

Y Grŵp Iechyd a Gwasanaethau Cymdeithasol
Health and Social Services Group



Llywodraeth Cymru
Welsh Government

Members of the CV-19 Social Care Planning & Response Group
Older People's Commissioner
Chief Executive, Healthcare Inspectorate Wales
Directors of Social Services
Local Health Board Chief Executives

Ein Cyf/Our Ref: MA/JM/1114/20

3 April 2020

Dear stakeholder,

Consultation letter - Emergency social care provision, pre-employment checks in adult residential and domiciliary care, and provider annual returns

In the 4 Nations Coronavirus Action Plan published on 3 March, we committed that any necessary changes to legislation are taken forward as quickly as possible. Partners have already received a briefing on the social care provisions we have taken in the Coronavirus Act 2020 and of our proposals to bring those into force to respond to the growing impact on the sector in Wales.

I am now writing to inform you of, and consult you on, draft subordinate legislation which the Welsh Government is urgently progressing in order to support the provision of emergency social care for adults and to simplify the pre-employment checks required for new residential and domiciliary care workers.

The principal intention of these changes is twofold:

Firstly, to **exempt** certain emergency care and support services for adults set up to respond to CV-19 from registration with Care Inspectorate Wales, the service regulator.

Secondly, to **relax** requirements on providers to undertake pre-employment checks on employees in domiciliary and residential care.

These are expanded on below. This letter also contains information on the timing of provider annual returns and on how and by when to respond to this consultation.

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.



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Exempting emergency care and support services set up to respond to CV-19 from registration with Care Inspectorate Wales (adult services only)

The rationale behind exempting emergency care and support services for adults set up to respond to CV-19 from registration with Care Inspectorate Wales is twofold. Our first intention is to streamline the processes associated with establishing care and support provision so that these services can be established quickly and be available when they are most needed to reduce unnecessary pressure on hospitals. Our second intention is allow for a wider range of types of premises to be used for emergency residential services (for example moth-balled care homes), some of which are unlikely to meet the standards required to register with the regulator under the Regulation and Inspection of Social Care (Wales) Act 2016 (the 2016 Act).

Exempting such provision from the requirement to register will involve using powers in section 2(3) of the 2016 Act.

We envisage that provision which would be eligible for the exemption would (i) provide additional, temporary, time-limited¹ capacity not anticipated to be required for more than nine months, (ii) provide care which is commissioned by a health board or local authority solely to facilitate hospital discharge or prevent hospital admission, thereby creating the additional health and social care capacity required to meet the increase in demand as a result of the outbreak of COVID-19; and (iii) be services which otherwise would fall within the scope of the definitions of care homes and domiciliary support services given in Schedule 1 of the 2016 Act.

The proposed exemption would only apply to services arranged or provided by local authorities, local health boards, or provided by providers already registered as care home or domiciliary support providers with Care Inspectorate Wales or the Care Quality Commission. The broad rationale here is that these parties will already be subject to regulation/ or review and inspection in some guise which gives some overall assurance about their governance, systems and understanding of the nature of the care and support services being provided.

Due to the level of risk and the vulnerability of individuals using these services we do **not** intend to extend this exemption to prospective providers who are not already registered with Care Inspectorate Wales or the Care Quality Commission.

This exemption would apply to new services set up to provide emergency CV-19 care and support only. Should existing adult residential care home services wish to extend the number of beds they provide within their existing premises, the current requirements to apply to Care Inspectorate Wales for a variation to their maximum numbers will continue to apply. Care Inspectorate Wales is making arrangements to treat such applications (which must be considered on a case by case basis given the unique nature of each home) as a priority. In this regard we propose to relax the 15% threshold set out in regulations, on a temporary basis, in situations where providers have additional space (not currently in use as bedrooms) which they are considering turning into additional bedrooms, some of which may be shared, to increase their maximum number. We propose that this would also apply to currently unoccupied bedrooms, where appropriate. Care Inspectorate Wales would consider any application to increase the maximum number of beds on a case by case basis with regard to the best interests of all the residents. Any increase to the maximum number

¹ The exemption will be revoked when the Welsh Ministers determine that it is no longer needed

(including where there would otherwise be a breach of the 15% threshold) would be conditional and time limited. We do not intend that this flexibility will apply where bedrooms are currently occupied (regardless of their size or how they have been used in the past).

Finally, in view of the particular vulnerabilities associated with looked after children, at the moment we are **not** proposing a similar exception in relation to residential care services for children.

The proposed exemption will operate on the basis of the intending provider informing Care Inspectorate Wales of its intention to set up a CV-19 emergency care and support service. This will allow the regulator to have an understanding of the type of services which have been established and to be able to satisfy itself that the service does genuinely fall outside the scope of regulation. This will enable the regulator to ensure that the services have ceased to operate once the crisis has passed and they are no longer required, and also to ensure that any residual service which continues to operate is brought within the scope of regulation. (To this end we intend, after the present emergency, that there would be a period allowed for such services to submit an application to register to continue to provide the services as permanent regulated services in the event that the services could meet the necessary criteria and should the provider so wish.)

To manage the application of the exception, Care Inspectorate Wales will be seeking specified information about the nature of the provision to be supplied along with a notification of an intent to set up emergency CV-19 provision. This is likely to be similar in format to the current Statement of Purpose template.

The relevant headings from the current template are:

- The provider
- The location of the service
- The service provided
- How the service is to be provided
- The staffing arrangements
- The services and facilities
- The governance arrangements

In the event that Care Inspectorate Wales considered that the proposed service did not fall within the exception, it would notify the intending provider. Should the provider persist, the inspectorate would inform them they were operating a regulated service without being registered to do so and could subsequently consider prosecuting the provider for operating without registration.

We would welcome your comments on these proposals.

Relaxing requirements on providers to undertake pre-employment checks on employees in domiciliary and residential care

The rationale for this change is to facilitate speedy recruitment of additional staff and volunteers in residential care homes for adults and domiciliary care for adults. To do this, we propose easing the requirements set out in Part 1 of Schedule 1 to the Service Providers and Responsible Individuals Regulations, regarding pre-employment checks.

Present requirements include two written references, documentary evidence of qualifications and evidence of full employment history (including explanation of any gaps in employment). Given the potential difficulty of obtaining some of these things in an emergency situation, our proposal is to place a less stringent requirement upon providers, focusing on obliging them to undertake and record appropriate checks and risk assessments. These checks are likely to include:

- Proof of identity.
- In so far as it is reasonably practicable to obtain, satisfactory evidence of conduct in previous employment.
- In so far as it is reasonably practicable to obtain, satisfactory evidence of any relevant qualification.
- In so far as it is reasonably practicable to obtain, an employment history.

These proposals will involve using powers in section 27 of the 2016 Act to amend the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017.

In view of the particular vulnerabilities associated with looked after children, at the moment we are **not** proposing a similar relaxation in relation to employment in residential care services for children.

We would welcome your comments on this proposal

In respect of the need for Disclosure and Barring Service (DBS) checks, as you will have seen from their recent announcement (<https://www.gov.uk/guidance/covid-19-how-dbs-is-supporting-the-fight-against-coronavirus>) the DBS has introduced a temporary new service for certain roles such as nurses, midwives and social workers, (paragraph G refers: <https://www.gov.uk/government/publications/covid-19-free-of-charge-dbs-applications-and-fast-track-barred-list-check-service/fast-track-service-eligible-roles>). From 30 March the DBS has established arrangements to fast track the applications against both of the barred lists, within 24 hours. These arrangements will provide employers with the option to appoint new recruits into regulated activity with adults and/or children, as long as the individuals are not barred and appropriate measures are put in place to manage the individual until the full DBS check is received.

Consideration is being given to whether any further provision, in addition to that discussed above, is needed in relation to Disclosure and Barring Service checks. This might potentially require an additional amendment to Regulation 35 of these Regulations. We will write to you under separate cover about this, if needed.

Other matters – Provider Annual Returns

You may also wish to be aware that we intend to use these Regulations as a vehicle to defer implementation of the requirement upon providers of residential care, domiciliary support, secure accommodation and residential family centre services to produce an annual return for publication on the website of the service regulator, Care Inspectorate Wales. Our intention is to defer the requirement for one year, so that it will take effect from 1 April 2021, with returns being due by 27 May 2021. As well as releasing providers from having to address this new commitment during this emergency period, this will have the effect of commencing the requirement in relation to all registered providers simultaneously.

This will entail making amendments to the Regulated Services (Annual Returns) (Wales) Regulations 2017, using powers under section 10 of the 2016 Act.

Timing of response

In view of the urgency, I would be grateful if you could respond with any comments or questions on these proposals to the RISCAct2016@gov.wales mailbox by **12:00am on 17 April 2020** so that we can take these into account before the Regulations are finalised.

ANTHONY JORDAN

Head of Programme and Legislative Implementation