

## **Explanatory Memorandum to the Adult Placement Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019**

This Explanatory Memorandum has been prepared by the Health and Social Services Department and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Adult Placement Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019.

I am satisfied that the benefits justify the likely costs.

Huw Irranca-Davies  
Minister for Children, Older People and Social Care

10 December 2018

## **PART 1**

### **1. Description**

In 2011 the Welsh Government published the white paper *Sustainable Social Services: A Framework for Action*. This set out an ambitious plan to create a new integrated and person-centred approach to social services provision in Wales. To achieve this new approach, in the last Assembly term, the Welsh Government made two pieces of primary legislation: the Social Services and Well-being (Wales) Act 2014 and the Regulation and Inspection of Social Care (Wales) Act 2016 (“the 2016 Act”).

The 2016 Act was passed by the National Assembly for Wales on 24 November 2015 and received Royal Assent on 18 January 2016. It reforms the regulation and inspection regime for specified services. These services are listed in Section 2, and include ‘adult placement services’ to be specified in regulations to be made by the Welsh Ministers. The 2016 Act provides the statutory framework for the regulation and inspection of social care services and the social care workforce. It enables the Welsh Ministers to put in place a number of items of subordinate legislation through the making of regulations, the publication of guidance and the issuing of codes of practice.

This Explanatory Memorandum relates to regulations that will come into force on 29 April 2019. They are about the specification of adult placement services to be regulated and the standards against which they will be regulated.

Statutory guidance to accompany the Regulations (under section 29 of the 2016 Act), published for consultation at the same time, has been revised and is published in draft on the Welsh Government website, to aid scrutiny of the Regulations. The statutory guidance will be finalised and published in spring 2019.

<https://gov.wales/topics/health/socialcare/regulation/?skip=1&lang=en>

Regulation 25 contains a prohibition against depriving individuals of their liberty without lawful authority. The Mental Capacity Act 2005 sets out the requirements about the steps required to authorise the deprivation of liberty for a person who lacks capacity through an application to the Court of Protection.

### **2. Matters of special interest to the Constitutional and Legislative Affairs Committee**

No specific matters have been identified.

### **3. Legislative background**

The powers enabling these Regulations to be made are contained in sections 21(5), 27, 28, 30, 31, 45, 46 and 187(1) of the 2016 Act.

These Regulations are being laid before the National Assembly under the affirmative procedure.

### **Regulations about adult placement services, registered service providers and responsible individuals**

Section 2 of the 2016 Act defines the meaning of regulated service under the Act. Paragraph 6 of Schedule 1 defines an ‘adult placement service’ for the purposes of section 2.

#### **4. Purpose & intended effect of the legislation**

These Regulations set the standards against which adult placement services will be regulated and inspected under the 2016 Act.

#### **5. Consultation**

A 12- week consultation on these regulations ran between 23 May and 16 August 2018. Further details on the consultation process are set out in the Regulatory Impact Assessment below.

Section 27(4) of the 2016 Act provides that “Before making regulations under this section the Welsh Ministers must – (a) consult any persons they think appropriate, and (b) publish a statement about the consultation.” To discharge this requirement, a summary of the responses, together with the Welsh Government’s analysis and conclusions is being laid with this Explanatory Memorandum and can be found at:

<https://beta.gov.wales/adult-placement-services-regulations>

Section 27(5) of the 2016 Act provides that “The Welsh Ministers must lay a copy of a statement published under subsection (4)(b) before the National Assembly for Wales”. Therefore a copy of the summary of responses can also be found at:

<http://www.assembly.wales/en/bus-home/Pages/Plenary.aspx?assembly=5&category=Laid%20Document>

## **PART 2 - REGULATORY IMPACT ASSESSMENT**

### **Adult placement services**

The Act creates a revised system of regulation and inspection for adult placement services in Wales. 'Adult placement services' are defined within Schedule 1 of the 2016 Act as 'a service carried on (whether or not for profit) by a local authority or other person for the purposes of placing adults with an individual in Wales under a carer agreement (and includes any arrangements for the recruitment, training and supervision of such individuals). A 'carer agreement' means an agreement for the provision by an individual of accommodation at the individual's home together with care and support for up to three adults. Most commonly, provision is for adults with learning disabilities, although there are also placements for older people.

The Regulations will place requirements on the providers of adult placement services rather than the adult placement carers and as such the impact of any changes will be minimal as there are currently only eight of these operating in Wales.

The revised system of regulation and inspection is supported by a continuing requirement for providers to register with Care Inspectorate Wales (CIW). The Act sets out the high-level information required when submitting an application to register a service. The Act states that a person must specify the regulated service the person wants to provide, the places at, from or in relation to which the service is to be provided and the person designated as responsible individual. If a provider wishes to vary their registration, the application to do so must contain details of the variation sought by the provider.

These Regulations set out:

- requirements upon a service provider in relation to a registered adult placement service;
- requirements on a responsible individual in relation to an adult placement service in respect of which the individual is designated.

In drafting the Regulations the approach has been, as far as is appropriate, to achieve consistency with the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017, and to reflect the views of the Technical Group on Adult Placement Services which was established to consider the development of regulations and guidance under the 2016 Act.

### **Definition**

This Regulatory Impact Assessment does not present a 'do nothing' option, which would essentially mean continuing with the current regulations established under the Care Standards Act 2000. The National Assembly for Wales has determined, by passing the 2016 Act, that there should be revised regulations reflecting the regulation and inspection regime set out in the 2016 Act. These Regulations are intended to give effect to that intention.

## i) Options

### Option one – Replicate the provisions of the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017

Under the 2016 Act, the following are listed in section 2 as regulated services:

- A care home service;
- A secure accommodation service;
- A residential family centre service;
- An adoption service;
- A fostering service;
- An adult placement service;
- An advocacy service;
- A domiciliary support service;
- any other service comprising the provision of care and support in Wales as may be prescribed.

Under this option the provisions of the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 would apply to adult placement services in the same way that they do to other regulated services without modification.

### Option two – Modify the provisions of the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017

Adult placement services are of a clearly different nature to services where accommodation is provided to individuals in a non-family setting, or the service relates to domiciliary support and so it is necessary to consider which of the provisions should apply, which should not, and what modifications may be appropriate.

An exercise was undertaken, with the assistance of the Technical Group on Adult Placement Services, to identify appropriate adaptations and modifications. The provisions of the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 ('the 2017 Regulations') that are applicable to adult placement services are listed below with some commentary.

Throughout the various Parts of the Regulations, references to children, care homes and domiciliary care would need to be removed as these are not relevant to adult placement services, where an individual is placed with a family.

**General requirements on service providers** – the bulk of these would be applicable to adult placement services. The requirement to have a policy and procedure in place for 'admissions and commencement of the service' is replaced with those for 'suitability of the service' and 'recruitment and training of adult placement carers' to reflect the different arrangements and importance of matching individuals for compatibility with an appropriate family. The duty of candour requirement is amended to also require the service provider to act in an open and transparent way with adult placement carers and service commissioners – relevant where local authorities commission a third party to deliver services.

**Requirements on service providers as to the steps to be taken before agreeing to provide care and support** – will apply to adult placement services, with the addition that the risks to the well-being of the adult placement carer and members of their household should also be taken into account in any placement.

**Requirements on service providers as to the steps to be taken on commencement of the provision of care and support** – the personal plan element is consistent with the 2017 regulations but the two other elements set out in the Regulations are more appropriate for the nature of adult placement services. In particular, the requirement for service providers to undertake an assessment of individual's needs within 7 days is not appropriate as these considerations would be undertaken before an adult is placed with the family. The carer agreement is an agreement between the provider and the adult placement carer which sets out broad arrangements and responsibilities. The individual placement agreement sets out the specific aspects relating to providing accommodation and care and support for a specific individual, including information to be provided, costs and terms and conditions. These 3 elements replace the Adult Placement Agreement and Adult Plan required under previous regulations, as the Technical Group advised that there was currently confusion and consistency in what should be included in each.

**Requirements on service providers as to the information to be provided to individuals on commencement of the provision of care and support** – this replicates Part 6 of the 2017 Regulations with a small modification to exclude wording on the service agreement as this is only relevant for care homes.

**Requirements on service providers as to the standard of care and support to be provided** – these provisions are effectively replicated with modifications reflecting their application to adult placement services. The element on continuity of care is not included as this is not relevant for an adult placed with a family.

**Requirements on service providers – safeguarding** – these provisions apply to regulated adult placement service providers other than those provisions relating to individuals' money being held by a provider or corporal punishment which are not relevant.

**Requirements on service providers – staffing** – the bulk of these provisions apply to regulated adult placement service providers.

**Requirements on service providers – adult placement carers.** This section is additional to the 2017 Regulations in order to set out the specific arrangements in place to recruit and train adult placement carers, develop effective relationships with providers, provide them with support and ensure they are fit to undertake their role.

**Requirements on service providers as to premises** – are largely the same as those in the 2017 Regulations with the exclusion of those elements which specifically relate to care homes.

**Other requirements on service providers** – are largely the same as those in the 2017 Regulations with appropriate omission of elements relating to children and care homes.

An additional element has been added to enable and support adult placement carers to raise a concern within whistleblowing arrangements.

**Requirements on responsible individuals** – the requirements in Parts 16 to 20 of the 2017 Regulations are all replicated with a small modification in the requirements for responsible individuals to visit premises, staff and individuals to reflect the specific arrangements for adult placement services.

**Offences** - we intend that the regulations specify that the failure by service providers or responsible individuals to meet certain requirements is an offence, as in Part 21 of the 2017 Regulations. Where these refer to the same or similar requirements under these regulations similar offences are created.

**Preferred Option:** For the reasons set out under 'Benefits/Risks' below, Option Two is the preferred option.

## ii) Costs

### Options One and Two

Provisions under the following Parts of the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 apply to adult placement services. Under Option One they are applied unmodified; modifications relevant to Option Two are noted in the text where appropriate.

It is not anticipated that the new Regulations will place additional burdens on Care Inspectorate Wales as they do not bring in any new organisations to be regulated. There may be small additional burdens in assessing new requirements but these should be offset by the greater consistency with other regulated services under the 2016 Act which will lead to savings in training and interpretation.

### **General requirements on service providers**

No additional costs have been identified in putting in place the new regulations as the requirements are largely the same as those in the existing regulations under the Care Standards Act 2000 (The Adult Placement Schemes (Wales) Regulations 2004 and The Adult Placement Schemes (Wales) (Miscellaneous Amendments) Regulations 2010).

### **Requirements on service providers as to the steps to be taken on commencement of the provision of care and support**

Some transitional costs may be incurred by providers and CIW in moving to the proposed arrangement of 3 plans / agreements i.e. the Carer Agreement, the Adult Placement Agreement and the Personal Plan as opposed to the existing 2 elements – the adult placement agreement and the adult plan. However, overall, in time it is believed that the new arrangements will bring benefits to both parties in adopting an approach consistent with other regulated services and across different providers. It is not believed that completing 3 plans will involve additional burden as the information

contained within these will be largely the same as that currently in the two plans, it will merely be a case of reframing these.

***Requirements on service providers as to the information to be provided to individuals on commencement of the provision of care and support***

No additional costs have been identified in putting in place the new regulations as the requirements are largely the same as those in the existing regulations.

***Requirements on service providers as to the standard of care and support to be provided***

No additional costs have been identified in putting in place the new regulations as the requirements are largely the same as those in the existing regulations.

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

No additional costs have been identified in putting in place the new regulations as the requirements are largely the same as those in the existing regulations.

***Requirements on service providers as to staffing***

No additional costs have been identified in putting in place the new regulations as the requirements are largely the same as those in the existing regulations.

***Requirements on service providers as to premises, facilities and equipment***

No additional costs have been identified in putting in place the new regulations as the requirements are largely the same as those in the existing regulations.

***Other requirements on service providers***

No additional costs have been identified in putting in place the new regulations as the requirements are largely the same as those in the existing regulations.

***Requirements on responsible individuals***

The requirements on Responsible Individuals (RIs) relate to the oversight of the service, ensuring the management is supervised, making reports on the quality of the service, adequacy of resources and other matters. The Responsible Individual must also make visits to the service in person and ensure the service is complying with other requirements, such as making notifications, recording incidents and complaints.

The proposed regulations will incur additional costs for providers in terms of requirements for RIs to visit services and to undertake quality reviews six-monthly, as opposed to the current requirement of an annual review.

Using the ONS data from the Annual Survey of Hours and Earnings, which states that the gross hourly earnings for managers and directors in Social Services' in 2017 was



£19.29<sup>1</sup>, it is estimated that, assuming RIs spend most of their working day (8 hours) at a service during their visit, this would give a total cost, including on-costs, of £201 per visit. It is required that visits should take place at least every 3 months which would mean an annual cost of around £804 for each of the services. The costs for each of the 8 adult placement providers in Wales will vary as some RIs may have more than one service at different locations.

The regulations will also incur costs for service providers in terms of the requirement for Responsible Individuals to undertake quality of service reviews every six months. The Regulatory Impact Assessment for the Regulation and Inspection of Social Care (Wales) Bill estimated that it would take providers 4 working days (assuming the working week is 37 hours) to complete an annual return. The annual return, a requirement under Section 10 of the 2016 Act, contains a similar level of information to the quality of care review but as the quality of care review draws from existing monitoring information this should not take as long to complete. A reasonable estimation for this would be more like 2 working days, therefore incurring a cost of around £196 for each service, every six months. As providers are currently required to undertake similar reviews on an annual basis, the additional cost (of moving to six-monthly) should only be £196 per annum. However, this figure will vary depending on the salary of the person undertaking the review and may vary according to the size of the provider. The costs for each of the 8 adult placement providers in Wales will again vary as some RIs may have more than one service at different locations.

Combining the costs of an additional quality review and visits identified above gives an estimated additional annual cost of approximately £1,000 per provider. However, as explained, this may vary based upon arrangements that are currently in place, the size of the provider and number of services it operates.

### **iii) Benefits/Risks**

#### Option One

Adopting Option One in its entirety would provide the greatest amount of consistency between the requirements for adult placement services and other regulated services. However, this would involve retaining large amounts of wording which is not relevant as it relates to children or care homes, making the Regulations unnecessarily long and not aiding their understanding.

#### Option Two

The key benefit of Option Two is that the regulations would only contain the elements relevant to adult placement services, with the opportunity to also adopt key elements so that they are entirely appropriate for the nature of the service being provided. In adopting this option there would still be the opportunity for many of the requirements to be consistent with other regulated services regulations developed under the 2016 Act.

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<sup>1</sup> This figure is then updated by 30% to include on-costs.

This option has been developed with the Technical Group on Adult Placement Services and as a result of responses to consultation on Phase 1 and Phase 3 of the implementation of the 2016 Act.

#### **iv) Consultation**

The formal consultation on the Regulations ran from 24 May to 16 August 2018. During that period, two consultation events which aimed to encourage stakeholders to respond and to enable those attending to:

- gain an overview of the draft legislative framework and key changes it will effect;
- check their understanding of the proposals and seek clarity, if needed;
- consider potential implications for their role and organisation

A range of public, private and third sector organisations were represented at the events, including a number of service providers.

A summary of consultation responses is available at:

<https://beta.gov.wales/adult-placement-services-regulations>

The vast majority of consultation responses received were positive and no significant concerns were raised over additional burdens arising from the new regulations.

The following minor changes were made to the legislation as a result of the consultation:

- Within 'suitability of the service' - wording has been amended to refer to 'policy and procedures on matching for compatibility' rather than 'placements'. This is to reflect several comments received in consultation that adult placements should not be considered merely as finding accommodation for individuals but it is important that wording reflects the importance of personal choice of the individual and ensuring compatibility between them and the family that they will live with.
- Within 'Individual placement agreement' - The words 'any representative' to be added to those who might provide a reasonable request to the service provider to review the adult placement agreement to reflect the potentially important role that they may have in supporting an individual in their placement.
- Within 'The appropriate use of control and restraint' - An additional requirement to be added requiring the service provider to include in their control and restraint procedure a requirement that the adult placement carer must inform them of any incident in which control or restraint is used within 24 hours. Also that the existing requirement for 'a record of any incident in which control or restraint is used must be made within 24 hours' is amended to require service providers to record any such incident immediately after being notified by the adult placement carer. These changes are needed as the previous wording was ambiguous as to what point the 24 hours referred to (i.e. notification or time of incident). It would also have been difficult for service providers to comply with a requirement to make a record within 24 hours if there were not also some arrangement for adult placement carers to notify them.

## v) Competition Assessment

The competition filter test	
Question	Answer yes or no
<b>Q1:</b> In the market(s) affected by the new regulation, does any firm have more than 10% market share?	Yes
<b>Q2:</b> In the market(s) affected by the new regulation, does any firm have more than 20% market share?	Yes
<b>Q3:</b> In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	Yes
<b>Q4:</b> Would the costs of the regulation affect some firms substantially more than others?	No
<b>Q5:</b> Is the regulation likely to affect the market structure, changing the number or size of firms?	No
<b>Q6:</b> Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q7:</b> Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q8:</b> Is the sector categorised by rapid technological change?	No
<b>Q9:</b> Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

The filter test shows that it is not likely that the regulation will have any detrimental effect on competition; therefore a detailed assessment has not been conducted.

We do not consider it necessary to undertake a competition assessment for these Regulations since they will not affect the business sector in any significant way.

## vi) Post implementation review

As set out in the RIA for the Act the Welsh Government has two clear aims for the regulation and inspection of social care, the Act and as such these regulations. They are:

- To secure the well-being of citizens; and
- To improve the quality of social care.

The Act makes provision for a number of key reporting mechanisms which will offer a set of clear evidence to inform the post implementation review and establish how successful the Act has been in achieving both of these aims. The reporting mechanisms include:

- Annual returns from service providers.
- Annual reports from local authorities and the review of those reports as undertaken in the Annual Review of Performance and Evaluation of Performance by the service regulator.
- The annual report from the Welsh Ministers in their role as the service regulator.

- The annual report of the workforce regulator.

CIW will monitor the implementation of these Regulations following their coming-into-force date of 29 April 2019.