



Llywodraeth Cymru  
Welsh Government

**Number: WG45886**

Welsh Government

Consultation – summary of responses

## **Changes to requirements on providers of certain regulated social care services**

Amendments to the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017

- To revoke amendments made by the Regulated Services (Service Providers and Responsible Individuals) (Wales) (Amendment) (Coronavirus) Regulations 2020; and
- To clarify the description of ‘Category C’ premises within regulation 49

September 2022

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.

This document is also available in Welsh.

## **Overview**

This document provides a summary of the responses received by the Welsh Government to our consultation: WG45087 - Changes to requirements on providers of certain regulated social care services.

The consultation sought views on a proposal to revoke the temporary coronavirus-related amendments made by the Regulated Services (Service Providers and Responsible Individuals) (Wales) (Amendment) (Coronavirus) Regulations 2020 to the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017, on 31 October 2022. The amendments relate to requirements on providers of care home services, wholly or mainly for adults, and of domiciliary support services for adults.

The consultation also sought views on a proposed amendment to regulation 49 of the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017, to clarify the description of 'Category C' premises, used to describe those accommodation-based services to which additional requirements in respect of new premises apply.

The consultation was published on 20 May and closed on 18 July 2022.

## **Action Required**

This document is for information only.

## **Further information and related documents**

Large print, Braille and alternative language versions of this document are available on request.

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## **Additional copies**

This summary of response is published in electronic form only and can be accessed on the Welsh Government's website. <https://gov.wales/changes-requirements-providers-certain-regulated-social-care-services>

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## Introduction

1. This consultation<sup>1</sup> sought views on two proposals to make further amendments to the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017<sup>2</sup> ('the Regulated Services Regulations').
2. Firstly, to revoke the temporary coronavirus-related amendments made to requirements on providers of care home services, wholly or mainly for adults, or of domiciliary support services for adults, through the Regulated Services (Service Providers and Responsible Individuals) (Wales) (Amendment) (Coronavirus) Regulations 2020<sup>3</sup> ('the 2020 Regulations'). These aimed to support the provision of emergency social care for adults, where this was required as a result of the spread of coronavirus, and to simplify pre-employment checks required for new residential and domiciliary care workers, in situations where this information was hard to access.
3. Secondly, to clarify the description of 'Category C' premises within regulation 49 of the Regulated Services Regulations, to ensure that additional requirements in respect of new premises apply whether the premises were included within a previous provider's registration under the Regulation and Inspection of Social Care (Wales) Act 2016<sup>4</sup> ('the 2016 Act') or whether they constituted relevant premises or establishments in respect of which a person had been registered under any relevant Act which previously provided such regulatory control and oversight.
4. The consultation was published on 20 May and closed on 18 July 2022. There were 35 responses received in total: 28 via the online survey and 7 submitted by email. Only one response did not use the online or consultation response form. Most respondents (21) preferred to remain anonymous while others indicated that they were responding on behalf of organisations such as the Welsh Local Government Association and Association of Directors of Social Services Cymru; Care Forum Wales; Unison; Gwent Regional Partnership Team and Flintshire County Council. There were some responses from service providers – either care home services or domiciliary support services – as well as a small number from individuals.
5. Summary and analysis of the responses to each of the proposals is included within the next two sections. A list of respondents is enclosed at Annex A.

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<sup>1</sup> <https://gov.wales/changes-requirements-providers-certain-regulated-social-care-services>

<sup>2</sup> <https://www.legislation.gov.uk/wsi/2017/1264/contents/made>

<sup>3</sup> <https://www.legislation.gov.uk/wsi/2020/570/made>

<sup>4</sup> <https://www.legislation.gov.uk/anaw/2016/2/contents/enacted>

## **Proposal 1: to revoke coronavirus-related amendments made by the Regulated Services (Service Provider and Responsible Individuals) (Wales) (Amendment) Regulations 2020**

### **Background**

1. In spring 2020, working in partnership with Care Inspectorate Wales ('CIW'), the Welsh Government identified a small number of changes to regulations under the Regulation and Inspection of Social Care (Wales) Act 2016<sup>5</sup> ('the 2016 Act') Act that could be made to support providers of regulated services in responding to and managing the impact of the Covid-19 pandemic. These changes related to care home services, wholly or mainly for adults, or to domiciliary support services for adults. Requirements on other regulated services were unaffected.
2. Following consultation with members of the Covid-19 Social Care Planning and Response Group<sup>6</sup> – including representatives from local government; social care providers; the voluntary sector; housing providers; Social Care Wales; the Older People's Commissioner for Wales and CIW – as well as Healthcare Inspectorate Wales; Directors of Social Services; and Chief Executives of Local Health Boards in Wales, the Regulated Services (Service Providers and Responsible Individuals) (Wales) (Amendment) (Coronavirus) Regulations 2020<sup>7</sup> ('the 2020 Regulations') were approved by the Senedd on 3 June 2020 and came into force on 5 June 2020. Accompanying guidance<sup>8</sup> was issued to assist service providers and others to interpret the changes; explain how they could work in practice; and reinforce that all other requirements remained in effect.

### **Description of the changes made by the 2020 Regulations**

3. The 2020 Regulations amend the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017<sup>9</sup> ('the Regulated Services Regulations') in two ways. Firstly, by creating limited exceptions that are not to be treated as a regulated service. Secondly, by easing requirements on certain providers, in prescribed circumstances, in relation to information and documents to be held about people working at the service and to the accommodation of adults in shared rooms.

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<sup>5</sup> <https://www.legislation.gov.uk/anaw/2016/2/contents/enacted>

<sup>6</sup> <https://gov.wales/sites/default/files/publications/2020-05/regulated-services-service-providers-and-responsible-individuals-wales-amendment-coronavirus-regulations-2020-consultation-statement.pdf>

<sup>7</sup> <https://www.legislation.gov.uk/wsi/2020/570/made>

<sup>8</sup> <https://gov.wales/sites/default/files/publications/2020-05/regulated-services-service-providers-and-responsible-individuals-wales-amendment-coronavirus-regulations-2020-consultation-statement.pdf>

<sup>9</sup> <https://www.legislation.gov.uk/wsi/2017/1264/contents/made>

4. Regulation 4 of the 2020 Regulations (exception from the scope of care home services) amends regulation 2 of the Regulated Services Regulations to the effect that the provision of accommodation together with nursing or care, where the accommodation and nursing or care are provided to adults and the services are needed as a result of the spread of coronavirus, is not to be treated as a care home service for the purposes of the 2016 Act. This exception only applies where:

- the service is to be provided by a local authority or a Local Health Board, or
- the service is to be commissioned by a local authority or a Local Health Board and is provided either:
  - by a service provider already registered under the 2016 Act and who provides a care home service wholly or mainly to adults, or
  - by providers of care homes in England who are already registered with the Care Quality Commission.
- and the person intending to provide the service has notified the Welsh Ministers in advance (in practice, CIW, using a mandatory notification form).

5. Likewise, regulation 5 of the 2020 Regulations (exception from the scope of domiciliary support services) amends regulation 3 of the Regulated Services Regulations to the effect that the provision of care and support for adults, where the care and support is needed as a result of the spread of coronavirus, is not to be treated as a domiciliary support service for the purposes of the 2016 Act. Again, this exception only applies where:

- the service is to be provided by a local authority or a Local Health Board, or
- the service is to be commissioned by a local authority or a Local Health Board and is provided either:
  - by a service provider already registered under the 2016 Act and who provides a domiciliary support service for adults, or
  - by providers of domiciliary care agencies in England who are already registered with the Care Quality Commission.
- and the person intending to provide the service has notified the Welsh Ministers in advance (in practice, CIW, using a mandatory notification form)

6. Regulation 6 of the 2020 Regulations (fitness of staff) amends regulation 35 of the Regulated Services Regulations to the effect that where a service provider provides a care home service, wholly or mainly for adults, or a domiciliary support service to adults, the requirement within regulation 35(2)(d) for a person – a prospective employee – to provide full and satisfactory information or documentation of certain matters is to be treated as having been met if:
- the person cannot reasonably provide full and satisfactory information or documentation as a result of the spread of coronavirus; and
  - the person provides as full and satisfactory information or documentation as is reasonably practicable; and
  - the information or documentation provided is available at the service for inspection by CIW.

Those certain matters are:

- two written references, including a reference from the last employer, if any;
  - documentary evidence of any relevant qualification;
  - a full employment history, together with a satisfactory written explanation of any gaps in employment; and
  - evidence of satisfactory linguistic ability for the purposes of providing care and support to those individuals for whom the worker is to provide care and support.
7. Regulation 7 of the 2020 Regulations (shared rooms) amends regulation 45 of the Regulated Services Regulations to the effect that providers of care home services may apply to CIW to vary their registration in order to exceed 15% of the total number of adults accommodated by the service in shared rooms, where accommodation needs to be provided as a result of the spread of coronavirus.

### **Use of the amendments**

8. All of the amendments built in safeguards or align with existing requirements to ensure some level of oversight from the Welsh Ministers (CIW in practice), as the service regulator. Any person intending to provide a service which may be exempt, by virtue of the 2020 Regulations, from registration as a care home service or domiciliary support service must first notify CIW, using a prescribed form. Providers of care home services, wholly or mainly for adults, or domiciliary support for adults, must make the information or documentation they have obtained in relation to people working at the service available for

inspection. Any application to vary the maximum capacity of a care home for adults must be approved by CIW.

9. Since the 2020 Regulations came into force on 5 June 2020, CIW advise that:
  - 12 notifications were made of the intention to provide accommodation and nursing or care for adults, related to Covid-19. Of these, some in fact did not proceed to provide the service and the majority of those that did were local authorities, providing a service to a small number of people at a time, often as a step-down/reablement placement following hospital discharge. Only one service remains operational and the provider has indicated their intention to register this as a care home service.
  - no notifications were made of the intention to provide (domiciliary) care and support for adults, specifically related to Covid-19.
  - only one relevant application was approved to vary the maximum capacity of a care home service.
10. Recent inspection work has highlighted no widespread reliance on the changes to requirements to make information and documents available in respect of people working at the service. Some providers report difficulties in recruiting, generally, but not in undertaking and documenting pre-employment checks.

### **Rationale for change**

11. As conveyed through Together for a safer future: Wales' long-term Covid-19 transition from pandemic to endemic and the Social Care Transition Plan, both published in March 2022, the Covid-19 situation in Wales has significantly improved since the 'emergency footing' seen at start of the pandemic, when the 2020 Regulations were made. High levels of vaccination; fewer hospitalisations and deaths; and improved infection prevention and control measures enabled the majority of legal protections/restrictions in Wales to be lifted at the end of March 2022, with focus now moving towards living alongside coronavirus, with appropriate guidance and effective practical safeguards in place.
12. Provision made within the Coronavirus Act 2020 to enable the temporary registration of social workers in emergency situations and – unused – powers to disapply or modify DBS requirements also expired at the end of March 2022.
13. In view of this current situation, and intelligence from CIW on the limited use of the easements, Welsh Ministers no longer consider it proportionate for the



amendments made by the 2020 Regulations – intended to support the provision of emergency social care for adults, needed as a result of the spread of coronavirus – to remain in place. It was anticipated they would be required for no longer than 9 months.

14. Whilst in the long-term coronavirus is expected to become endemic, we acknowledge that at present, it remains prevalent and a potentially serious threat, particularly if new, more harmful variants emerge or as immunity wanes. Should this happen and we see a return to public health protections and heightened alert level measures, Welsh Ministers will promptly consider – in consultation with stakeholders – whether any legislative response is required to support providers of regulated services, to ensure the safe provision of care and support.

## Proposal 1: Summary and analysis of responses

**Question 1:** Do you agree that regulation 4 (exception from the scope of care home services) of the Regulated Services (Service Provider and Responsible Individuals) (Wales) (Amendment) Regulations 2020 should be revoked on 31 October 2022?

Agree	Tend to agree	Tend to disagree	Disagree	Did not answer
23	8	1	1	2
65.71%	22.86%	2.86%	2.86%	5.14%

A significant majority of the responses (88.57%) either agreed or tended to agree with the proposal to revoke regulation 4 of the 2020 Regulations on 31 October 2022. Some respondents who tended to agree – along with others who tended to disagree or disagreed – highlighted the importance of monitoring the ongoing prevalence and implications of Covid-19 within social care; the risk of future ‘waves’ of infection and new variants. And, considering this, the need to review and potentially reinstate this amendment, as quickly as possible, to secure the provision of services required as a result of the spread of coronavirus. One respondent highlighted the need to consider how any additional accommodation-based services would be staffed, given current capacity issues across Wales.

### Welsh Government response:

The Welsh Government continues to monitor the ongoing situation regarding COVID-19. The pandemic has shown that, working together, in partnership with stakeholders, we can deliver effective resources, actions and legislative change at pace to support the social care sector in times of emergency. We have also been clear that we will continue to monitor the public health situation and promptly consider, in consultation with stakeholders, whether any further legislative response may be required to ensure the safe provision of care and support.

We continue to work closely with local authorities and their partners to monitor staffing pressures across the social care sector. During the pandemic this included temporary redeployment of staff to areas of greatest need. We continue to work with stakeholders (including Social Care Wales) more broadly, to attract, recruit and retain social care workers. We have implemented a number of measures designed to increase the social care workforce capacity in Wales, including high-profile

recruitment campaigns, using the WeCare.Wales brand<sup>10</sup>; launched a series of *Introduction to Social Care* courses; and progressed with our wider programme of professionalisation of the workforce which includes registration of those working in care home services. As a member of the Social Care Fair Work Forum, Welsh Government is delivering our commitment to improve recognition and reward (including terms and conditions) for the workforce and in April 2022 issued guidance<sup>11</sup> for local authorities and local health boards, intended to support a consistent approach to paying social care workers the Real Living Wage.

**Question 2:** Do you agree that regulation 5 (exception from the scope of domiciliary support services) of the Regulated Services (Service Provider and Responsible Individuals) (Wales) (Amendment) Regulations 2020 should be revoked on 31 October 2022?

Agree	Tend to agree	Tend to disagree	Disagree	Did not answer
27	5	2	0	1
77.14%	14.29%	5.14%	0%	2.86%

A significant majority of the responses (91.43%) agreed or tended to agree with the proposal to revoke regulation 5 of the 2020 Regulations on 31 October 2022. As with responses to question 1, there were calls to keep the public health situation under review and consider reinstating the amendment, if required. One respondent expressed concern that the impact of new variants could place additional pressures on hospitals in the autumn/winter, leading to the need for additional community capacity. Respondents who tended to disagree with the proposal were concerned that coronavirus remains a threat and continues to impact on staff absences.

### Welsh Government response:

There are robust measures in place, across Welsh Government and its partners, to effectively monitor and assess the evolving situation regarding coronavirus (and other respiratory infections). We have announced several preventative or precautionary measures, including a winter Covid-19 booster and flu vaccination strategy<sup>12</sup>, to improve protection for those at higher risk whilst helping to support the NHS during winter 2022-23. In addition to enabling access to vaccinations and

<sup>10</sup> <https://wecare.wales/>

<sup>11</sup> <https://gov.wales/real-living-wage-social-care-workers-guidance-0>

<sup>12</sup> <https://gov.wales/winter-respiratory-vaccination-strategy-autumn-and-winter-2022-2023>

appropriate treatments, our overall approach continues to focus on promoting measures to safeguard against the risk of infection; maintaining capacity (in health and social care) to respond to localised outbreaks and in high-risk settings; retaining effective surveillance systems to identify deterioration in the situation (such as from harmful variants and mutations of concern); and preparing for the possible resurgence of the virus.

In July 2022, we extended the Social Care Transition Plan<sup>13</sup> to provide continued protection to vulnerable groups; allow us to continue to monitor the evolving situation, including changes to prevalence; and to consider what measures may be required during the autumn/winter period, to help manage a potential rise in respiratory infections. This plan will be regularly reviewed and revised as needed, until such a point as it can be retired. To support this plan, the Social Care Testing Infection Prevention and Control Group – a forum established to co-ordinate clinical, social care sector and operational intelligence to inform the effective design and implementation of testing and infection control strategies – continues to meet every 3 weeks and recommend action as necessary.

**Question 3:** Do you agree that regulation 6 (fitness of staff) of the Regulated Services (Service Provider and Responsible Individuals) (Wales) (Amendment) Regulations 2020 should be revoked on 31 October 2022?

(Regulation 6 applies to service providers who provide a care home services, wholly or mainly for adults, or domiciliary support services to adults)

<b>Agree</b>	<b>Tend to agree</b>	<b>Tend to disagree</b>	<b>Disagree</b>	<b>Did not answer</b>
24	9	1	0	1
68.57%	25.71%	2.86%	0%	2.86%

A significant majority of the responses (94.28%) agreed or tended to agree with the proposal to revoke regulation 5 of the 2020 Regulations on 31 October 2022. Further calls were made to keep the public health situation under review and consider reinstating the amendments, if required. Whilst several comments we made in response to this question, they tended to relate to general workforce matters, rather than any direct implications of removing the amendments made to regulation 35 of the Regulated Services Regulations. For example, two respondents observed that in

<sup>13</sup> <https://gov.wales/infection-prevention-and-control-social-care>

a difficult recruitment climate, some providers are increasingly reluctant to comply with reference requests; suggesting this could be designed to discourage staff from leaving their employment. Other comments were made about the large number of vacancies in the sector; rates of pay and unreasonable workloads for social care staff; disparities between fuel allowances and rising costs; some workers paying for their own DBS checks; registration fees and training, completed in their own time.

### **Welsh Government response:**

Some respondents may have misunderstood or misinterpreted the intention, effect, or scope of the amendments. One respondent thought that restoring all requirements regarding pre-employment checks for new workers may have a detrimental effect on potential recruitment of people arriving in Wales from Ukraine who may seek employment within the sector. Here, the amendments made to regulation 35 only apply if it is not reasonably practicable for prospective staff to provide full and satisfactory information or documentation *due to the spread of coronavirus*. Therefore, in any other circumstances, full and satisfactory information or documentation would be required. Another respondent felt that the temporary changes to regulation 35 did not alleviate significant recruitment problems, generally, although they acknowledged this would not do so, in isolation. The temporary amendments were only intended to simplify pre-employment checks for new residential and domiciliary care workers in situations where this information was difficult to access *as a result of the spread of coronavirus*.

To alleviate some of the recruitment difficulties currently reported by service providers, we continue to work with stakeholders including Social Care Wales on measures designed to attract, recruit and retain social care workers, including through the implementation of recruitment campaigns using the WeCare.Wales<sup>14</sup> brand. During 2022, this involved significant funding for an extensive campaign across all aspects of the media: from TV and cinema advertising, to printed advertising at supermarkets, on public transport and use of social media.

We are also committed to working as part of the Social Care Fair Work Forum, in partnership with the wider sector, to improve employment terms and conditions in the sector. The Forum will use its collective experience and intelligence to identify ways in which Fair Work can be implemented in a social care context, including in regard to pay, working conditions, employee voice and training; and provide leadership to identify and share best practice across the social care sector.

In October 2020, Health Education and Improvement Wales (HEIW) and Social Care Wales jointly published *A Healthier Wales: Our Workforce Strategy for health and*

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<sup>14</sup> <https://wecare.wales/>

*social care*<sup>15</sup>, which set out a ten-year plan for the sector, with actions across seven themes. These included proposals around an engaged, healthy and motivated workforce; attraction and recruitment; seamless workforce models; building a digital-ready workforce; excellent education and learning; leadership and succession; and workforce supply and shape. Of the 32 actions to be taken forward in the first 3 years of the strategy, two of those already underway include a workforce plan for the social worker workforce and one for the mental health workforce, developed in conjunction with HEIW.

**Question 4:** Do you agree that regulation 7 (shared rooms) of the Regulated Services (Service Provider and Responsible Individuals) (Wales) (Amendment) Regulations 2020 should be revoked on 31 October 2022?

(Regulation 7 applies to the provision of accommodation for adults, in shared rooms)

<b>Agree</b>	<b>Tend to agree</b>	<b>Tend to disagree</b>	<b>Disagree</b>	<b>Did not answer</b>
22	6	2	2	3
62.86%	17.14%	5.14%	5.14%	8.57%

A clear majority of the responses (80%) agreed or tended to agree with the proposal to revoke regulation 7 of the 2020 Regulations on 31 October 2022. One respondent who disagreed, felt that it was prudent to keep the amendment in place through the winter period in case there was an up-surge in demand for residential care, however others felt that restoring 15% cap was a sensible change. One respondent believed that the choice of whether an individual wishes to share a room should be one for them and not impacted by the 15% maximum.

**Welsh Government response:**

The purpose of regulation 45 (1)(2)(d) of the Regulated Services Regulations is to provide flexibility for the use of shared rooms, where that is the preference of the two individuals concerned, whilst ensuring service providers' use of this option is appropriately managed. We expect that most individuals will want a bedroom of single occupancy (their own) and we would not expect shared rooms to become the norm. Therefore, the regulation stipulates that the number of adults who are accommodated in shared rooms within a premises must not exceed 15% of the total

<sup>15</sup> [https://socialcare.wales/cms\\_assets/file-uploads/Workforce-strategy-ENG-March-2021.pdf](https://socialcare.wales/cms_assets/file-uploads/Workforce-strategy-ENG-March-2021.pdf)

number of adults accommodated by the service. This allows some flexibility for circumstances where individuals wish to share a room.

**Question 5:** Do you think there will be any unintended consequences and/or financial implications of revoking any of the amendments made by the Regulated Services (Service Provider and Responsible Individuals) (Wales) (Amendment) Regulations 2020?

<b>Agree</b>	<b>Tend to agree</b>	<b>Tend to disagree</b>	<b>Disagree</b>	<b>Did not answer</b>
7	5	10	10	3
20%	14.29%	28.57%	28.57%	8.57%

There was a mixed response in answer to this question but a majority of people (57.14%) either tended to disagree or disagreed that there would be any unintended consequences and/or financial implications in revoking any of the amendments. Amongst the few comments made was a suggestion that any learning from practices that utilised the amendments should be gathered, to help address current recruitment challenges. One respondent felt that restoring the 15% cap on the total number of adults in shared rooms could result in individuals being relocated. The respondent also felt that some people who may have (temporarily) received domiciliary support, whilst in recovery from Covid-19, may have built up a professional relationship with care staff, the removal of whom may have impacted their well-being.

**Welsh Government response:**

The easement of a 15% limit on the total number of adults accommodated in shared rooms was only intended to be a temporary measure, only applying where required as a result of the spread of coronavirus. CIW has advised that only one provider made an application to vary their registration in order to exceed 15%. Therefore, we do not anticipate that revoking this regulation will necessitate people moving to a different care home, unless that is their wish.

In relation to the comment made about the removal of temporary domiciliary support, this will not be impacted by the revocation of regulation 5 of the 2020 Regulations on 31 October 2022. In these cases, domiciliary support will have ended if the person no longer had needs for care and support following their recovery from Covid-19. If it appeared that they had ongoing care and support needs, the person will have been

entitled to an assessment by their local authority and for those needs to be met, if this was determined.

The Welsh Government will document any intelligence provided in relation to the use of the easements to apply when considering future reinstatement or equivalent interventions.

**Question 6:** Do you think the revocation of any of the amendments made by the Regulated Services (Service Provider and Responsible Individuals) (Wales) (Amendment) Regulations 2020 will have any positive or any negative impacts on groups with protected characteristics?

Protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, and sexual orientation.

- i. What effects do you think there would be and on which characteristics?
- ii. How could positive effects be increased, or negative effects be mitigated?

Almost half of respondents (17 out of 35) commented on this question. Many were of the view that revoking the amendments – which specifically relate to the spread of coronavirus – should otherwise have no or little impact on those with protected characteristics, as no changes were made to providers' duties to comply with equalities legislation and all other requirements placed on them and their Responsible Individuals by the Regulated Services Regulations. A small number of respondents felt that revoking the amendments would, generally, have a positive effect. Some of the specific points raised are addressed in the Welsh Government response below.

**Welsh Government response:**

We note comments regarding potential challenges facing some disabled people in providing 'a satisfactory written explanation of any gaps in employment' and will work with Social Care Wales, as the regulator, to find solutions to help alleviate this. We will continue to work with Social Care Wales on the gathering of demographic information for the social care workforce, including protected characteristics, and will use this evidence to inform our considerations about potential disproportionate impacts of regulation, in general, including registration requirements.

Social Care Wales already has a system that allows employers check the workforce



register for those social workers and social care workers who are required to register with them. The regulator is constantly working to improve their services, to meet the needs of employers and registered individuals. As this is still new for many individuals, as they become more experienced with the registration process, uploading digital copies of qualifications etc to their online accounts, this will allow for a quicker and smoother service. We recognise there is potential for the system to be developed further, to better support both employers and social care workers and this could include, for example, the ability for employers to review relevant documentation (e.g. evidencing qualifications) that individuals have uploaded to their Social Care Wales account.

Two respondents raised the need to ensure that effective risks assessments are undertaken for staff who may be at disproportionately higher risk from Covid-19, such as Black, Asian, Minority Ethnic or mixed-race staff and those with relevant disabilities or health conditions. The All Wales Covid-19 Workforce Risk Assessment Tool remains available on the Welsh Government website for individuals to use in discussion with their manager to evaluate and address their individual risks. This assessment process is not impacted by the revocation of the 2020 Regulations.

**Question 7:** We would like to know your views on the effects that revoking any of the amendments made by the Regulated Services (Service Provider and Responsible Individuals) (Wales) (Amendment) Regulations 2020 would have on the Welsh language. Specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

- i. What effects do you think there would be?
- ii. How could positive effects be increased, or negative effects be mitigated

Thirteen respondents commented on this question, most expressing the view that there would be no impact on the Welsh language. Only one response raised the possibility that there might be a reduced number of social care workers who speak Welsh due to the impacts of Covid-19 on the workforce, consequently, service providers may not be able to fully meet the spoken language preferences of individuals. It suggested this could be mitigated through the provision of Welsh language courses for social care staff.

**Welsh Government response:**

We have no cause to believe that the spread of Coronavirus has resulted in a reduction in the number of Welsh speakers within the social care workforce.

*More than just words* is the Welsh Government's strategic framework to strengthen Welsh language provision in health and social care. Its aim is to support Welsh-speakers to receive services in their first language. A five-year plan for implementation of the strategy has been developed, following an independent evaluation of implementation of the strategy. This plan includes recommendations around supporting and developing Welsh language skills of the health and social care workforce. We are working with Social Care Wales on these actions including how we might support the provision of Welsh language skills training in the sector.

We have also provided significant funding through Social Care Wales's WeCare.Wales<sup>16</sup> campaign to support development of Welsh language materials. This extensive campaign ranged across all aspects of the media, from TV and cinema advertising to printed advertising at supermarkets and on public transport through to social media. It seeks to promote job opportunities and the value of such a career in the social care sector, to help address capacity issues.

**Question 8:** Please also explain how you believe the proposal to revoke the amendments made by the Regulated Services (Service Provider and Responsible Individuals) (Wales) (Amendment) Regulations 2020 could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Thirteen respondents commented on this question. Most expressed the view that there would be no impact on the Welsh language whilst others made comments that were not directly related to the revocation of the changes but reinforced that individuals' language preferences and communication needs should be respected, with services provided through the medium of Welsh if this would best support their needs.

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<sup>16</sup> <https://wecare.wales/>

## **Proposal 2: to clarify the description of ‘Category C’ premises within regulation 49 of the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017**

### **Background**

1. Part 13 of the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 (‘the Regulated Services Regulations’) sets out additional requirements about the physical standards of rooms and facilities for new accommodation-based services i.e. care home, secure accommodation and residential family centre services. These standards include minimum room sizes, minimum amounts of communal space and facilities within en-suite bathrooms.
2. Regulation 49 prescribes the three categories of “new premises” to which the additional standards apply:
  - Category A: The premises used for the provision of the service consist of a new building or an existing building which has been converted for the purpose of providing the service, and, in either case, the building has not previously been used for the purpose of providing an accommodation-based service. i.e. a new build or converted premises
  - Category B: The premises consist of [a building or buildings to which an extension is added and the extension] is used for the purpose of providing the service at a place specified as a condition to the service provider's registration. i.e. an extension to existing premises
  - Category C: The premises consist of a building which was unoccupied immediately prior to the service provider's registration but was previously used for the purpose of providing an accommodation-based service at a place specified as a condition to the registration of another service provider. I.e. where premises formerly used for the provision of an accommodation-based service (by another provider) have been purchased for operation by the service provider.
3. The purpose of Part 13 of the Regulated Services Regulations was to achieve improvement in the built estate over time but without destabilising the market. Therefore, the additional requirements for new premises do not apply to existing occupied services or in situations where service providers have temporarily vacated premises for the purpose of refurbishment. The categories of new premises set out in regulation 49 were intended to encompass the breadth of premises which could potentially be used to provide accommodation-based services and to which the additional standards

would apply. 'Category C' was intended to capture buildings which were not being used to provide a regulated service immediately prior to a service provider's registration under the Regulation and Inspection of Social Care (Wales) Act 2016 ('the 2016 Act') but had previously been used for that purpose at some point in the past, by another provider. The intention was that this should apply whether the premises were included within a previous provider's registration under the 2016 Act, or they constituted relevant premises or establishments in respect of which a person had been registered under any relevant Act which previously provided such regulatory control and oversight.

### **Description and rationale for the change**

4. We have been advised that the wording used in regulation 49 to describe 'Category C' has the unintended effect of excluding premises which are unoccupied at the point of registration *if* their earlier period of use pre-dated the commencement of the relevant provisions of the 2016 Act in April 2018. I.e. that the provision does not extend to unoccupied premises that were registered under previous legislation.
5. The unintended consequence is that any dormant care homes, in respect of which a person had, for example, been registered under the Care Standards Act 2000 (or earlier legislation which that Act replaced) but have so far not been included within the registration of a service provider under the 2016 Act, do not have to comply with the additional premises requirements in Part 13 of the Regulated Services Regulations. This undermines the policy intention of achieving improvement in the quality of the built estate over time.
6. Therefore we have consulted on a proposal to amend the description of Category C premises to ensure that this unintended gap is closed and provide certainty that 'Category C' premises are intended to include relevant premises and establishments in respect of which a person had been registered under any relevant Act which previously provided for regulatory control and oversight of accommodation-based services.

### **Summary and analysis of responses**

**Question 9:** In paragraphs 25 – 32 of the consultation document we have set out our intention to clarify the description of 'Category C' premises within regulation 49 of the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017, and explained out our rationale for this.

Do you have any comments on this proposal or its potential impacts?

Please include any unintended consequences and/or financial implications; any positive or any negative impacts on groups with protected characteristics; and impacts on the Welsh Language.

12 respondents commented on the Category C proposal, which garnered a mixture of responses. Five respondents expressed clear support for the clarification and the importance of investing in the quality of care home premises, whilst some expressed general concerns about the costs involved and potential impact on their businesses, or made comments on the proposal but did not state a position. Other comments related the proposal back to the provision of emergency accommodation, such as in relation to Coronavirus.

### **Welsh Government response:**

Clarifying the definition of Category C premises will not affect existing care home providers with homes already registered with Care Inspectorate Wales. Category C premises are those which were previously registered as care homes (under any former legislation), are presently unoccupied and have not been included in a service provider's registration under the 2016 Act which has been a requirement to operate a care home service, since April 2018. Category C applies when a vacant care home is being sold or bought for the purpose of re-registering it as a care home (as opposed to utilising the building for another purpose). Whilst we do not have information on the number of dormant care homes, there may be a small number of these premises in Wales which providers are trying to sell, in which case the new buyer would need to make the necessary investment to the building in order to re-register it as a care home. This is intended to ensure that going forward improvements continue to be made to the built estate without destabilising the market by applying the requirement to all care homes.

This change would not be applied retrospectively. It will not apply to applications for registration for premises falling within Category C made to CIW on or before 31 October 2022.

There were a few comments about the use of Category C premises as emergency accommodation. Some of these responses may have conflated the issues. Whilst the vehicle for amending the definition of Category C is The Regulated Services (Service Providers and Responsible Individuals) (Wales) (Amendment) and (Coronavirus) (Revocation) Regulations 2022, this matter is separate from the temporary measures put in place to create additional capacity in the sector.

## **Related issues raised by respondents**

**Question 10:** We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

A range of general points were made by respondents in relation to this question, including:

- the need for parity of esteem and recognition with staff working in the healthcare sector;
- the conditions under which social care staff work and involvement of staff in health and safety planning – listening to and acting on their concerns;
- improvements in remuneration and ensuring staff are properly recompensed for travel time and costs; and
- the challenging environments for recruitment and retention of the workforce and the commissioning of services, at a time of increasing demand for services, particularly domiciliary support.

There were positive comments made about the limited use of the Covid-related amendments, demonstrating the incredible efforts made across social care in response to the pandemic, to ensure *the safe provision of care and support*. Points were also made in relation to the need to have mechanisms and processes in place to be able to react as soon as possible, to reinstate the easements, should the public health situation worsen; and to apply lessons from implementation of the easements in doing so.

## **Welsh Government response**

We continue to work with unions, employers, and local government as part of the Social Care Fair Work Forum on what further steps can be taken to improve the employment terms and conditions of the social care workforce. The Forum provides an opportunity to discuss jointly what further action is needed, and this would include any issues relating to safe, healthy and inclusive working environments alongside other characteristics of Fair Work. We are therefore committed to working with the sector to ensure that we do not undermine it and we can deliver the strong service we all want.

We are also committed to developing a strategic National Framework for commissioned care and support, as part of the ambitious and transformative proposals in the Rebalancing Care and Support Programme and, again, look forward to working with stakeholders to deliver on this.

No further action is proposed around overseas recruitment at this point, but the Welsh Government is engaged with and working with stakeholders and partners through our Forum on a range of areas relating to recruitment and retention. We will continue to monitor this issue as it develops to understand the barriers and matters that arise from this concern; and work with our stakeholders and partners to determine what actions might be required to address them.

We will continue to work with our partners as we have during the pandemic to ensure that we gather intelligence and act accordingly upon this data should the need arise. In addition, as noted above, the Welsh Government will document any intelligence provided in relation to the use of the easements to apply when considering future reinstatement or equivalent interventions. Social Care Wales (SCW) has already consulted upon and made several changes to the registration process in light of lessons learned during the pandemic. These will help streamline the process and take account of the experience the workforce has acquired over the pandemic and can utilise in delivering quality care to those they serve. Further work around providing greater support from the workforce regulator to the workforce and employers is also being developed with the sector and details of this will be shared by SCW in due course.

## Next steps

1. Regulations entitled 'The Regulated Services (Service Providers and Responsible Individuals) (Wales) (Amendment) and (Coronavirus) (Revocation) Regulations 2022' have been prepared and were laid before the Senedd in September 2022. They will be debated in October 2022 and if passed by the Senedd, will come into force on 1 November 2022.
2. The effects of this will be that from 1 November 2022:
  - There will be no exception from registration as a care home service for those providing accommodation together with nursing or care, for adults, where needed as a result of the spread of coronavirus.
  - There will be no exception from registration as a domiciliary support service for those providing care and support, for adults, where needed as a result of the spread of coronavirus.
  - Providers of care home services, wholly or mainly for adults, or domiciliary support services for adults, must obtain and make available at the service all information and documentation required in Schedule 1 to the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017.
  - Service providers will not be able to apply to CIW to exceed 15% of the total number of adults accommodated by the service in shared rooms.
  - Service providers applying under sections 6 or 11 of the Regulation and Inspection of Social Care (Wales) Act to use currently unoccupied premises, that were previously registered under any relevant enactment, to provide accommodation-based services – i.e. care home, secure accommodation or residential family centre services – must ensure these meet the additional premises requirements within Part 13 of the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017.



## **Annex A – List of respondents**

1. Aria Care Home
2. Anonymous
3. Anonymous
4. Anonymous
5. Anonymous
6. Care Without Compromise
7. Anonymous
8. Right at Home
9. Anonymous
10. Sapphire Streams Ltd
11. Anonymous
12. Anonymous
13. Anonymous
14. Flintshire County Council
15. iMeUs HealthCare
16. Anonymous
17. Anonymous
18. Anonymous
19. Innovate Trust
20. Anonymous
21. Anonymous
22. Cllr. Marina Chacon Dawson
23. Pobl Care & Support Ltd
24. Anonymous
25. Joan & John Filce
26. Anonymous
27. Anonymous
28. Care Forum Wales
29. Gwent Regional Partnership Team
30. UNISON Cymru Wales
31. Anonymous
32. Anonymous
33. Anonymous
34. Anonymous
35. Welsh Local Government Association and Association of Directors of Social Services Cymru