

*Draft Regulations laid before the National Assembly for Wales under section 187(2)(f),(g),(j) and (k) of the Regulation and Inspection of Social Care (Wales) Act 2016, for approval by resolution of the National Assembly for Wales.*

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DRAFT WELSH STATUTORY  
INSTRUMENTS

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**2019 No. (W. )**

**SOCIAL CARE, WALES**

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

**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/XXXX) (W. )**, 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.

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(Service Providers and Responsible  
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2019

*Made*

*\*\*\**

*Coming into force*

*29 April 2019*

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The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 21(5), 27, 28, 30, 31, 45, 46 and 187(1) of the Regulation and Inspection of Social Care (Wales) Act 2016(1) (“the 2016 Act”).

The Welsh Ministers have consulted such persons as they think appropriate, as required by sections 27(4)(a) and 28(4) of the 2016 Act, and published a statement about the consultation as required by section 27(4)(b) of that Act. The Welsh Ministers have also laid the statement before the National Assembly for Wales as required by section 27(5) of that Act.

A draft of these Regulations was laid before the National Assembly for Wales under section 187(2)(f), (g), (j) and (k) of the 2016 Act and has been approved by a resolution of the National Assembly for Wales.

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(1) 2016 anaw 2; see section 189 for the definition of “prescribed”.

# PART 1

## General

### Title and commencement

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

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

### Interpretation

2. In these Regulations—

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

“the 2015 Regulations” (“*Rheoliadau 2015*”) means the Care Planning, Placement and Case Review (Wales) Regulations 2015(1);

“the 2017 Registration Regulations” (“*Rheoliadau Cofrestru 2017*”) means the Regulated Services (Registration) (Wales) Regulations 2017(2);

“the 2018 Regulations” (“*Rheoliadau 2018*”) means the Fostering Panels (Establishment and Functions) (Wales) Regulations 2018(3);

“abuse” (“*camdriniaeth*”, “*cam-drin*”) means physical, sexual, psychological, emotional or financial abuse, and “financial abuse” (“*camdriniaeth ariannol*”) includes—

- (a) having money or other property stolen,
- (b) being defrauded,
- (c) being put under pressure in relation to money or other property, or
- (d) having money or other property misused;

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(1) S.I. 2015/1818 (W. 261).

(2) S.I. 2017/1098 (W. 278).

(3) **S.I. 2018/XXXX (W. X)**. These Regulations are made under section 93 of the Social Services and Well-being (Wales) Act 2014 (anaw 4) and make provision for securing that a child is not placed with a local authority foster parent unless that person is approved as a local authority foster parent by such local authority or a regulated service provider.

“area authority” (*“awdurdod ardal”*) means the local authority or local authority in England for the area in which the child is placed, or is to be placed, where this is different from the placing authority;

“care and support plan” (*“cynllun gofal a chymorth”*) means a plan for the child made under section 83 of the 2014 Act<sup>(1)</sup>;

“child who is looked after by a local authority” (*“plentyn sy’n derbyn gofal gan awdurdod lleol”*) has the same meaning as in section 74 of the 2014 Act;

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

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

“employee” (*“cyflogai”*) has the same meaning as in section 230(1) of the Employment Rights Act 1996<sup>(3)</sup>;

“foster care agreement” (*“cytundeb gofal maeth”*) means the written agreement covering the matters specified in Schedule 3 to the 2018 Regulations;

“foster parent” (*“rhiant maeth”*) means a person who has been approved as a foster parent in accordance with the 2018 Regulations, and includes a person with whom a child is placed under regulation 26 of the 2015 Regulations (temporary approval of a relative, friend or other person connected with a child) or regulation 28 of those Regulations (temporary approval of a particular prospective adopter as a foster parent);

“general practitioner” (*“ymarferydd cyffredinol”*) means a registered medical practitioner<sup>(4)</sup> who—

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(1) “The 2014 Act” is defined in section 189 of the 2016 Act as the Social Services and Well-being (Wales) Act 2014.

(2) 2012 c. 9.

(3) 1996 c. 18.

(4) The definition of a “registered medical practitioner” in Schedule 1 to the Interpretation Act 1978 (c. 30) was substituted by S.I. 2002/3135, Schedule 1, paragraph 10 with effect from 16 November 2009.

- (a) provides primary medical services under Part 4 of the National Health Service (Wales) Act 2006<sup>(1)</sup>, or
- (b) provides services which correspond to services provided under Part 4 of the National Health Service (Wales) Act 2006, otherwise than in pursuance of that Act;

“improper treatment” (*“triniaeth amhriodol”*) means discrimination or unlawful restraint, including inappropriate deprivation of liberty under the terms of the Mental Capacity Act 2005<sup>(2)</sup>;

“local authority in England” (*“awdurdod lleol yn Lloegr”*) means—

- (a) a county council in England,
- (b) a district council for an area in England for which there is no county council,
- (c) a London borough council, or
- (d) the Common Council of the City of London;

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

“parent” (*“rhiant”*), in relation to a child, includes any person who has parental responsibility for the child;

“personal outcomes” (*“canlyniadau personol”*) means—

- (a) the outcomes that the child wishes to achieve, or
- (b) the outcomes that any persons with parental responsibility wish to achieve in relation to the child;

“placement” (*“lleoliad”*) means the placement of a child with a foster parent under section 81(5), (6)(a) and (b) of the 2014 Act;

“placing authority” (*“awdurdod lleoli”*) means, in relation to a child who is looked after by a local authority or local authority in England, that local authority;

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(1) 2006 c. 42.

(2) 2005 c. 9.

“reasonable adjustments” (*“addasiadau rhesymol”*) means such reasonable adjustments as would be required under the Equality Act 2010(1);

“responsible individual” (*“unigolyn cyfrifol”*) means an individual designated by a service provider when making an application to register under section 6 of the 2016 Act;

“social worker” (*“gweithiwr cymdeithasol”*) means a person who is registered as a social worker in the register maintained by SCW(2) under section 80 of the 2016 Act, in Part 16 of the register maintained by the Health and Care Professions Council under article 5 of the Health and Social Work Professions Order 2001(3) or in a corresponding register maintained under the law of Scotland or Northern Ireland;

“staff” (*“staff”*) includes—

- (a) persons employed by the service provider to work at the service as an employee or a worker, and
- (b) persons engaged by the service provider under a contract for services,

but does not include persons who are allowed to work as volunteers;

“statement of purpose” (*“datganiad o ddiben”*) means the document containing the information which must be provided in accordance with regulation 3(c) of and Schedule 2 to the 2017 Registration Regulations for the place in relation to which the service is provided(4);

“worker” (*“gweithiwr”*) has the same meaning as in section 230(3) of the Employment Rights Act 1996.

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(1) 2010 c. 15, section 20.

(2) See section 67(3) of the 2016 Act for the definition of Social Care Wales as “SCW”.

(3) S.I. 2002/254.

(4) Regulation 3(c) of the 2017 Registration Regulations requires a person who wants to provide a fostering service to provide a statement of purpose for each place in relation to which the service is to be provided.

## 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—

- (a) keep the statement of purpose under review, and
- (b) where appropriate, revise the statement of purpose.

(3) The service provider must give notice to the persons listed in paragraph (4) of any revision to be made to the statement of purpose at least 28 days before it is to take effect.

(4) The persons who must be given notice of any revision to the statement of purpose in accordance with paragraph (3) are—

- (a) the Welsh Ministers,
- (b) any child placed with a foster parent by the service provider, unless it would not be appropriate to do so having regard to the child's age and understanding,
- (c) the parents of any such child,
- (d) foster parents and prospective foster parents,
- (e) persons working for the purposes of the fostering service,
- (f) the placing authority.

(5) 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 a child.



### **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 service.

(2) The arrangements must include arrangements for seeking the views of—

- (a) any child placed with a foster parent by the service provider,
- (b) the parents of any such child, unless this is inappropriate or inconsistent with the child's well-being,
- (c) foster parents,
- (d) persons working for the purposes of the fostering service,
- (e) the placing authority, and
- (f) in the case of a child who is placed with an area authority, that area authority,

on the quality of the service and how this can be improved.

(3) When making any decisions on plans for improvement of the quality of the service, a service provider must—

- (a) take into account the views of those consulted in accordance with paragraph (2), and
- (b) have regard to the report prepared by the responsible individual in accordance with regulation 63(4) (quality of care review).

### **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<sup>(1)</sup>—

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(1) Section 6 of the 2016 Act requires a person who wants to provide a regulated service to make an application for registration to the Welsh Ministers designating an individual 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 in Parts 12 to 16, the provider must—

(a) take such action as is necessary to ensure that the requirement is complied with, and

(b) inform the Welsh Ministers.

(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 these Regulations, and

(d) monitoring, reviewing and improving the quality of the service.

(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 Welsh Ministers, and

(b) inform the Welsh Ministers of the interim arrangements.

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

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

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

(3) During any time when the individual is absent, they 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 these Regulations, and

(d) monitoring, reviewing and improving the quality of the service.

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

(a) notify the Welsh Ministers, and

(b) inform the Welsh Ministers of the interim arrangements.

#### **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 the 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—

(a) placement and commencement of the service (see regulation 11 (suitability of the service)),

(b) safeguarding (see regulation 21),

(c) appropriate use of control or restraint (see regulation 22),

(d) bullying (see regulation 25),

(e) absence (see regulation 26),

(f) medication (see regulation 27 (access to health services)),

(g) supporting and developing staff (see regulation 31),

(h) staff discipline (see regulation 34),

(i) complaints (see regulation 42),

- (j) whistleblowing (see regulation 43),
- (k) support for foster parents on how to help children manage their money (see regulation 48).

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

(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 children for whom care and support is provided,
- (b) consistent with the statement of purpose, and
- (c) kept up to date.

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

(5) The service provider must ensure that the content of the policies and procedures which are required to be in place under paragraph (1)(a), (b), (c), (d) and (i) takes into account the needs of any other children who may be affected by the placement being made.

#### **Duty of candour**

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

- (a) any child placed by the service provider,
- (b) the parents of any such child,
- (c) foster parents and prospective foster parents,
- (d) the placing authority,
- (e) in the case of a child who is placed with an area authority, that area authority.

## PART 3

### Requirements on service providers as to the steps to be taken before providing care and support

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

**11.—(1)** The service provider must not agree to place a child with a foster parent unless the provider has determined that there is a suitable placement which can meet the child's needs for care and support and enable the child to achieve their personal outcomes.

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

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

- (a) the child's care and support plan,
- (b) any health or other relevant assessments,
- (c) the child's views, wishes and feelings,
- (d) any risks to the child's well-being,
- (e) any risks to the well-being of any other child who may be affected by the placement to be made,
- (f) the child's religious persuasion, racial origin, cultural and linguistic background, sexual orientation and gender identity,
- (g) any reasonable adjustments which the service provider could make to enable the child's care and support needs to be met,
- (h) the service provider's policy and procedures on placements and commencement of the service.

(4) In making the determination in paragraph (1), the service provider must involve—

- (a) the child, where practicable,
- (b) the child's parents, unless this is inappropriate or inconsistent with the child's well-being,
- (c) the placing authority.

## PART 4

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

#### Information about the service

**12.—**(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 a language, style, presentation and format which is appropriate for both children (of all ages and understanding) and adults,
- (c) given to—
  - (i) any child placed by the service provider,
  - (ii) any foster parents and prospective foster parents,
  - (iii) the placing authority, and
- (d) made available to others on request, unless this is not appropriate or would be inconsistent with the well-being of the child.

(3) The guide must contain the following—

- (a) a summary of the policies and procedures which the service provider must put in place under regulation 9(1)(a), (b), (c), (d), (e), (f), (i) and (k),
- (b) information about how to make a complaint,
- (c) information about the availability of advocacy services for children who are looked after by a local authority,
- (d) information about the role and contact details for the Children's Commissioner for Wales.

(4) The service provider must ensure that children receive such support as is necessary to enable them to understand the information contained in the guide.

## PART 5

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

### **Standards of care and support – overarching requirements**

**13.** The service provider must ensure that foster parents give care and support to a child placed with them—

- (a) in accordance with the child’s care and support plan, and
- (b) in a way which maintains, protects and promotes the safety and well-being of the child.

### **Continuing suitability of the placement**

**14.** If, as a result of a change in the child’s assessed needs, the placement made by the service provider is no longer suitable to meet the child’s needs for care and support, even after any reasonable adjustments have been made, the service provider must immediately give written notice of this to the placing authority.

### **Information for children**

**15.—(1)** The service provider must put arrangements in place to ensure that children have the information they need to make and participate in day to day decisions about the way care and support is provided to them and how they are supported to achieve their personal outcomes.

(2) Information provided must be available in an appropriate language, style, presentation and format for children of all ages.

(3) The service provider must put arrangements in place to ensure that children receive such support as is necessary to enable them to understand the information provided.

### **Language and communication**

**16.—(1)** The service provider must take reasonable steps to meet the language needs of children.

(2) The service provider must ensure that children are provided with access to such aids and equipment as may be necessary to facilitate their communication with others.

### **Respect and sensitivity**

**17.—(1)** The service provider must put arrangements in place to ensure that children placed by the provider are treated with respect and sensitivity.

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

- (a) respecting the child's privacy and dignity,
- (b) respecting the child's right to confidentiality,
- (c) promoting the child's autonomy and independence, and
- (d) having regard to any relevant protected characteristics (as defined in section 4 of the Equality Act 2010) of the child.

### **Compliance with foster care agreement**

**18.** The service provider must monitor the foster parents' compliance with the requirements of the foster care agreement.

### **Duty to promote contact**

**19.** The service provider must ensure foster parents promote contact between a child placed with them and the child's parents, relatives and friends, in accordance with the child's care and support plan and any court order relating to contact.

## **PART 6**

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

#### **Safeguarding – overarching requirements**

**20.** The service provider must put arrangements in place to ensure that children placed by it 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—

- (a) for the prevention of abuse, neglect and improper treatment, and
- (b) for 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 children for whom care and support is 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.

#### **The appropriate use of control and restraint**

**22.—**(1) The service provider must have a policy and procedures in place on the use of control or restraint.

(2) The policy and procedures must prohibit care and support being provided in a way which includes acts intended to control or restrain a child unless those acts—

- (a) are necessary to prevent a risk of harm posed to the child or other persons or likely serious damage to property, and
- (b) are a proportionate response to such a risk.

(3) The policy and procedures must require foster parents to be trained in any methods of control or restraint to be used.

(4) The policy and procedures must require foster parents to—

- (a) make a record of any incident in which control or restraint is used, and
- (b) notify the service provider of any such incident within 24 hours.

(5) The service provider must ensure that any control or restraint used by foster parents is carried out in accordance with these policies and procedures.

(6) For the purposes of this regulation, a person controls or restrains a child if that person—

- (a) uses, or threatens to use, force to secure the doing of an act which the child resists, or
- (b) restricts the child's liberty of movement, whether or not the child resists, including by the use of physical, mechanical or chemical means.

(7) For the purposes of this regulation, "harm" has the same meaning as in section 22(10) of the 2016 Act.

#### **Prohibition on the use of corporal punishment**

**23.** The service provider must ensure that foster parents do not use any form of corporal punishment at any time against any child.

#### **Deprivation of liberty**

**24.** A child must not be deprived of their liberty for the purpose of receiving care and support without lawful authority.

#### **Policy and procedures on bullying**

**25.** The service provider must have in place a policy on the prevention of bullying and procedures for dealing with an allegation of bullying.

#### **Procedure when child is absent without permission**

**26.** The service provider must ensure that there is a procedure to be followed when any child who has been placed with foster parents by the provider is absent without permission.

## **PART 7**

Requirements on service providers to ensure access to health, education and other services

#### **Access to health services**

**27.—(1)** The service provider must ensure that foster parents promote the physical, mental and emotional health and development of children placed with them.

(2) In particular, the service provider must put arrangements in place to ensure that foster parents—

- (a) register each child with a general practitioner,
- (b) provide each child with access to such medical, dental, optical, nursing, psychological and psychiatric advice, treatment and services as the child may require,
- (c) support each child to obtain such individual support, aids and equipment which the child may require as a result of any particular health needs or disability they may have, and
- (d) provide each child with guidance, support and advice on health, personal care and health promotion issues appropriate to the child's needs and wishes.

(3) The service provider must have a policy and procedures in place in relation to the administration of medicines by foster parents.

#### **Education, employment and leisure activities**

**28.—(1)** The service provider must ensure that the educational attainment of children placed with foster parents is promoted.

(2) In particular the service provider must—

- (a) establish a procedure for monitoring the educational attainment, progress and school attendance of children placed with foster parents,
- (b) in relation to school aged children placed with foster parents, ensure foster parents promote the children's regular attendance at school and participation in school activities, and
- (c) provide foster parents with such information and assistance, including equipment, as may be necessary to meet the educational needs of children placed with them.

(3) The service provider must ensure that foster parents promote the leisure interests of children placed with them and support them to engage in play and recreational activities appropriate to their age and to participate freely in cultural life and the arts<sup>(1)</sup>.

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(1) Section 1 of the Rights of Children and Young Persons (Wales) Measure 2011 (nawm 2) requires the Welsh Ministers, when

(4) Where any child placed with foster parents has attained the age where they are no longer required to receive compulsory full-time education, the service provider must assist with the making of, and give effect to, arrangements made for the child in respect of their education, training and employment.

## PART 8

### Staffing

#### Staffing - overarching requirements

**29.** 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—

- (a) the statement of purpose for the service,
- (b) the care and support needs of children,
- (c) the need to support children to achieve their personal outcomes,
- (d) the need to safeguard and promote the health and welfare of children, and
- (e) the requirements of these Regulations.

#### Fitness of staff

**30.—(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, or
- (c) allow any other person to work at the service in a position in which they may in the course of their duties have regular contact with children who are receiving care and support unless that person is fit to do so.

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exercising any of their functions, to have due regard to the requirements of Part 1 of the United Nations Convention on the Rights of the Child adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 (“the Convention”). Article 31 of Part 1 of the Convention recognises a child’s right to play.

(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 they are 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 their role,
- (d) the person has provided full and satisfactory information or documentation, as the case may be, in respect of each of the matters required under paragraphs 1 to 9 of Schedule 1, and this information or documentation is available at the service for inspection by the Welsh Ministers, and
- (e) where the person is employed by the service provider to manage the service, from 1 April 2022, the person is registered as a social care manager<sup>(1)</sup> with SCW.

(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

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(1) See section 79(1)(b) of the 2016 Act for the definition of a "social care manager".

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 fostering 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 safeguard children, and
- (b) where appropriate, inform—
  - (i) SCW,
  - (ii) the Disclosure and Barring Service.

### **Supporting and developing staff**

**31.**—(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, and
- (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 as a manager is supported to maintain any registration with SCW.

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

**32.** 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 2016 Act.

### **Information for staff**

**33.—**(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 suitable arrangements in place to make staff aware of any codes of practice about the standards of conduct expected of social care workers which are required to be published by SCW under section 112(1)(a) of the 2016 Act.

### **Disciplinary procedures**

**34.—**(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 employees in the interests of the safety or well-being of children receiving care and support from the service, and
- (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) an officer of the Welsh Ministers,
- (b) the service provider,
- (c) the responsible individual,
- (d) an officer of the local authority,
- (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,

as the case may be.

### **Restrictions on employment**

**35.—**(1) The service provider must not employ to work for the purposes of the fostering service in a

position to which paragraph (2) applies, a person who is—

- (a) a foster parent approved by the fostering service, or
- (b) a member of the household of such a foster parent.

(2) This paragraph applies to any management, social work or other professional position, unless in the case of a position which is not a management or a social work position, the work is undertaken on an occasional basis, as a volunteer, or for no more than 5 hours in any week.

## PART 9

### Premises, facilities and equipment

#### **Premises, facilities and equipment - service providers**

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

#### **Adequacy of facilities**

**37.** The service provider must ensure that the premises used for the operation of the service have adequate facilities for—

- (a) the supervision of staff, and
- (b) the secure storage of records.

#### **Premises, facilities and equipment - foster parents**

**38.—(1)** The service provider must have arrangements in place to ensure that the premises, facilities and equipment used by foster parents for the provision of care and support to children are—

- (a) suitable and safe for the purpose for which they are intended to be used,
- (b) used in a safe way,
- (c) properly maintained, and
- (d) kept clean to a standard which is appropriate for the purpose for which they are being used.

(2) The service provider must ensure that foster parents are properly trained on how to operate any



equipment that they may use when providing care and support to a child.

## PART 10

### Other requirements on service providers

#### **Records with respect to fostering services**

**39.**—(1) The service provider must maintain the records specified in Schedule 2 for 15 years.

(2) The service provider must—

- (a) ensure that the records specified in Schedule 2 are accurate and up to date,
- (b) keep the records securely,
- (c) ensure the records are delivered to the placing authority when the service ceases to be provided in respect of the child to whom the records relate,
- (d) make suitable arrangements for the records to continue to be kept securely in the event the service closes,
- (e) make the records available to the Welsh Ministers on request,
- (f) ensure that children who use the service—
  - (i) are made aware of their right to access their records, and
  - (ii) have such access to their records as is permitted by law.

#### **Notifications**

**40.**—(1) The service provider must notify the Welsh Ministers of the events specified in Part 1 of Schedule 3.

(2) The service provider must notify the placing authority of the events specified in Part 2 of Schedule 3.

(3) The service provider must notify the area authority of the events specified in Part 3 of Schedule 3.

(4) The service provider must notify the Local Health Board in whose area the child is placed of the events specified in Part 4 of Schedule 3.

(5) The service provider must notify the police of the events specified in Part 5 of Schedule 3.

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

(7) Notifications must be made in such manner and in such form as may be required by the Welsh Ministers.

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

### **Conflicts of interest**

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

### **Complaints policy and procedures**

**42.—(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 complaints policy must include procedures for considering complaints made to the service provider by or on behalf of children placed by the provider about—

- (a) the provider,
- (b) foster parents, and
- (c) any other matter considered by the provider to be relevant.

(3) The complaints policy must include procedures for considering complaints made to the service provider by or on behalf of any other children who may be affected by the placement made about—

- (a) the provider, and
- (b) any other matter considered by the provider to be relevant.

(4) The complaints policy must include procedures for considering complaints made to the service provider by foster parents about—

- (a) the provider, and
- (b) any other matter considered by the provider to be relevant.

(5) The complaints policy must include procedures for considering complaints made to the service

provider by the parents of any child placed by the provider about—

- (a) the provider, and
- (b) any other matter considered by the provider to be relevant.

(6) 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, and
- (d) keeping records relating to the matters in sub-paragraphs (a) to (c).

(7) The service provider must provide a summary of complaints, responses and any subsequent action taken to the Welsh Ministers within 28 days of being requested to do so.

(8) 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**

**43.—**(1) The service provider must put 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 the service.

(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 service 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, and
- (c) a record is kept relating to the matters in sub-paragraphs (a) and (b).

## **PART 11**

### **Support and oversight of foster parents**

#### **Support, training and information for foster parents**

**44.—(1)** The service provider must ensure that foster parents have the information they need to provide care and support to a child placed with them in accordance with the child's care and support plan.

(2) The service provider must ensure foster parents receive such training, advice and support, including support outside office hours, as appears necessary in the interests of children placed with the foster parents and to enable them to provide care and support to children in accordance with each child's care and support plan.

(3) The service provider must ensure prospective foster parents receive such training, information and advice as is considered necessary.

(4) The service provider must monitor and review the information, training, advice and support provided to foster parents and prospective foster parents and make any improvements which may be necessary.

#### **Policies and procedures to foster parents**

**45.** The service provider must ensure that foster parents are familiar with and act in accordance with the policies and procedures established under regulations 11, 21, 22, 25, 26, 27, 42 and 48.

#### **Supervision**

**46.** The service provider must ensure that foster parents are appropriately supervised.

#### **Effective working relationships**

**47.** The service provider must—

- (a) maintain good professional relationships with foster parents, and

- (b) encourage and assist foster parents to maintain good personal relationships with children placed with them.

### **Supporting children to manage their money**

**48.—**(1) The service provider must have a policy and procedures in place to enable foster parents to provide support and assistance to children on how to manage their money.

(2) The policy and procedures which are required by this regulation to be in place must set out the steps which are to be taken by foster parents to enable and support children to manage their own money and to protect children from financial abuse.

(3) The policy and procedures must ensure that there is adequate oversight and monitoring by the service provider of savings which are made by foster parents on behalf of children.

(4) Where a child's money is held by the foster parents for any purpose, the policy and procedures required by this regulation must provide that the money is held in an account in the child's name or in an account which enables clear demarcation of the child's money.

(5) The policy and procedures must ensure that foster parents pass on all records of savings (including expenditure from savings) to the service provider when the placement of the child to whom the records relate comes to an end.

## **PART 12**

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

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

**49.** The responsible individual must supervise the management of the service.

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

**50.—**(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) Where the service provider is an individual, the conditions are—

- (a) the service provider proposes to manage the service,
- (b) the service provider is fit to manage the service,
- (c) subject to paragraph (6), the service provider is registered as a manager with SCW, and
- (d) the Welsh Ministers agree to the service provider managing the service.

(3) Where the service provider is a partnership, body corporate or unincorporated body, the conditions are—

- (a) the service provider proposes that the individual designated as the responsible individual for the service is to be appointed to manage the service,
- (b) that individual is fit to manage the service,
- (c) subject to paragraph (6), that individual is registered as a manager with SCW, and
- (d) the Welsh Ministers agree to that individual managing the service.

(4) For the purposes of paragraph (2)(b), the service provider is not fit to manage the service unless the requirements of regulation 30(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)(c) and (3)(c) applies only from 1 April 2022.

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

**51.—**(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 30(2) (fitness of staff) are met in respect of that person.

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

**52.—**(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 Welsh Ministers for permission to appoint a manager for more than one service, and
- (b) the Welsh Ministers are satisfied that the proposed management arrangements—
  - (i) will not have an adverse impact on the care and support provided to children, and
  - (ii) will provide reliable and effective oversight of each service.

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

**53.** On the appointment of a manager in accordance with regulation 50(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 the appointment of manager to SCW and the Welsh Ministers**

**54.—(1)** On the appointment of a manager in accordance with regulation 50(1), the responsible individual must give notice to SCW and the Welsh Ministers 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) Where a service provider who is an individual is to manage the service, that individual must give notice to SCW of—

- (a) their name, date of birth and SCW registration number, and
- (b) the date from which they will manage the service.

**Arrangements when manager is absent**

**55.—(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 absent from the service.

(2) If there is no manager or the manager is absent for a period of more than 28 days, the responsible individual must—

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

### **Visits**

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

- (a) visit the premises from which the service is provided,
- (b) meet with members of staff who are employed by the service provider from each place in respect of which the responsible individual is designated, and
- (c) meet with children who have been placed by the service provider and their foster parents.

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

## **PART 13**

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

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

**57.—**(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 of these Regulations.

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

(3) The requirement in paragraph (1) does not apply where the service provider is an individual.

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

**58.—**(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 in which the service is managed or provided, and
- (c) any concerns that the service is not being provided in accordance with the statement of purpose for the service.

(2) The requirement in paragraph (1) does not apply where the service provider is an individual.

### **Engagement with children and others**

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

- (a) any child placed by the service provider,
- (b) the parents of any such child, unless this is inappropriate or inconsistent with the child's well-being,
- (c) foster parents,
- (d) the placing authority, and
- (e) staff employed at the service,

on the quality of care and support provided to children 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 provider when making any decisions on plans for improving the quality of care and support provided by the service.

## **PART 14**

Requirements on responsible individuals for ensuring the compliance of the service

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

**60.** The responsible individual must ensure that there are effective systems in place to record incidents, complaints and matters on which notifications must be made under regulations 40 and 67.

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

**61.** 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 must be kept under regulation 39.

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

**62.** 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 15

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

**Quality of care review**

**63.—(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 suitable arrangements for—

- (a) considering the outcome of the engagement with children and others, as required by regulation 59 (engagement with children and others),
- (b) analysing aggregated data on notifications, safeguarding matters, whistleblowing concerns and complaints,
- (c) reviewing any action taken in relation to complaints, and
- (d) considering the outcome of any audit of the accuracy and completeness of records.

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

- (a) w assessment of the standard of care and support provided, and
- (b) recommendations for the improvement of the service.

(5) 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 care and support**

**64.—**(1) The responsible individual must prepare the statement required to be included in the annual return under section 10(2)(b) of the 2016 Act.

(2) When preparing the statement, the responsible individual must have regard to the assessment of the standard of care and support which is included in the report prepared in accordance with regulation 63(4).

## **PART 16**

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

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

**65.** 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**

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

- (a) any child who is placed by the service provider,
- (b) the parents of any such child,
- (c) foster parents and prospective foster parents,
- (d) the placing authority.

## Notifications

**67.—**(1) The responsible individual must notify the Welsh Ministers of the events specified in Schedule 4.

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

(3) Notifications must be made in such manner and in such form as may be required by the Welsh Ministers.

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

## PART 17

### Offences

#### Offences - service providers

**68.—**(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)(1).

(2) The provisions specified for the purposes of paragraph (1) are the provisions of regulations—

- (a) 4(3) (requirements in relation to the statement of purpose),
- (b) 4(4) (requirements in relation to the statement of purpose),
- (c) 8(3) (requirements in relation to financial sustainability of the service),
- (d) 9(1) (requirement to provide the service in accordance with policies and procedures),
- (e) 12(1) (information about the service),
- (f) 12(2) (information about the service),
- (g) 12(3) (information about the service),
- (h) 25 (policy and procedures on bullying),
- (i) 26 (procedure when child is absent without permission),
- (j) 30(1) (fitness of staff),

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(1) For penalties upon conviction for an offence under this regulation, see section 51(1) of the 2016 Act.

- (k) 33(1) (information for staff),
- (l) 39(1) (records with respect to fostering services),
- (m) 39(2) (records with respect to fostering services),
- (n) 40(1) (notifications),
- (o) 40(2) (notifications),
- (p) 40(3) (notifications),
- (q) 40(4) (notifications),
- (r) 40(5) (notifications),
- (s) 40(8) (notifications).

(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 a child,
- (b) a child 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 a child of the money or property concerned.

(4) The provisions specified for the purposes of paragraph (3) are the provisions of regulations—

- (a) 3 (requirements in relation to the provision of the service),
- (b) 4(1) (requirements in relation to the statement of purpose),
- (c) 9(5) (requirement to provide the service in accordance with policies and procedures),
- (d) 11(1) (suitability of the service),
- (e) 11(3) (suitability of the service),
- (f) 13 (standards of care and support – overarching requirements),
- (g) 20 (safeguarding),
- (h) 27(3) (access to health services),
- (i) 29 (staffing – overarching requirements).

### **Offences – responsible individuals**

**69.**—(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)(1).

(2) The provisions specified for the purposes of paragraph (1) are the provisions of regulations—

- (a) 50(1) (duty to appoint a manager),
- (b) 51(1) (fitness requirements for appointment of manager),
- (c) 54(1) (duty to report the appointment of manager to SCW and the Welsh Ministers),
- (d) 54(2) (duty to report the appointment of manager to SCW and the Welsh Ministers),
- (e) 56(1) (visits),
- (f) 56(2) (visits),
- (g) 57(1) (oversight of adequacy of resources),
- (h) 57(2) (oversight of adequacy of resources),
- (i) 58(1) (other reports to the service provider),
- (j) 63(4) (quality of care review),
- (k) 64(1) (statement of compliance with the requirements as to standards of care and support),
- (l) 67(1) (notifications), and
- (m) 67(4) (notifications).

## **PART 18**

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

#### **Appointment of liquidators etc.**

**70.** An appointed person(2) must—

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(1) For penalties upon conviction for an offence under this regulation, see section 51(1) of the 2016 Act.

(2) “Appointed person” has the same meaning as in section 30 of the 2016 Act.

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

#### **Death of service provider**

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

- (a) without delay, give written notice of the death to the Welsh Ministers, and
- (b) within 28 days of the death, notify the Welsh Ministers of their intentions regarding the future operation of the service.

(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 Welsh Ministers 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 2016 Act applies with the following modifications—

- (a) section 5 (requirement to register) does not apply;
- (b) section 21(2) (responsible individuals) is to be read as if after paragraph (a), there is inserted—

“(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;”.

(4) In this regulation, “the service” means the fostering service which the individual provider who has died was registered to provide at the time of their death.

## PART 19

### Regulations under section 21(5) of the 2016 Act

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

72. 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, in the following circumstances—

- (a) the service provider is an individual who has died and the personal representatives of the provider have informed the Welsh Ministers that they do not intend to make an application under section 11(1)(c) of the 2016 Act;
- (b) the service provider is an individual and they have informed the Welsh Ministers—
  - (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 informed the Welsh Ministers—
  - (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.

#### *Name*

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



Date

## SCHEDULE 1

Regulation 30(2) and (3)

### PART 1

#### Information and documentation to be available in respect of persons working in fostering 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(1), 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(2) (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.

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(1) 1997 c. 50.

(2) 2006 c. 47. Sections 30 to 32 of the Safeguarding Vulnerable Groups Act 2006 as originally enacted are to be replaced by new sections 30A and 30B as a result of substitutions made by section 72(1) of the Protection of Freedoms Act 2012. Section 72(1) is to be commenced on a day to be appointed.

**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.** Details of registration with or membership of any professional body.

## PART 2

### Interpretation of Part 1

**10.** 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 30(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.

## SCHEDULE 2

Regulations 2 and 39

### Records to be kept by service providers

1. A record showing in respect of each child placed with foster parents—

- (a) the date of the child's placement;
- (b) the child's care and support plan;
- (c) the foster care agreement in respect of the child;
- (d) the name and address of the foster parents;
- (e) the date on which the child ceased to be placed there;
- (f) the child's address prior to placement;
- (g) the child's address on leaving the placement;
- (h) the child's local authority;
- (i) the statutory provision under which the child is or was provided with foster care.

2. A record of all persons working for the service provider, which must include in respect of a person falling within regulation 30(1) the following matters—

- (a) full name and home address;
- (b) date of birth;
- (c) sex;
- (d) qualifications relevant to, and experience of, work involving children;
- (e) copy of birth certificate and passport (if any) in respect of the person;
- (f) copy of each reference obtained in respect of the person;
- (g) whether the person is employed by the service provider under a contract of service, a contract for services, or otherwise than under a contract, or is employed by someone other than the service provider;
- (h) whether the person works full-time or part-time, and, if part-time, the average number of hours worked per week;
- (i) the dates on which the person commences and ceases to be so employed;

- (j) the position the person holds in the service;
- (k) records of disciplinary action and any other records in relation to the person's employment; and
- (l) a record of the date of the person's latest DBS certificate and whether there was any action taken as a result of the content of the certificate.

**3.** A record of all serious accidents and injuries occurring to children whilst placed with foster parents.

**4.** A record of all complaints made under the complaints policy put in place by the service provider, and the action taken by the service provider in respect of any such complaints.

**5.** Date and circumstances of any safeguarding referrals, and the outcome.

**6.** Date and circumstances of any incident of control or restraint used by foster parents on a child.

## Notifications by the service provider

### PART 1

#### Notifications to the Welsh Ministers

**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, 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 the commencement of the absence.

**9.** 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 a child that involves the service provider, a member of staff, a volunteer and/or a foster parent.

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

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

**16.** Serious accident or injury of a child placed with foster parents.

**17.** Any incident which is reported to the police relating to a child placed with foster parents.

**18.** Death of a child placed with foster parents.

**19.** Any referral to the Disclosure and Barring Service pursuant to the Safeguarding Vulnerable Groups Act 2006.

**20.** Instigation and outcome of any child protection enquiry involving a child placed with foster parents.

**21.** Any incident of child sexual or criminal exploitation or any suspected child sexual or criminal exploitation.

**22.** Any proposed change to the address of the principal office, 28 days prior to the change taking place.

## PART 2

### Notifications to the placing authority

**23.** Death of a child placed with foster parents.

**24.** Any referral to the Disclosure and Barring Service pursuant to the Safeguarding Vulnerable Groups Act 2006.

**25.** Serious accident or injury of a child placed with foster parents.

**26.** Outbreak at the home of foster parents of any infectious disease which in the opinion of a general practitioner attending the home is sufficiently serious to be so notified.

**27.** Allegation that a child placed with foster parents has committed a serious offence.

**28.** Any incident which is reported to the police relating to a child placed with foster parents.

**29.** Any incident of a child placed with foster parents being absent without permission.

**30.** Any serious complaint or allegation about any foster parents approved by the service provider.

**31.** Instigation and outcome of any child protection enquiry involving a child placed with foster parents.

**32.** Any incident of child sexual or criminal exploitation or any suspected child sexual or criminal exploitation.

### PART 3

#### Notifications to the area authority in whose area the foster home is situated

**33.** Death of a child placed with foster parents.

**34.** Outbreak at the home of foster parents of any infectious disease which in the opinion of a general practitioner attending the home is sufficiently serious to be so notified.

**35.** Any incident of child sexual or criminal exploitation or any suspected child sexual or criminal exploitation.

**36.** Instigation and outcome of any child protection enquiry involving a child placed with foster parents.

**37.** Any incident which is reported to the police relating to a child placed with foster parents.

### PART 4

#### Notifications to the Local Health Board in whose area the child is placed

**38.** The death of a child placed with foster parents.

**39.** Outbreak at the home of foster parents of any infectious disease which in the opinion of a general practitioner attending the home is sufficiently serious to be so notified.

### PART 5

#### Notifications to the police

**40.** Allegation that a child placed with foster parents has committed a serious offence.

**41.** Any incident of child sexual or criminal exploitation or any suspected child sexual or criminal exploitation.

## **SCHEDULE 4**

Regulation 67(1)

### **Notifications by the responsible individual**

**1.** The appointment of a manager (see regulation 50(1)).

**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.