

# Securing improvement and enforcement policy

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.  
This document is also available in Welsh.

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# 1 Overview: our approach to securing improvement and enforcement

## Introduction

1.1 This policy sets out our overarching approach to enforcement as a service regulator, including the principles and processes we follow when using our powers under the relevant legislation (Annex A). We inspect against the requirements of the legislation and take action against service providers where these requirements are not being met.

1.2 Our primary concern is to ensure that people using services are supported to achieve the best possible outcomes and are not placed at risk or do not experience harm. In order to achieve this we:

- have a robust registration process, so that we only register services who have assured us that they will comply with regulations;
- undertake both routine (planned) and responsive inspections; and
- have a clear, graduated and proportionate enforcement pathway.

1.3 This policy takes effect from 1 May 2018. Where we have commenced enforcement action prior to 1 May 2018 but it has not been completed, we will be guided by this policy. However we will give consideration to any previous guidance if that is more appropriate to the facts of an individual case.

## Who we regulate

1.4 We regulate the following service providers:

- |   |  |
|---|--|
| <ul style="list-style-type: none"><li>• care homes (adults/children);</li><li>• secure accommodation;</li><li>• residential family centre;</li><li>• domiciliary support;</li></ul> | Under the Regulation and Inspection of Social Care (Wales) Act 2016 from 2 April 2018                                      |
| <ul style="list-style-type: none"><li>• adoption;</li><li>• fostering;</li><li>• adult placement; and</li><li>• advocacy.</li></ul>   | Under the Care Standards Act 2000<br>Under the Regulation and Inspection of Social Care (Wales) Act 2016 from 1 April 2019 |
| <ul style="list-style-type: none"><li>• Child minders</li><li>• Day care and play</li></ul>   | Under the Children and Families (Wales) Measure 2010   |

## Principles of securing improvement and enforcement

1.5 We use our improvement and enforcement powers to promote our core objective to improve the quality and safety of services for the well-being of the people of Wales. The following principles guide our enforcement decision-making:

- **Responsibility:** Providers of services are responsible for ensuring they meet their regulatory requirements. Unless urgent action is required, we give providers opportunities to rectify failings and to improve services.
- **Proportionality:** We take action that is proportionate to the circumstances, the outcomes for and risk to individuals accessing the service and the capacity and capability of the provider to respond. Providers who persistently fail to comply with regulations will face escalated enforcement action, including possible action to cancel their registration.
- **Efficient and effective:** We are open and transparent about our enforcement approach and how we use our enforcement powers. Any action we take is clear, consistent, timely, fair and proportionate.
- **Sharing information:** We work with commissioners, regulators and other relevant agencies and professional bodies to share intelligence in order to make effective use of the information available about a service. In processing and sharing information we adhere to all relevant legislative requirements.
- **Taking co-ordinated action:** We work with our partners to ensure any enforcement action is co-ordinated. This is particularly important when there are safeguarding concerns or health and safety issues overseen by other regulators.
- **Upholding rights of individuals:** We are committed to promoting and upholding the rights of people who use care and support services. Where care is unacceptable we will take enforcement action.

## How do we secure improvement and enforce compliance?

1.6 Securing improvement and enforcement is a core part of our work as a regulator. We do this by targeting improvement and enforcement action that reduces the risk to people using services and holds providers to account for any service failures.

1.7 Where appropriate to do so, we operate a graduated approach to secure improvement and enforcement in line with our enforcement principles. Where we have concerns or have identified non-compliance (i.e. not meeting the requirements of the law) we take action to secure the required improvement. However where we identify serious, multiple or persistent non-compliance, we

may use our powers to restrict the provision a provider can legally deliver or ultimately, prevent the provider from operating altogether.

1.8 Where there is an immediate risk to an individual's health and/or well-being it may be necessary to take immediate enforcement action. This action will focus on safeguarding individuals from the risk we have identified. In these cases, it may not be appropriate to undertake a graduated approach with the relevant provider.

### **Who can we take enforcement action against?**

1.9 Where we have concerns or have identified non-compliance we can take enforcement action against the relevant provider<sup>1</sup>. This includes the following:

- Registered providers and/or designated responsible individuals depending on the relevant legislation;
- A person/provider carrying on a regulated activity without being registered to do so.

1.10 Under the 2016 Act, we can also take enforcement action against registered providers at three different levels:

- individual service level i.e. against a single service carried out at a specific place, such as a care home;
- service-wide level, i.e. in relation to each of the services of a specific type operated (e.g. domiciliary support services) by the provider; or
- provider level, i.e. for all service types operating within a provider's portfolio (e.g. domiciliary support services, care home services, etc).

### **What securing improvement and enforcement action can we take?**

1.11 We have a range of improvement and enforcement tools to improve the quality and safety of services. We use our civil powers to focus on reducing risk to people who use regulated services. We also have criminal powers that can be used to hold relevant providers and designated responsible individuals to account for serious failures. In some cases it may be appropriate to use both civil and criminal enforcement powers at the same time.

a. Civil powers enable us to:

- prevent the provider from continuing to operate the service<sup>2</sup> (where necessary, this action could be taken urgently);
- suspend<sup>3</sup> the provider for a set period of time;

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<sup>1</sup> When using the term 'provider' in this document we are referring to those listed in paragraph 1.9.

<sup>2</sup> For services regulated under the 2016 Act this also includes preventing the provider from operating a regulated service or the provision of a service at a particular place.

<sup>3</sup> This only applies to services regulated under the 2000 Act and the 2010 Measure.

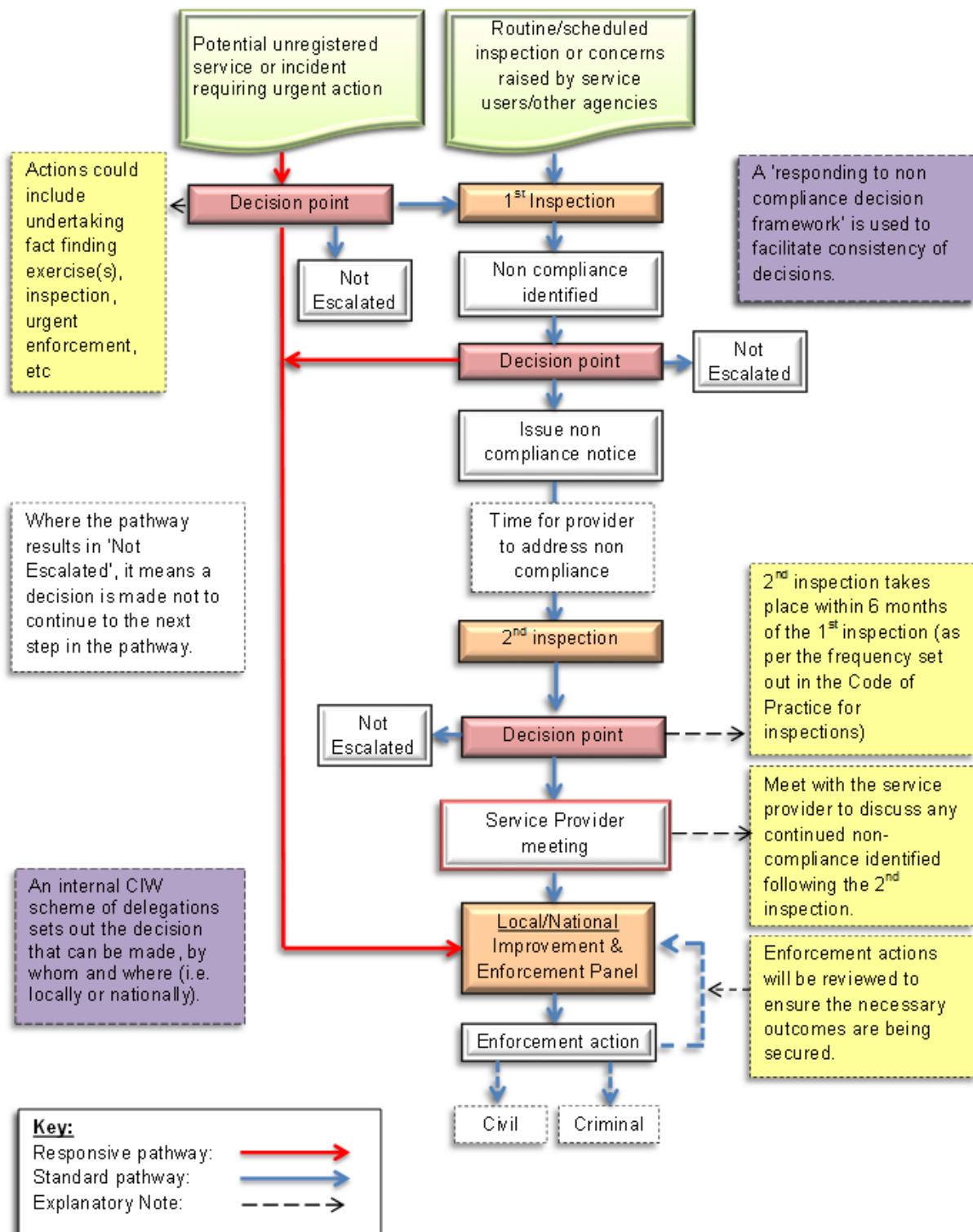
- limit the operation of the provider e.g. prevent new admissions to the service;
  - require the provider to take certain action;
  - determine the provider as a service of concern/provider of concern;
  - undertake intensive monitoring of the provider; or
  - undertake a provider-level inspection.
- b. Criminal powers enable us to:
- initiate a criminal investigation;
  - issue a penalty notice<sup>4</sup>.
  - recommend a criminal prosecution

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<sup>4</sup> For services regulated under the Regulation and Inspection of Social Care (Wales) Act 2016

## 2 Securing improvement and enforcement pathway

2.1 CIW have developed a pathway that sets out our approach to improvement and enforcement activity. The following diagram illustrates the various steps contained within the **pathway**.





## The standard pathway

### 1st Inspection

2.2 The pathway (see flowchart) begins when we undertake an inspection that is either a scheduled inspection or as a result of concerns being raised by individuals accessing the service, whistle-blowers or from other professionals/agencies. Further information on how CIW generally undertakes inspections is set out within our [Code of Practice for Inspection](#)<sup>5</sup>.

2.3 During the **1<sup>st</sup> inspection** we review outcomes for individuals and the quality and safety of the service being delivered. Where failures are identified that constitute non-compliance with the law, we apply our 'non-compliance decision framework' (see Chapter 3). This determines our response to the non-compliance identified. At this point in the pathway, the options available will usually be:

- a) The failure does not require a non-compliance notice to be issued. In such circumstances we highlight the non-compliance within the inspection report, which the provider must take action to address and the service is scheduled for an early inspection. Actions taken to address the non-compliance and outcomes arising will be assessed at that next inspection. In such circumstances we will not progress to the next step of the pathway.
- b) The failure requires a non-compliance notice to be issued, which the provider must take action to address. Actions taken to address the non-compliance and outcomes arising will be assessed at the 2<sup>nd</sup> inspection, in line with the pathway.
- c) The failure requires a more immediate enforcement response. In such circumstances we follow our **responsive pathway**. These circumstances will usually relate to where we have identified unacceptable care delivered by the provider.

2.4 Depending on the circumstances of an individual case, we may also decide it is necessary to meet with the provider. This will not be a routine approach but provides flexibility for us to take action if we deem it necessary to do so. It also does not prevent the **service provider meeting** from taking place following the 2<sup>nd</sup> inspection (see paragraph 2.7).

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<sup>5</sup> Whilst the Code of Practice is specifically in relation to inspection of services regulated under the 2016 Act, the principles apply equally to those services regulated under the 2000 Act and the 2010 Measure.

## 2nd Inspection

2.5 Where a non-compliance notice is issued the provider will be scheduled for a priority **2<sup>nd</sup> inspection**. The 2<sup>nd</sup> inspection will take place **within** six months of the date when the non compliance notice was issued. This 2<sup>nd</sup> inspection specifically focuses on assessing the actions taken to address the identified non-compliance and any outcomes arising. If we are satisfied that the actions taken to address the non-compliance has resulted in the provider being compliant with the regulatory requirements, the provider is informed and the process comes to an end.

2.6 If following the 2<sup>nd</sup> inspection the provider remains non-compliant, we will apply the 'non-compliance decision framework' to guide our decision and assess whether the non-compliance continues to impact on outcomes for individuals accessing the service. Where the non-compliance continues to impact on outcomes, the non-compliance notice will remain open and the provider will be informed that the matter will be escalated.

## Service provider meeting

2.7 In the event where a non-compliance notice remains open following a 2<sup>nd</sup> inspection, a **service provider meeting** is held. We write to the provider outlining the continued non-compliance and invite them to a service provider meeting. This allows the provider an opportunity to explain why it remains non-compliant and highlight any actions taken to date, or those proposed to be taken, to resolve any continued non-compliance. The purpose of the meeting is not to assess the level of compliance but to identify any mitigating reasons or further information that should be taken into account when enforcement action is considered by our **Local or National Improvement and Enforcement Panel**.

2.8 It is expected that providers are able and competent to attend the service provider meeting without the need for external or legal support. The provider may request the opportunity to bring such persons to the meeting. However any request must be made promptly to avoid any unnecessary delays and this must be agreed with us in advance.

2.9 The service provider meeting will be held as soon as practicable but should be **no later** than four weeks after the 2nd inspection visit.

## Local or National Improvement and Enforcement Panel

2.10 Where continued non-compliance has been identified following a 2<sup>nd</sup> inspection the matter will be escalated to the **Local or National Improvement and Enforcement Panel**. The information provided at the service provider meeting does not stop this escalation process.

2.11 To ensure decisions are made at the right level and at the right time, we operate improvement and enforcement panels at both local and national levels. Whether an enforcement decision is required at a local or national panel will depend on the type of enforcement action and decision required. We maintain an internal scheme of delegations which sets out the decisions that can be made and by whom.

2.12 The purpose of the panel will be to:

- consider the non-compliance or concerns identified in relation to a registered provider and/or designated responsible individual (depending on the relevant legislation);
- review the evidence base underpinning the non-compliance or concerns and provide instructions on any further evidence required;
- make a determination on the recommended civil or criminal enforcement action required to improve the quality and safety of those using the service(s);
- consider the communication strategy required for any enforcement action determined to be taken forward.

Our National Improvement and Enforcement Panel will also monitor and provide oversight and quality assurance for those decisions made at Local Improvement and Enforcement Panels.

### **The Responsive Pathway**

2.13 The responsive pathway (see flowchart) is only followed where a potential service operating without registration has been identified, a serious incident has taken place or there is a serious and immediate risk of harm to people using a service and immediate action may be required.

2.14 In these circumstances we consider whether further information is needed and take steps to obtain that information. Alternatively we may refer the case immediately to the Local or National Improvement and Enforcement Panel to take urgent enforcement action against the provider.

### **3 Non-compliance decision framework**

3.1 We apply a non-compliance decision framework to ensure a structured approach to determining what actions we take in response to any identified non-compliance. The framework consists of two stages:

- Stage 1 - Determining if a provider is non-compliant
- Stage 2 - Determining the appropriate action

#### **Stage 1 – Determining if a provider is non-compliant**

3.2 The purpose of Stage 1 is to determine whether any issues identified constitute non-compliance with the law. In making this decision, we review the evidence gathered at inspection and consider the following:

- Does the evidence demonstrate there is possible non-compliance?
- Is the evidence sufficient and of good quality that is credible, accurately recorded, weighted appropriately and triangulated, to support the identification of non-compliance?
- Has there been an analysis of the root cause of the identified failings?
- Which regulations does this relate to?

3.3 In addition, to assist our considerations for Stage 2, we also assess the following:

- Does the evidence identify any impact on or potential risk to the well-being of the individuals using the service?
- Are there any historical issues that need to be taken into account, i.e. any previous non-compliance?
- What leadership and governance arrangements are in place to address the non-compliance and are these arrangements adequate?

**3.4 Where it is clear that there is non-compliance, and the evidence is sufficiently robust, we proceed to Stage 2**

## Stage 2 – Determining the appropriate action

3.5 The purpose of Stage 2 is to guide our inspectors to determine the most appropriate response to the identified non-compliance. Stage 2 provides a risk matrix which takes into account two criteria that will assist us in reaching a decision. These are the:

- a) impact on or risk to the well-being of individuals accessing the service;
- b) likelihood that the non-compliance will continue or reoccur .

3.6 We assess the impact on or risk to the well-being of people accessing the service, using the following:

	Definition
Minor / Moderate impact on wellbeing	<p>The identified non-compliance results in one or more of the following:</p> <ul style="list-style-type: none"> <li>• Minimal or Moderate impact on individual(s) using the service including infringement of their privacy, dignity, rights or well being</li> <li>• Minor or moderate reduction in well-being</li> <li>• Minor but reversible health condition</li> </ul>
Major impact on / or risk to wellbeing	<p>The identified non-compliance results in one or more of the following:</p> <ul style="list-style-type: none"> <li>• Significant impact<sup>6</sup> on or risk to individual(s) using the service including infringement of their privacy, dignity, rights, or health and well being</li> <li>• Permanent disability</li> <li>• Significant or irreversible adverse health condition</li> <li>• Major reduction in well-being</li> <li>• Children or adults are placed at significant risk of harm, abuse and/or neglect</li> </ul>

<sup>6</sup> CIW's [human rights](#) document identifies the unacceptable care which would have a significant impact on people's well being.

3.7 We assess whether the likelihood of the non-compliance will continue or reoccur in the future using the following:

Likelihood the non-compliance will continue or reoccur	Definition
Unlikely	The factors leading to the non-compliance are unlikely to continue or reoccur as measures have been taken or are currently being implemented to address the issues identified and/or fully manage the risk.
Likely	<p>The factors leading to the non-compliance are likely to continue or reoccur as:</p> <ul style="list-style-type: none"> <li>• insufficient or ineffective measures are in place to fully manage the risk or address the issues identified or</li> <li>• there is insufficient capacity, capability or commitment from the service provider to manage the risk and/or address the issues identified.</li> </ul>

3.8 We apply the outcome of the assessment against the matrix, in paragraph 3.6 and 3.7, to the table below to identify the appropriate action to take.

Impact of the non-compliance	Likelihood the non-compliance will continue or reoccur	
	Unlikely	Likely
Minor / Moderate	<ul style="list-style-type: none"> <li>• Highlight the non-compliance in the inspection report. The service provider must take action to address the non-compliance</li> <li>• In the case of a child care and play setting, the rating is likely to be adequate/requires improvement for the relevant inspection theme</li> <li>• Service may be scheduled for early inspection</li> <li>• Assess actions taken to address the non-compliance and outcomes arising at that next inspection</li> </ul>	<ul style="list-style-type: none"> <li>• Issue a non-compliance notice.</li> <li>• The service provider must take action to address the non-compliance within a defined timescale</li> <li>• In the case of a child care and play setting, the rating is likely to be poor for the relevant inspection theme</li> <li>• Service will be scheduled for priority inspection</li> <li>• Assess actions taken to address the non-compliance and outcomes arising at that next inspection</li> </ul>
Major	<ul style="list-style-type: none"> <li>• Issue a non-compliance notice.</li> <li>• The service provider must take action to address the non-compliance within a defined timescale</li> <li>• Service will be scheduled for priority inspection</li> <li>• In the case of a child care and play setting, the rating is likely to be poor for the relevant inspection theme</li> <li>• Assess actions taken to address the non-compliance and outcomes arising at that next inspection</li> </ul>	<ul style="list-style-type: none"> <li>• Option to take urgent enforcement action</li> <li>• Issue a non-compliance notice.</li> <li>• The service provider must take action to address the non-compliance within a defined timescale</li> <li>• In the case of a child care and play setting, the rating is likely to be poor for the relevant inspection theme</li> <li>• Arrange a service provider meeting</li> <li>• Service will be scheduled for priority inspection</li> <li>• Assess actions taken to address the non-compliance and outcomes arising at that next inspection</li> </ul>

3.9 Any determination by the relevant inspector as to whether a non-compliance issue falls within a category of minor/moderate or major is made on a case by case basis and the evidence available. However, prior to making a final decision, we review any proposed actions arising from applying this framework. This ensures our decisions are consistent.



## 4 Securing improvement and enforcement tools

4.1 We have a range of statutory tools available to support our improvement and enforcement process. The tools used in any given circumstance depends on:

- the action we propose to take;
- the relevant legislation the provider is regulated under;
- the severity of the issues or risks identified and
- the stage of the improvement and enforcement process that has been reached.

### Improvement notice / notice of decision

4.2 Improvement notices will only be used for those services regulated under the 2016 Act<sup>7</sup>. An improvement notice is issued where CIW proposed to take any of the following actions:

- To cancel the registration of the provider. This will include all regulated services associated with that provider's conditions of registration;
- To impose a variation on the provider's registration and remove a regulated service or services from that provider's conditions of registration
- To remove a place at, from or in relation to which the provider is providing a regulated service
- To cancel the designation of the responsible individual

4.3 The improvement notice specifies the proposed action and the grounds upon which such action is being taken. It details the actions the provider must take or the information that must be provided within a specified time limit in order to satisfy us that the proposed enforcement action should not be taken. Where the provider wishes to challenge our reasons for taking action, the provider can make representations to us within the time limit specified in the improvement notice.

4.4 Where we are satisfied the provider has taken forward the specified actions and/or provided the information requested in the improvement notice, and within the specified timescales required, we will notify the provider setting out our decision not to take forward the proposed enforcement action.

4.5 Where we are not satisfied:

- our notice of decision sets out our intention to proceed with the proposed enforcement action, the reasons and any right of appeal; or
- we may provide an extension of time by which the specified action must be taken. Under the 2016 Act we cannot provide an extension of time in relation to the information required in the improvement notice.

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<sup>7</sup> From April 2018 this will apply to care homes, domiciliary support services, residential family services and secure accommodation services. This will also apply to fostering services, adoption services, advocacy services and adult placement services from April 2019.

## **Notice of proposal / notice of decision**

4.6 We must issue a notice of proposal to take enforcement action that:

- for services regulated under the 2016 Act: varies the conditions of a provider's registration (other than those variations listed in paragraph 4.2); or
- for services regulated under the 2000 Act<sup>8</sup>: cancels the registration, suspends the registration or extends the period of suspension; or to vary, remove or impose any condition on the provider's registration.

4.7 The notice of proposal specifies the enforcement action we are proposing to take, the reasons and the proposed date it will take effect (of no less than 28 days from the date when the notice is given). Under the 2016 Act the notice of proposal may also set out the actions the provider needs to take, in order to avoid enforcement action being taken forward.

4.8 The provider can make representations to us within the specified time limit and this will be taken into account before any final decision is made. Where representations are not upheld, a notice of decision is issued setting out our intention to proceed with the proposed enforcement action, the reasons and any right of appeal.

## **Notice of intention / notice of decision**

4.9 Under the Children's and Families (Wales) Measure 2010, we issue a notice of intention if we decide to take any of the following enforcement action:

- Impose, vary or remove a condition of registration
- Cancel a registration

4.10 The notice of intention specifies the enforcement action we are proposing to take, the reasons and a time limit (of no less than 28 days from the date when the notice is given). The provider can make representations to us within the specified time limit and this will be taken into account before any final decision is made. Where representations are not upheld, a notice of decision is issued setting out our intention to proceed with the proposed enforcement action, the reasons and any right of appeal.

## **Enforcement Notice**

4.11 Under the Children's and Families (Wales) Measure 2010, we issue a notice on any person we believe is acting as a child minder without being registered to do so. The notice has effect for a period of a year from the date it is served. The notice informs the person concerned that if during that period of time, and without

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<sup>8</sup> This will apply to those services that are registered under the 2000 Act but have not yet registered under the 2016 Act, i.e. fostering services, adoption services, advocacy services and adult placement services.

reasonable excuse, they act as a child minder without being registered they will commit an offence for which they will risk prosecution.

## **Matters requiring urgent action**

4.12 We consider taking urgent enforcement action when:

- for services regulated under the 2016 Act: a serious risk to a person's life, physical or mental health is identified and/or where a person is suffering from abuse or neglect.
- for services regulated under the 2000 Act: a serious risk to a person's life, health or well-being is identified; or
- for services regulated under the 2010 Measure: a child is likely to suffer significant harm

In these circumstances we may decide to undertake immediate enforcement action. This could include:

- Seeking to cancel a registered provider or vary a registration to remove a condition (under the 2016 Act) or urgent cancellation of a registered provider (under the 2000 Act). In such cases, we make an application to the justice of the peace. The justice of the peace will make an order only if they are satisfied as to the ground on which we made the application. An order made by the justice of the peace will take effect as soon as it is made or at a time the justice of the peace thinks appropriate.
- Seeking an urgent variation of registration, including varying or imposing a condition (under the 2000 Act and the 2016 Act). A notice of decision is issued which takes effect on the day it is given. The notice of decision explains the enforcement action taken, the reasons and any right of appeal.
- Imposing, varying or removing conditions of registration in an emergency under the 2010 Measure. A notice of decision is issued setting out the enforcement action, the reasons, the date it takes effect and any right of appeal.
- A suspension of a person's registration under the 2010 Measure<sup>9</sup>. A notice of decision is issued setting out the enforcement action, the reasons, the period of suspension and any right of appeal. The suspension of a person's registration takes effect from the date and, where necessary, time specified in the notice. This can be immediate. The period of suspension cannot be more than 6 weeks from the date the suspension begins. In exceptional circumstances it is possible to extend the period of suspension, on the same

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<sup>9</sup> Under regulations made under the 2010 Measure, the Child Minding and Day Care (Wales) Regulations 2010.

grounds, though generally for no more than 12 weeks in aggregate in any period of 12 months.

- 4.13 When we exercise urgent enforcement action in response to an urgent concern or serious incident, our decisions usually have immediate effect. Providers have the right to appeal against the use of urgent enforcement action but this does not prevent that action taking effect immediately.

### **Voluntarily cancelling a registration**

- 4.14 Any service provider may apply to voluntarily cancel their registration, however any such application may be refused if enforcement action has already been commenced by us with a view to cancelling that provider's registration.
- 4.15 For services regulated under the 2016 Act, once a decision has been made at the local or national improvement and enforcement panel to take action with a view to cancelling a provider's registration, that decision will be deemed the point at which enforcement action has commenced. We will be able to refuse any applications made subsequently for a voluntary cancellation. In these situations the provider will be notified of the decision by the local or national improvement and enforcement panel, as soon as practicable, after which an Improvement Notice will be issued.
- 4.16 For services regulated under the 2000 Act, a provider may not make an application for the voluntary cancellation of their registration if they have been served with a Notice of Proposal or a Notice of Decision to cancel their registration.
- 4.17 For services regulated under the 2010 Measure, once a Notice of Intention to cancel the provider's registration is issued, that will be deemed the point at which we are unable to accept any applications for the voluntary cancellation of their registration.
- 4.18 Where a provider wishes to challenge the grounds to refuse an application to voluntarily cancel their registration, the provider can make representations to us within the time limit specified in the relevant notice (see Chapter 6).

## 5 Criminal Enforcement Action

5.1 It is a criminal offence for a provider to fail to comply with certain provisions set out in legislation or regulations. In these circumstances, a provider may face criminal enforcement action. A list of legislative and regulatory offences is set out in Annex B.

5.2 Criminal enforcement action is taken against any registered provider and/or designated responsible individual (depending on the relevant legislation), or a person/provider carrying on a regulated activity without being registered to do so. Criminal enforcement action is also taken against any person who obstructs us in the course of an inspection and against registered or unregistered persons where they have made a false or misleading statement in any application to us.

### Fact finding

5.3 A fact finding review may be an appropriate course of action where we become aware of incidents or events that may constitute an offence under the legislation. The fact finding review allows us to establish the facts and consider if we have evidence to believe an offence has been committed.

5.4 A review is usually confined to examining relevant records in relation to the incident(s) or event(s) concerned. However, there may be times where, during the course of the review, other information comes to light that also needs to be considered. The review will not usually involve taking statements from individuals accessing the service or members of the public, but there may be times when this is required, for example where there is an allegation that a service is operating without registration.

5.5 Where there is sufficient evidence that makes us believe an offence has been committed a criminal investigation will be undertaken.

### Criminal investigation

5.6 All investigations of criminal offences are carried out having regard to the [Criminal Procedure and Investigations Act 1996 \(CPIA\)](#) and the [Police and Criminal Evidence Act 1984](#) (PACE) [Codes of Practice](#).

5.7 The remit of any criminal investigation, including who we communicate with or involve in the investigation, is determined by our National Improvement and Enforcement Panel. Where a criminal investigation is being pursued as a result of an adult or child protection referral, we may plan that investigation with other interested parties, for example the police and/or social services. All criminal investigations are monitored by CIW's National Improvement and Enforcement Panel.

5.8A criminal investigation is undertaken to establish whether there is evidence to suggest that:

- a) A person/provider is operating without registration and:
  - i. people using the service have suffered harm (serious impact on a person's life, health or well-being)
  - ii. There is previous similar conduct;
  - iii. The person/provider has shown a clear disregard for the requirement to register;
  - iv. The person/provider has intentionally provided false or misleading information to the public or CIW.
- b) Non-compliance has occurred and that failure resulted in significant harm to an individual(s) **and** there is evidence to suggest that the non-compliance can be attributed to the conduct or inaction of a registered provider and/or designated responsible individual (depending on the relevant legislation).

### Penalty notice

5.9 Under the 2016 Act, a penalty notice may be issued instead of bringing proceedings for a prosecution. Paying a penalty enables a registered provider and/or designated responsible individual to avoid a potential prosecution for an offence. There is no obligation on the registered provider or the designated responsible individual to pay the sum under the penalty notice. However, in those cases we may make a recommendation to the Welsh Government for prosecution.

5.10 The prescribed offences for which a penalty notice can be issued and the amount of penalty for each offence is set out in Schedule of prescribed offences within the [Regulated Services \(Penalty Notices\) \(Wales\) Regulations 2017](#).

### Prosecution

5.11 CIW is responsible for making a recommendation to Welsh Government to consider prosecution. The decision to proceed with a prosecution is made by the Counsel General on behalf of the Welsh Government. This decision is made in accordance with the Welsh Government's [Prosecution Code](#).

5.12 The outcome of the Counsel General's consideration may be to:

- issue a **simple caution** to ensure there is a formal record of an offence when a registered provider and/or designated responsible individual has admitted to it, but is not prosecuted;
- issue a **penalty notice** under the 2016 Act (see section above); or
- **proceed with the prosecution** for some or all of the offences; or

- **not to pursue criminal proceedings** but consider an alternative approach, i.e. our civil enforcement actions.

### **Service operating without registration**

5.13 It is an offence to provide a regulated service or services in Wales without being registered with us. It is a provider's responsibility to apply and register with us. Where there is reasonable cause for concern that a provider is operating illegally, we will consider our enforcement approach. This could include, but not be limited to, advising the provider to register (in the cases of non-intentional operation) or undertaking criminal enforcement action.

5.14 Where it is determined that the service in question is required to be registered, the provider concerned is informed that they risk prosecution if they continue to operate without being registered.

## **6 Representations and appeals**

### **Representations**

6.1 Registered providers and/or designated responsible individuals can make representations to us about certain types of enforcement action. These include:

- Improvement notice
- Notice of proposal to vary the conditions of a provider's registration (under the 2016 Act)
- Notice of proposal to cancel the registration, suspend the registration or extend the period of suspension; or to vary, remove or impose any condition on the provider's registration (under the 2000 Act)
- Notice of intention to impose, vary or remove a condition of registration; or cancel a registration (under the 2010 Measure)

6.2 The timeframe set out within the notice for making representations may vary depending on the type of notice issued. For example, representations as a result of a notice of proposal must be made within 28 days of the date we issue that notice.

6.3 Representations can be made in writing or orally, and should be submitted with any additional supporting evidence. Failure to provide this additional supporting evidence may affect our response or cause a delay.

6.4 When we receive representations, we appoint a decision-maker to make a determination. The decision-maker is someone of an equivalent or senior grade to the inspector who signed the notice and will have had no involvement with the original decision.

6.5 We aim to respond within 28 days of the deadline for representations elapsing (This is not 28 days after receipt of the representations.) However, for services regulated under the 2016 Act, if we are not able to respond within 28 days then we will inform the recipient of the notice. In such cases we will come to a decision and respond within 56 days of the deadline for representations elapsing, and explain the reasons for the delay.

### **Appeals to tribunal**

6.6 Registered providers and/or designated responsible individuals have the right to appeal to the First Tier Tribunal for:

- Any notice of decision issued, including those issued under urgent procedures
- Any decision to cancel a registered provider or vary a registration to remove a condition (under the 2016 Act) or urgent cancellation of a registered provider (under the 2000 Act) following a decision by the justice of the peace



6.7 An appeal must be made no later than 28 days after the date on which the decision notice is given. However the Tribunal may allow an appeal to be made after this period if it is satisfied that there are good reasons for the failure to appeal within the 28 days.

6.8 The powers of the Tribunal depend on the legislation that an appeal is being made under. These powers generally include:

- confirming our decision;
- directing that the action can not be taken;
- deciding on an alternative action to be taken forward; or
- make any other order (such as an interim order to suspend the effect of the decision for a period) as the Tribunal thinks appropriate in respect of the provider's registration.

6.9 There is no right of appeal to the Tribunal in relation to non-compliance notices, penalty notices or conviction following prosecution for an offence.

6.10 The registered provider and/or designated responsible individuals (depending on the legislation) are requested to advise us of any appeals being made.

## 7 Information

7.1 The knowledge and information we hold is one of our most important assets. It ensures that the decisions we make and the advice we give is underpinned by a robust evidence base.

7.2 Through our registration and inspection processes we gather and hold a considerable amount of information on providers, as well as information obtained from other intelligence sources. This valuable information helps us to assess whether a registered provider and/or designated responsible individuals (depending on the legislation) is complying with their legislative and regulatory responsibilities.

7.3 The information we use therefore provides the fundamental basis upon which our enforcement decisions are made and subsequently forms the evidence base we will rely upon should our enforcement actions be challenged.

7.4 On occasion we may receive a request to release information relating to an individual case or provider. Any individual has the right to request recorded information that we hold, and subject to the statutory requirements of legislation around information handling, to be given a copy of this information.

7.5 To ensure that the right information is available at the right time, and that we uphold the statutory requirements that are required of us, we:

- Safeguard the information we hold, in line with Welsh Government procedures, to ensure high standards of information security and data protection.
- Store our information in the correct way, adhering to the [Welsh Government's records management](#) principles.
- Respond to requests for information within the established processes and timeframes required by law<sup>10</sup>.
- Share information appropriately and lawfully, to enhance and re-use our knowledge, work collaboratively and reduce duplication.

7.6 In certain cases CIW may participate in or undertake an inspection jointly with other regulatory bodies or agencies, such as the Police or Health and Safety Executive. Sharing information with these regulatory bodies or agencies is crucial in ensuring an effective use of information and resource. In these situations we share information in line with the statutory requirements placed upon us.

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<sup>10</sup> There are four laws governing our handling of requests for information, these are the Data Protection Act (DPA) 1998, General Data Protection Regulation (GDPR) 2016, Freedom of Information Act (FOIA) 2000 and Environmental Information Regulations (EIR) 2004.

7.7 CIW has a responsibility to the public to share information in order to ensure that individuals receiving accommodation-based services, or services commissioned to support them in their day-to-day lives, are made aware if they might be at risk. Therefore where we identify a provider as a service of concern/provider of concern we notify the relevant commissioning bodies and other regulatory bodies as required under legislation.

## 8 Communication and publication

8.1 Where a provider is inspected, information about non-compliance and any subsequent enforcement action is included within our inspection reports. These are published on our [website](#).

8.2 Where there is a need to protect vulnerable individuals from the risk of harm, we will lawfully share information on our enforcement actions with relevant bodies, e.g. commissioners.

8.3 For services regulated under the 2016 Act we must inform local authorities of any enforcement action against a provider resulting in:

- The cancellation of the registration of a provider;
- The variation of a registration of a provider by removing a regulated service or services or removing a place at, from, or in relation to which the provider is providing a regulated service;
- The making of an order of the justice of the peace for an urgent cancellation or variation by removing a service or place (this also applies to services regulated under the 2000 Act);
- The cancellation of a designated responsible individual;
- Criminal proceedings brought against a person;
- A penalty notice given.

8.4 For providers regulated under the 2010 Measure we must inform the local authority in whose area the provider operated of any enforcement action resulting in the:

- The suspension of a person's registration;
- The cancellation of a registration

8.5 We may also decide to notify other stakeholders of any enforcement actions taken by us. This is determined on a case by case basis and include, but not limited to, the following:

- Individuals accessing the service, relatives, representative / advocates
- NHS commissioners
- Welsh Ministers
- Other agencies and inspectorates e.g. CQC, Fire Service
- Social Care Wales (SCW), Family Information Service, Nursing and Midwifery Council (NMC), General Medical Council (GMC), etc.

8.6 Under the 2016 Act, we must maintain a register of providers. This is published on our website and sets out registration details including any conditions imposed on the registration and any enforcement action taken.

## **9 Terminology used in this Policy**

### **Care Inspectorate Wales (CIW)**

The independent regulator of social care and childcare. We register, inspect and take action to improve the quality and safety of services for the well-being of the people of Wales.

### **Code of Practice for Inspection**

High-level description of the manner in which the inspection of regulated services is to be carried out, in accordance with the requirements of the 2016 Act and associated regulations.

### **Concerns**

Issues reported to CIW that relate to the safety, well-being or rights of people using the service.

### **Compliance**

Where a provider or designated responsible individual (depending on the legislation) is meeting the requirements placed on them by the law or conversely is non-compliant when they are not.

### **Enforcement**

Actions we take in relation to a service provider or designated responsible individual (depending on the legislation) in compelling compliance with the law.

### **Regulator**

Organisation established by government to supervise, by means of rules and regulations, an area of commercial or social activity.

### **Safeguarding**

General term for actions taken to promote the welfare of children and vulnerable adults and protect them from neglect, abuse and exploitation.

### **Service of concern / provider of concern**

A designation within CIW for services and providers whose operations are giving cause for concern and who consequently require closer scrutiny by CIW.

### **Well-being**

Broadly refers to the state of a person being healthy, happy, safe and comfortable with their life.

### **Whistle-blower**

Someone who raises an issue of public concern about wrong doing, risk or malpractice that they are aware of through their work. Whistle-blowers are protected by law, from being mistreated or dismissed from their jobs, when whistle-blowing.

## Regulatory Framework

The following sets out the legislative and regulatory requirements under which CIW regulates social care and child care providers. These providers must adhere to these requirements in order to provide a care service in Wales. CIW take enforcement action where they are failing to comply with the law.

Through regulations made under the 2016 Act care home services, secure accommodation services, residential family centre services and domiciliary support services are required to be regulated by CIW from 2 April 2018. Therefore the following regulations and guidance apply to these providers:

- [The Regulated Services \(Registration\) \(Wales\) Regulations 2017](#).
- [The Regulated Services \(Annual Returns\) \(Wales\) Regulations 2017](#).
- [The Regulated Services \(Service Providers and Responsible Individuals\) \(Wales\) Regulations 2017](#).
- [Statutory guidance for service providers and responsible individuals on meeting service standard regulations](#).
- [The Regulated Services \(Penalty Notices\) \(Wales\) Regulations 2017](#).

Adoption services, fostering services, adult placement services and advocacy services (a new regulated service under the 2016 Act) all fall under the scope of the 2016 Act. However these services are not required to be regulated under the 2016 Act until 1 April 2019. In the mean time adoption services, fostering services and adult placement services will remain regulated by CIW under the Care Standards Act 2000. The following regulations and guidance apply to these providers:

- [The Fostering Services \(Wales\) Regulations 2003](#)
- [The Fostering Services \(Wales\) \(Amendment\) Regulations 2003](#)
- [National Minimum Standards for fostering services](#)
- [The Adoption and Children Act 2002](#)
- [The Adoption Agencies \(Wales\) Regulations 2005](#)
- [The Adoption Agencies \(Wales\) \(Amendment\) Regulations 2012](#)
- [The Adoption Support Agencies \(Wales\) Regulations 2005](#)
- [The Adoption Information Intermediary Services \(Pre Commencement Adoptions\) \(Wales\) Regulations 2005](#)
- [The Adoption Information Intermediary Services \(Pre Commencement Adoptions\) \(Wales\) \(Amendment\) Regulations 2005](#)
- [The Adoptions with a Foreign Element Regulations 2005](#)
- [The Access to Information \(Post Commencement Adoptions\) \(Wales\) Regulations 2005](#)

- [The Independent Review of Determinations \(Adoptions\) \(Wales\) Regulations 2006](#)
- [The Independent Review of Determinations \(Adoption and Fostering\) \(Wales\) Regulations 2010](#)
- [The Restrictions on the Preparation of Adoption Reports Regulations 2005](#)
- [The Adopted Children and Adoption Contact Registers Regulations 2005](#)
- [The Voluntary Adoption Agencies \(Amendment\) Regulations 2005](#)
- [The Voluntary Adoption Agencies and the Adoption Agencies \(Miscellaneous Amendments\) Regulations 2003](#)
- [The Local Authority Adoption Services \(Wales\) Regulations 2007](#)
- [The Adoption Support Services \(Local Authorities\) \(Wales\) Regulations 2005](#)
- [Local Authorities \(Prescribed fees\) \(Adoptions with a Foreign Element\) \(Wales\) Regulations 2005](#)
- [National Minimum Standards for adoption support agencies](#)
- [National Minimum Standards for voluntary adoption agencies](#)
- [National Minimum Standards for local authority adoption agencies](#)
- [The Adult Placement Schemes \(Wales\) Regulations 2004](#)
- [The Adult Placement Schemes \(Wales\) \(Miscellaneous Amendments\) Regulations 2010](#)
- [National Minimum Standards for adult placement schemes](#)

The Children and Families (Wales) Measure 2010 requires child minders and day care and play providers to be regulated by CIW. The following regulations and guidance apply to these providers:

- [The Regulation of Child Minding and Day Care \(Wales\) Order 2016](#)
- [The Child Minding and Day Care \(Wales\) Regulations 2010](#)
- [The Child Minding and Day Care \(Inspection and Information for Local Authorities\) \(Wales\) Regulations 2010](#)
- [The Child Minding and Day Care Exceptions \(Wales\) Order 2010](#)
- [The Children and Families \(Wales\) Measure 2010 \(Commencement No.2, Saving and Transitional Provisions\) \(Amendment\) and \(Consequential Amendment\) Order 2011](#)
- [Children and Families \(Wales\) Measure 2010](#)
- [The Child Minding and Day Care \(Disqualification\) \(Wales\) Regulations 2010](#)
- [National Minimum Standards for Regulated Childcare for children up to the age of 12 years](#)

## Legislative and Regulatory Offences

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

- Section 43(1) fail to comply with any condition relating to the provider's registration which is for the time being in force.
- Section 44(1) intent to deceive another by (a) pretend to be a service provider, (b) pretend that a place is one at, from or in relation to which a regulated service is provided, or (c) pretend to be a responsible individual.
- Section 45 failure by service provider to comply with requirements in regulations made under section 27 or 37(2)(a).
- Section 46 failure by responsible individual to comply with requirements in regulations made under section 28.
- Section 47 make a statement which the person knows is false or materially misleading in (a) an application for registration, (b) an application to vary or cancel registration, (c) an annual return (submitted under section 10), or (d) responding to a requirement imposed by Welsh Ministers under section 32(1).
- Section 48 fail to submit annual return to the Welsh Ministers within the time limit prescribed under section 10(4).
- Section 49 fail to comply with a requirement imposed on a person by the Welsh Ministers under section 32(1) (to provide information).
- Section 50 intentionally obstructs an inspector exercising any functions conferred (under Chapter 3) or fail to comply with any requirement imposed by an inspector exercising such functions.

### The Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017

#### *Offences – service providers - Regulation 85*

(1) It is an offence for a service provider to fail to comply with a requirement of any of the provisions specified in paragraph (2)(1).

(2) The provisions specified for the purposes of paragraph (1) are the provisions of regulations 7(3), 7(5), 11(3), 12(1), 12(2), 19(1), 19(2), 19(3), 20(1), 35(1), 38(1), 59(1), 59(2), 59(3), 60(1), 60(2), 60(4), 61(3) and 62(3).



(3) A service provider commits an offence if the provider fails to comply with a requirement of any of the provisions specified in paragraph (4) and such failure results in:

- (a) avoidable harm (whether of a physical or psychological nature) to an individual,
- (b) an individual being exposed to a significant risk of such harm occurring, or
- (c) in a case of theft, misuse or misappropriation of money or property, any loss by an individual of the money or property concerned.

(4) The provisions specified for the purposes of paragraph (3) are the provisions of regulations 6, 7(1), 12(5), 14(1), 14(3), 15(1), 15(3), 15(5), 16(1), 16(5), 18(1), 18(6), 18(7), 21(1), 21(2), 22, 26, 33(1), 34(1), 34(2) and 34(3).

#### *Offences – Responsible Individuals - Regulation 86*

(1) It is an offence for the responsible individual to fail to comply with a requirement of any of the provisions specified in paragraph (2)(1).

(2) The provisions specified for the purposes of paragraph (1) are the provisions of regulations 67(1), 68(1), 71(1), 71(2), 73(1), 73(2), 73(3), 74(1), 74(2), 75(1), 80(4), 81(1), 84(1) and 84(3)

#### **Children and Families (Wales) Measure 2010**

- Section 21(5) without reasonable excuse acting as a child minder in contravention of an enforcement notice
- Section 23(2) without reasonable excuse providing day care for children on any premises in Wales without being registered to provide day care on those premises
- Section 29(4) without reasonable excuse failing to comply with any condition imposed
- Regulations made under section 30(4) without reasonable excuse contravening or otherwise failing to comply with any requirement of the regulations
- Section 32(7) acting as a child minder in Wales at a time when that person's registration is suspended or providing day care on any premises at a time when that person's registration in respect of those premises is suspended
- Section 39(3) acting as a child minder in Wales whilst disqualified
- Section 39(3) providing day care in Wales or being directly concerned in the management of any provision of day care in Wales whilst disqualified
- Section 39(3) employing a person who is disqualified from registration in connection with the provision of day care or child minding in Wales

- Section 42(7)(a) without reasonable excuse, obstructing a person exercising any power under section 41 or 42
- Section 42(7)(b) without reasonable excuse, failing to comply with any requirement imposed under section 42
- Section 46(1) knowingly making a statement which is false or misleading in a material particular in an application for registration
- Section 50 (if an offence is proved against a body corporate) a separate offence is committed if the offence against the body corporate is committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, or other similar officer of the body corporate or by any person purporting to act in any such capacity
- Section 51(5) (if an offence is proved against an unincorporated association) a separate offence is committed if the offence against the unincorporated association is committed with the consent or connivance of an officer of the association or a member of its governing body, or is attributable to any neglect on the part of any officer or member

### **Children Act 1989**

- Paragraph 5(1)(a) of Schedule 9A acting as a child minder at any time whilst disqualified for registration for child minding
- Paragraph 5(1)(b) of Schedule 9A and regulation 11(4) of the Child Minding and Day Care (Disqualification) (Wales) Regulations 2010 without reasonable excuse failing to comply with the requirements of regulation 11 in respect of disclosure
- NB: By virtue of paragraph 5(2) of Schedule 9A, a person is not guilty of an offence under the above provision if he/she proves he/she did not know, and had no reasonable grounds for believing, that the person in question was living or employed in the household
- Paragraph 5(1)(b) of Schedule 9A providing day care, or being concerned in the management of day care, or having any financial interest in the provision of day care, whilst disqualified for registration for providing day care
- Paragraph 5(1)(b) of Schedule 9A employing a person in connection with the provision of day care who is disqualified for registration for providing day care

NB: By virtue of paragraph 5(3) of Schedule 9A, a person is not guilty of an offence under the above provision if he/she proves he/she did not know, and had no reasonable grounds for believing, that the person whom he/she was employing was disqualified