

Explanatory Memorandum to The Children's Homes (Wales) (Amendment) Regulations 2017

This Explanatory Memorandum has been prepared by the Health and Social Services Group within the Welsh Government, and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Children's Homes (Wales) (Amendment) Regulations 2017.

Rebecca Evans
Minister for Social Services and Public Health
26 January 2017

Part 1 – Overview

1. Description

The Children’s Homes (Wales) (Amendment) Regulations 2017 (“these Regulations”) amend the Children’s Homes (Wales) Regulations 2002 (“the 2002 Regulations”). The 2002 Regulations are made under powers contained in Part 2 of the Care Standards Act 2002 (“the Act”) and they make provision about persons who carry on or manage children’s homes in Wales as well as about the conduct of those homes.

The amendments to the 2002 Regulations will place new duties on the registered person of a secure children’s home, to facilitate investigations by the Prisons and Probation Ombudsman (PPO) for England and Wales into the death of any child in the home.

The new duties are to:

- notify the PPO of the death of a child in the home;
- grant the PPO access to the premises of the home and to the home’s documents and records;
- allow the PPO to take away copies of any of the home’s documents and records from the premises, provided the PPO has secure arrangements for doing so; and
- allow the PPO (with consent) to interview in private any children, parents or relatives, or persons working in the home.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

No specific matters identified.

3. Legislative background and current position

The Welsh Ministers make these Regulations in exercise of powers conferred on them by sections 22(1), 22(2)(f), 22(7)(d), and 118(5) to (7) of the Act.

This statutory instrument is subject to the negative procedure.

These Regulations will come into force on 1 April 2017.

Secure accommodation in Wales

There is currently one secure children’s home in Wales, Hillside Secure Children’s Home in Neath, which is run by Neath Port Talbot County Council. This accommodates children and young people up to the age of 18 who are:

- placed by local authorities in Wales under section 119 of the Social Services and Well-being (Wales) Act 2014;
- placed by local authorities in England under section 25 of the Children Act 1989;
- on remand or serving a custodial sentence, and placed by the Youth Justice Board for England and Wales; or
- charged with an offence but refused bail, and transferred under the section 38(6) of the Police and Criminal Evidence Act 1984.

Role of the PPO

The PPO is an independent non-statutory body appointed by the Secretary of State for Justice. His remit covers England and Wales. He investigates deaths among prisoners, immigration detainees and residents of probation hostels, and complaints.

In April 2015 the Ministry of Justice extended the remit of the PPO to include investigating the deaths of children placed in secure children's homes in England.

The PPO's role in investigating deaths in secure children's homes in England was facilitated by the Children's Homes (England) Regulations 2015 ("the 2015 Regulations"), which came into force on 1 April 2015. These specify that if a child accommodated in a secure children's home in England dies, the registered manager must notify certain relevant persons including the PPO without delay, and allow the PPO to investigate the death by:

- granting the PPO access to the premises of the home, and the home's documents and records;
- allowing the PPO to take away securely copies of documents and records; and
- if they consent, allowing the PPO to interview in private any children, parents, relatives or persons working at the home.

A person appointed by, or working on behalf of, the PPO may carry out the investigation instead of the PPO.

The 2015 Regulations, which applies only to children's homes in England, replaced the Children's Homes Regulations 2001 (which also applied to children's homes in England). . Children in Wales can be placed in a secure children's home in England by a Welsh local authority under section 25 of the Children Act 1989.

The PPO's remit does not currently include investigations into the death of a child placed in secure accommodation in Wales. The Ministry of Justice have undertaken to extend the PPO's remit to coincide with the coming into force of these Regulations.

4. Purpose and intended effect of the legislation

These Regulations insert a new regulation (regulation 29A) into the 2002 Regulations and amend regulation 2(1) (interpretation) and regulation 29 (notifiable events). The purpose is to make provision in relation to the notification of and investigation into the death of a child in a secure children's home in Wales.

- **Regulation 2(1)**

Regulation 5 of these Regulations inserts the definition of 'a secure children's home' into regulation 2(1) of the 2002 Regulations. The effect of this is to make secure accommodation for children a specific category within the 2002 Regulations to which the new regulation 29A can apply. A secure children's home is defined as a children's home which provides accommodation for the purposes of restricting liberty, and in respect of which a person is registered under Part 2 of the Care Standards Act 2000. The registered person is included in the definition so that the duties under the new regulation 29A can apply to him / her.

- **Regulation 29**

Regulation 6 of these Regulations inserts paragraph (5) into regulation 29 of the 2002 Regulations. Regulation 29 makes provision in relation to all children's homes for the notification to certain persons of certain events which are listed in Schedule 5 of the 2002 Regulations. Regulation 29 also makes provision for notifying the child's parent of any significant incident affecting the child's welfare.

The inserted paragraph (5) provides that regulation 29 is not to apply to a notification in relation to the death of a child accommodated in a secure children's home. This is because the new provisions relating to notifications to and investigations by the PPO are only relevant in the event of a death of a child accommodated in a secure children's home (but not other types of children's homes). As such, provision for this specific event is set out separately in regulation 29A.

- **Regulation 29A**

Regulation 7 of these Regulations inserts regulation 29A into the 2002 Regulations. Regulation 29A(1) places a duty on the registered person in respect of a secure children's home to notify the following without delay if any child accommodated in the home dies:

- the appropriate office of the registration authority (i.e. the Care and Social Services Inspectorate Wales);
- the placing authority;
- the local authority in whose area the secure children's home is located;
- the health authority in whose areas the secure children's home is located;
- the Prisons and Probation Ombudsman for England and Wales; and

- the child's parent or person who has parental responsibility for the child.

The requirement to notify the PPO is new. However, the registered person is already required by the 2002 Regulations to notify the other persons listed above.

Regulation 29A(2) introduces new provisions which require the registered person to allow the PPO to investigate the death by:

- granting the PPO access to the premises of the home and the home's documents and records;
- allowing the PPO to take away copies of any documents or records from the premises, provided that the PPO has secure arrangements for doing so; and
- allowing the PPO (with consent) to interview in private any children, parents or relatives, or persons working in the home.

Regulation 29A(3) states that a 'notification' under this regulation must include details of the circumstances of the death; the other persons, bodies or organisations who have been notified; and any actions taken by the registered person as a result of the death. The notification must be made or confirmed in writing.

Regulation 29A(4) makes it clear that references to the PPO in this regulation include a person appointed by, or working on behalf of, the PPO for the purposes of an investigation.

The intended effect of these regulations is to facilitate investigations by the PPO into any death of a child in a secure children's home in Wales by placing requirements on the registered provider to notify the PPO of such a death and allow the PPO to investigate the death. Another intended effect is to ensure equity between the way a death of a child is investigated in secure accommodation in Wales and in England. It will remove the discrepancy by which the death of a child placed by a Welsh local authority in secure accommodation in England under section 25 of the Children Act 1989 would be investigated by the PPO, but not a child placed (by an authority in Wales or England) in secure accommodation in Wales under section 119 of the Social Services and Well-being (Wales) Act 2014.

Consultation

The Children's Homes (Wales) (Amendment) Regulations 2017 were consulted upon between 28 October and 16 December 2016. A consultation report has been prepared, and no changes were required to be made to the draft regulations as a result of the consultation.

Regulatory Impact Assessment

We have considered the criteria in the Welsh Minister's Code of Practice on carrying out regulatory impact assessments, and have concluded that it is not necessary to carry out an assessment for these amending regulations. The new duties upon

registered persons in respect of notifications are not onerous and will only need to be put into effect in very exceptional circumstances (there has been only the one death of a child in secure accommodation, in the late 1990s).

It should be noted that the 2002 Regulations will be replaced by new regulations to be made under the Regulation and Inspection of Social Care (Wales) Act 2016. It is the Welsh Government's intention that these new provisions regarding the PPO will be carried forward into these new regulations, placing an equivalent duty upon the provider or the responsible individual. The new regulations on secure accommodation under the Regulation and Inspection of Social Care (Wales) Act 2016 are expected to come into force in April 2019.