

2017 No. (W.)

SOCIAL CARE, WALES

**The Regulated Services (Penalty
Notices) (Wales) Regulations 2017**

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”) establishes a new system of regulation and inspection of social care services in Wales, which replaces the system that was established under the Care Standards Act 2000.

Section 2 of and Schedule 1 to the Act specify the services which are “regulated services” for the purposes of the Act.

A person who is registered as a provider of regulated services is referred to as a “service provider” and regulations made under section 27 of the Act impose requirements on service providers in respect of the regulated services they provide.

Section 6 of the Act requires a service provider to 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 and regulations made under section 28 of the Act impose requirements on the responsible individual in relation to the regulated services for which they are responsible.

Section 52 of the Act gives the Welsh Ministers (acting as the service regulator) the power to give a penalty notice to a person instead of bringing proceedings for an offence, but only in relation to those offences that are prescribed in regulations. This power is subject to the limitations specified in section 52(2) of the Act.

Regulation 3 and the first column in the table in the Schedule prescribe the offences for which the Welsh Ministers may give a penalty notice. The second column in that table contains a description of the offence.

Regulation 4 and the third column in the table in the Schedule specify the amount of the penalty payable in respect of each of the prescribed offences. The amounts payable are expressed as multiples of the amount corresponding to level 4 on the standard scale (and range between multiples of one to two and a half times).

Regulations 5 and 6 make provision about the time by which a penalty notice must be paid and specify the way in which a payment may be made.

Regulation 7 makes provision about the period during which proceedings may not be instituted for the offence to which the penalty notice relates.

Regulation 8 makes provision about the circumstances in which a penalty notice once given may be withdrawn, the consequences of such withdrawal, and specifies when proceedings may be instituted or continued in respect of the offence to which the penalty notice relates.

Regulation 9 sets out the requirements for the content of a penalty notice.

Regulation 10 sets out the record-keeping requirements of the service regulator in respect of any penalty notice that it gives.

The Welsh Ministers' Code of Practice on the carrying on 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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**The Regulated Services (Penalty
Notices) (Wales) Regulations 2017**

Made 14 December 2017

*Laid before the National Assembly
for Wales* 18 December 2017

Coming into force 2 April 2018

The Welsh Ministers, in exercise of the powers conferred by sections 52(1) and (6) and 187(1) of the Regulation and Inspection of Social Care (Wales) Act 2016⁽¹⁾, make the following Regulations:

Title, commencement and application

1.—(1) The title of these Regulations is the Regulated Services (Penalty Notices) (Wales) Regulations 2017.

(2) These Regulations come into force on 2 April 2018.

(3) These Regulations apply in relation to Wales.

Interpretation

2. In these Regulations—

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

“the Service Providers Regulations” (“*y Rheoliadau Darparwyr Gwasanaethau*”) means the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017⁽²⁾;

“offence” (“*trosedd*”) means a prescribed offence;

“payment period” (“*cyfnod talu*”) has the meaning given in regulation 5;

⁽¹⁾ 2016 anaw 2.

⁽²⁾ S.I. 2017/1264 (W. 295).

“penalty notice” (*“hysbysiad cosb”*) means a penalty notice given pursuant to section 52 of the Act;

“recipient” (*“derbynnydd”*) means a person to whom a penalty notice is given in accordance with section 52 of the Act;

“service regulator” (*“rheoleiddiwr gwasanaethau”*) means the Welsh Ministers.

Prescribed offences

3. The offences under the provisions listed in the first column of the table in the Schedule are prescribed⁽¹⁾ as prescribed offences⁽²⁾ for the purposes of section 52(1) of the Act.

Amount of penalty

4. The amount of the penalty to be paid for each offence is specified in the third column of the table in the Schedule.

Period for payment of the penalty

5. The time by which the penalty specified in a penalty notice is to be paid is the end of the period of 28 days beginning with the date of receipt of the notice (“payment period”).

Payment of the penalty

6.—(1) Payment of the penalty specified in a penalty notice must be made to the service regulator by the method specified in the notice.

(2) In any proceedings a certificate purporting to be signed by or on behalf of the service regulator stating that payment of a penalty was or was not received by the date specified in the certificate is evidence of the facts stated.

Period during which proceedings may not be instituted

7.—(1) Where a recipient is given a penalty notice, proceedings for the offence to which the notice relates may not be instituted against the recipient before the expiry of the payment period.

(2) Section 184 of the Act⁽³⁾ applies to a penalty notice as it applies to a notice required to be given under the Act.

(1) See section 189 of the Act for the definition of “prescribed”.

(2) The second column in the table in the Schedule contains a description of the prescribed offence.

(3) Section 184 of the Act (service of documents etc.) specifies that notices may be hand delivered, may be left at a recipient’s address, sent by recorded delivery or, if the recipient has agreed to receive it electronically, by being sent electronically to an address provided

Withdrawal of penalty notice

8.—(1) The service regulator may withdraw a penalty notice by giving written notice of the withdrawal to the recipient if—

- (a) the service regulator determines that—
 - (i) it ought not to have been given, or
 - (ii) it ought not to have been given to the person named as the recipient; or
- (b) it appears to the service regulator that the notice contains material errors.

(2) A penalty notice may be withdrawn in accordance with paragraph (1) whether or not the payment period has expired, and whether or not the penalty has been paid.

(3) Where a penalty notice has been withdrawn in accordance with paragraph (1), the service regulator must repay any amount paid by way of penalty in pursuance of that notice to the person who paid it.

(4) Except as provided in paragraph (5), no proceedings may be instituted or continued against a recipient for the offence to which the penalty notice relates where the notice has been withdrawn in accordance with paragraph (1).

(5) Where a penalty notice has been withdrawn under paragraph (1)(b), proceedings may be instituted or continued for the offence in connection with which that penalty notice was given if a further penalty notice in respect of the offence has been given and the penalty has not been paid before the expiry of the payment period.

Content of penalty notice

9.—(1) A penalty notice must give such details of the circumstances alleged to constitute the offence as seem to the service regulator to be reasonably required to give the recipient information about it.

- (2) A penalty notice must state—
- (a) the name and address of the recipient;
 - (b) the amount of the penalty;
 - (c) the payment period;
 - (d) that payment within that period will discharge any liability for the offence;
 - (e) the period within which proceedings in respect of the offence to which the notice relates will not be brought;

for that purpose; subsection (8) provides that where a notice is sent by recorded delivery or electronically it is to be taken to have been received 48 hours after it is sent (unless the contrary is shown).

- (f) the consequences of the penalty not being paid before the expiry of the period for paying it;
- (g) the person to whom and the address at which the penalty may be paid and to which any correspondence about the penalty notice may be sent;
- (h) the means by which payment of the penalty may be made;
- (i) the grounds on which the penalty notice may be withdrawn.

Records

10. The service regulator must keep a record of any penalty notices given, which must include—

- (a) a copy of each penalty notice given;
- (b) a record of all payments made and the dates upon which they were received;
- (c) details of any penalty notice which was withdrawn and the grounds for its withdrawal;
- (d) details of whether the recipient was prosecuted for the offence for which the penalty notice was given.

Huw Irranca-Davies

Minister for Children and Social Care, under authority
of the Cabinet Secretary for Health and Social
Services, one of the Welsh Ministers

14 December 2017

SCHEDULE Regulations 3
and 4

Prescribed offences

<i>Provision creating offence</i>	<i>General nature of the offence</i>	<i>Amount of penalty</i>
Section 47 of the Act	Making false statements	An amount corresponding to two and a half times level 4 on the standard scale ⁽¹⁾
Section 48 of the Act	Failure to submit an annual return	An amount corresponding to level 4 on the standard scale
Section 49 of the Act	Failure to provide information	An amount corresponding to level 4 on the standard scale
Regulation 7(3) and (5) of the Service Providers Regulations	Contravention of, or failure to comply with, requirements in relation to the statement of purpose	An amount corresponding to two and a half times level 4 on the standard scale
Regulation 11(3) of the Service Providers Regulations	Contravention of, or failure to comply with, requirements in relation to the financial position of the service	An amount corresponding to level 4 on the standard scale
Regulation 12(1) and (2) of the Service Providers Regulations	Contravention of, or failure to comply with, requirements to have in place specified policies and procedures	An amount corresponding to level 4 on the standard scale
Regulation 19(1), (2) and (3) of the Service Providers Regulations	Contravention of, or failure to comply with, requirements in relation to the provision of information about the service	An amount corresponding to two times level 4 on the standard scale

Regulation 20(1) of the Service Providers Regulations	Contravention of, or failure to comply with, requirements in relation to the provision of a service agreement	An amount corresponding to level 4 on the standard scale
Regulation 35(1) of the Service Providers Regulations	Contravention of, or failure to comply with, requirements in relation to the fitness of staff	An amount corresponding to two and a half times level 4 on the standard scale
Regulation 38(1) of the Service Providers Regulations	Contravention of, or failure to comply with, requirements in relation to the provision of information for staff	An amount corresponding to two times level 4 on the standard scale
Regulation 59(1), (2) and (3) of the Service Providers Regulations	Contravention of, or failure to comply with, requirements in relation to the making and maintenance of records	An amount corresponding to two times level 4 on the standard scale
Regulation 60(1), (2) and (4) of the Service Providers Regulations	Contravention of, or failure to comply with, requirements in relation to notifications to the service regulator	An amount corresponding to two times level 4 on the standard scale
Regulation 67(1) of the Service Providers Regulations	Contravention of, or failure to comply with, requirements in relation to the duty of a responsible individual to appoint a manager	An amount corresponding to two and a half times level 4 on the standard scale
Regulation 74(1) and (2) of the Service Providers Regulations	Contravention of, or failure to comply with, requirements in relation to the duty of a responsible individual to report the	An amount corresponding to two times level 4 on the standard scale

	adequacy of resources	
Regulation 75(1) of the Service Providers Regulations	Contravention of, or failure to comply with, requirements in relation to the making by a responsible individual of other reports to the service provider	An amount corresponding to two times level 4 on the standard scale
Regulation 80(4) of the Service Providers Regulations	Contravention of, or failure to comply with, requirements in relation to the preparation by a responsible individual of a report in respect of a quality of care review	An amount corresponding to two times level 4 on the standard scale
Regulation 81(1) of the Service Providers Regulations	Contravention of, or failure to comply with, requirements in relation to the preparation by a responsible individual of a statement of compliance with the requirements as to standards of care and support	An amount corresponding to two times level 4 on the standard scale
Regulation 84(1) and (3) of the Service Providers Regulations	Contravention of, or failure to comply with requirements in relation to the responsible individual's duty to make notifications to the service regulator	An amount corresponding to two times level 4 on the standard scale

⁽¹⁾ See section 37 of the Criminal Justice Act 1982 (c. 48) ("the 1982 Act"); at the date of the coming into force of these Regulations, level 4 on the standard scale is set at £2,500 (this figure may be increased by virtue of an amendment to the 1982 Act).