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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

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

The 2016 Act also introduced a new concept of a “regulated service” which is defined in section 2 of that 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.

Section 2(1)(e) of the 2016 Act provides that a fostering service is a regulated service, which is defined in Schedule 1 to that Act as meaning any service provided in Wales by a person other than a local authority which consists of or includes the placement of children with foster parents or exercising functions in connection with such a placement. Section 3(1)(c) of the 2016 Act defines “a service provider” as person registered under section 7 of that Act to provide a regulated service.

Section 27 of the 2016 Act provides that regulations may impose requirements on a service provider in relation to a regulated service. Section 28 of that Act further provides that regulations may impose requirements on responsible individuals designated by a regulated service provider.

Section 30 of the 2016 Act enables the Welsh Ministers to make regulations about service providers who are liquidated, with section 31 of that Act allowing regulations to be made about providers who have died.

The Welsh Ministers may also make regulations to provide that it is an offence for a service provider (section 45 of the 2016 Act) and for a responsible individual (section 46 of that Act) to fail to comply with specified provisions.

Part 1 of these Regulations contains definitions of certain terms used in the Regulations.

Part 2 sets out the general requirements which apply to service providers of a regulated fostering service as to the way in which the service is provided, including requirements in relation to the statement of purpose, the financial sustainability of the service and the duty of candour. Under section 6 of the 2016 Act, a person who wants to provide a regulated fostering service must make an application for registration to the Welsh Ministers in which a person is designated as the responsible individual, and Part 2 also gives details of requirements in relation to the designation of the responsible individual.

Part 3 describes the requirements which must be met by service providers as to the steps which must be taken before a child may be placed with foster parents. Part 4 sets out the requirements on service providers as to the information to be contained in a written guide to be provided to children and foster parents on commencement of a placement.

Part 5 of these Regulations sets out the requirements which must be met in relation to the standard of care and support to be provided. These include requirements relating to meeting the language and communication needs of a child and treating children with respect and sensitivity. The service provider is also required to ensure foster parents comply with the requirements set out in the foster care agreement as prescribed in the Fostering Panels (Establishment and Functions) (Wales) Regulations 2018 (S.I. 2018/1333) (W. 260 ), and to promote contact between a fostered child and the child’s parents, relatives and friends.

Part 6 requires the service provider to put arrangements in place to ensure children they place with foster parents are safe and protected from abuse. As well as requiring policies and procedures to be in place in relation to safeguarding and 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. This Part also requires the service provider to put certain procedures in place, including those in relation to bullying and those which apply when a child who has been placed with foster parents goes absent without permission.

Part 7 sets out requirements on service providers to put arrangements in place to ensure children access health, education and other services.

Part 8 contains requirements as to staffing, which include general requirements as to the deployment of sufficient numbers of staff and 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 fostering service, which would include agency staff. The fitness requirements include a requirement for specific information and documentation to be available in respect of persons working in fostering services.

Other requirements contained in Part 8 include requirements relating to supporting and developing staff, providing information to staff and the operation of a suitable 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 itself be grounds for disciplinary proceedings. This Part also restricts certain persons from being employed by the service provider in specified key roles.

Part 9 requires service providers to ensure that premises, facilities and equipment to be used in relation to fostering services are suitable and safe.

Part 10 sets out the requirement to keep records in respect of fostering services, and Schedule 2 lists the specific records which must be kept. Part 10 also deals with the making of notifications to the Welsh Ministers and other bodies, and Schedule 3 lists the specific notifications which are required to be made. This Part further imposes requirements on service providers in relation to having a complaints policy in place, together with procedures to deal with any whistleblowing concerns which may be raised by members of staff and volunteers.

Part 11 outlines the support and other assistance to be given to foster parents. This Part also requires service providers to supervise foster parents and to ensure that foster parents are familiar with and act in accordance with key policies and procedures.

Part 12 sets out requirements on responsible individuals for ensuring the effective management of the service. The responsible individual has a general duty to supervise the management of the service and specific duties to appoint a fit person to manage the service. The responsible individual must also put arrangements in place for the management of the service when the manager is absent. This Part also sets out details of the visits which must be undertaken by responsible individuals.

Part 13 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 also required to make reports to the service provider on the adequacy of resources and on other matters. The responsible individual must also make arrangements for engagement with children and others so that their views on the quality of care and support provided can be taken into account by the provider.

Part 14 sets out the duty of the responsible individual for ensuring the service is compliant with the relevant requirements, including those for keeping records and recording incidents and complaints. The responsible individual must also ensure that the policies and procedures of the service provider are kept up to date.

Part 15 imposes requirements on the responsible individual for monitoring and reviewing the quality of the service, and for making a report to the service provider.

Part 16 requires the responsible individual to make the notifications outlined in Schedule 4 to the Welsh Ministers, and to ensure the provider's whistleblowing policy is being complied with. This Part also imposes a duty of candour on the responsible individual.

Part 17 provides that a failure of a service provider to comply with the requirements of specified provisions in these Regulations is an offence. In relation to certain other requirements, this Part provides that a failure to comply is an offence if the failure to comply results in a child 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.

Part 17 also provides that it is an offence for the responsible individual to fail to comply with the requirements of specified provisions in these Regulations.

Part 18 specifies the responsibilities on the "appointed person" in the event of the insolvency of the service provider. This Part also sets out steps to be taken by the personal representatives of the deceased in the event of the death of a service provider who is an individual. It enables the personal representatives to act as the provider and modifies the 2016 Act so that in these circumstances, the personal representatives are not required to register as provider, and one of the personal representatives can be designated as the responsible individual.

Part 19 sets out the circumstances in which 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 2016 Act not being met in respect of the individual.

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.