

Explanatory Memorandum to The Regulated Services (Registration) (Wales) (Amendment) Regulations 2023

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

Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Regulated Services (Registration) (Wales) (Amendment) Regulations 2023. I am satisfied that the benefits justify the likely costs.

Julie Morgan MS
Deputy Minister for Social Services

8 December 2023

1. Description

- 1.1 The Regulation and Inspection of Social Care (Wales) Act 2016 ('the 2016 Act') provides the statutory framework for the regulation and inspection of social care services and the regulation of the social care workforce in Wales. To help achieve this it provides the Welsh Ministers with a range of regulation-making and other subordinate legislation powers.
- 1.2 *The Regulated Services (Registration) (Wales) (Amendment) Regulations 2023* ("the 2023 Regulations") amend the Regulated Services (Registration) (Wales) Regulations 2017.
- 1.3 The purpose of the 2023 Regulations is to amend the regulatory framework to include the *special school residential service* which is being prescribed as a new regulated service under section 2 of the 2016 Act.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

None.

3. Legislative background

- 3.1 The powers enabling these draft amendment regulations to be made are contained in sections 6, 11 and 187 of the 2016 Act.
- 3.2 Sections 6 and 11 relate to the application for registration to provide a regulated care and support service, and to the application to vary an existing registration. Section 187(1) specifies that a power to make regulations under the 2016 Act is exercisable by statutory instrument.

Registration & Variation of Registration

- 3.3 Section 6 of the 2016 Act sets out the overarching requirements for registering to provide a regulated service. This section states that an applicant must specify the regulated service they wish to provide, the place at, from or in relation to which the service is to be provided and the person designated to be the responsible individual. It includes regulation making powers to prescribe the form of the application to register and further information to be provided.
- 3.4 Section 11 of the 2016 Act sets out the situations in which a service provider must make an application for variation of their registration. This covers situations where a provider wants:
 - to provide a regulated service they are not already registered to provide,
 - to provide a regulated service at, from or in relation to a place not already specified in the provider's registration,

- to cease to provide a regulated service,
- to cease to provide a regulated service at, from or in relation to a place,
- a condition imposed their registration to be varied or removed, or
- to designate a different responsible individual in respect of a place or is required to designate a responsible individual because there is no responsible individual designated in respect of a place.

3.5 Section 11 of the 2016 Act sets out the overarching requirements for application for variation of registration as a service provider. This section states that the Welsh Ministers must prescribe a time limit within which an application to designate a replacement responsible individual must be made, an application must set out further information as may be prescribed and be in the prescribed form.

3.6 The 2023 Regulations are subject to the negative procedure.

4. Purpose and intended effect of the legislation

4.1 In March 2022, the Independent Inquiry into Child Sexual Abuse (“the Inquiry”) published the investigation report [‘The residential schools investigation Phase 1: Music schools, residential special schools 2: Safeguarding day and boarding schools’](#). The Inquiry examined questions concerning sexual abuse of children in residential special schools in England and Wales. The Chief Social Care Officer for Wales and Care inspectorate Wales (CIW) gave evidence to the Inquiry. The recommendations of the Inquiry include requiring all residential special schools to be inspected against the quality standards used to regulate care homes in Wales.

4.2 The purpose of the 2023 Regulations is to amend the substantive regulations relating to registration to include residential special schools. ‘Residential special school’ is not a term specifically defined in current legislation, but it is used by CIW to differentiate these schools from a special school not providing accommodation. The proposed Regulated Services (Registration) (Wales) (Amendment) Regulations 2023 will define the *special school residential service* for the purposes of the 2016 Act and bring it into the regulation, inspection, and enforcement regime.

4.3 The Regulated Services (Registration) (Wales) Regulations 2017 set out the requirements for application for registration, and application for variation of registration as a service provider. The regulations state the information to be provided by the applicant to register as a service provider, information required by a service provider to vary the registration, the form of application and the time limit within which an application to vary must be made where there is no designated responsible individual. In response to feedback from the public consultation, the intention is to require an applicant to clearly demonstrate the working relationship between the

special school residential service and the education provision in the statement of purpose at registration or application for variation of registration.

5. Consultation

A 12-week public consultation was undertaken between 15 May 2023 to 6 August 2023 on the suite of draft Regulations making up the regulatory framework and the accompanying statutory guidance for the special school residential services. The consultation was drawn to the attention of key stakeholders including the current residential special schools, local authorities, the Children's Commissioner for Wales, CIW, Estyn, and Social Care Wales. A meeting of the stakeholder group was convened during the consultation period. The consultation responses report can be found [here](#).

PART 2 - REGULATORY IMPACT ASSESSMENT

The Regulated Services (Registration) (Wales) (Amendment) Regulations 2023 (“the 2023 Regulations”).

6.Registration & Variation of Registration

Two options have been considered in the analysis of the costs, risks, and benefits. The options are:

6.1 Option one: Do the minimum – amend the Regulated Services (Registration) (Wales) Regulations 2017 to satisfy section 11(2) of the 2016 Act which requires the Welsh Ministers to prescribe a time limit within which an application for variation of a provider’s registration must be made in circumstances when there is no responsible individual designated in relation to the regulated service, so that it applies to *special school residential services*.

Under this option, a person who wants to provide a regulated *special school residential service* would still be required to make an application for registration to the Welsh Ministers (in practice CIW) under section 6(1)(a)-(c) of the 2016 Act and to provide the information specified on the face of the Act. This includes specifying the regulated service that the person wants to provide, the places at, from or in relation to which the service is to be provided and designating a responsible individual. However, under this option, the amendment regulations would not require the applicant to provide the additional information required in an application to register or to vary a registration, or to use the prescribed form of application.

6.1.1 Costs

There will be a cost to Welsh Government, specifically for CIW as the service regulator, in extending the online system of registration to include *special school residential services* to process the registrations and variations of registration required under this option. The one-off cost is estimated to be £46,000 in 2023-24. CIW will need to develop the inspection framework and relevant guidance, and the staffing costs to undertake this work is estimated to be £4,600 in 2023-24.

There are currently four residential special schools in Wales, and all are provided by local authorities who are already registered as service providers. Existing service providers will apply for a variation of registration to add the new service to their registration.

The estimated staff time for CIW to process, assess and approve a straightforward and complete application to register a new service is 33 hours. On this basis, the cost for CIW in registering a service provider is estimated to be £1,200 per service, a total of £4,800. This may be lower for applications by existing service providers to vary a registration by adding a new service.

There will be a time cost to applicants in completing the registration or variation of registration process required under this option. However, assessing the precise cost of this option for both new and existing service providers is problematic as it will vary depending on the capacity of the service provider and their current organisational practices and processes. A person who wants to register a regulated *special school residential service* will only be required to do this once, therefore, there will be no recurring cost.

The addition of the four existing residential special schools as *special school residential services* will increase the monitoring and inspections to be undertaken by CIW. The estimated annual cost based on 2023-24 figures is £15,000 which equates to an additional 0.25 inspector. This will be a recurring cost.

6.1.2 Risks

Several risks have been identified under this option. To do the minimum and not specify the additional information and documentation to be included in an application to register, or to vary an existing registration, will create an inconsistency between existing regulated services and *special school residential services*.

This will mean that CIW will not have access to the full range of information it requires to satisfy itself as to the suitability of the service and the fitness of the service provider and the designated responsible individual. There will be no requirement for the applicant to submit a statement of purpose as part of the registration process. The statement of purpose is an integral part of the system of regulation and forms the basis of the registration, inspection, and enforcement processes. The statement of purpose is the central component of the quality standards used to regulate care homes. It states how the service will meet the care and support needs of the individuals and support them to achieve their personal outcomes.

This option will not respond effectively to the Inquiry recommendation as it will not ensure equity of treatment in the registration of *special school residential services* and other regulated services, including care homes. This may have unintended consequences for the on-going regulation and quality of services and the outcomes for people using the services. This may have reputational consequences for the Welsh Government.

Additionally, without the requirement for *special school residential services* to complete a specified form to register or vary a registration the process is likely to take a lot longer, as people will not know what level of information to provide. This is likely to result in inadequate and inconsistent information being provided and could affect the decision to grant or refuse a registration as stipulated in section 7 of the 2016 Act. This will be less user-friendly and take more time, both for applicants and for CIW.

6.1.3 Benefits

No significant benefits have been identified in relation to this option.

6.2 Option two: Amend the Regulated Services (Registration) (Wales) Regulations 2017 to apply to *special school residential services*. This will mean that the additional information and documentation requirements set out in Schedule 1 of the existing regulations will be required for applications to register a *special school residential service* or to add a *special school residential service* to an existing registration. Schedule 2 of the existing regulations will state the information required to be contained in the statement of purpose will also be required under this option. The statement of purpose is a written document setting out the aims and objectives of the service and the way in which the provider will meet these aims and the needs of people in their care. It is integral to the existing system of regulation and is the basis of the registration, inspection, and enforcement processes.

The requirements in the regulations provide key information to support CIW in making a sound judgement as to the suitability of the service and the fitness of applicant and designated responsible individual to provide the regulated service. Under this option the information, documentation, and statement of purpose requirements for *special school residential services* will be consistent with other regulated services. In response to the consultation feedback Schedule 2 will be amended to provide additional information relating to the joint working arrangements between the *special school residential service* and the education setting.

The form of the application to register a service or vary a registration is prescribed in the existing regulations and is accessed online from the Welsh Government's (CIW) website. The amending regulations will require applicants to provide *special school residential services* to follow the same process.

6.2.1 Costs

The costs to Welsh Government, specifically CIW, are the same as option one. In option two, applicants will be required to write / amend a statement of purpose. The information should be readily available, and the time estimated to write / amend the statement is likely to be fairly modest as all are provided by local authorities who are already registered as service providers. The cost is considered to be as a small administrative cost.

6.2.2 Risks

Under this option there is a small risk that the process of registration or variation of registration could take longer than anticipated due to providers not meeting the information, documentation, and statement of purpose requirements. This will be mitigated for existing providers in advance of the regulations coming into force by signposting the providers to the statement of purpose template and registration guidance available on the CIW website, and access to advice from the CIW registration team.

6.2.3 Benefits

The requirements in regulations are part of an existing registration process that has been successfully tried and tested since the implementation of the system of service regulation established under the 2016 Act.

This option provides clarity and certainty for both providers and CIW. It will set out the information and documentation requirements for providers. It will enable CIW to make an informed decision about the suitability of the service and the fitness of the service provider and designated responsible individual.

This option establishes a direct link between the statement of purpose and the requirements in regulations under section 27 of the 2016 Act which deal with the quality, safety, and governance of services. The statement of purpose will ensure providers of *special school residential services* are regulated and inspected on an equivalent footing with other regulated services, including care home services, as per the recommendation by the Inquiry.

This option responds to the Inquiry recommendation by ensuring parity of treatment in the registration requirements placed on providers of *special school residential services* and other regulated services including care home services. This option will benefit service users by ensuring an equally robust system of service registration applies across all regulated services.

6.3 Conclusion

Having analysed the costs, risks and benefits of each option, the preferred option is **Option 2 – Amend the Regulated Services (Registration) (Wales) Regulations 2017 to apply to *special school residential services*.**

7. Competition Assessment

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

Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No
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There are only four existing residential special schools in Wales which will register as *special school residential services* and for the purposes of the filter test this means that the market share of two firms equals 50%. We do not consider it necessary to undertake a competition assessment for this Regulation since it will not have a detrimental effect on competition or affect the business or third sector in any significant way.

8. Post implementation review

CIW will monitor the implementation of these Regulations following their coming-into-force date of 31 December 2023.