

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 improvement and enforcement for regulated services, 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 providers who do not meet these requirements.
- 1.2 Our primary concern is to ensure providers support people to achieve the best possible outcomes and keep them safe. In order to achieve this we:
- have a rigorous registration process, so that we only register services who have satisfied us they will comply with regulations
 - undertake both routine (planned) and responsive inspections
 - have a clear, graduated and proportionate enforcement pathway

Who we regulate

1.3 We regulate the following providers:

- | | | |
|--|---|---|
| <ul style="list-style-type: none">• care homes (adults/children);• secure accommodation;• residential family centre;• domiciliary support;• adoption;• fostering;• adult placement; and• advocacy | } | Under the Regulation and Inspection of Social Care (Wales) Act 2016 |
| <ul style="list-style-type: none">• child minders• day care | } | Under the Children and Families (Wales) Measure 2010 |

Principles of securing improvement and enforcement

1.4 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 regulatory requirements. We expect providers to rectify failings and to improve services.
- **Proportionality:** We take action that is proportionate to the circumstances, the outcomes and risks for 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 cancellation of their registration.
- **Efficient and effective:** We are open and transparent about our enforcement approach and about 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 about a service in order to make effective use of the information available. 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 governed 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 poor we will take enforcement action.

How do we secure improvement and enforce compliance?

- 1.5 Securing improvement and enforcement is a core part of our work as a regulator. We target areas for improvement and take enforcement action that reduces the risk to people using services and holds providers to account for any service failures.
- 1.6 Where appropriate to do so, we operate a graduated approach to secure improvement in line with our enforcement procedures. Where we have concerns or have identified non-compliance (i.e. not meeting the requirements of the law) we take action to secure improvement. However, where we identify serious, multiple or persistent non-compliance, we may use our powers to restrict the provision a provider can deliver or ultimately, prevent the provider from operating altogether.
- 1.7 Where there is significant impact on well-being and/or risk of harm it may be necessary to take immediate enforcement action. This action will focus on safeguarding people's health and well-being. In these cases, it may not be appropriate to undertake a graduated approach with the relevant provider.

Who can we take enforcement action against?

- 1.8 Where we have concerns or have identified non-compliance we can take enforcement action against the relevant provider. 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
- 1.9 Under the 2016 Act, we can also take enforcement action against registered providers at three different levels:
- **individual service level:** against a single service carried out at a specific place, such as a care home
 - **service-wide level:** in relation to each of the services of a specific type operated (for example, domiciliary support services) by the provider
 - **provider level:** for all service types operating within a provider's portfolio (for example, domiciliary support services, care home services, etc.)

What securing improvement and enforcement action can we take?

- 1.10 We have a range of improvement and enforcement tools to improve the quality and safety of services. We use our civil sanctions to focus on reducing risk to people who use regulated services. We also have criminal sanctions 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 sanctions at the same time.
- a. Civil sanctions enable us to:
- require the provider to take certain action (for example, address regulatory failings as outlined in a priority action notice) or provide information, documents, records relating to regulated services)
 - prevent the provider from continuing to operate the service¹ (where necessary, this action could be taken urgently)
 - suspend² the provider for a set period of time
 - limit the operation of the provider (for example, prevent new admissions to the service)
 - undertake inspection at a service level or engage at a provider-level to consider service portfolio failings
 - Impose conditions on the registration
- b. Criminal sanctions enable us to:

¹ 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.

² This only applies to services regulated under the 2010 Measure.

- issue a penalty notice
- recommend a criminal prosecution following a criminal investigation
- issue a simple caution

2 Non-compliance decision framework

- 2.1 We apply a non-compliance decision framework to ensure a structured approach to determining what actions we take in response to any non-compliance and its impact on people’s health and well-being outcomes. The framework consists of three stages:
- stage 1 - Determining if a provider is non-compliant and its impact on people’s outcomes
 - stage 2 - Assessing our response to non-compliance
 - stage 3 - Determining the appropriate action

Stage 1 – Determining if a provider is non-compliant

- 2.2 The purpose of Stage 1 is to determine whether any issues constitute non-compliance with the law. In making this decision, we review the evidence gathered at inspection or from other sources and consider the following:
- which regulations apply?
 - is the evidence sufficient and of good quality that is credible, accurately recorded, weighted appropriately and triangulated, to support the identification of non-compliance?
 - does the evidence demonstrate there is non-compliance?
 - has there been an analysis of the root cause of the failings?

2.3 Stage 2 - Assessing our response to non-compliance

- 2.4 The purpose of Stage 2 is to guide our inspectors to determine the best response to the identified non-compliance. We will consider what leadership and governance arrangements are in place to address the non-compliance and whether these arrangements are adequate along with:
- a) impact on and/or potential risk to the health and well-being of people accessing the service
 - b) likelihood that the non-compliance will continue or reoccur

- 2.5 We assess the impact on and/or potential risk to the health and well-being of people accessing the service, using the following:

Level of impact/ potential risk	Definition
Minor	Where non-compliance results in one or more of the following: <ul style="list-style-type: none"> • minimal impact on and/or potential minor risk to people’s health and well-being including infringement of their rights • minor reduction in health and well-being

Moderate	<p>Where non-compliance results in one or more of the following:</p> <ul style="list-style-type: none"> • moderate impact on and/or potential moderate risk of harm to people’s health and well-being including infringement of their rights • moderate reduction in health and well-being
Major	<p>Where non-compliance results in one or more of the following:</p> <ul style="list-style-type: none"> • major/significant impact³ on or potential significant risk of harm to people’s health and well-being including infringement of their rights • permanent disability • significant or irreversible adverse health condition • major reduction in health and well-being

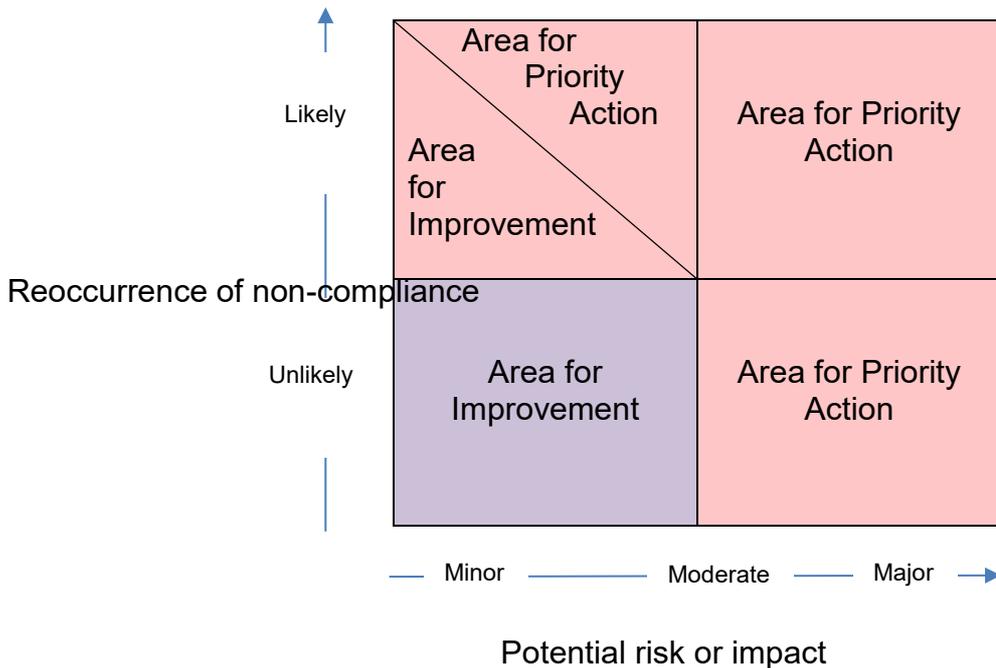
2.6 We assess whether the likelihood of the non-compliance will continue or reoccur in the future using the following:

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 impact/risk.
Likely	<p>The factors leading to the non-compliance are likely to continue or reoccur as:</p> <ul style="list-style-type: none"> • insufficient or ineffective measures are in place to fully manage the impact / risk or address the issues identified or • there is insufficient capacity, capability or commitment from the provider to manage the impact/risk and/or address the issues identified.

³ CIW’s [human rights](#) document identifies the unacceptable care that would have a significant impact on people’s well-being.

Stage 3 – Determining the appropriate action

2.7 The purpose of Stage 3 is to determine the appropriate action in response to the regulatory failure and its potential risk and/or impact on people’s health and well-being. To determine our response where non-compliance is identified, we use the following table:



Areas for Improvement

2.8 We will record non-compliance with regulations as an area for improvement where:

- we have assessed the potential risk and/or impact on people’s health and well-being as a result of this non-compliance as minor and isolated; or
- we have assessed the potential risk and/or impact on people’s health and well-being as a result of this non-compliance as minor and likely to reoccur.

There will be a requirement for the provider to take action to address the identified area for improvement within a set timescale.

2.9 Where we have identified **Areas for Improvement** we take the following actions:

- our evidence of the regulatory failure will be detailed within the inspection report as an area for improvement. The provider must take action to address the non-compliance.
- schedule the service for an early inspection.
- assess actions taken to address the non-compliance and outcomes arising at that next inspection.

- consider a provider meeting when there is ongoing potential risk and/or impact on people's health and well-being identified for improvement at second inspection.
- where we have identified an area for improvement and non-compliance continues at second inspection and there is ongoing minor potential risk and/or ongoing minor impact to people's health and well-being we will escalate this to an area for priority action.

Areas for Priority Action

2.10 We will record non-compliance as an area for priority action to highlight the seriousness of the issues identified and the requirement for the provider to take action to address the non-compliance and make improvements within required timescales. We will respond to the non-compliance as an area for priority action when:

- we have assessed the potential risk and/or impact on people's health and well-being as a result of this non-compliance as minor and has been ongoing; or
- we have assessed the potential risk and/or impact on people's health and well-being as a result of this non-compliance as moderate; or
- we have assessed the potential risk and/or impact on people's health and well-being as a result of this non-compliance as moderate and there is likely reoccurrence / or has been ongoing; or
- we have assessed the potential risk and/or impact on people's health and well-being as a result of this non-compliance as major; or
- we have assessed the potential risk and/or impact on people's health and well-being as a result of this non-compliance as major and there is a likely reoccurrence or has been ongoing.

2.11 Where we have identified non-compliance as an area for **Priority Action** we take the following actions:

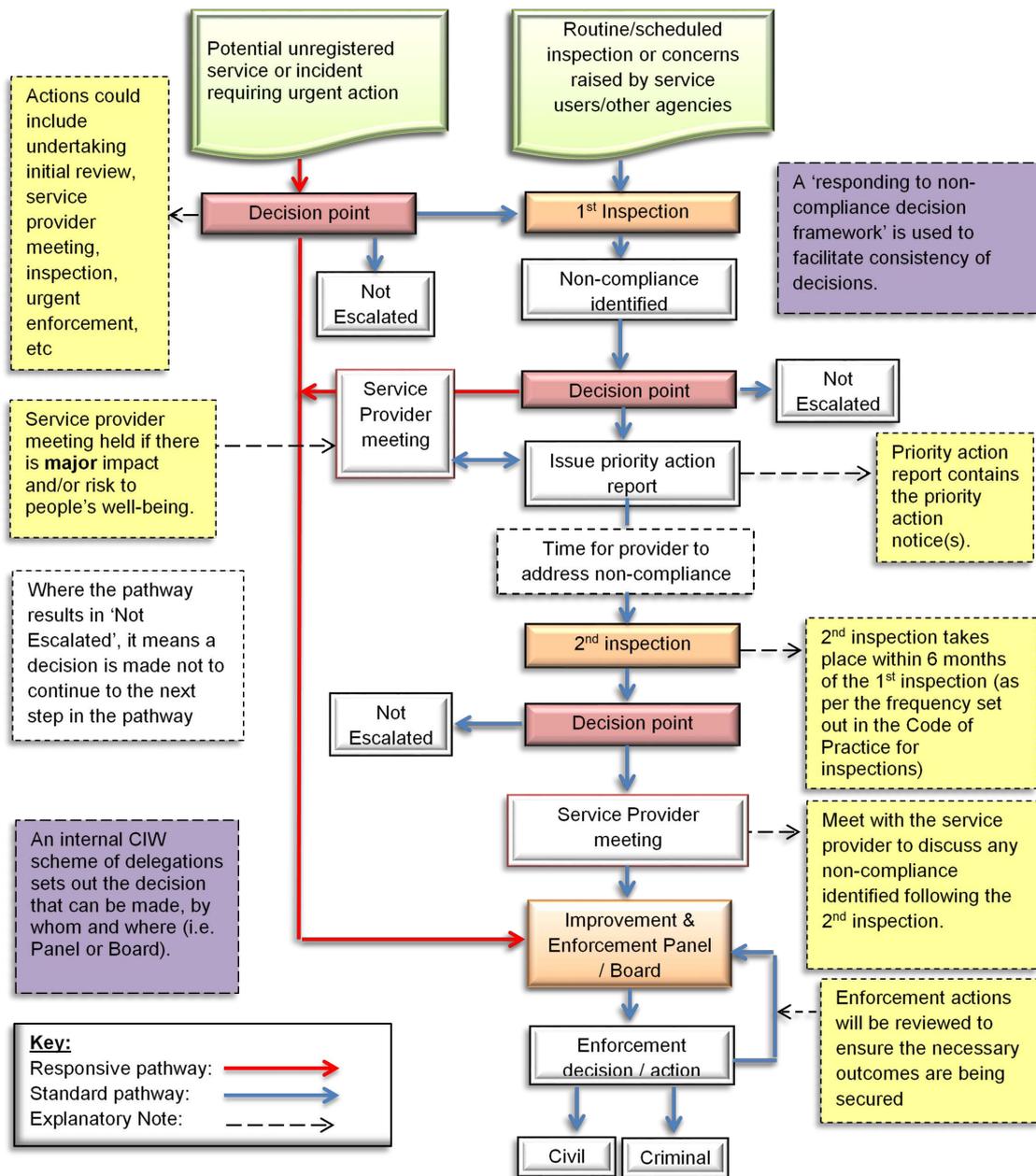
- a Priority Action Notice will set out the regulatory area of the non-compliance and detail the evidence CIW has to make this judgement.
- a Priority Action Report will be issued to the provider which will set out the priority action notice(s). The provider must take action to address the non-compliance.
- schedule the service for a priority inspection.
- assess actions taken to address the non-compliance and outcomes arising at that next inspection
- convene a provider meeting if there has been any re-occurrence and ongoing potential risk and/or impact on people's health and well-being

- where **Major** potential risk and/or impact on people's health and well-being is identified, a provider meeting will be arranged and urgent enforcement action may be considered.
- where we have identified continued non-compliance which required priority action at second inspection as we have assessed ongoing moderate or major potential risk and/or impact on people's health and well-being due to continued regulatory failures, we will escalate the matter to the next step in our securing improvement and enforcement pathway.

2.12 Any determination by the relevant inspector as to whether a non-compliance issue falls within a category of minor, moderate or major, and any determination on the likelihood of reoccurrence 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.

3 Securing improvement and enforcement pathway

3.1 We 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

First inspection

- 3.2 The pathway (see flowchart) begins when we undertake an inspection that is either scheduled or as a result of concerns being raised by individuals accessing the service or employed at the service or by other professionals/agencies. Further information on how CIW generally undertakes inspections is set out within our [Code of Practice for Inspection](#)⁴.
- 3.3 During the first inspection we review outcomes for people 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 2). This determines our response to the non-compliance identified. At this point in the pathway, the potential outcomes will usually be:
- a) The failure(s) does not require a priority action notice to be issued. The failure(s) is identified in the inspection report as areas for improvement, 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(s) requires a priority action notice to be issued, and is identified in the priority action report due to concerns about potential risk and/or impact on people's health and well-being, and on occasions where there is likelihood of reoccurrence which the provider must take action to address. Actions taken to address the non-compliance and outcomes arising will be assessed at the second inspection, in line with the pathway.
 - c) The failure(s) requires a more immediate enforcement response. In such circumstances, we follow our **responsive pathway** (see para. 3.15). These circumstances will usually relate to where we have identified unacceptable care delivered by the provider. Depending on the circumstances, we may also decide it is necessary to meet with the provider.
 - d) A service provider meeting will be held where a priority action notice has been issued as we have assessed **major** impact and/or potential risk to

⁴ Whilst the Code of Practice is specifically in relation to inspection of services regulated under the 2016 Act, the principles apply equally to the 2010 Measure.

people's well-being resulting from non-compliance. The service provider meeting will be held as soon as practicable after the inspection visit.

Second inspection

- 3.4 Where a priority action notice is issued the provider will be scheduled for a priority second inspection. The second inspection will take place within six months of the date the priority action report. This second inspection will generally focus on assessing the actions taken to address the identified non-compliance and any outcomes arising.
- 3.5 If we are satisfied the actions taken by the provider resulted in the service being compliant with the regulatory requirements and there are no further areas of non-compliance where there is impact and/or potential risk to people's well-being, the provider is informed and the process comes to an end.
- 3.6 If following the second inspection the provider remains non-compliant with regulatory requirements (as identified at the first inspection) and these continue to have a moderate or major impact on and/or potential risk to people's health and well-being, we will escalate the matter to the next step in our securing improvement and enforcement pathway. The updated priority action report will contain where identified at second inspection areas where compliance has been achieved, new areas of non-compliance with regulatory requirements along with continued areas of non-compliance which require priority action. The notices within the priority action report will be updated with findings and evidence from the second inspection and the report will be re issued to the provider.

Service provider meeting

- 3.7 A service provider meeting is held where we have assessed major potential risk and/or impact on people's well-being; and where we have assessed continued non-compliance resulting in ongoing moderate or major impact and/or risk to people's well-being; and may be considered if there are continued non-compliances which have ongoing minor potential risk and /or impact on people's well-being. Depending on the circumstances of an individual case, we may 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.
- 3.8 We write to the provider outlining the non-compliance and invite them to a meeting. This allows the provider an opportunity to explain why service failings have continued and highlight any actions taken to date, or those proposed to be

taken, to resolve the issues and improve outcomes for people. 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 an Improvement and Enforcement Panel/Board.

- 3.9 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 we must agree this in advance.
- 3.10 The service provider meeting will be held as soon as practicable but should be no later than four weeks after the inspection visit or within two weeks in the event of major impact and/or potential risk to people's well-being.

Improvement and Enforcement Panel/Board

- 3.11 Where continued service failings have been identified following a second inspection, the matter will be escalated to an Improvement and Enforcement Panel/Board. The information provided at the service provider meeting does not stop this escalation process.
- 3.12 To ensure decisions are made at the right level and at the right time, we operate an Improvement and Enforcement Panel and an Improvement and Enforcement Board. Whether an enforcement decision is required at a panel or at a board level will depend on the type of enforcement action and decision required.
- 3.13 We operate sector specific Improvement and Enforcement Panels, i.e. Childcare and Play Services, Adult & Children's Services, and for services Operating Without Registration. The purpose of the Improvement and Enforcement 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)
 - consider concerns in relation to services operating without registration
 - 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

3.14 Our Improvement and Enforcement Board covers all services regulated by CIW. The purpose of the Improvement and Enforcement Board will be to:

- quality assure and provide oversight for those decisions made at Improvement and Enforcement Panel
- consider criminal enforcement action recommendations made at Improvement and Enforcement Panel
- provide oversight and decision making where criminal enforcement action is recommended
- consider Improvement and Enforcement Panel recommendations where there are provider level concerns
- provide oversight and decision making where there are provider level concerns

The Responsive Pathway

3.15 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.

3.16 In these circumstances, we may refer the case immediately to the Improvement and Enforcement Panel. The panel will consider whether urgent enforcement action is required or whether further information is needed and the steps required to obtain that information.

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 depend on:
- the action we propose to take
 - the relevant legislation the provider is regulated under
 - the severity of the issues or risks identified
 - the stage of the improvement and enforcement process that has been reached
- 4.2 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.

For services regulated under the 2016 Act

Improvement notice/notice of decision

- 4.3 Improvement notices will only be used for those services regulated under the 2016 Act. An improvement notice is issued where CIW propose to take any of the following actions:
- cancel the registration of the provider; this will include all regulated services associated with that provider's conditions of registration.
 - impose a variation on the provider's registration by removing a regulated service or services from that provider's conditions of registration
 - impose a variation on the provider's registration by removing a place at, from or in relation to which the provider is providing a regulated service
 - cancel the designation of the responsible individual
- 4.4 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 or responsible individual wishes to challenge our reasons for taking action, the provider can make representations to us within the time limit specified in the improvement notice.
- 4.5 Where we are satisfied the provider or responsible individual 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.

4.6 Where we are not satisfied:

- our notice of decision sets out our decision 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 in relation to the provider, we cannot provide an extension of time in relation to the information required in the improvement notice.

Notice of proposal/notice of decision

4.7 We must issue a notice of proposal to take enforcement action that varies the conditions of a provider's registration (other than those variations listed in paragraph 4.2), or imposes a further condition on their registration, for services regulated under the 2016 Act.

4.8 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). The notice of proposal may also set out the actions the provider needs to take, in order to avoid enforcement action being taken forward.

4.9 The provider can make representations to us within the specified time limit and these will be taken into account before any final decision is made. Where representations are not submitted or not upheld, a notice of decision is issued, setting out our decision to proceed with the proposed enforcement action, the reasons and any right of appeal. However, if we have set out actions the provider needs to take in order to avoid enforcement action and we are satisfied that the provider has taken the action within the time limit specified then enforcement action must not be taken.

Matters requiring urgent action

4.10 We consider taking urgent enforcement action in relation to a provider when there is 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.

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

- seeking to cancel a registered provider or vary a registration by removing from the registration (a) a regulated service or (b) a place at from or in relation to which the provider is providing a regulated service. In such cases, we make an application to a 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 in respect of other conditions of registration. In such cases, 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.

4.12 We consider taking urgent enforcement action in relation to a designated responsible individual when we have reasonable cause to believe that unless the responsible individual's designation is cancelled a person will or may be exposed to a risk of harm.

4.13 In these circumstances, we may decide to undertake immediate enforcement action. This could include seeking to cancel the designation of the responsible individual. In such cases we issue a notice of cancellation without first issuing an improvement notice. The notice of cancellation must give reasons for the decision, explain the right of appeal, explain the need for the provider to apply to vary registration and specify the time limit for doing so. The notice of cancellation must be given to the responsible individual and service provider. A person ceases to be a responsible individual when the notice is given to the provider.

Voluntarily cancelling a registration

4.14 For services regulated under the 2016 Act a provider may apply to us for cancellation of their registration. The application must be granted unless CIW have taken action with a view to cancelling the registration. In these situations the provider will be notified of the decision by the improvement and enforcement panel. Cancellation takes effect on the day falling three months after the provider receives the notice or on an earlier day specified in the notice.

For services regulated under the Children and Families (Wales) Measure 2010

Notice of intention/notice of decision

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

- impose, vary or remove a condition of registration
- cancel a registration

4.16 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 these will be taken into account before any final decision is made. Where representations are not submitted or not upheld, a notice of decision is issued, setting out our decision to proceed with the proposed enforcement action, the reasons and any right of appeal.

Enforcement Notice

4.17 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 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

4.18 We consider taking urgent enforcement action when:

- for cancelling registration or changing conditions, we have reasonable cause to believe unless we cancel registration or change conditions, a child will suffer or is likely to suffer significant harm.
- for suspending registration, we have reasonable cause to believe that the continued provision of such care exposes, or may expose, one or more of the children cared for by that person to the risk of harm.

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

- for emergency cancellation of registration we may apply to the family court for an order cancelling the person's registration. If the court considers that a child is suffering or is likely to suffer significant harm the court may make the order. As soon as reasonably practicable after the making of the order, we must serve a copy of the order, any written statement in support of the application for the order and notice of any right of appeal on the provider.
- for imposing, varying or removing conditions of registration, we may issue a notice of decision setting out the enforcement action, the reasons, the date it takes effect and any right of appeal.

- for suspending a person's registration under the 2010 Measure⁵, 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 six weeks from the date the suspension begins. In exceptional circumstances it is possible to extend the period of suspension, on the same grounds, though generally for no more than 12 weeks in aggregate in any period of 12 months.

Notification of removal from the register.

4.20 For services regulated under the 2010 Measure, a person may give notice to CIW to remove them from the register. CIW must remove that person from the register unless a Notice of Intention has been issued to cancel registration, and CIW still intend to take that step or CIW has issued a Notice of Decision to cancel registration and the time limit to appeal has not expired or appeal determined.

Voluntary suspension

4.21 For services regulated under the 2010 Measure, a registered person may give no less than five working days' notice to CIW to suspend their registration setting out the start and, where it is known, the end date and the reason for wishing to voluntarily suspend their registration. We may not suspend registration in this manner if we have already issued a Notice of Decision to suspend registration, or when we have received a request for an enforced suspension to be lifted, and that request has not yet been determined, or there is an appeal to the first tier Tribunal following an enforced suspension which had not yet been determined.

4.22 CIW may take enforcement action to suspend a person's registration when person's registration has a voluntary suspension in place.

4.23 There is no right of appeal to the First-tier Tribunal against our decision to refuse to take action in respect of a notice for voluntary suspension.

⁵ Under regulations made under the 2010 Measure, the Child Minding and Day Care (Wales) Regulations 2010.

5 Criminal Enforcement Action

5.1 We may take criminal enforcement action in response to breaches of certain regulations, and sections of the Regulation and Inspection of Social Care (Wales) Act 2016 ('the Act') and the Children and Families (Wales) Measure 2010 ('the Measure'). A summary list of legislative and regulatory offences is set out on our website.

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.

Initial Review

5.3 An initial 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 initial review allows us to establish the facts and consider if we have evidence to believe an offence has been committed. The decision to undertake an Initial Review is made at Improvement and Enforcement Panel.

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 using 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 for us to believe an offence has been committed, the Improvement and Enforcement Panel will make a recommendation to the Improvement and Enforcement Board for a criminal investigation to be undertaken.

Criminal investigation

5.6 Where there is already [sufficient evidence](#) to suggest that an offence has been committed, an Initial Review will not be required. In these cases the Improvement

and Enforcement Panel will make a recommendation to the Improvement and Enforcement Board for a criminal investigation to be undertaken.

5.6 All criminal investigations 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 Improvement and Enforcement Board. 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 our Improvement and Enforcement Board.

Services operating without registration

5.8 It is an offence to provide a regulated service or services in Wales without being registered to do so. It is a provider's responsibility to apply to register with us. Where there is reasonable cause to believe a provider is operating illegally, we will consider our enforcement approach. This could include, but is not limited to, advising the provider to register within a set timescale (in the cases of non-intentional operation) or undertaking criminal enforcement action. Where there are reasonable grounds to believe a service is operating without registration, it will be considered at an Improvement and Enforcement Panel.

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

5.10 Where there is reasonable cause to believe a regulated service is operating without registration, we may place reliance on section 34(1) and (4) of the 2016 Act or sections 41(2) and 42 of the 2010 Measure to enter the premises and seize evidence. Prior to exercising the power of entry of an unregistered service we will consider:

- the evidence which gives reasonable cause to believe the service is providing a regulated services,
- whether it is reasonable and necessary, and
- whether any safeguards should be considered when exercising the power of entry

Prosecution

5.11 CIW is responsible for making a recommendation to the Welsh Government to consider prosecution. When determining whether to make a recommendation for prosecution the Improvement and Enforcement Board will consider if:

In the case of registered services

1. an offence contained within RISCA or the CFM has been committed; or
2. a failure in care/regulatory breach has occurred **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
 - c) in a case of theft, misuse or misappropriation of money or property, any loss by an individual of the money or property concerned

In the case of services operating without registration

- 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

In all cases, we will consider the following additional factors:

- a) The gravity of the incident, taken together with the seriousness of any actual or potential harm or the general record and approach of the provider, mean that not holding the provider to account could undermine public confidence in regulation or in that sector of providers.
- b) There has been disregard for the requirements on a registered person.
- c) There have been repeated or multiple breaches, which give rise to significant risk, or persistent and significant poor compliance.
- d) The service is breaching fundamentals of care, namely that it has been carried on significantly below the standards that are required for compliance with regulations and is giving rise to significant risk.
- e) The potential for wider learning points for providers may mean we will prioritise a single case, so that enforcement sends a broader message to a sector and encourages improvement across it.

5.12 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.

5.13 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 **fixed penalty notice** under the 2016 Act (see section 5.14)
- **proceed with the prosecution** for some or all of the offences
- **not to pursue criminal proceedings** but consider an alternative approach, i.e. our civil enforcement actions

Fixed Penalty notices (only applicable to services registered under the 2016 Act)

5.14 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.

5.15 The prescribed offences for which a penalty notice can be issued under the 2016 Act and the amount of penalty for each offence is set out in Schedule of prescribed offences within the Regulated Services (Penalty Notices) (Wales) Regulations 2019.

6 Representations and appeals

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

- 6.1 The Act requires us to follow a set process depending on the type of action we are proposing to take.
- 6.2 We are required to issue a **Notice of Proposal** in respect of the following actions:
- refusing an application to register
 - granting an application to register with imposed conditions
 - refusing an application to vary registration conditions (including adding or removing a regulated service or service)
 - imposing conditions on a service provider's registration
 - varying conditions on a service provider's registration (excluding variation of responsible individual)
 - responding to a service provider's application to vary or remove a condition by proposing to vary conditions on different terms or imposing a different condition.
- 6.3 We are required to issue an **Improvement Notice** in respect of the following actions:
- cancellation of a service provider
 - removing regulated service or service from a service provider's registration
 - cancelling the designation of a responsible individual
- 6.4 It should be noted, these procedures do not apply to any urgent action taken by us.

The Children and Families (Wales) Measure 2010

- 6.5 We are required to issue a **Notice of Intention** in respect of the following actions:
- refusing an application to register
 - impose a new condition on a person's registration
 - vary or remove any condition imposed on a person's registration
 - refuse to grant an application for the variation or removal of any such condition
 - cancel a person's registration

Right to make representations

- 6.6 All Notices we issue will set out the action we intend to take, the reason(s) for taking the action and a deadline for the recipient to make representations to us. The timeframe for making representations may vary depending on the circumstances, but in all cases must be a minimum of 28 days from the date the Notice is issued.
- 6.7 Those making representations to us should clearly state this in their communication with us. We will seek to clarify the status of any communications received in response to a Notice, where it is unclear if the person is making representations.
- 6.8 Representations can be made either in writing or orally. The process for both is set out below.
- 6.9 Representations should be submitted with any supporting evidence being relied upon. Failure to do so is likely to affect our consideration of the representations or cause a delay.

Timeframe

- 6.10 Once representations have been received, we aim to respond by issuing a Notice of Decision/Cancellation within 28 days of the deadline for representations elapsing. This is not 28 days after receipt of the representations. If we are not able to respond within 28 days we will notify the recipient of the Notice. In such cases we will issue a Notice of Decision within 56 days of the deadline for representations elapsing and explain the reasons for the delay.

Process

- 6.11 Upon receipt of representations, a Decision Maker will be allocated. The Decision Maker will be someone of an equivalent or senior grade to the inspector who signed the Notice and will have had no involvement with the decision to take the proposed action.

Written representations

- 6.12 These can be submitted by post or email, along with any supporting evidence. Care should be taken to protect the personal or sensitive personal data of individuals at the service.

Oral representations

- 6.13 Those wishing to make oral representations, should notify us of this as soon as practicable. Oral representations will be heard by the Decision Maker at a mutually convenient time and location. This should be within 28 days of notification by the recipient of the Notice that they wish to make oral representations.
- 6.14 The recipient of the notice can attend to make their objections in person or they can arrange for their objections to be made by a representative. It would generally be expected the person would attend with their representative.
- 6.15 If, for any reason, the recipient of the notice does not attend but wishes their representative to proceed to make oral objections in their absence, we require written authorisation from the recipient of the notice to this effect.
- 6.16 The oral representations hearing does not include individuals giving evidence or the calling of witnesses, and there is no provision for the attendance by the inspector or manager responsible for issuing the Notice.
- 6.17 Decision making**
- 6.18 The Decision Maker will consider all evidence relevant to the proposed action, including:
- the Notice proposing the action,
 - any supporting evidence relied upon for taking the action,
 - the representations made by the recipient of the Notice, and
 - any supporting evidence supplied by the recipient of the Notice.
- 6.19 As part of reaching their decision, the Decision Maker may request additional information including requesting an inspection of the service(s). The outcome of the inspection will be considered in the form of a draft inspection report. Due to the timescales we must adhere to in considering representations, there is insufficient time to await the publication of the report before considering the outcome of the inspection. Where the Notice is upheld by the Decision Maker and the draft report is challenged by the recipient of the Notice, this should be identified in any appeal made to the Tribunal.
- 6.20 The Decision Maker may seek advice from Legal Services on matters of law and procedure. However, responsibility for the decision rests with the Decision Maker.

Outcomes following a Notice of Proposal

- 6.21 Having reached a decision, the Decision Maker must issue a Notice of Decision setting out their decision and the reason(s) for it. The decisions available to the Decision Maker are:
- to uphold the Notice, or
 - to uphold the Representations

Outcomes following an Improvement Notice

- 6.22 Representations made in relation to an Improvement Notice may challenge the grounds upon which a Notice has been issued and/or make the case that the requirements within the Notice have been complied with.
- 6.23 A Decision Maker must firstly consider whether they are satisfied that the grounds for issuing the Notice were valid at the time it was issued. If the Decision Maker is not satisfied that the grounds for issuing the Notice were valid, then the Notice must be withdrawn. The recipient will be informed of this decision in writing.
- 6.24 If the Decision Maker is satisfied that the grounds for issuing the Notice were valid, then they must move on to consider whether the requirement(s) set out in the Notice have been met within the specified timeframe.
- 6.25 If the Decision Maker is satisfied that the requirement(s) set out in the Notice have been met, they must issue a Notice informing the recipient that the proposed action has been withdrawn.
- 6.26 Where the Decision Maker is not satisfied that the requirement(s) set out in the Notice have been met, the available outcomes vary depending on the type of action being proposed.
- 6.27 Where the proposed action is to **cancel the registration of a service provider or to remove a regulated service or service from a service provider's registration** and the Decision Maker is not satisfied that the **information** specified in the Notice has been received, they **must** uphold the Notice.
- 6.28 Where the proposed action is to **cancel the registration of a service provider or to remove a regulated service or service from a service provider's**

registration and the Decision Maker is not satisfied that the **action** specified in the Notice has been taken, the Decision Maker can **either**:

- issue a Notice of Decision to uphold the proposed action, or
- issue a Notice informing the service provider that the action has not been taken and set a new date for the action to be taken by. Following this date, an inspection to be undertaken to assess whether the action specified in the original Notice has been taken.

6.29 Where the proposed action is to **cancel the designation of a Responsible Individual** and the Decision Maker is not satisfied that the information specified in the Notice has been provided or the action required has not been taken, they **may** issue a Notice of Cancellation. The Notice of Cancellation must be issued to both the service provider and Responsible Individual.

Outcomes following a Notice of Intention

6.30 Having reached a decision, the Decision Maker must issue a Notice of Decision setting out their decision and the reason(s) for it. The decisions available to the Decision Maker are:

- uphold the Notice; or
- uphold the Representations

6.31 Where there is a right of appeal to the Health and Social Care Tribunal, this will be clearly stated on the Notice of Decision.

Appeals to tribunal

6.32 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) following a decision by the justice of the peace

6.33 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.

6.34 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 cannot be taken
- deciding on an alternative action to be taken forward
- 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

6.35 There is no right of appeal to the Tribunal in relation to priority action notices, penalty notices or conviction following prosecution for an offence.

6.36 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 law⁶
 - share information appropriately and lawfully, to enhance and re-use our knowledge, work collaboratively and reduce duplication
- 7.6 Our Privacy Notice⁷ summarises how we handle all the types of personal information we collect. This includes the legal basis for collecting the information, how the information is processed, how long it is kept for, who it

⁶ There are four laws governing our handling of requests for information, these are the Data Protection Act (DPA) 2018, General Data Protection Regulation (GDPR) , Freedom of Information Act (FOIA) 2000 and Environmental Information Regulations (EIR) 2004.

⁷ <https://careinspectorate.wales/how-we-use-your-information>

might be shared with, what your rights are in relation to it and the relevant contacts that you might need.

- 7.7 In certain cases we may participate in or undertake an inspection jointly with other regulatory bodies or agencies, such as the police or the 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.
- 7.8 We have a responsibility to the public to share information in order to ensure 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 have concerns about a provider and/or there is a need to protect vulnerable individuals from the risk of harm we notify and share information with the relevant commissioning bodies and other regulatory bodies as required under legislation. Where we have identified non-compliance which has impact on and/or risk to people's health and well-being we may share information with the relevant commissioning bodies.

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 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
 - the cancellation of a designated responsible individual
 - criminal proceedings brought against a person
 - a penalty notice is given
- 8.3 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:
- suspension of a person's registration
 - cancellation of a registration
- 8.4 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:
- people accessing the service, relatives, representative/advocates and the public
 - 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.
- 8.5 Under the 2016 Act and the 2010 Measure, we must maintain a register of providers/services. 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 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.

Well-being

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

Regulatory Framework

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

The Regulation and Inspection of Social Care (Wales) Act 2016 requires care home services, secure accommodation services, residential family centre services, domiciliary support services, adoption services, fostering services, adult placement services and advocacy services to be regulated by us. 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 \(Annual Returns and Registration\) \(Wales\) \(Amendment\) Regulations 2019](#)
- [The Regulated Services \(Penalty Notices\) \(Wales\) Regulations 2019](#)
- [The Regulated Services \(Service Providers and Responsible Individuals\) \(Wales\) Regulations 2017](#)
- [The Regulated Services \(Service Providers and Responsible Individuals\) \(Wales\) \(Amendment\) Regulations 2019](#)
- [Statutory guidance for providers and responsible individuals of care home and domiciliary support services](#)
- [The Regulated Adoption Services \(Service Providers and Responsible Individuals\) \(Wales\) Regulations 2019](#)
- [Statutory guidance for providers and responsible individuals of regulated adoption services](#)
- [The Adult Placement Services \(Service Providers and Responsible Individuals\) \(Wales\) Regulations 2019](#)
- [Statutory guidance for providers and responsible individuals of adult placement services](#)
- [The Regulated Advocacy Services \(Service Providers and Responsible Individuals\) \(Wales\) Regulations 2019](#)
- [Statutory guidance for providers and responsible individuals of regulated advocacy services](#)
- [The Regulated Fostering Services \(Service Providers and Responsible Individuals\) \(Wales\) Regulations 2019](#)
- [Statutory guidance for providers and responsible individuals of regulated fostering services](#)

- The Regulation and Inspection of Social Care (Wales) Act 2016 and Regulated Services (Miscellaneous Amendments) Regulations 2020
- The Regulated Services (Service Providers and Responsible Individuals) (Wales) (Amendment) (Coronavirus) Regulations 2020

The following legislation and codes of practice also apply to providers of adoption and fostering services for which we regulate and/or inspect:

- [The Adoption and Children Act 2002](#)
- [The Adoption Agencies \(Wales\) Regulations 2005](#)
- [The Adoption Agencies \(Wales\) \(Amendment\) Regulations 2012](#)
- [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 Adoption Support Services \(Wales\) Regulations 2019](#)
- [The Adoption Support Services \(Local Authorities\) \(Wales\) Regulations 2005](#)
- [Local Authorities \(Prescribed fees\) \(Adoptions with a Foreign Element\) \(Wales\) Regulations 2005](#)
- [The Adoption Agencies \(Wales\)\(Amendment\) Regulations 2020](#)
- [The Fostering Panels \(Establishment and Functions\) \(Wales\) Regulations 2018](#)
- [Care Planning, Placement and Case Review \(Wales\) Regulations 2015](#)
- [Code of practice for local authority adoption services](#)
- [Code of practice for local authority fostering services](#)

The Children and Families (Wales) Measure 2010 requires child minders and day care and play providers to be regulated by us. 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](#)