
EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 (“the Act”) introduces a new system of regulation of care and support services in Wales, replacing that established under the Care Standards Act 2000 (“the Care Standards Act”).

The Act introduces a new concept of “regulated services” which is defined in section 2 of the Act. A person who wants to provide a regulated service must make an application for registration to the Welsh Ministers (in the exercise of their regulatory functions) specifying the regulated service that the person wants to provide. A person who is registered to provide a regulated service is referred to as a “service provider”.

The application for registration must specify the places at, from or in relation to which the service is to be provided. The application for registration must also designate an individual as the responsible individual in respect of each place at, from or in relation to which a regulated service is to be provided. The Welsh Ministers must be satisfied that the individual is a fit and proper person to be a responsible individual and that they are eligible to be a responsible individual. In accordance with powers in section 27 of the Act, these Regulations impose requirements on service providers in relation to a regulated service, including requirements as to the standard of care and support to be provided.

In accordance with powers in section 28 of the Act, these Regulations impose requirements on responsible individuals in relation to a place in respect of which the individual is designated. These Regulations also provide for offences in the event of failure by a service provider or a responsible individual to comply with specified requirements.

Guidance has been published about how service providers and responsible individuals may comply with the requirements imposed by these Regulations (including how providers may meet any standards for the provision of a regulated service) and section 29 of the Act requires service providers and responsible individuals to have regard to this guidance.

As well as placing requirements on service providers, these Regulations also place requirements on other persons: on the “appointed person” in the event of the insolvency of the service provider and on the personal representatives of the deceased in the event of the death of a service provider who is an individual.

Part 1 of the Regulations contains definitions of certain terms used in the Regulations. In particular, the definition of “the service” means that, in relation to a care home service, secure accommodation service or residential family centre service, a reference to “the service” is a reference to the service provided at a particular location; in relation to a domiciliary support service, a reference to “the service” is a reference to the service provided in relation to a particular area.

Part 2 of the Regulations covers exceptions. The regulations in Part 2 are made under the powers in section 2(3) of the Act which enable the Welsh Ministers to prescribe things which, despite Schedule 1 to the Act (which sets out the definitions of regulated services), are not to be treated as regulated services. Regulations 2 and 4 set out the situations where the provision of accommodation is not to be treated as a care home service or as a residential family centre service respectively. Regulation 3 sets out the situations where the provision of care and support is not to be treated as a domiciliary support service.

Part 3 covers general requirements on the service provider as to the way the service is provided, including requirements in relation to the statement of purpose, the arrangements for monitoring and improvement, the support to be provided to the responsible individual, the steps to be taken to ensure the financial sustainability of the service and the policies and procedures which must be in place.

Part 4 covers the requirements as to the steps to be taken before the service provider agrees to provide care and support to an individual. A service provider must not agree to provide care and support unless they have first determined that the service is suitable to meet the individual's needs. Regulation 14 sets out the steps that must be taken and the matters which must be taken into account when making this determination. Where there is no local authority care and support plan in place, the steps to be taken include carrying out an assessment of the individual's needs.

Part 5 covers the requirements as to the steps to be taken once the service provider has agreed to provide care and support to an individual. Before the commencement of such provision, the provider must prepare an initial personal plan which, among other things, sets out how on a day to day basis the individual needs will be met. Within 7 days of the commencement of the provision, the service provider must carry out a detailed assessment of how the individual's care and support needs can best be met and this assessment then prompts a review of the initial personal plan, which will usually lead to a more comprehensive plan being prepared.

Part 5 also makes provision for the review of personal plans and the keeping and sharing of records of the personal plan.

Part 6 deals with the requirements as to the information to be provided to individuals on the commencement of the provision of care and support. Regulation 19 requires that this information must be in the form of a written guide and sets out detailed requirements about the guide, including its contents and format. More detail of the information it is expected the guide would usually contain is in the guidance issued under section 29 of the Act.

Part 7 contains requirements as to the standard of care and support to be provided. These include overarching requirements as well as more detailed requirements relating to continuity of care, the provision of information, meeting individual's language and communication needs and treating individuals with respect and sensitivity.

Part 8 contains specific requirements in relation to ensuring individuals are safe and protected from abuse, neglect and improper treatment. As well as requiring policies and procedures to be in place in relation safeguarding and in relation to the appropriate use of control and restraint, the regulations in this Part place specific requirements as to the action to be taken in the event of an allegation or evidence of abuse.

Part 9 sets out additional requirements as to the standards of care and support which only apply where accommodation is provided. This is where the regulated service is a care home service, a secure accommodation service or a residential family centre service. These requirements relate to arrangements for individuals to access health and other services and, where accommodation is provided to children, the designation of a link worker.

Part 10 contains requirements as to staffing, which include general requirements as to the deployment of sufficient numbers of staff together with specific requirements as to the deployment of registered nurses to work at a care home service in certain circumstances.

Part 10 contains specific requirements as to the fitness of individuals working at the service. These requirements apply not just to employees but extend also to volunteers and to other persons working at the service, which would include agency staff. The fitness requirements include a requirement for specific information and documents to be available, as set out in Schedule 1.

Persons employed to manage the regulated service must be registered with Social Care Wales, the workforce regulator, but there is no longer a requirement, as there was under the Care Standards Act, for managers to be registered with the Welsh Ministers, as the service regulator. Certain categories of persons employed to work in certain regulated services which provide accommodation to children must also be registered with Social Care Wales within six months of commencing their employment.

Other requirements contained in Part 10 include requirements relating to supporting and developing staff, providing information to staff and the operation of a disciplinary procedure. To ensure that employees report incidents of abuse to an appropriate person, the regulations in this Part require the provider's disciplinary procedure to provide that a failure to report would be grounds for disciplinary proceedings.

Part 11 contains particular requirements which apply to providers in respect of domiciliary support services. This includes a requirement for a “schedule of visits” to be prepared which delineates the time allowed for each visit and the time allowed for travel between each visit. There is also a requirement for the provider to offer domiciliary care workers on non-guaranteed hours contracts the choice of alternative contractual arrangements.

Part 12 covers requirements as to premises, facilities and equipment. The requirements as to premises in regulations 44 to 46 only apply where accommodation is provided, whereas the requirements in regulation 47 apply in all cases.

The requirements in Part 12 apply to all providers of care home services, secure accommodation services or residential family centre services. In particular, regulations 45 and 46 contain specific requirements in relation to single occupancy and shared rooms, for adults and children respectively.

Part 13 sets out additional requirements which apply to service providers who are registered to provide a care home service, secure accommodation service or residential family centre service but only if the premises which are to be used for the provision of the service fall into one of three categories: a new or converted building; an extension to a building which is used for the purpose of providing an existing service ; a building which was used for the purpose of providing a service registered by another service provider but is unoccupied at the time of the service provider's registration..

The additional requirements in Part 13 set out more specific environmental standards, including standards as to en-suite bathrooms, room sizes and the amount of communal space.

Part 14 sets out requirements as to supplies, hygiene, health and safety and medicines. These requirements will apply to all regulated services, whether accommodation based or not.

Part 15 contains miscellaneous requirements on service providers, including requirements as to the keeping of records and the making of notifications to the service regulator and other bodies. Schedule 2 sets out the records which are required to be kept and Schedule 3 sets out the specific notifications which are required to be made.

Part 15 includes specific notification requirements which apply to secure accommodation services and care home services which provide accommodation to children.

Part 15 also contains requirements on the service provider to have a complaints policy and a whistleblowing policy in place.

Parts 16 to 20 contain the requirements imposed on responsible individuals. The regulations in these Parts are made under section 28 of the Act.

Part 16 sets out requirements on responsible individuals which relate to the effective management of the service. The responsible individual has a general duty to supervise the management of the service (regulation 66) and specific duties to appoint a fit person to manage the service (regulations 67 and 68), to put arrangements in place for the management of the service when the manager is absent (regulation 72) and to visit the places where the service is being provided (regulation 73).

Part 17 contains requirements on responsible individuals for ensuring the effective oversight of the service. By placing these requirements on the responsible individual, the regulations in this Part ensure that a person of an appropriately senior level in the organisation is accountable for service quality and compliance. The responsible individual is required to make reports to the service provider on the adequacy of resources (regulation 74) and on other matters (regulation 75). The responsible individual is required to make arrangements for engagement with individuals and others so that their views on the quality of care and support provided can be taken into account by the service provider (regulation 76).

Part 18 sets out the requirements on the responsible individual for ensuring the compliance of the service with other requirements, including requirements as to the notification of incidents and complaints (regulation 77) and the keeping of records (regulation 78). The responsible individual must also put arrangements in place for ensuring that the provider's policies and procedures are kept up to date (regulation 79).

Changes to legislation: There are currently no known outstanding effects for the The Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017. (See end of Document for details)

Part 19 sets out the requirements on the responsible individual in relation to monitoring, reviewing and improving the quality of care and support provided, including making a report to the service provider.

Part 20 sets out other requirements on the responsible individual, including requirements to make certain notifications to the service regulator, contained in Schedule 4.

Part 21 deals with offences. Regulation 85 is made under the powers in section 45 of the Act and provides that failure of a service provider to comply with the requirements of specified provisions in these Regulations is an offence. There is a further qualification which applies in the case of a service provider's failure to comply with certain requirements. In these cases, the regulation provides that this is only an offence if the failure to comply results in individuals being exposed to avoidable harm or significant risk of such harm or suffering a loss of money or property as a result of theft, misuse or misappropriation.

Regulation 86 provides that it is an offence for the responsible individual to fail to comply with the requirements of specified provisions in these Regulations. This regulation is made under section 46 of the Act.

Part 22 sets out specific requirements which apply when the service provider is insolvent or when a service provider who is an individual has died. In these circumstances, the regulations in this Part place specific notification duties on the appointed person (in the case of insolvency) or the personal representatives (in the case of the death of a service provider who is an individual).

Regulation 88 enables the personal representatives to act in the capacity of the service provider and the Act is modified so that in these circumstances the personal representatives are not required to register and one of the personal representatives can be designated as the responsible individual in respect of a place where the service is provided.

Part 23 (regulation 89) specifies the circumstances in which the Welsh Ministers (instead of a service provider) may designate an individual to be a responsible individual, despite the eligibility requirements of section 21(2) of the Act not being met in respect of the individual. This regulation is made under section 21(5) of the Act.

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.

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