studies and research, and
- (c) the validity of conclusions drawn from such studies and research.

(2) The Welsh Ministers must—
- (a) prepare and publish a report of a review conducted under subsection (1), and
- (b) lay a copy of the report before the National Assembly for Wales.

149B Reviews of local authority social services functions

(1) The Welsh Ministers may review the way in which the social services functions of local authorities are exercised.

(2) In particular, the Welsh Ministers may—
- (a) review the overall exercise of local authority social services functions in Wales;
- (b) review the way in which the social services functions of a particular local authority are exercised;
- (c) review the exercise of a local authority social services function of a particular description (whether exercised by a single local authority or by two or more authorities working together);
- (d) review the exercise of a local authority social services function by a particular person or persons.

(3) A reference in subsection (2) to the exercise by a local authority of local authority social services functions includes a reference to the commissioning of any services in connection with those functions.

(4) The Welsh Ministers must—
- (a) prepare and publish a report of a review conducted under subsection (1), and
- (b) lay a copy of the report before the National Assembly for Wales.

(5) Regulations may make provision about ratings that may be given in relation to the exercise of a specified local authority social services function.

(6) If regulations are made under subsection (5) in relation to the exercise of a local authority social services function, the Welsh Ministers must—
- (a) in conducting a review of the exercise of that function give a rating in accordance with the regulations, and

(b) include the rating in their report of the review.

(7) Before making regulations under subsection (5) the Welsh Ministers must consult any persons they think appropriate.

(8) But the requirement to consult does not apply to regulations which—

(a) amend other regulations made under that subsection, and

(b) do not, in the opinion of the Welsh Ministers, effect any substantial change in the provision made by the regulations to be amended.

149C Fees

(1) Regulations may make provision for a local authority to pay a fee in respect of a review under section 149B(1).

(2) Regulations under subsection (1) may include provision—

(a) specifying the amount of any fee or permitting the Welsh Ministers to determine the amount of any fee (subject to any limits or other factors as may be specified in the regulations);

(b) specifying the time by which a fee is to be payable or specifying factors by which that time is to be determined by the Welsh Ministers.

149D General considerations

When conducting a review under section 149A or 149B, the Welsh Ministers must, in relation to the local authority social services functions under review, have regard to—

(a) the availability and accessibility of the services;

(b) the quality and effectiveness of the services;

(c) the management of the services;

(d) the economy and efficiency of their provision and their value for money;

(e) the availability and quality of information provided to people in the local authority area about the services;

(f) the duties imposed on local authorities by sections 5 (duty to promote well-being), 6 (other overarching duties) and 7 (duties relating to UN Principles and Convention) in so far as they are relevant to the services and the effectiveness of measures taken by a local authority to fulfil those duties;

(g) the effectiveness of measures taken by a local authority to achieve the outcomes specified in a statement issued by the Welsh Ministers under section 8 (statement of outcomes relating to well-being) in so far as they are relevant to the services;

(h) any performance measures and performance targets set out in a code issued under section 9 that they think are relevant;

(i) any requirements or guidelines contained in a code issued under section 145 that they think are relevant;

(j) the extent to which a local authority has involved people in the local authority area—

(i) in decisions about the way in which its social services functions are exercised, and

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(ii) in reviewing the exercise of those functions."

(2) For section 161 of the 2014 Act (powers of entry and inspection) substitute—

"Enforcement

161 Powers of entry and inspection

(1) A person falling within subsection (2) may authorise an inspector to enter and inspect premises falling within subsection (3).

(2) The following persons fall within this subsection—
- (a) the Welsh Ministers—
  - (i) where they consider it necessary or expedient for the purposes of a review conducted under section 149B(1), or
  - (ii) in pursuance of a direction under section 155;
- (b) a person specified in a direction under section 153 or, where the direction specifies a class of persons, the person with whom the local authority enters into the contract or other arrangement required by the direction;
- (c) a person specified in a direction under section 154;
- (d) a person nominated in a direction under section 155.

(3) The following premises fall within this subsection—
- (a) premises owned or controlled by a local authority;
- (b) premises—
  - (i) which are used, or proposed to be used, by any person in connection with the exercise of a local authority social services function, or
  - (ii) which the Welsh Ministers reasonably believe is being used, or may be used, for that purpose,

but premises used wholly or mainly as a private dwelling do not fall within this subsection unless the occupier of the premises consents to the inspector entering and inspecting them.

(4) "Premises" includes a vehicle.

(5) The Welsh Ministers may by regulations make provision about the qualifications and other conditions to be met by an individual who may be an inspector.

(6) When entering premises, an inspector must, if requested to do so by any person at the premises, produce a document showing the inspector's authorisation given under subsection (1).

(7) The inspector may—
- (a) examine the state and management of the premises and, if any persons are accommodated or receive care and support at the premises, examine the treatment of those persons;
- (b) require the manager of the premises or any other person who appears to the inspector to hold or be accountable for documents or records kept at the premises to produce any documents or records (including

medical and other personal records) that the inspector considers may be relevant to the exercise of functions under this Part by the person who authorised the inspector;

(c) inspect and take copies of any documents or records (including medical and other personal records) that the inspector considers may be relevant to the exercise of functions under this Part by the person who authorised the inspector;

(d) require any person to afford the inspector such facilities and assistance with respect to matters within the person's control as are necessary to enable the inspector to carry out the inspection;

(e) take such measurements and photographs and make such recordings as the inspector considers necessary for the purpose of carrying out the inspection;

(f) interview in private—

(i) the manager of the premises or any other person who appears to the inspector to be responsible for the premises;

(ii) any person working there;

(iii) any person accommodated or receiving care and support there who consents to be interviewed.

(8) The powers in subsection (7)(b) to (d) include the power to—

(a) gain access to and check the operation of any computer and associated apparatus which the inspector has reasonable grounds to believe is (or has been) used in connection with the documents or records, and

(b) require documents or records to be produced in a form which is legible and portable.

(9) Subsection (10) applies where—

(a) persons are accommodated or receiving care and support at the inspected premises,

(b) the inspector is a registered medical practitioner or registered nurse, and

(c) the inspector has reasonable grounds to believe that a person accommodated or receiving care and support at the premises is not receiving (or has not received) proper care and support.

(10) Where this subsection applies, the inspector may examine the person in private but only if the person gives consent to the examination.

(11) For the purposes of subsections (7)(f) and (10), an interview or examination is to be treated as conducted in private despite the presence of a third party if—

(a) the person being interviewed or examined wants the third party to be present and the inspector does not object, or

(b) the inspector wants the third party to be present and the person being interviewed or examined consents.

(12) Where an inspector conducts an interview or examination under this section, the inspector must, if requested to do so by—

(a) the person being interviewed or examined, or

(b) an individual accompanying that person,

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produce a document showing the inspector's authorisation given under subsection (1) and, in the case of an examination, a document showing that the inspector is a registered medical practitioner or registered nurse.

(13) As soon as is reasonably practicable after an inspector has concluded an inspection under this section, the inspector must send a report of the inspection to the person who gave the authorisation under subsection (1).

(14) That person must send a copy of the inspector's report—
- (a) to the local authority being reviewed or subject to the direction, and
- (b) if the person is not the Welsh Ministers, to the Welsh Ministers.

(15) In this section and sections 161A, 161B and 161C, "inspector" means an individual authorised under subsection (1).

161A Code of practice about inspections

(1) The Welsh Ministers must prepare and publish a code of practice about the manner in which inspections of premises under section 161 are to be carried out (including about the frequency of such inspections).

(2) The Welsh Ministers may revise the code and must publish a revised code.

(3) An inspector must have regard to the most recently published code when carrying out an inspection under section 161.

161B Power to require information

(1) The Welsh Ministers may require a person falling within subsection (2) to provide them with—
- (a) any documents, records (including medical or other personal records) or other information—
  - (i) which relate to the exercise of a social services function of a local authority, and
  - (ii) which the Welsh Ministers consider it necessary or expedient to have for the purposes of a review under section 149A or 149B;
- (b) an explanation of the content of—
  - (i) any documents, records or other information provided under paragraph (a), or
  - (ii) any documents or records provided to an inspector conducting an inspection of premises under section 161 in connection with a review under section 149B.

(2) The following persons fall within this subsection—
- (a) a local authority;
- (b) a person providing a service in connection with the exercise of a local authority social services function;
- (c) a Local Health Board;
- (d) an NHS trust,

but a Local Health Board or NHS trust cannot be required to provide an explanation of the content of any documents or records provided to an inspector conducting an inspection of premises under section 161.

(3) A person is not required to provide documents, records or other information under subsection (1) if the person is prohibited from providing them by any enactment or other rule of law.

(4) The power in subsection (1) includes power to require documents or records to be produced in a form which is legible and portable.

161C Offences

(1) It is an offence for a person—
  (a) to intentionally obstruct the carrying out of an inspection of premises under section 161 by an inspector, or
  (b) to fail to comply with any requirement imposed on the person by an inspector carrying out such an inspection.

(2) It is an offence for a person to fail to comply with a requirement imposed on the person by the Welsh Ministers under section 161B(1).

(3) It is a defence for a person charged with an offence under subsection (1)(b) or (2) to show that the person had a reasonable excuse for not complying with the requirement.

(4) A person guilty of an offence under this section is liable—
  (a) on summary conviction, to a fine, or to imprisonment for a term not exceeding 6 months, or to both;
  (b) on conviction on indictment, to a fine, or to imprisonment for a term not exceeding 2 years, or to both.

(5) Sections 53 (offences by bodies corporate), 54 (offences by unincorporated bodies) and 55 (proceedings for offences) of the Regulation and Inspection of Social Care (Wales) Act 2016 apply to an offence under this section as they apply to offences under Part 1 of that Act.”

(3) In section 196(6)(a) of the 2014 Act (regulations made only if draft approved by resolution of the National Assembly for Wales), after “135(4),” insert “ 149B(5), 149C(1), ”.

Commencement Information
I5 S. 57 in force at 29.4.2019 by S.I. 2019/864, **art. 2(3)(c)**

58 Regulation of local authority functions relating to looked after and accommodated children

After section 94 of the 2014 Act (regulations about agency arrangements) insert—

"Regulation of local authority functions relating to looked after and accommodated children

94A Regulation of the exercise of local authority functions relating to looked after and accommodated children

(1) Regulations may make provision about the exercise by local authorities of functions conferred on them by—
   (a) section 81 (ways in which looked after children are to be accommodated and maintained), or
   (b) regulations made under section 87 (regulations about looked after children) making provision such as is mentioned in section 92(1), 93 or 94.

(2) Regulations under subsection (1) may, for example, include provision—
   (a) as to the persons who are fit to work for local authorities in connection with the exercise of those functions,
   (b) as to the fitness of premises to be used by local authorities in exercising those functions,
   (c) as to the management and control of the exercise of those functions,
   (d) as to the number of persons, or persons of a particular type, working for local authorities in connection with the exercise of those functions,
   (e) as to the management and training of such persons, and
   (f) as to the fees or expenses which may be paid to persons assisting local authorities in making decisions in the exercise of those functions.

(3) Regulations under subsection (2)(a) may, in particular, make provision specifying that a person is not fit to work for a local authority in such position as may be specified if the person is not registered in, or in a particular part of, the register kept under section 80 of the Regulation and Inspection of Social Care (Wales) Act 2016 (registration of social care workers).

94B Offence of contravening regulations under section 94A

(1) Regulations may provide that it is an offence for a person to contravene or fail to comply with a specified provision of regulations made under section 94A.

(2) A person guilty of an offence under regulations made under subsection (1) is liable—
   (a) on summary conviction, to a fine, or to imprisonment for a term not exceeding 6 months, or to both;
   (b) on conviction on indictment, to a fine, or to imprisonment for a term not exceeding 2 years, or to both.

(3) Sections 53 (offences by bodies corporate), 54 (offences by unincorporated bodies) and 55 (proceedings for offences) of the Regulation and Inspection of Social Care (Wales) Act 2016 apply to an offence under regulations made under subsection (1) as they apply to offences under Part 1 of that Act."

Commencement Information

I6 S. 58 in force at 2.4.2018 by S.I. 2017/1326, **art. 2(3)(f)**

Changes to legislation:
There are currently no known outstanding effects for the Regulation and Inspection of Social Care (Wales) Act 2016, CHAPTER 6.