
HEALTH, SOCIAL CARE AND SPORT COMMITTEE

LEGAL SERVICES SUMMARY OF THREE SETS OF SOCIAL CARE REGULATIONS LAID BEFORE THE ASSEMBLY:

1. The Adult Placement Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019
2. The Regulated Fostering Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019
3. The Regulated Advocacy Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019

Background

All of these Regulations are made under the Regulation and Inspection of Social Care (Wales) Act 2016 (**the 2016 Act**). Part 1 of the 2016 Act introduced a new system of regulation of care and support services in Wales, replacing the system established under the Care Standards Act 2000.

These Regulations were laid on 10 and 11 January 2019. They are affirmative resolution Regulations and the Plenary debate and vote on all three sets of Regulations has been scheduled for 22 January 2019.

The Adult Placement Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019

Summary

Section 2 of the 2016 Act defines “regulated service” as including an adult placement service. Paragraph 6 of Schedule 1 to the 2016 Act defines “adult placement service” as a service carried on (whether or not for profit) by a local authority or other person for the purposes of placing adults with an individual in Wales under a carer agreement (and includes any arrangements for the recruitment, training and supervision of such individuals).

These Regulations impose requirements on service providers in relation to adult placement services, including requirements as to the standard of care and support to be provided to an individual who is placed under a carer agreement. Paragraph 6 of Schedule 1 to the 2016 Act defines “carer agreement” as an agreement for the

provision by an individual of accommodation at the individual's home together with care and support for up to three adults.

CLA reporting points

No reporting points have been included in the draft CLA report on these Regulations.

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

Summary

A “fostering service” is a regulated service, defined in the 2016 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.

These Regulations impose requirements on service providers and responsible individuals in respect of fostering services. For example, the Regulations require service providers to ensure that fostering services are carried out with sufficient care, competence and skill and to take reasonable steps to ensure the service is financially stable.

CLA reporting points

The following three points are included in the draft CLA report on these Regulations. At the time of writing, the Welsh Government has not yet responded to the reporting points.

1. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

The Regulations refer to “prospective foster parent” in six places. However, it is unclear what is meant by “prospective foster parent” and who is captured by the term.

The lack of clarity is of particular concern given that the term “prospective parent” applies in relation to criminal offences. For example, it is a criminal offence if a service provider fails to give a guide about the service to, among others, any prospective foster parents (see regulation 12(2)(c)(ii)).

We repeat a concern we have raised previously that absolute clarity is required when creating criminal offences.

2. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

The Regulations require service providers to give various notifications. For example, service providers must notify the police of any “allegation that a child placed with foster parents has committed a serious offence” (see regulation 40(5) and paragraph 40 of Schedule 3). It is a criminal offence for a service provider to fail to do so.

However, it is unclear what amounts to an “allegation” and what amounts to a “serious offence”.

Again, we repeat our concern that absolute clarity is required when creating criminal offences.

3. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

In the definition of “datganiad o ddiben” in the Welsh text, there is reference to “Reoliadau Cofrestru 2018”. However, the reference should be to “Reoliadau Cofrestru 2017”.

We note that, given the context, this error is unlikely to raise significant confusion in practice.

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

Summary

These Regulations set out the regulatory requirements and related provision for providers of regulated advocacy services and for those persons who are designated as responsible individuals for such services.

These Regulations impose requirements on service providers and responsible individuals in respect of advocacy services. For example, the Regulations require service providers to ensure there are effective arrangements in place for monitoring, reviewing and improving the quality of the advocacy provided and to have policies in relation to, for example, safeguarding and staff discipline.

CLA reporting points

The following three points are included in the draft CLA report on these Regulations. The Welsh Government response to each point is included.

1. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

If a responsible individual is unable to fulfil their duties, regulation 6(4)(c) requires service providers to ensure there are arrangements in place for the regulated advocacy service to comply with Part 3 to 15 of the Regulations.

However, there are also important requirements in Part 2 of the Regulations. It is unclear why regulation 6(4)(c) does not require compliance with Part 2 of the Regulations.

The same issue arises in respect of regulation 7(3)(c).

Welsh Government response to reporting point 1:

“Although many of the duties in Part 2 are of a more general overarching nature, and are therefore of more limited application in the context of interim arrangements during the temporary absence of a responsible individual (or individual provider), it is acknowledged that there may be occasions when the duties under part 2 will be of relevance and that the references in regulations 6(4)(c) and 7(3)(c) should refer to parts 2 to 15 of the Regulations. An amendment will be made at the next available opportunity.”

2. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

Regulation 10 places a duty of candour on service providers – service providers must act in an open and transparent way with:

- individuals (i.e. persons for whom the service provider is providing or has provided advocacy, or for whom the service provider may provide advocacy), and
- any representatives of those individuals.

However, there is no duty to act in an open and transparent way with service commissioners (i.e. local authorities which are responsible for making arrangements with a service provider for the provision of assistance to a child or person under section 178(1) of the Social Services and Well-being (Wales) Act 2014).

We ask why there is no such duty?

Welsh Government response to reporting point 2:

“Specific consideration was given to this issue in the drafting of the regulations and to the fact that for other types of regulated service the duty of candour does apply to a service provider’s relationship with service commissioners. However for an advocacy service provider, the service commissioner is also the body against whom the child or young person wishes to make representations. In providing advocacy for a child or young person it is important that the advocacy service provider’s prime function is to represent the views of that person to the commissioning local authority. A duty to be open and transparent with the commissioning local authority might conflict with the child or young person’s instructions and conflict with this duty. For this reason service commissioners were specifically excluded from the scope of this duty for this particular type of service.”

3. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

Regulation 15 requires service providers to prepare a written guide to the advocacy service. The guide must then be given to “commissioning authorities” (see regulation 15(2)(d)).

However, there is no definition of “commissioning authorities”.

The lack of clarity is of particular concern given that breach of the duty in regulation 15(2)(d) is a criminal offence, and absolute clarity is required when creating criminal offences.

Welsh Government response to reporting point 3:

“Although in the context, this is a term which is likely to be understood because in the overwhelming majority of cases services will be commissioned by local authorities, and although in our view, to the extent that there is uncertainty, a court is overwhelmingly likely to interpret the phrase in the same way, it is accepted that the clarity of the provision would be improved if the phrase “commissioning authorities” was replaced with the phrase “service commissioners”. The phrase “service commissioner” is defined in regulation 2. An amendment will be made at the next available opportunity.”

Gareth Howells
Assembly Legal Services
10 January 2019