



# Regulation and Inspection of Social Care (Wales) Act 2016

2016 anaw 2

## PART 1

### REGULATION OF SOCIAL CARE SERVICES

#### CHAPTER 2

##### REGISTRATION ETC. OF SERVICE PROVIDERS

*Application for, variation of and cancellation of registration*

#### **6 Application for registration as a service provider**

- (1) A person who wants to provide a regulated service must make an application for registration to the Welsh Ministers—
  - (a) specifying the regulated service that the person wants to provide,
  - (b) specifying the places at, from or in relation to which the service is to be provided,
  - (c) designating an individual as the responsible individual in respect of each place and stating each such individual's name and address (section 21 sets out who may be designated as a responsible individual), and
  - (d) including such other information as may be prescribed.
- (2) An application must be in the prescribed form.
- (3) A person who wants to be registered as a service provider in respect of two or more regulated services may make a single application in respect of them.

## **7 Grant or refusal of registration as a service provider**

- (1) The Welsh Ministers must grant an application under section 6 if satisfied that—
- (a) the application—
    - (i) contains everything required by or under subsection (1) of that section,
    - (ii) in the case of an application relating to a domiciliary support service, contains the undertaking mentioned in section 8, and
    - (iii) meets the requirements prescribed under section 6(2);
  - (b) the applicant is a fit and proper person to be a service provider (see section 9);
  - (c) each individual to be designated as a responsible individual—
    - (i) is eligible to be a responsible individual in accordance with section 21(2),
    - (ii) is a fit and proper person to be a responsible individual (see section 9), and
    - (iii) will comply with any requirements of regulations under section 28 (so far as applicable);
  - (d) the requirements of—
    - (i) any regulations under section 27 (including any requirements as to the standard of care and support that must be provided), and
    - (ii) any other enactment which appears to the Welsh Ministers to be relevant,

will be complied with (so far as applicable) in relation to the provision of the regulated service.
- (2) In any other case the Welsh Ministers must refuse an application.
- (3) The grant of an application—
- (a) must be subject to a condition specifying—
    - (i) the places at, from or in relation to which the service provider is to provide a regulated service, and
    - (ii) the individual designated as the responsible individual for each place, and
  - (b) may be subject to such further conditions as the Welsh Ministers think appropriate.
- (4) Where a person has made a single application in respect of two or more regulated services the Welsh Ministers may separately grant or refuse the application in respect of each service.
- (5) But the grant of an application takes effect only if the requirements of sections 18 to 20 are met (so far as applicable).

## **8 Duration of domiciliary support visits**

- (1) The undertaking mentioned in section 7(1)(a)(ii) and 11(3)(a)(ii) is that a domiciliary support service will not be provided by way of a visit which is shorter than 30 minutes unless either condition A, B or C is met.
- (2) Condition A applies where—
- (a) a local authority is required—

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- (i) by virtue of section 35 or 37 of the 2014 Act, to meet the needs of the person being visited, or
    - (ii) by virtue of section 40 or 42 of that Act, to meet the needs of that person’s carer, and
  - (b) the authority meets those needs by providing or arranging the provision of a domiciliary support service to the person being visited.
- (3) Condition A is that—
  - (a) the individual carrying out the visit has previously carried out a visit during the period for which the local authority maintains—
    - (i) a care and support plan under section 54(1) of the 2014 Act in respect of the person being visited, or
    - (ii) a support plan under that section in respect of the person’s carer, and
  - (b) either—
    - (i) the visit is conducted for the sole purpose of checking whether the person is safe and well, or
    - (ii) the tasks to be performed during the visit can reasonably be, and are, completed to a standard which satisfies any requirements specified in regulations made under section 27 that are relevant to the visit.
- (4) Condition B applies where a domiciliary support service is provided in circumstances where Condition A does not apply.
- (5) Condition B is that—
  - (a) a visit of less than 30 minutes is consistent with the terms of any arrangement to provide the service made between the service provider and the person being visited (or another person acting on behalf of the person being visited),
  - (b) the visit is conducted for the sole purpose of checking whether the person is safe and well, or
  - (c) the tasks to be performed during the visit can reasonably be, and are, completed to a standard which satisfies any requirements specified in regulations made under section 27 that are relevant to the visit.
- (6) Condition C applies in any case where a domiciliary support service is provided by way of a visit to a person.
- (7) Condition C is that the visit is curtailed at the request of the person being visited.

## **9 Fit and proper person: relevant considerations**

- (1) This section applies to any decision of the Welsh Ministers as to whether—
  - (a) a service provider,
  - (b) a person applying to be a service provider,
  - (c) a responsible individual, or
  - (d) a person to be designated as a responsible individual,is a fit and proper person to be a service provider or, as the case may be, a responsible individual.
- (2) In making such a decision the Welsh Ministers must have regard to all matters they think appropriate.

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- (3) In particular, the Welsh Ministers must have regard to any evidence falling within subsections (4) to (8).
- (4) Evidence falls within this subsection if it shows that the person has—
- (a) committed—
    - (i) any offence involving fraud or other dishonesty, violence, firearms or drugs or any offence listed in Schedule 3 to the [Sexual Offences Act 2003 \(c.42\)](#) (offences attracting notification requirements),
    - (ii) an offence under this Act or regulations made under it,
    - (iii) an offence under Part 2 of the [Care Standards Act 2000 \(c.14\)](#) or regulations made under it, or
    - (iv) any other offence which the Welsh Ministers think is relevant, or
  - (b) practised unlawful discrimination or harassment on the grounds of any characteristic which is a protected characteristic under section 4 of the [Equality Act 2010 \(c.15\)](#), or victimised another person contrary to that Act, in or in connection with the carrying on of any business.
- (5) Evidence is within this subsection if—
- (a) it shows that any other person associated or formerly associated with the person (whether on a personal, work or other basis) has done any of the things set out in subsection (4), and
  - (b) it appears to the Welsh Ministers that the evidence is relevant to the question as to whether the person is a fit and proper person to be a service provider or, as the case may be, a responsible individual.
- (6) Evidence is within this subsection if it shows that the person has been responsible for, contributed to or facilitated misconduct or mismanagement in the provision—
- (a) of a regulated service or a service provided outside Wales which, if provided in Wales, would be a regulated service;
  - (b) of a service which would have fallen within paragraph (a) had the regulatory system established by this Part been operating at the time the service was being provided.
- (7) When having regard to evidence within subsection (6), the Welsh Ministers must, among other things, take account of—
- (a) the seriousness and duration of the misconduct or mismanagement;
  - (b) harm caused to any person, or any evidence of an intent to cause harm;
  - (c) any financial gain made by the person;
  - (d) any action taken by the person to remedy the misconduct or mismanagement.
- (8) Evidence is within this subsection if it shows that the person has previously failed to comply with—
- (a) an undertaking given under section 7(1)(a)(ii) or 11(3)(a)(ii),
  - (b) a condition imposed under this Part, or
  - (c) a requirement imposed by regulations under section 27(1) or 28(1).
- (9) The Welsh Ministers may by regulations amend this section to vary the evidence to which they must have regard.

## **10 Annual return**

- (1) A service provider must submit an annual return to the Welsh Ministers following the end of each financial year during which the provider is registered.
- (2) An annual return must contain—
  - (a) the following information—
    - (i) the regulated services that the service provider is registered to provide;
    - (ii) the places at, from or in relation to which the provider is registered to provide those services;
    - (iii) the name of the responsible individual registered in respect of each such place;
    - (iv) the date on which the provider's registration took effect in respect of each such regulated service and place;
    - (v) details of any other conditions imposed on the service provider's registration;
    - (vi) details of the number of persons to whom the provider provided care and support during the year in the course of providing each such service;
    - (vii) such information about training offered or undertaken in relation to each such service as may be prescribed;
    - (viii) such information about workforce planning as may be prescribed;
    - (ix) such other information as may be prescribed, and
  - (b) a statement setting out how the service provider has complied with any regulations made under section 27(1) specifying the standard of care and support that must be provided by a service provider (see section 27(2)).
- (3) An annual return must be in the prescribed form.
- (4) An annual return must be submitted to the Welsh Ministers within the prescribed time limit.
- (5) The Welsh Ministers must publish each annual return submitted under subsection (1).
- (6) Despite section 187(3), a statutory instrument containing—
  - (a) the first regulations made under subsection (2)(a)(vii),
  - (b) the first regulations made under subsection (2)(a)(viii), or
  - (c) the first regulations made under subsection (2)(a)(ix),may not be made unless a draft of the instrument has been laid before and approved by a resolution of the National Assembly for Wales.

## **11 Application for variation of registration as a service provider**

- (1) A service provider must apply to the Welsh Ministers for a variation of the provider's registration if—
  - (a) the provider wants to—
    - (i) provide a regulated service which the provider is not already registered to provide,
    - (ii) provide a regulated service at, from or in relation to a place which is not already specified in the provider's registration in relation to that service,

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- (iii) cease to provide a regulated service, or
  - (iv) cease to provide a regulated service at, from or in relation to a place;
  - (b) the provider wants a condition imposed under section 7(3)(b), 12(2) or 13(1) to be varied or removed;
  - (c) the provider wants to designate a different responsible individual in respect of a place or is required to designate a responsible individual because there is no such individual designated in respect of a place at, from or in relation to which the provider provides a regulated service.
- (2) The Welsh Ministers must by regulations prescribe a time limit within which an application for variation of a provider's registration must be made in circumstances where there is no responsible individual designated in respect of a place at, from or in relation to which the provider provides a regulated service.
- (3) An application under subsection (1) must—
- (a) contain—
    - (i) details of the variation sought by the provider,
    - (ii) in the case of an application under subsection (1)(a)(i) to provide a domiciliary support service, the undertaking set out in section 8, and
    - (iii) such other information as may be prescribed;
  - (b) be in the prescribed form.

## **12 Grant or refusal of application for variation**

- (1) The Welsh Ministers may grant or refuse an application under section 11 (but see subsection (2)).
- (2) In the case of an application under section 11(1)(b), the Welsh Ministers may (instead of granting or refusing the application)—
- (a) vary a condition on different terms to those specified in the application, or
  - (b) impose another condition on the provider's registration (whether in place of or in addition to the condition which the provider applied to have varied or removed).
- (3) But a variation under this section takes effect only if the requirements of sections 18 to 20 are met (so far as applicable).

## **13 Variation without application**

- (1) The Welsh Ministers may—
- (a) vary any condition imposed under section 7(3)(b), 12(2) or paragraph (b) of this subsection, or
  - (b) impose a further condition on a service provider's registration.
- (2) No variation of a provider's registration may be made under subsection (1) unless the requirements of sections 18 and 19 are met (but this does not affect the Welsh Ministers' power to urgently vary a registration under section 25).
- (3) If a service provider provides more than one regulated service, the Welsh Ministers may vary the provider's registration by removing a regulated service if satisfied that—
- (a) the service provider no longer provides that service, or

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- (b) the service is not being provided in accordance with the requirements mentioned in section 7(1)(d) so far as applicable to that service.
- (4) If a service provider provides a regulated service at, from or in relation to more than one place, the Welsh Ministers may vary the provider's registration by removing a place if satisfied that—
  - (a) the service provider no longer provides a regulated service at, from or in relation to that place,
  - (b) the service provided at, from or in relation to that place is not being provided in accordance with the requirements mentioned in section 7(1)(d) so far as applicable to that service, or
  - (c) there is no responsible individual designated in respect of that place (and the time limit prescribed under section 11(2) has expired).
- (5) No variation may be made under subsection (3) or (4) unless the requirements of sections 16 and 17 are met (but this does not affect the Welsh Ministers' power to urgently vary a registration under section 23).

#### **14 Application for cancellation of registration as a service provider**

- (1) If a service provider applies to the Welsh Ministers for cancellation of the provider's registration, the Welsh Ministers must grant the application unless they have taken action with a view to cancelling the registration under section 15 or 23.
- (2) The Welsh Ministers must give notice of the granting of an application for cancellation under this section to the service provider.
- (3) Cancellation under this section takes effect—
  - (a) on the day falling 3 months after the day on which the service provider receives the notice, or
  - (b) such earlier day as the Welsh Ministers may specify in the notice.

#### **15 Cancellation without application**

- (1) The Welsh Ministers may cancel the registration of a service provider on any of the following grounds—
  - (a) the service provider no longer provides any regulated services;
  - (b) the Welsh Ministers are no longer satisfied that the service provider is a fit and proper person to be a service provider (see section 9);
  - (c) there is no responsible individual designated in respect of each place at, from or in relation to which the provider provides a regulated service (and the time limit for applying to vary the registration prescribed in regulations made under section 11(2) has expired);
  - (d) the service provider or a responsible individual designated in respect of a place at, from or in relation to which the provider provides a regulated service has been convicted of, or has been given a caution in respect of, a relevant offence in connection with a regulated service provided by the service provider;
  - (e) any other person has been convicted of, or has been given a caution in respect of, a relevant offence in connection with a regulated service provided by the service provider;

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- (f) a regulated service provided by the service provider is not being provided in accordance with the requirements mentioned in section 7(1)(d) so far as applicable to that service.
- (2) For the purposes of subsection (1)(d) and (e), the following are relevant offences—
- (a) an offence under this Act or regulations made under it;
  - (b) an offence under Part 2 of the [Care Standards Act 2000 \(c.14\)](#) or regulations made under it;
  - (c) any offence which, in the opinion of the Welsh Ministers, makes it appropriate for the registration to be cancelled (including an offence committed outside England and Wales which, if committed in England and Wales, would constitute a criminal offence).
- (3) No cancellation may be made under this section unless the requirements of sections 16 and 17 are met (but this does not affect the Welsh Ministers' power to urgently cancel a registration under section 23).