

SL(6)457 – The Special Schools Residential Services (Service Providers and Responsible Individuals) (Wales) Regulations 2024

Background and Purpose

The Special Schools Residential Services (Service Providers and Responsible Individuals) (Wales) Regulations 2024 (“the Regulations”) set the quality standards against which special school residential services will be regulated and inspected against under the Regulation and Inspection of Social Care (Wales) Act 2016 (“the 2016 Act”). The Regulations will replace the National Minimum Standards for Residential Special Schools made under section 23(1) of the Care Standards Act 2000.

The Regulations also make provision regarding special school residential services in relation to:

- annual returns;
- requirements on responsible individuals in relation to compliance, quality, and oversight of the service, and ensuring the effective management of the service;
- requirements on service providers in relation to governance, suitability of the service, information about the service, environment, staffing, staff training and safeguarding;
- notification in the event of the death or liquidation of a service provider; and
- offences and penalty notices.

Procedure

Affirmative.

The Welsh Ministers have laid a draft of the Regulations before the Senedd. The Welsh Ministers cannot make the Regulations unless the Senedd approves the draft Regulations.

Technical Scrutiny

The following nine points are identified for reporting under Standing Order 21.2 in respect of this instrument.

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

The term “care and support” is used throughout the Regulations. “Care”, “support” and “care and support” are given specific meanings by section 4 of the 2016 Act, but the Regulations do not give a specific meaning to the term. The Legislation (Wales) Act 2019 applies to these Regulations so terms that are defined in the 2016 Act do not bear the same meaning in the Regulations. Clarification is requested as to whether the term “care and support” is intended



to have the same meaning as in the 2016 Act, and if so, why this is not specified in the Regulations.

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

The regulations use the phrase “contract for services” in regulations 1 and 31 but this term is not defined. It would be helpful to have further information regarding what this term covers and how it is to be distinguished from a “contract of employment” which is used in regulations 30 and 31 and which is also undefined.

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

Regulation 1(3) defines a DBS certificate as the certificate referred to in paragraphs 2 and 3 of Schedule 1. The words “the certificate” indicate a single certificate but paragraphs 2 and 3 refer to different certificates. It is not clear whether both certificates are covered by the definition, in which case the plural word should be used, or whether the certificates should be defined separately.

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

In regulation 1(3), in the definition of “individual”, the phrase “unless the context indicates otherwise” has been used. However, the Welsh Government’s drafting guidelines, Writing Laws for Wales, paragraph 4.8(5), states that it generally is not helpful to the reader to use similar wording and that it should be explained where the definition applies. Further explanation would therefore assist in this regard.

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

In regulation 1(3), “personal outcomes” is defined for a child as the outcomes that the child wishes to achieve, or the outcomes that any persons with parental responsibility wish to achieve in relation to the child. It is conceivable that the wishes of the child and/or the one or more persons with parental responsibility may not be the same, therefore it would assist to have an explanation regarding how the child’s personal outcomes would be determined in such circumstances.

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

Regulation 47 deals with supplies, but this word is not defined and there is no further information as to what “supplies” comprise of. It would assist the reader to have more information as to what “supplies” includes.

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



Regulation 79(3)(b) provides for a modification to section 21(2) of the 2016 Act. The introductory wording of the modification in regulation 79(3)(b) does not make sense. It appears that it is intended to say “as if after paragraph (a) there were inserted”, or words to that effect.

8. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts.

In regulation 82(a), in the Welsh text, the amendment is incorrect because it fails to correctly identify the text of the definition of “the Fostering Services Regulations” in regulation 2 of the Regulated Services (Penalty Notices) (Wales) Regulations 2019.

In the Welsh text, the amendment states that the new definition of “the Special School Residential Services Regulations” should be inserted in regulation 2 after “ystyr “y Rheoliadau Gwasanaethau Maethu” (“the Adoption Services Regulations”) yw Rheoliadau Gwasanaethau Maethu Rheoleiddiedig (Darparwyr Gwasanaethau ac Unigolion Cyfrifol) (Cymru) 2019;”.

However, the English words in brackets and italics should state “(“the Fostering Services Regulations”)” as found in the existing Welsh text of the definition of “the Fostering Services Regulations” in regulation 2 of the 2019 Regulations, rather than “(“the Adoption Services Regulations”)”.

In addition, it would be more customary to describe the location of the amendment by stating, “after the definition of “the Fostering Services Regulations” insert...” rather than by quoting the entire text of that definition.

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

Paragraphs 17 and 35 of Schedule 3 to the Regulations require notification to be made of “any occurrence of category 3 or 4 pressure damage or unstageable pressure damage”. No further information is provided as to the categorisation of pressure damage or what constitutes unstageable pressure damage. Such information would assist the reader in understanding the notification requirements.

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Welsh Government response

A Welsh Government response is required.

Legal Advisers

Legislation, Justice and Constitution Committee

28 February 2024

