

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. 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 provide good quality services that comply with regulations.
- undertake both routine (planned) and responsive inspections.
- have a clear, graduated, and proportionate enforcement pathway.

1.2. This policy sets out our approach to securing improvement and enforcement for regulated services, including the principles and processes we follow when using our powers under the relevant legislation (Annex A).

Who we regulate:

1.3. We regulate the following providers:

- 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 (the 2016 Act)

day care

- child minders

Under the Children and Families Day Care (Wales) Measure 2010 (the Measure)

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:

- **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.
- **Responsibility:** Providers of services are responsible for ensuring the people they provide care and support for have positive outcomes and they meet regulatory requirements. We expect providers to take action to improve services.
- **Proportionality:** We take action that is proportionate to the circumstances, the outcomes and risks for people accessing the service, and the capacity and capability of the provider to respond. Providers who persistently fail to ensure good outcomes for people and who do not comply with regulations will face escalated enforcement action, including possible cancelation 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 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.

How do we secure improvement and enforce compliance?

- 1.5. Securing improvement and taking enforcement action is a core part of our work. 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 about poor outcomes for people or have identified failings, we take action to secure improvement. However, where we identify serious, multiple, or persistent failings, 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 poor outcomes for people, 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:

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

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.

2. **Securing Improvement decision making framework**

- 2.1. We apply a decision-making framework to ensure a structured approach to determining what actions are required in response to any failings we find and the impact these are having on people's well-being outcomes. The framework consists of three stages:

Stage 1 – Determining the extent to which any failings we have found affect or pose a likely risk to people's outcomes:

During this stage we consider the following:

- is the evidence gathered at inspection or from other sources sufficient and triangulated?
- does the evidence demonstrate the failings impact on or pose a likely risk to people's wellbeing outcomes?
- does the evidence constitute a breach of the regulations?
- has there been an analysis of the root cause of the failings?

Stage 2 - Assessing our response to the failings.

- 2.2. During this stage we will consider what leadership and governance arrangements are in place to address the failings and whether these arrangements are adequate, along with:
- a) impact on or likely risk to the well-being of people accessing the service.
 - b) likelihood that the failings will continue or reoccur.
- 2.3. We assess the impact on and/or potential risk to the well-being of people using the service as below:

Level of impact/risk	Definition
Negligible	<ul style="list-style-type: none">• Where people enjoy good wellbeing outcomes, and it is very unlikely outcomes could be impacted by the failings we have found.• The service provided is safe overall.

Minor	<ul style="list-style-type: none"> Where the failings identified have resulted in minor impact or risk of harm to people's wellbeing outcomes
Moderate	<ul style="list-style-type: none"> Where the failings identified have resulted in a moderate impact or risk of harm to people's wellbeing outcomes including infringement of their rights
Major	<ul style="list-style-type: none"> Where the failings identified have resulted in a major/significant impact² on or significant risk of harm to people's wellbeing outcomes including infringement of their rights <p>Or</p> <ul style="list-style-type: none"> permanent disability <p>Or</p> <ul style="list-style-type: none"> significant or irreversible adverse health condition

2.4. We assess whether the likelihood of the failings will continue or reoccur in the future using the following:

Likelihood the noncompliance will continue or reoccur	Definition
Unlikely	<p>The factors leading to the failings are unlikely to continue or reoccur as:</p> <ul style="list-style-type: none"> measures have been taken or are currently being implemented to address the issues identified and/or fully manage the impact/risk and/or we are confident the provider has the capacity, capability and commitment to ensure the issues identified are addressed

² CIW's [human rights](#) document identifies the unacceptable care that would have a significant impact on people's well-being.

Likely	<p>The factors leading to the failings 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 and/or there is insufficient capacity, capability, or commitment from the provider to manage the impact/risk and/or address the issues identified.
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Stage 3 – Determining the appropriate action

- 2.5. The purpose of Stage 3 is to determine the appropriate action in response to potential risk and/or impact on people's well-being arising from breaches of regulation. To determine our response where failings are identified, we use the following table:

Likelihood of re-occurrence	Likely	For RISCA services discuss with provider in feedback and record in feedback section of inspection notes.	Priority Action Notice OR Area For Improvement (Inspector's judgement)	Priority Action Notice	Priority Action Notice
	Unlikely		Area for Improvement	Priority Action Notice OR Area For Improvement (Inspector's judgement)	Priority Action Notice
		Negligible	Minor	Moderate	Major

Level of impact/potential risk to service user

- 2.6. Where we have identified failings that have negligible impact or risk to outcomes for people we would discuss this with the provider during the feedback session and this will be recorded in the feedback section of the inspection notes.
- 2.7. Where we have identified **Areas for Improvement** we take the following actions:
- our evidence of the failings will be detailed within the inspection report as an area for improvement. The provider must take action to improve outcomes for people.
 - schedule the service for an early inspection.

- assess actions taken to improve outcomes at the next inspection.
- consider a provider meeting when there is ongoing potential risk and/or impact on people's well-being identified for improvement at second inspection.
- Where an area for improvement is not resolved at the subsequent inspection and the impact to people's well-being and/or risk continues to be minor, the inspector may highlight this again as an area for improvement or issue a priority action notice. In making this decision, the inspector will use their professional judgment taking into account the impact/risk for people, any action the provider has taken to address the issue or other relevant factors. The inspector will seek to be fair and proportionate.

2.8. Where we have identified failings that require Priority Action we take the following actions:

- a Priority Action Notice will set out the actions the provider needs to take to improve. It will also set out the regulations not being met and detail the evidence CIW has identified 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 improve outcomes for people.
- schedule the service for a priority inspection.
- assess actions taken to improve outcomes 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 well-being
- where **Major** potential risk and/or impact on people's well-being is identified, a provider meeting will be arranged, and urgent enforcement action may be considered.

where we have identified continued poor outcomes for people with ongoing moderate or major potential risk and/or impact at second inspection, we will escalate the matter to the next step in our securing improvement and enforcement pathway.

2.9. Any determination by the inspector as to whether the failings fall within a category of negligible, minor, moderate or major, and any determination on the likelihood of reoccurrence is made on a case-by-case basis and the evidence available.

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:



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 people 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](#)³.
- 3.3. During the first inspection we review outcomes for people and the quality and safety of the service being delivered. Where poor outcomes are identified as a result of regulatory failings, we apply our 'decision making framework' (see Chapter 2). This determines our response to the failings identified. At this point in the pathway, the potential outcomes will usually be:
- a) Where failings are identified as having negligible impact or risk to outcomes for people, this will be discussed with the provider and recorded in the feedback section of the inspection record.
 - b) The failings identified are highlighted 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 improve outcomes will be assessed at that next inspection. In such circumstances, we will not progress to the next step of the pathway.
 - c) The failings identified require priority action to be taken to improve outcomes for people. We will issue a priority action notice(s). This will be set out in the priority action report. Actions taken to improve outcomes and address the failings will be assessed at the second inspection, in line with the pathway.
 - d) 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 resulting in poor outcomes for people. Depending on the circumstances, we may also decide it is necessary to meet with the provider.

³ 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.

- e) A service provider meeting will be held where a priority action notice has been issued and we have assessed **major** impact and/or potential risk to people's well-being resulting from the failings. 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 of the priority action report. This second inspection will generally focus on assessing the actions taken to secure improvement and improve outcomes by addressing the identified failings.
- 3.5. If we are satisfied the actions taken by the provider resulted in improved outcomes for people, and there is no further impact and/or potential risk to people's wellbeing, the provider is informed and the process comes to an end.
- 3.6. If following the second inspection outcomes for people have not improved (as identified at the first inspection) and there continues to be a moderate or major impact on and/or potential risk to people's 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 the following information:
- areas where the failings have been addressed.
 - any new areas of regulatory failings
 - the ongoing areas of regulatory failings which require priority action.
- 3.7. 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

- 3.8. A service provider meeting is held where the provider has not taken action to address the failing identified at the first inspection to improve outcomes for people. This may also be considered where there are continued failings which have ongoing minor potential risk and /or impact on people's well-being.
- 3.9. As described in paragraph 3.3 (d) a service provider meeting may also be held following the first inspection where a priority action notice has been issued and we have assessed major impact and/or potential risk to people's well-being resulting from the failings.
- 3.10. We write to the provider outlining the failings 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.
- 3.11. 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.
- 3.12. 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

- 3.13. Where continued service failings have been identified following a second inspection, the matter will be escalated to an Improvement and Enforcement Panel. The information provided at the service provider meeting does not stop this escalation process.
- 3.14. 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.
- 3.15. 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 failings 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 identified failings 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.
- 3.16. 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

- 3.17. The responsive pathway (see flowchart) is followed where 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.
- 3.18. 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 take urgent enforcement action in response to a 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 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 considered 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 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 considered 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 Measure⁴, 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.

⁴ Under regulations made under the 2010 Measure, the Child Minding and Day Care (Wales) Regulations 2010.

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. 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 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.
- 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 may be undertaken. In these circumstances, the Improvement and Enforcement Panel will make a recommendation to the Improvement and Enforcement Board for consideration.

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 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.

- 5.8. A 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. 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 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](#).

Prosecution

- 5.11. CIW is responsible for making a recommendation to the 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 5.9)
- **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

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. All services where there are reasonable grounds to believe they are operating without registration will be considered at an Improvement and Enforcement Panel.

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

5.15. During the course of an inspector investigating concerns that a service is operating without registration, where there is reasonable cause to believe a regulated service is being provided, they 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 of an unregistered service and seize evidence. Consideration will be taken prior to exercising the power of entry of an unregistered service of:

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

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.

Decision making

6.17 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.

6.18 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.

6.19 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

6.20 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

6.21 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.

6.22 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.

6.23 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.

6.24 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.

6.25 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.

6.26 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.

6.27 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 **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.

6.28 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

6.29 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

6.30 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

6.31 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.

6.32 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.

6.33 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

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

6.35 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 law⁵
 - 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 might be shared

⁵ 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>

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 noncompliant 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.

Annex A

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](#)