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WELSH STATUTORY INSTRUMENTS

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**2019 No. 165 (W. 41)**

**SOCIAL CARE, WALES**

**The Regulated Advocacy Services (Service Providers  
and Responsible Individuals) (Wales) Regulations 2019**

*Made* - - - - 31 January 2019

*Coming into force* - - 29 April 2019

In exercise of the powers conferred by sections 2(3), 21(5), 27, 28, 30, 31, 45, 46, 186(1) and 187(1) of, and paragraph 7(1) of Schedule 1 to, the Regulation and Inspection of Social Care (Wales) Act 2016<sup>(1)</sup> the Welsh Ministers make the following Regulations.

The Welsh Ministers, as required by sections 27(4)(a) and 28(4) of that Act, have consulted such persons as they think appropriate and published a statement about the consultation as required by section 27(4)(b) of that Act. The Welsh Ministers have laid the statement before the National Assembly for Wales as required by section 27(5) of that Act. The Welsh Ministers have also carried out a consultation in accordance with the requirement in paragraph 7(5) of Schedule 1 to that Act.

A draft of these Regulations was laid before the National Assembly for Wales under section 187(2) (b), (f), (g), (j), (k) and (w) of that Act and has been approved by a resolution of the National Assembly for Wales.

**PART 1**

**General**

**Title, commencement and interpretation**

**1.—**(1) The title of these Regulations is the Regulated Advocacy Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019.

(2) These Regulations come into force on 29 April 2019.

(3) In these Regulations—

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

“advocacy” (“*eiriolaeth*”) means assistance given to help a person represent their views;

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(1) 2016 [anaw 2](#); see the definition of “prescribed” in section 189 of the Act.

“advocacy plan” (“*cynllun eirioli*”) means the plan prepared by the service provider in relation to an individual in accordance with regulation 12;

“child” (“*plentyn*”) means a person who is aged under 18;

“DBS” (“*GDG*”) or “the Disclosure and Barring Service” (“*y Gwasanaeth Datgelu a Gwahardd*”) mean the body established by section 87(1) of the Protection of Freedoms Act 2012(2);

“DBS certificate” (“*tystysgrif GDG*”) means a certificate of a type referred to in paragraph 2 or 3 of Schedule 1;

“individual” (“*unigolyn*”), except where the context otherwise requires, means a person for whom the service provider is providing, or has provided advocacy, or for whom the service provider may provide advocacy;

“representative” (“*cynrychiolydd*”) means any person having legal authority, or having the consent of the individual to act on the individual’s behalf;

“service” (“*gwasanaeth*”) means an advocacy service as defined in regulation 2 which is provided in relation to a specified area;

“service commissioner” (“*comisiynydd y gwasanaeth*”) means a local authority which is responsible for making arrangements with a service provider for the provision of assistance to a child or person under section 178(1) of the 2014 Act(3);

“service provider” (“*darparwr gwasanaeth*”) means an advocacy service provider who is registered under section 7 of the Act;

“service regulator” (“*rheoleiddiwr gwasanaethau*”) means the Welsh Ministers in exercise of their regulatory functions(4);

“specified area” (“*ardal benodedig*”) means an area which is specified in a condition to the service provider’s registration as a place in relation to which the service is to be provided;

“statement of purpose” (“*datganiad o ddiben*”) means the statement of purpose for the service which a service provider must keep under review and revise in accordance with regulation 4(5).

## Definition and exceptions

2.—(1) For the purpose of paragraph 7(1) of Schedule 1 to the Act, an advocacy service is—

(a) a service carried on to provide advocacy for children who make or intend to make representations which fall within section 174 of the 2014 Act(6); 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(7),

where the purpose of the advocacy 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(8).

(2) 2012 c. 9.

(3) “The 2014 Act” is defined in section 189 of the Act as the Social Services and Well-Being (Wales) Act 2014 (anaw 4).

(4) “Regulatory functions” are defined in section 3(1)(b) of the Act.

(5) The contents of the statement of purpose are prescribed in regulation 4 of, and Schedule 2 to, the Regulated Services (Registration) (Wales) Regulations 2017 (S.I. 2017/1098 (W. 278)).

(6) Section 174 of the 2014 Act requires a local authority to establish a procedure for considering representations (including complaints) made to the authority in relation to a range of its social services functions in so far as they are exercisable in relation to a child.

(7) Section 176 of the 2014 Act requires a local authority to establish a procedure for considering representations (including complaints) about the discharge of its functions under Parts 3 to 7 of the 2014 Act in relation to children or young persons who have previously been looked after and related other young persons.

(8) Paragraph 7(3) of Schedule 1 to the 2016 Act requires that a service can only be specified as an advocacy service for the purposes of the 2016 Act if it is a service which is carried on (whether or not for profit) for the purpose of representing the views of individuals or assisting individuals to represent those views, in respect of matters relating to those individuals needs for care and support (including matters relating to assessing whether those needs exist).

- (2) But a service referred to in paragraph (1) is not an advocacy service—
- (a) if it is provided by a person in the course of a legal activity within the meaning of the Legal Services Act 2007<sup>(9)</sup> by a person who is—
    - (i) an authorised person for the purposes of that Act, or
    - (ii) a European lawyer (within the meaning of the European Communities (Services of Lawyers) Order 1978<sup>(10)</sup>);
  - (b) if the assistance is provided by a Welsh family proceedings officer in the course of discharging functions in relation to family proceedings;
  - (c) if the assistance is provided by the Children’s Commissioner for Wales or by a member of staff of the Children’s Commissioner for Wales;
  - (d) if it is provided by a person who has not provided and does not intend to provide advocacy to more than 4 persons within any 12 month period;
  - (e) to the extent that it is provided by a relative or friend of the person on whose behalf representations are made or are intended to be made.
- (3) In this regulation—
- (a) the following words and phrases have the meanings ascribed to them—
    - (i) “relative” means a parent or other person with parental responsibility, brother, sister, uncle or aunt (whether by marriage or civil partnership), grandparent, step-parent, foster parent or prospective adopter with whom the child is placed;
    - (ii) “family proceedings” has the meaning given by section 12 of the Criminal Justice and Court Services Act 2000<sup>(11)</sup>;
    - (iii) “Welsh family proceedings officer” has the same meaning as in section 35(4) of the Children Act 2004<sup>(12)</sup>;
    - (iv) “sibling group” includes both brothers and sisters and half-brothers and half-sisters; and
  - (b) in determining whether a person has provided or intends to provide an advocacy service to more than 4 persons for the purpose of paragraph (2)(d), provision of advocacy to a sibling group is counted as provision of advocacy to a single person.

## PART 2

### General requirements on service providers

#### **Requirements in relation to the provision of the service**

**3.** The service provider must ensure that the service is provided with sufficient care, competence and skill, having regard to the statement of purpose.

#### **Requirements in relation to the statement of purpose**

**4.—(1)** The service provider must provide the service in accordance with the statement of purpose.

(2) The service provider must—

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<sup>(9)</sup> 2007 c. 29.  
<sup>(10)</sup> S.I. 1978/1910.  
<sup>(11)</sup> 2000 c. 43.  
<sup>(12)</sup> 2004 c. 31.

- (a) keep the statement of purpose under review, and
  - (b) where appropriate, revise the statement of purpose.
- (3) Unless paragraph (4) applies, the service provider must notify the persons listed in paragraph (6) of any revision to be made to the statement of purpose at least 28 days before it is to take effect.
- (4) This paragraph applies in cases where it is necessary to revise the statement of purpose with immediate effect.
- (5) If paragraph (4) applies, the service provider must, without delay, notify the persons listed in paragraph (6) of any revision made to the statement of purpose.
- (6) The persons who must be notified of any revision to the statement of purpose in accordance with paragraph (3) or (5) are—
- (a) the service regulator,
  - (b) the individuals,
  - (c) service commissioners, and
  - (d) any representative, unless it is not appropriate to do so or would be inconsistent with the well-being of an individual.
- (7) The service provider must provide the up to date statement of purpose to any person on request, unless it is not appropriate to do so or would be inconsistent with the well-being of an individual.

#### **Requirements in relation to monitoring and improvement**

- 5.—(1) The service provider must ensure that there are effective arrangements in place for monitoring, reviewing and improving the quality of the advocacy provided.
- (2) Those arrangements must include arrangements for seeking views of—
- (a) individuals,
  - (b) any representatives, unless this is not appropriate or would be inconsistent with the individual’s well-being,
  - (c) service commissioners, and
  - (d) staff,
- on the quality of the advocacy provided by the service and how this can be improved.
- (3) When making any decisions on plans for improvement of the quality of the advocacy, the service provider must—
- (a) take into account the views of those persons consulted in accordance with paragraph (2), and
  - (b) have regard to the quality of service report prepared by the responsible individual in accordance with regulation 50(4).

#### **Requirements in relation to the responsible individual**

- 6.—(1) This regulation does not apply to a service provider who is an individual.
- (2) A service provider to whom this regulation applies must ensure that the person who is designated as the responsible individual—
- (a) is supported to carry out their duties effectively; and
  - (b) undertakes appropriate training.

(3) In the event that the service provider has reason to believe that the responsible individual has not complied with a requirement imposed by the regulations 36 to 54, the provider must—

- (a) take such action as is necessary to ensure that the requirement is complied with; and
- (b) notify the service regulator.

(4) During any time when the responsible individual is unable to fulfil their duties, the service provider must ensure that there are arrangements in place for—

- (a) the effective management of the service,
- (b) the effective oversight of the service,
- (c) the compliance of the service with the requirements of the regulations in Parts 3 to 15, and
- (d) monitoring, reviewing and improving the quality of the advocacy provided.

(5) If the responsible individual is unable to fulfil their duties for a period of more than 28 days, the service provider must—

- (a) notify the service regulator; and
- (b) inform the service regulator of the interim arrangements made to comply with paragraph (4).

#### **Requirements in relation to the responsible individual where the service provider is an individual**

7.—(1) This regulation applies where the service provider is an individual.

(2) If this regulation applies, the individual must undertake appropriate training for the proper discharge of the individual's duties as the responsible individual.

(3) During any time when the individual is absent, the individual must ensure that there are arrangements in place for—

- (a) the effective management of the service,
- (b) the effective oversight of the service,
- (c) the compliance of the service with the requirements of the regulations in Parts 3 to 15, and
- (d) monitoring, reviewing and improving the quality of the advocacy provided by the service.

(4) If the individual is unable to fulfil their duties as a responsible individual for a period of more than 28 days, the individual must—

- (a) notify the service regulator; and
- (b) inform the service regulator of the interim arrangements made to comply with paragraph (3).

#### **Requirements in relation to the financial sustainability of the service**

8.—(1) The service provider must take reasonable steps to ensure that the service is financially sustainable for the purpose of achieving the aims and objectives set out in the statement of purpose.

(2) The service provider must maintain appropriate and up to date accounts for the service.

(3) The service provider must provide copies of the accounts to the Welsh Ministers within 28 days of being requested to do so.

(4) The Welsh Ministers may require accounts to be certified by an accountant.

### **Requirements to provide the service in accordance with policies and procedures**

9.—(1) The service provider must ensure that the following policies and procedures are in place for the service—

- Commencement of the service (see Part 3, regulation 11)
- Confidentiality (see Part 6, regulation 19)
- Safeguarding (see Part 7, regulation 21)
- Staff support and development (see Part 8, regulation 25)
- Staff discipline (see Part 8, regulation 28)
- Complaints (see Part 10, regulation 34)
- Whistleblowing (see Part 10, regulation 35).

(2) The service provider must have such other policies and procedures in place as are reasonably necessary to support the aims and objectives of the service.

(3) The service provider must ensure that the content of the policies and procedures which are required to be in place by virtue of paragraphs (1) and (2) is—

- (a) appropriate to the needs of individuals for whom advocacy is provided,
- (b) consistent with the statement of purpose, and
- (c) kept up-to-date.

(4) The service provider must ensure that the service is provided in accordance with those policies and procedures.

### **Duty of candour**

10. The service provider must act in an open and transparent way with—

- (a) individuals,
- (b) any representatives of those individuals.

## **PART 3**

### **Requirements on service providers as to the steps to be taken before agreeing to provide advocacy**

#### **Suitability of the service**

11.—(1) The service provider must not provide advocacy for an individual unless the service provider has determined that the service is suitable to meet the individual's need for advocacy.

(2) The service provider must have in place a policy and procedure on commencement of the service.

(3) The determination under paragraph (1) must take into account—

- (a) the individual's views, wishes and feelings,
- (b) any risks to the individual's well-being,
- (c) any reasonable adjustments which the service provider could make to enable the individual's advocacy needs to be met, and
- (d) the service provider's policy and procedures on commencement of the service.

(4) In making the determination in paragraph (1), the service provider must involve the individual and any representative. But the service provider is not required to involve a representative if—

- (a) the individual is an adult or a child aged 16 or over and the individual does not wish the representative to be involved; or
- (b) involving the representative would not be consistent with the individual's well-being.

## PART 4

### Requirements on service providers as to the steps to be taken on commencement of provision of advocacy

#### **Advocacy plan**

**12.**—(1) If the service provider determines that the service is suitable to meet the needs of the individual it must, as soon as reasonably practicable, prepare a plan setting out—

- (a) the steps which are to be taken to assist the individual to make representations; and
- (b) any steps to be taken to mitigate identified risks to the individual's well-being.

(2) When preparing the advocacy plan the service provider must involve the individual and any representative unless—

- (a) the individual is an adult or a child aged 16 or over and the individual does not want the representative to be involved; or
- (b) involving the representative would not be consistent with the individual's well-being.

#### **Review of advocacy plan**

**13.**—(1) The advocacy plan must be reviewed as and when agreed between the service provider and the individual.

(2) A review of an advocacy plan must include a review of the extent to which the individual has been able to represent the individual's views or have those views represented.

(3) When carrying out a review under this regulation, the service provider must involve the individual and any representative. But the service provider is not required to involve a representative if—

- (a) the individual is an adult or a child aged 16 or over and the individual does not wish the representative to be involved; or
- (b) involving the representative would not be consistent with the individual's well-being.

(4) Following the completion of any review required by this regulation, the service provider must consider whether the advocacy plan should be revised and revise the plan as necessary.

#### **Records of advocacy plans**

**14.** The service provider must—

- (a) keep a record of—
  - (i) the advocacy plan and any revised plan, and
  - (ii) the outcome of any review, and
- (b) give a copy of the advocacy plan and any revised plan to—
  - (i) the individual,

- (ii) any representative, unless this is not appropriate or would be inconsistent with the individual's well-being.

## PART 5

### Requirements on service providers as to the information to be provided to individuals on commencement of the provision of advocacy

#### Information about the service

- 15.**—(1) The service provider must prepare a written guide to the service.
- (2) The guide must be—
- (a) dated, reviewed at least annually and updated as necessary;
  - (b) in an appropriate language, style, presentation and format, having regard to the statement of purpose for the service;
  - (c) given to all individuals who are receiving advocacy;
  - (d) given to commissioning authorities; and
  - (e) made available to others on request, unless this is not appropriate or would be inconsistent with the well-being of an individual.
- (3) The guide must contain information about how to raise a concern or make a complaint.
- (4) The service provider must ensure that all individuals receive such support as is necessary to enable them to understand the information contained in the guide.

## PART 6

### Requirements on service providers as to the standard of advocacy to be provided

#### Service standards

- 16.**—(1) The service provider must ensure that advocacy is provided in a way which—
- (a) enables individuals to represent their views and to have those views represented; and
  - (b) protects, promotes and maintains the safety and well-being of individuals.
- (2) The service provider must ensure that advocacy is provided to each individual in accordance with the individual's advocacy plan.
- (3) The service provider must ensure that the advocacy is provided in a way which—
- (a) maintains good personal and professional relationships with individuals and staff; and
  - (b) encourages and assists staff to maintain good personal and professional relationships with individuals.
- (4) If, as a result of a change in the individual's circumstances, the service provider is no longer able to meet those needs, even after making any reasonable adjustments, the provider must immediately give written notification of this to the individual, any representative and the service commissioner.
- (5) The service provider must consider whether an individual has needs for legal or other specialist advice or assistance and take all reasonable steps to obtain that advice or assistance.

### **Language and communication**

17. The service provider must take reasonable steps to meet the language and communication needs of individuals.

### **Respect and sensitivity**

18.—(1) The service provider must ensure that individuals are treated with respect and sensitivity.

(2) This includes, but is not limited to—

- (a) respecting the individual’s privacy and dignity;
- (b) promoting the individual’s autonomy and independence;
- (c) having regard to any relevant protected characteristics (as defined in section 4 of the Equality Act 2010(13)) of the individual.

### **Confidentiality**

19.—(1) The service provider must respect the individual’s rights to confidentiality.

(2) The service provider must have in place a policy about the right of individuals to confidentiality, which also includes the circumstances when an individual’s right to confidentiality may be over-ridden, and must operate the service in accordance with the policy.

## **PART 7**

### **Requirements on service providers –safeguarding**

#### **Safeguarding - overarching requirement**

20. The service provider must provide the service in a way which ensures that individuals are safe and are protected from abuse, neglect and improper treatment.

#### **Safeguarding policies and procedures**

21.—(1) The service provider must have policies and procedures in place for—

- (a) the prevention of abuse, neglect and improper treatment, and
- (b) responding to any allegation or evidence of abuse, neglect or improper treatment.

(2) In this regulation, such policies and procedures are referred to as safeguarding policies and procedures.

(3) The service provider must ensure that its safeguarding policies and procedures are operated effectively.

(4) In particular, where there is an allegation or evidence of abuse, neglect or improper treatment, the service provider must—

- (a) act in accordance with its safeguarding policies and procedures;
- (b) take immediate action to ensure the safety of all individuals for whom advocacy services are provided;
- (c) make appropriate referrals to other agencies; and

- (d) keep a record of any evidence or the substance of any allegation, any action taken and any referrals made.

### **Interpretation of Part 7**

#### **22. In this Part—**

“abuse” (“*camdriniaeth*”) means physical, sexual, psychological, emotional or financial abuse and, in relation to a child, any other harm and for the purposes of this definition—

(a) “financial abuse” includes—

- (i) having money or other property stolen;
- (ii) being defrauded;
- (iii) being put under pressure in relation to money or other property;
- (iv) having money or other property misused;

(b) “harm” has the same meaning as in section 197(1) of the 2014 Act;

“improper treatment” (“*triniaeth amhriodol*”) includes discrimination or unlawful restraint, including inappropriate deprivation of liberty under the terms of the Mental Capacity Act 2005(14);

“neglect” (“*esgeulustod*”) has the same meaning as in section 197(1) of the 2014 Act.

## **PART 8**

### **Requirements on service providers as to staffing Staffing - overarching requirements**

**23.** The service provider must ensure that at all times a sufficient number of suitably qualified, trained, skilled, competent and experienced staff are deployed to work at the service, having regard to the statement of purpose for the service.

### **Fitness of staff**

**24.—(1)** The service provider must not—

- (a) employ a person under a contract of employment to work at the service unless that person is fit to do so;
- (b) allow a volunteer to work at the service unless that person is fit to do so;
- (c) allow any other person to work at the service in a position in which, in the course of duties, that person may, in the course of carrying out duties, have regular contact with individuals or with other persons who are vulnerable unless that person is fit to do so.

(2) For the purposes of paragraph (1), a person is not fit to work at the service unless—

- (a) the person is of suitable integrity and good character;
- (b) the person has the qualifications, skills, competence and experience necessary for the work that person is to perform;
- (c) the person is able by reason of their health, after reasonable adjustments are made, of properly performing the tasks which are intrinsic to the work for which that person is employed or engaged;
- (d) the person has provided full and satisfactory information or documentation, as the case may be, in respect of each of the matters specified in Part 1 of Schedule 1 and this

information or documentation is available at the service for inspection by the service regulator;

- (e) where the person is employed by the service provider to manage the service, after 1 September 2022 the person is registered as a social care manager with SCW<sup>(15)</sup>.

(3) An appropriate DBS certificate must be applied for by, or on behalf of the service provider, for the purpose of assessing the suitability of a person for the post referred to in paragraph (1). But this requirement does not apply if the person working at the service is registered with the Disclosure and Barring Service update service (referred to in this regulation as “the DBS update service”).

(4) Where a person being considered for a post referred to in paragraph (1) is registered with the DBS update service, the service provider must check the person’s DBS certificate status for the purpose of assessing the suitability of that person for that post.

(5) Where a person appointed to a post referred to in paragraph (1) is registered with the DBS update service, the service provider must check the person’s DBS certificate status at least annually.

(6) Where a person appointed to a post referred to in paragraph (1) is not registered with the DBS update service, the service provider must apply for a new DBS certificate in respect of that person within three years of the issue of the certificate applied for in accordance with paragraph (3) and thereafter further such applications must be made at least every three years.

(7) If any person working at the service is no longer fit to work at the service as a result of one or more of the requirements in paragraph (2) not being met, the service provider must—

- (a) take necessary and proportionate action to ensure that the relevant requirements are complied with;
- (b) where appropriate, inform—
  - (i) the relevant regulatory or professional body;
  - (ii) the Disclosure and Barring Service.

### **Supporting and developing staff**

**25.**—(1) The service provider must have a policy in place for the support and development of staff.

(2) The service provider must ensure that any person working at the service (including a person allowed to work as a volunteer)—

- (a) receives an induction appropriate to their role;
- (b) is made aware of their own responsibilities and those of other staff;
- (c) receives appropriate supervision and appraisal;
- (d) receives core training appropriate to the work to be performed by them;
- (e) receives specialist training as appropriate;
- (f) receives support and assistance to obtain such further training as is appropriate to the work they perform.

(3) The service provider must ensure that any person employed to work at the service is supported to maintain their registration with the appropriate regulatory or occupational body.

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<sup>(15)</sup> See section 67(3) of the Act for the definition of Social Care Wales as “SCW”.

**Compliance with employer's code of practice**

26. The service provider must adhere to the code of practice on the standards of conduct and practice expected of persons employing or seeking to employ social care workers, which is required to be published by SCW under section 112(1)(b) of the Act.

**Information for staff**

27.—(1) The service provider must ensure that all persons working at the service (including any person allowed to work as a volunteer) are provided with information about the service and the way it is provided.

(2) The service provider must ensure that there are arrangements in place to make staff aware of any codes of practice about the standards of conduct expected of social care workers, which is required to be published by SCW under section 112(1)(a) of the Act.

**Disciplinary procedures**

28.—(1) The service provider must put in place and operate a disciplinary procedure.

(2) The disciplinary procedure must include—

- (a) provision for the suspension, and the taking of action short of suspension, of an employee, in the interests of the safety or well-being of individuals;
- (b) provision that a failure on the part of an employee to report an incident of abuse, or suspected abuse, to an appropriate person, is grounds on which disciplinary proceedings may be instituted.

(3) For the purpose of paragraph (2)(b), an appropriate person is—

- (a) the service provider,
- (b) the responsible individual,
- (c) an officer of the service regulator,
- (d) an officer of the local authority for the area in which the service is provided,
- (e) in the case of an incident of abuse or suspected abuse of a child, an officer of the National Society for the Prevention of Cruelty to Children, or
- (f) a police officer.

## PART 9

### Requirements on service providers as to premises

**Overarching requirement**

29. The service provider must ensure that the premises, facilities and equipment are suitable for the service, having regard to the statement of purpose for the service.

**Premises**

30. The service provider must ensure that the premises used for the operation of the service have adequate facilities for the secure storage of records.

## PART 10

### Other requirements on service providers

#### Records

**31.**—(1) The service provider must keep and maintain the records specified in Schedule 2 in respect of each place at, from or in relation to which the service is provided.

(2) The service provider must—

- (a) ensure that records relating to individuals are accurate and up to date;
- (b) keep all records securely;
- (c) make arrangements for the records to continue to be kept securely in the event the service closes;
- (d) make the records available to the service regulator on request;
- (e) retain records relating to adults for three years from the date of the last entry;
- (f) retain records relating to children for fifteen years from the date of the last entry;
- (g) ensure that individuals who use the service—
  - (i) can have access to their records; and
  - (ii) are made aware they can access their records.

#### Notifications

**32.**—(1) The service provider must notify the service regulator of the events specified in Schedule 3.

(2) The notifications required by paragraph (1) must include details of the event.

(3) Unless otherwise stated, notifications must be made without delay and in writing.

(4) Notifications must be made in such manner and in such form as may be required by the service regulator.

#### Conflicts of interest

**33.** The service provider must have effective arrangements in place to identify, record and manage conflicts of interest.

#### Complaints policy and procedure

**34.**—(1) The service provider must have a complaints policy in place and ensure that the service is operated in accordance with that policy.

(2) The service provider must have effective arrangements in place for dealing with complaints including arrangements for—

- (a) identifying and investigating complaints;
- (b) giving an appropriate response to a person who makes a complaint, if it is reasonably practicable to contact that person;
- (c) ensuring that appropriate action is taken following an investigation;
- (d) keeping records relating to the matters in sub-paragraphs (a) to (c).

(3) The service provider must provide a summary of complaints, responses and subsequent action to the service regulator within 28 days of being requested to do so.

- (4) The service provider must—
  - (a) analyse information relating to complaints and concerns; and
  - (b) having regard to that analysis, identify any areas for improvement.

### **Whistleblowing**

**35.**—(1) The service provider must have arrangements in place to ensure that all persons working at the service (including any person allowed to work as a volunteer) are able to raise concerns about matters that may adversely affect the health, safety or well-being of individuals for whom the service is provided.

- (2) These arrangements must include—
  - (a) having a whistleblowing policy in place and acting in accordance with that policy; and
  - (b) establishing arrangements to enable and support people working at the service to raise such concerns.
- (3) The provider must ensure that the arrangements required under this regulation are operated effectively.
- (4) When a concern is raised, the service provider must ensure that—
  - (a) the concern is investigated;
  - (b) appropriate steps are taken following an investigation;
  - (c) a record is kept of both the above.

## **PART 11**

### **Requirements on responsible individuals for ensuring effective management of the service**

#### **Supervision of management of the service**

**36.** The responsible individual must supervise the management of the service, which includes the specific requirements set out in this Part.

#### **Duty to appoint a manager**

**37.**—(1) The responsible individual must appoint a person to manage the service. But this requirement does not apply if the conditions in paragraph (2) or (3) apply.

- (2) The conditions are—
  - (a) the service provider is an individual;
  - (b) the service provider proposes to manage the service;
  - (c) the service provider is fit to manage the service;
  - (d) subject to paragraph (6), the service provider is registered as a social care manager with SCW; and
  - (e) the service regulator agrees to the service provider managing the service.
- (3) The conditions are—
  - (a) the service provider is a partnership, body corporate or unincorporated body;
  - (b) the service provider proposes that the individual designated as the responsible individual for the service is to be appointed to manage the service;

- (c) that individual is fit to manage the service;
- (d) subject to paragraph (6), that individual is registered as a social care manager with SCW; and
- (e) the service regulator agrees to that individual managing the service.

(4) For the purposes of paragraph (2)(c), the service provider is not fit to manage the service unless the requirements of regulation 24(2) (fitness of staff) are met in respect of the service provider.

(5) The duty in paragraph (1) is not discharged if the person appointed to manage the service is absent for a period of more than three months.

(6) The condition in paragraphs (2)(d) and (3)(d) only applies after 1 September 2022.

### **Fitness requirements for appointment of manager**

**38.**—(1) The responsible individual must not appoint a person to manage the service unless that person is fit to do so.

(2) For the purposes of paragraph (1), a person is not fit to manage the service unless the requirements of regulation 24(2) (fitness of staff) are met in respect of that person.

### **Restrictions on appointing manager for more than one service**

**39.**—(1) The responsible individual must not appoint a person to manage more than one service, unless paragraph (2) applies.

(2) This paragraph applies if—

- (a) the service provider has applied to the service regulator for permission to appoint a manager for more than one service; and
- (b) the service regulator is satisfied that the proposed management arrangements—
  - (i) will not have an adverse impact on the service provider’s ability to meet the requirements of regulation 16(1); and
  - (ii) will provide reliable and effective oversight of each service.

### **Duty to report the appointment of manager to service provider**

**40.** On the appointment of a manager in accordance with regulation 37(1), the responsible individual must give notice to the service provider of—

- (a) the name of the person appointed, and
- (b) the date on which the appointment is to take effect.

### **Duty to report appointment of manager to the workforce and service regulators**

**41.**—(1) On the appointment of a manager in accordance with regulation 37(1), the responsible individual must give notice to SCW and to the service regulator of—

- (a) the name, date of birth and SCW registration number of the person appointed, and
- (b) the date on which the appointment is to take effect.

(2) In a case where the service provider is an individual and the service regulator has agreed to the service provider managing the service, the service provider must give notice to SCW of—

- (a) the name, date of birth and SCW registration number of the service provider, and
- (b) the date from which the service provider is to manage the service.

### **Arrangements when manager is absent**

**42.**—(1) The responsible individual must put suitable arrangements in place to ensure that the service is managed effectively at any time when there is no manager or when the manager is not present at the service.

(2) If there is no manager or the manager is not present at the service for a period of more than 28 days, the responsible individual must—

- (a) notify the service provider and the service regulator; and
- (b) inform them of the arrangements which have been put in place for the effective management of the service.

### **Visits**

**43.**—(1) The responsible individual must—

- (a) visit the premises from which the service is provided;
- (b) meet with members of staff who are employed to provide the service in relation to each place in respect of which the responsible individual is designated; and
- (c) meet with individuals for whom advocacy is being provided in relation to each such place.

(2) The frequency of such visits and meetings is to be determined by the responsible individual having regard to the statement of purpose but must be at least every three months.

## **PART 12**

### **Requirements on responsible individuals for ensuring effective oversight of the service**

#### **Oversight of adequacy of resources**

**44.**—(1) The responsible individual must report to the service provider on the adequacy of the resources available to provide the service in accordance with the requirements on service providers in Parts 3 to 15.

(2) Such reports must be made on a quarterly basis.

(3) But this requirement does not apply where the service provider is an individual.

#### **Other reports to the service provider**

**45.**—(1) The responsible individual must, without delay, report to the service provider—

- (a) any concerns about the management or provision of the service;
- (b) any significant changes to the way the service is managed or provided;
- (c) any concerns that the service is not being provided in accordance with the statement of purpose for the service.

(2) But this requirement does not apply where the service provider is an individual.

#### **Engagement with individuals and others**

**46.**—(1) The responsible individual must put suitable arrangements in place for obtaining the views of—

- (a) individuals,

- (b) any representatives of those individuals,
- (c) service commissioners, and
- (d) staff employed at the service,

on the quality of advocacy provided and how this can be improved.

(2) The responsible individual must report the views obtained to the service provider so that these views can be taken into account by the service provider when making any decisions on plans for improvement of the quality of advocacy provided.

## PART 13

### Requirements on responsible individuals for ensuring the compliance of the service

#### **Duty to ensure there are systems in place to record incidents and complaints**

47. The responsible individual must ensure that there are effective systems in place to record incidents, complaints and matters on which notifications must be made in accordance with regulations 32 and 54.

#### **Duty to ensure there are systems in place for keeping of records**

48. The responsible individual must ensure that there are effective systems in place in relation to the keeping of records, which include systems for ensuring the accuracy and completeness of records which are required to be kept by regulation 31.

#### **Duty to ensure policies and procedures are up to date**

49. The responsible individual must put suitable arrangements in place to ensure that the service provider's policies and procedures are kept up to date, having regard to the statement of purpose.

## PART 14

### Requirements on responsible individuals for monitoring, reviewing and improving the quality of the service

#### **Quality of service review**

50.—(1) The responsible individual must put suitable arrangements in place to establish and maintain a system for monitoring, reviewing and improving the quality of the service.

(2) The system established under paragraph (1) must make provision for the quality of the service to be reviewed as often as required but at least every six months.

(3) As part of any review undertaken, the responsible individual must make arrangements for—

- (a) considering the outcome of the engagement with individuals and others, as required by regulation 46 (engagement with individuals and others);
- (b) analysing the aggregated data on incidents, notifiable incidents, safeguarding matters, whistleblowing, concerns and complaints;
- (c) reviewing any action taken in relation to complaints;
- (d) considering the outcome of any audit of the accuracy and completeness of records.

(4) On completion of a review of the quality of service in accordance with this regulation, the responsible individual must prepare a report to the service provider which must include—

- (a) an assessment of the standard of advocacy provided, and
- (b) recommendations for the improvement of the service.

(5) But the requirement in paragraph (4) does not apply where the service provider is an individual.

#### **Statement of compliance with the requirements as to standards of advocacy**

**51.**—(1) The responsible individual must prepare the statement required to be included in the annual return under section 10(2)(b) of the Act, in so far as it relates to the place or places in respect of which the responsible individual has been designated.

(2) When preparing the statement, the responsible individual must have regard to the assessment of the standard of advocacy which is contained in a report prepared in accordance with regulation 50(4).

## **PART 15**

### **Other requirements on responsible individuals**

#### **Support for staff raising concerns**

**52.** The responsible individual must ensure that the provider's whistleblowing policy is being complied with and that the arrangements to enable and support people working at the service to raise such concerns are being operated effectively.

#### **Duty of candour**

**53.** The responsible individual must act in an open and transparent way with—

- (a) individuals,
- (b) any representatives of those individuals.

#### **Notifications**

**54.**—(1) The responsible individual must notify the service regulator of the events specified in Schedule 4.

(2) The notifications required by paragraph (1) must include details of the event.

(3) Unless otherwise stated, notifications must be made without delay and in writing.

(4) Notifications must be made in such manner and in such form as may be required by the service regulator.

## PART 16

### Offences

#### Offences – service providers

**55.**—(1) It is an offence for a service provider to fail to comply with a requirement of any of the provisions specified in paragraph (2)(**16**).

(2) The provisions specified for the purposes of paragraph (1) are the provisions of regulations 4(3), 4(5), 8(3), 9(1), 9(3), 15(1), 15(2), 15(3), 24(1), 27(1), 31(1), 31(2), 32(1) and 32(3).

(3) A service provider commits an offence if the provider fails to comply with a requirement of any of the provisions specified in paragraph (4) and such failure results in—

- (a) avoidable harm (whether of a physical or psychological nature) to an individual,
- (b) an individual being exposed to a significant risk of such harm occurring, or
- (c) in a case of theft, misuse or misappropriation of money or property, any loss by an individual of the money or property concerned.

(4) The provisions specified for the purposes of paragraph (3) are the provisions of regulations 3, 4(1), 11(1), 11(3) and 12(1).

#### Offences – responsible individuals

**56.**—(1) It is an offence for the responsible individual to fail to comply with a requirement of any of the provisions specified in paragraph (2)(**17**).

(2) The provisions specified for the purposes of paragraph (1) are the provisions of regulations 37(1), 38(1), 41(1), 41(2), 43(1), 43(2), 44(1), 44(2), 45(1), 50(4), 51(1), 54(1) and 54(3).

## PART 17

### Service providers who are liquidated etc. or who have died

#### Appointment of liquidators etc.

**57.** An appointed person(**18**) must—

- (a) without delay, give written notification to the service regulator of their appointment and the reasons for their appointment;
- (b) within 28 days of their appointment, notify the service regulator of their intentions regarding the future operation of the service.

#### Death of service provider

**58.**—(1) Where a service provider who is an individual has died, the personal representatives of the individual must—

- (a) without delay, give written notification of the death to the service regulator;
- (b) within 28 days of the death, notify the service regulator of their intentions regarding the future operation of the service.

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(16) For penalties upon conviction for an offence under this regulation, *see* section 51(1) of the Act.

(17) For penalties upon conviction for an offence under this regulation, *see* section 51(1) of the Act.

(18) “Appointed person” has the same meaning as in section 30 of the Act.

(2) The personal representatives of the individual may act in the capacity of the service provider for a period not exceeding 28 days or for such longer period (not exceeding one year) as the service regulator may agree.

(3) Where the personal representatives are acting in the capacity of the service provider in accordance with paragraph (2), Part 1 of the Act applies with the following modifications—

(a) section 5 (requirement to register) does not apply;

(b) in section 21(2) (responsible individuals) after paragraph (a) insert—

“(aa) where the personal representatives of a service provider who has died are acting in the capacity of the service provider, be one of the personal representatives;”.

## PART 18

### Regulations under section 21(5) of the Act

#### **Designation of responsible individual by Welsh Ministers**

**59.** The Welsh Ministers (instead of a service provider) may designate an individual to be a responsible individual, despite the requirements of section 21(2) of the Act not being met in respect of the individual, in the following circumstances—

(a) the service provider is an individual who has died and the personal representatives of the service provider have notified the service regulator that they do not intend to make an application under section 11(1)(c) of the Act;

(b) the service provider is an individual and they have notified the service regulator—

(i) that they are no longer able to comply with their duties as a responsible individual, and

(ii) the reasons for this being the case;

(c) the service provider is a corporate body or partnership and they have notified the service regulator—

(i) that the individual designated by the service provider as the responsible individual is no longer able to comply with their duties as a responsible individual,

(ii) the reasons for this being the case, and

(iii) that there is no other individual who is eligible to be a responsible individual and who is able to comply with the duties of a responsible individual.

31 January 2019

*Julie Morgan*  
Deputy Minister for Health and Social Services

## SCHEDULE 1

Regulation 24

### PART 1

#### Information and documents to be available in respect of persons working in regulated services

1. Proof of identity including a recent photograph.
2. Where required for the purposes of an exempted question in accordance with section 113A(2)(b) of the Police Act 1997<sup>(19)</sup>, a copy of a valid criminal record certificate issued under section 113A of that Act together with, after the appointed day and where applicable, the information mentioned in section 30A(3) of the Safeguarding Vulnerable Groups Act 2006 (provision of barring information on request).
3. Where required for the purposes of an exempted question asked for a prescribed purpose under section 113B(2)(b) of the Police Act 1997, a copy of a valid enhanced criminal record certificate issued under section 113B of that Act together with, where applicable, suitability information relating to children (within the meaning of section 113BA(2) of that Act) or suitability information relating to vulnerable adults (within the meaning of section 113BB(2) of that Act).
4. Two written references, including a reference from the last employer, if any.
5. Where a person has previously worked in a position whose duties involved work with children or vulnerable adults, so far as reasonably practicable, verification of the reason why the employment or position ended.
6. Documentary evidence of any relevant qualification.
7. Where relevant, documentary evidence of registration with SCW.
8. A full employment history, together with a satisfactory written explanation of any gaps in employment.
9. Evidence of satisfactory linguistic ability for the purposes of providing advocacy to those individuals for whom the worker is to provide it.
10. Details of registration with or membership of any professional body.

### PART 2

#### Interpretation of Part 1

11. For the purposes of paragraphs 2 and 3 of Part 1 of this Schedule—
  - (a) if the person to whom the certificate relates is not registered with the DBS update service, a certificate is only valid if—
    - (i) it has been issued in response to an application by the service provider in accordance with regulation 24(3) or (6); and
    - (ii) no more than three years have elapsed since the certificate was issued;
  - (b) if the person to whom the certificate relates is registered with the DBS update service, the certificate is valid regardless of when it was issued.

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<sup>(19)</sup> 1997 c. 50.

## SCHEDULE 2

Regulation 31

### Records to be kept

1. In respect of each individual, records of—
  - (a) advocacy plans and revised advocacy plans,
  - (b) correspondence, reports and records in relation to the matters for which advocacy is provided and the outcome.
2. A record of any charges by the service provider to individuals for the provision of advocacy and any additional services.
3. A record of all complaints made by individuals or their representatives or by persons working at the service about the operation of the service, and the action taken by the service provider in respect of any such complaint.
4. A record of all persons working at the service, which must include the following matters—
  - (a) the person's full name, address, date of birth, qualifications and experience,
  - (b) a copy of the person's birth certificate and passport (if any),
  - (c) a copy of each reference obtained in respect of the person,
  - (d) the dates on which the person commences and ceases to be so employed,
  - (e) the position the person holds at the service, the work the person performs and the number of hours for which the person is employed each week,
  - (f) records of disciplinary action and any other records in relation to the person's employment,
  - (g) a record of the date of a DBS certificate and whether there was any action taken as a result of the content of the certificate.

## SCHEDULE 3

Regulation 32

### Notifications by the service provider

1. Any revision to the statement of purpose, 28 days prior to the revised statement of purpose coming into effect.
2. Service provider (individual or organisation) changes their name.
3. Where the service provider is a company, any change in the directors of the company.
4. Where the service provider is an individual, the appointment of a trustee in bankruptcy in relation to that individual.
5. Where the service provider is a body corporate or partnership, the appointment of a receiver, manager, liquidator or provisional liquidator in relation to that company or partnership.
6. Where the service provider is a partnership, death of one of the partners.
7. Where the service provider is a partnership, any change in the partners.
8. Expected absence of the responsible individual for 28 days or more, 7 days prior to commencement of the absence.
9. The unexpected absence of the responsible individual, no later than 7 days after the commencement of the absence.

10. Unexpected absence of the responsible individual for 28 days or more, where no prior notification has been given, immediately on the expiry of 28 days following the commencement of the absence.

11. Return from absence of the responsible individual.

12. The responsible individual ceases, or proposes to cease, being the responsible individual for the service.

13. Any abuse or allegation of abuse in relation to an individual that involves the service provider and/or a member of staff.

14. Service provider, responsible individual or appointed manager convicted of a criminal offence.

15. Any allegation of misconduct by a member of staff.

16. Any incident reported to the police.

17. Any events which prevent, or could prevent, the provider from continuing to provide the service safely.

18. Any proposal to change the address of the principal office, 28 days prior to the change taking place.

19. Any referral to the DBS pursuant to the Safeguarding Vulnerable Groups Act 2006(20).

20. Where the service provider, responsible individual or appointed manager is charged with any offence specified in the Schedule to the Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009(21), notice of the offence charged and the place of charge.

21. Incident of child sexual or criminal exploitation or suspected child sexual or criminal exploitation.

#### SCHEDULE 4

Regulation 54

##### Notifications by the responsible individual

1. The appointment of a manager (see regulation 41).
2. The expected absence of the appointed manager for 28 days or more, 7 days prior to the commencement of the absence.
3. The unexpected absence of the appointed manager, no later than 7 days after the commencement of the absence.
4. The unexpected absence of appointed manager for 28 days or more where no prior notification has been given, immediately on the expiry of 28 days following the commencement of the absence.
5. Return from absence of appointed manager.
6. Interim arrangements where the manager is absent for longer than 28 days.
7. Someone other than the appointed manager is proposing to manage or is managing the service.
8. The appointed manager ceases, or proposes to cease, managing the service.

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(20) 2006 c. 47.

(21) S.I. 2009/37.

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## 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 and set out the regulatory requirements and related provision for providers of regulated advocacy services and for those persons who are designated as the “responsible individuals” for such services.

The Regulations are divided into 18 Parts dealing with different aspects of the requirements. Regulation 2 in Part 1 defines the sorts of advocacy service which fall to be regulated under the Regulation and Inspection of Social Care (Wales) Act 2016.

Part 2 sets out the general requirements on service providers. This includes 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 financial sustainability and the policies and procedures which must be in place.

Regulation 11 in Part 3 requires providers to determine that their service is suitable to meet the individual’s needs before taking on an individual.

Part 4 requires service providers to prepare a plan and keep it under review for the period that they are providing a service to an individual.

Part 5 requires providers to give each person who uses the service a written guide and to local authorities who commission services. Part 6 sets requirements on services providers about the standard of the services which they must provide.

Part 7 requires service providers to ensure the individuals are safe and protected from abuse, neglect and improper treatment. Part 8 requires service providers to employ staff who are fit and prescribes what fitness means for these purposes.

Part 9 requires providers to have premises which are fit for the purpose and that facilities and equipment used meet the same standard. Part 10 sets a number of other requirements that service providers maintain the prescribed records, notify the regulator of prescribed events, manage conflicts of interest, have complaints procedures and a whistleblowing policy.

Parts 11 to 15 set the requirements which apply to responsible individuals. These include the duty to appoint a manager for the service, to supervise the management of the service, to ensure compliance with regulatory requirements and to monitor, review and improve the quality of the service.

Part 16 sets out those regulations whose breach amounts to an offence and which therefore create criminal liability for service providers and for responsible individuals.

Part 17 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 58 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 18 (regulation 59) 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.