
TABLE OF COMPARATIVE LAW

I. Primary Legislation

Wales	England	Significant Differences
<p><u>Section 108A</u>, read alongside <u>Schedules 7A</u> and <u>7B</u> of the <u>Government for Wales Act 2006</u> (as amended by the <u>Wales Act 2017</u>)</p>		
<p><u>Sections 2</u>, and <u>5-6 Social Services and Well-Being (Wales) Act 2014</u> ("<u>2014 Act</u>") (the material scope of the general duty under the <u>2014 Act</u>).</p> <p><u>Section 5</u> provides, "<i>A person exercising functions under this Act must seek to promote the well-being of—</i> <i>(a) people who need care and support...</i>".</p> <p><u>Section 2(2)-(3)</u> provides, "(2) 'Well-being', in relation to a person, means well-being in relation to any of the following— (a) physical and mental health and emotional well-being; (b) protection from abuse and neglect; (c) education, training and recreation; (d) domestic, family and personal relationships; (e) contribution made to society; (f) securing rights and entitlements; (g) social and economic well-being; (h) suitability of living accommodation. (3) In relation to a child, 'well-being' also includes— (a) physical, intellectual, motional, social and behavioural development; (b) 'welfare' as that word is interpreted for the purposes of</p>	<p><u>Section 17 Children Act 1989</u> ("<u>1989 Act</u>") (the material scope of the general duty under the <u>1989 Act</u>).</p> <p>Local authorities in England (<u>section 16B(1)-(2)</u>) must comply with the duties in <u>section 17(1)</u>; they are: "<i>(a) to safeguard and promote the welfare of children within their area who are in need; and (b) so far as is consistent with that duty, to promote the upbringing of such children by their families, by providing a range and level of services appropriate to those children's needs.</i>"</p> <p><u>Section 17(4A)</u> provides, "<i>(4A) Before determining what (if any) services to provide for a particular child in need in the exercise of functions conferred on them by this section, a local authority shall, so far as is reasonably practicable and consistent with the child's welfare— (a) ascertain the child's wishes and</i></p>	<p>The duty under the <u>2014 Act</u> applies to all those within its area who need "<i>care and support</i>". A child, to engage the duties under the <u>2014 Act</u> need not be "<i>in need</i>" within the meaning of <u>section 17(10) Children Act 1989</u>.</p> <p>The concept of "<i>well-being</i>" in the <u>2014 Act</u> is wider than that of "<i>welfare</i>" in the <u>1989 Act</u>.</p>

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<p><i>the [1989 Act].”</i></p> <p><i>Section 6 provides, “(1) A person exercising functions under this Act in relation to—</i> <i>(a) an individual who has, or may have, needs for care and support...(c) an individual in respect of whom functions are exercisable under Part 6 (looked after children etc), must comply with the duties in subsection (2). (2) The person must—</i> <i>(a) in so far as is reasonably practicable, ascertain and have regard to the individual's views, wishes and feelings,</i> <i>(b) have regard to the importance of promoting and respecting the dignity of the individual,</i> <i>(c) have regard to the characteristics, culture and beliefs of the individual (including, for example, language), and</i> <i>(d) have regard to the importance of providing appropriate support to enable the individual to participate in decisions that affect him or her to the extent that is appropriate in the circumstances, particularly where the individual's ability to communicate is limited for any reason. (3) A person exercising functions under this Act in relation to an adult falling within subsection (1)(a), (b) or (c) must, in addition, have regard to—</i> <i>(a) the importance of beginning with the presumption that the adult is best placed to judge the adult's well-being, and</i> <i>(b) the importance of promoting the adult's independence where possible.(4) A person exercising functions under this Act in relation to a child falling within subsection (1)(a), (b) or (c), in addition—</i> <i>(a) must have regard to the importance of promoting the upbringing of the child by the child's family, in so far as</i></p>	<p><i>feelings regarding the provision of those services; and (b) give due consideration (having regard to his age and understanding) to such wishes and feelings of the child as they have been able to ascertain...”.</i></p> <p><i>Section 17(10) provides, “For the purposes of this Part a child shall be taken to be in need if— (a) he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by a local authority under this Part;</i> <i>(b) his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services; or</i> <i>(c) he is disabled,</i> <i>and “family” , in relation to such a child, includes any person who has parental responsibility for the child and any other person with whom he has been living.”</i></p>	

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<p><i>doing so is consistent with promoting the well-being of the child, and (b) where the child is under the age of 16, must ascertain and have regard to the views, wishes and feelings of the persons with parental responsibility for the child, in so far as doing so is— (i) consistent with promoting the well-being of the child, and (ii) reasonably practicable.</i></p>		
<p><u>Section 7 2014 Act</u> (reference to the <u>UN Convention on the Rights of the Child 1989</u> (“<u>the Convention</u>”))</p> <p>Any person exercising functions under the Act must have “<i>due regard</i>” to <u>the Convention</u>.</p>		<p>UNCRC not imported into the Children Act</p>
<p><u>Section 38 2014 Act</u> (scope of powers to meet the care/support needs of children)</p> <p>A non-exhaustive list of the various ways a local authority can meet a child’s needs.</p>	<p><u>Section 17(1) and (6)</u> (scope of the powers for local authorities in respect of children in need)</p> <p>Authorities have the power to provide services listed in <u>Part One of Schedule Two</u> of the <u>1989 Act</u>. Direct payments can be made: see <u>sections 17(6) and 17A</u>.</p>	
<p><u>Section 74</u> (personal scope of the general duty under the <u>2014 Act</u>).</p> <p><u>Section 74 2014 Act</u> provides, “(1) <i>In this Act, a reference to a child who is looked after by a local authority is a reference to a child who is—</i> <i>(a) in its care, or</i> <i>(b) provided with accommodation by the authority in the exercise of any functions which are social services functions, apart from functions under section 15, Part 4, or section 109, 114 or 115. (2) In subsection (1), “accommodation” means accommodation which is</i></p>	<p><u>Section 17 1989 Act</u> (personal scope of the general duty under the <u>1989 Act</u>).</p> <p>The duty in <u>section 17</u> applies only to children “within... <i>[the authority’s] area</i>”: <u>section 17(1)(a)</u>.</p> <p><u>Section 17(13)</u> provides, “<i>The duties imposed on a local authority by virtue of this section do not apply in relation to a child in the authority’s area who is being looked after by a local authority in Wales in accordance with Part 6 of the [2014 Act].</i>”</p>	<p>None.</p>

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<p><i>provided for a continuous period of more than 24 hours....”</i></p> <p>Social services functions include the exercise of functions under the <u>1989 Act</u> or the <u>2014 Act: section 143 2014</u> and <u>Schedule Two 2014 Act</u>.</p>	<p><u>Section 30(2C)</u>, questions about where a child is ordinarily resident are to be determined by an agreement between the relevant local authority in England or Wales; in the absence of agreement, to be determined by the Secretary of State (see <u>section 195(1A) 2014 Act</u>).</p>	
<p><u>Section 75 2014 Act</u> (scope of duty to secure sufficient accommodation)</p> <p>Duty of local authorities to secure sufficient accommodation arrangements; this includes ensuring a number of providers, and that the range is sufficient to meet the needs of those in its area.</p>	<p><u>Section 22G 1989 Act</u> (scope of duty to secure sufficient accommodation)</p> <p>Same.</p>	<p>The <u>2014 Act</u> requires the provision to be “<i>consistent [with the] well-being</i>” of children in its area, rather than their welfare. Well-being has a statutory definition which is wider than welfare.</p>
<p><u>Sections 76 and 79 2014 Act</u> (personal scope of duty to accommodate certain children)</p> <p><u>Section 76</u>, “(1) A local authority must provide accommodation for any child within its area who appears to the authority to require accommodation as a result of—(a) there being no person who has parental responsibility for the child, (b) the child being lost or having been abandoned, or (c) the person who has been caring for the child being prevented (whether or not permanently, and for whatever reason) from providing the child with suitable accommodation or care. (2) Where a local authority provides accommodation under subsection (1) for a child who is ordinarily resident in the area of another local authority, that other local authority may take over the provision of accommodation for the child within— (a) three months of being notified in writing that the child</p>	<p><u>Sections 20 and 22A 1989 Act</u> (personal scope of duty to accommodate certain children)</p> <p><u>Section 20</u>, “(1) Every local authority shall provide accommodation for any child in need within their area who appears to them to require accommodation as a result of— (a) there being no person who has parental responsibility for him; (b) his being lost or having been abandoned; or (c) the person who has been caring for him being prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care. (2) Where a local authority provide accommodation under subsection (1) for a child who is ordinarily resident in the area of another local authority, that other local authority may take</p>	

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<p><i>is being provided with accommodation, or</i> <i>(b) such other longer period as may be specified.</i> [(2A) Where a local authority in England provides accommodation under section 20(1) of the [1989 Act] (provision of accommodation for children: general) for a child who is ordinarily resident in the area of a local authority in Wales, that local authority in Wales may take over the provision of accommodation for the child within— (a) three months of being notified in writing that the child is being provided with accommodation, or (b) such other longer period as may be specified.]¹ (3) A local authority must provide accommodation for any child within its area who has reached the age of 16 and whose well-being the authority considers is likely to be seriously prejudiced if it does not provide the child with accommodation. (4) A local authority may not provide accommodation under this section for any child if any person objects who— (a) has parental responsibility for the child, and (b) is willing and able to— (i) provide accommodation for the child, or (ii) arrange for accommodation to be provided for the child. (5) Any person who has parental responsibility for a child may at any time remove the child from accommodation provided by or on behalf of a local authority under this section. (6) Subsections (4) and (5) do not apply while any person— (a) in whose favour a [child arrangements order]² is in</p>	<p><i>over the provision of accommodation for the child within—</i> (a) three months of being notified in writing that the child is being provided with accommodation; or (b) such other longer period as may be prescribed [in regulations made by the Secretary of State]¹ . [(2A) Where a local authority in Wales provide accommodation under section 76(1) of the [2014 Act] (accommodation for children without parents or who are lost or abandoned etc.) for a child who is ordinarily resident in the area of a local authority in England, that local authority in England may take over the provision of accommodation for the child within— (a) three months of being notified in writing that the child is being provided with accommodation; or (b) such other longer period as may be prescribed in regulations made by the Secretary of State.]² (3) Every local authority shall provide accommodation for any child in need within their area who has reached the age of sixteen and whose welfare the authority consider is likely to be seriously prejudiced if they do not provide him with accommodation. (4) A local authority may provide accommodation for any child within their area (even though a person who has parental responsibility for him is able to provide him with accommodation) if they</p>	

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<p><i>force with respect to the child,</i> <i>(b) who is a special guardian of the child, or</i> <i>(c) who has care of the child by virtue of an order made in the exercise of the High Court's inherent jurisdiction with respect to children,</i> <i>agrees to the child being looked after in accommodation provided by or on behalf of the local authority. (7) Where there is more than one such person as is mentioned in subsection (6), all of them must agree. (8) Subsections (4) and (5) do not apply where a child who has reached the age of 16 agrees to being provided with accommodation under this section."</i></p> <p><u>Section 119 2014 Act</u> applies to children aged 16 or 17 accommodated under <u>section 76 2014 Act</u>; the (former) prohibition on the application of <u>section 119</u> to such children was revoked by the <u>Children (Secure Accommodation) (Wales) (Amendment) Regulations 2016 (SI 312)</u> from 6th April 2016 onwards.</p> <p><u>Section 79 2014 Act</u> requires authorities provide children in care with accommodation.</p>	<p><i>consider that to do so would safeguard or promote the child's welfare.</i> <i>(5) A local authority may provide accommodation for any person who has reached the age of sixteen but is under twenty-one in any community home which takes children who have reached the age of sixteen if they consider that to do so would safeguard or promote his welfare.</i> <i>(6) Before providing accommodation under this section, a local authority shall, so far as is reasonably practicable and consistent with the child's welfare—</i> <i>(a) ascertain the child's wishes [and feelings] ³ regarding the provision of accommodation; and</i> <i>(b) give due consideration (having regard to his age and understanding) to such wishes [and feelings] ³ of the child as they have been able to ascertain.</i> <i>(7) A local authority may not provide accommodation under this section for any child if any person who—</i> <i>(a) has parental responsibility for him; and</i> <i>(b) is willing and able to—</i> <i>(i) provide accommodation for him; or</i> <i>(ii) arrange for accommodation to be provided for him,</i> <i>objects.</i> <i>(8) Any person who has parental responsibility for a child may at any time remove the child from accommodation provided by or on behalf of the local authority under this section.</i> <i>(9) Subsections (7) and (8) do not apply while any person—</i></p>	

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	<p>[(a) who is named in a child arrangements order as a person with whom the child is to live;] ⁴</p> <p>[(aa) who is a special guardian of the child; or] ⁵</p> <p>(b) who has care of the child by virtue of an order made in the exercise of the High Court's inherent jurisdiction with respect to children, agrees to the child being looked after in accommodation provided by or on behalf of the local authority.</p> <p>(10) Where there is more than one such person as is mentioned in subsection (9), all of them must agree.</p> <p>(11) Subsections (7) and (8) do not apply where a child who has reached the age of sixteen agrees to being provided with accommodation under this section.</p> <p>Section 22A 1989 Act requires authorities to provide children in care with accommodation.</p>	
<p><u>Section 78 2014</u> (material scope of duty towards looked after children)</p> <p><u>Section 78</u> provides, “(1) A local authority looking after any child must— (a) safeguard and promote the child's well-being, and (b) make such use of services available for children cared for by their own parents as appears to the authority reasonable in the child's case. (2) The duty of a local authority under subsection (1)(a)</p>	<p><u>Section 22 1989 Act</u> (material scope of duty towards looked after children)</p> <p><u>Section 22</u> provides, “(1) [In this section] , any reference to a child who is looked after by a local authority is a reference to a child who is— (a) in their care; or (b) provided with accommodation by the authority in the exercise of any functions (in particular those under this Act) which [are social services</p>	<p>The duties under the <u>2014 Act</u> are wider, i.e. to promote well-being.</p>

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<p><i>to safeguard and promote the well-being of a child looked after by it includes, for example—</i></p> <p><i>(a) a duty to promote the child's educational achievement;</i></p> <p><i>(b) a duty—</i></p> <p><i>(i) to assess from time to time whether the child has care and support needs which meet the eligibility criteria set under section 32, and</i></p> <p><i>(ii) if the child has needs which meet the eligibility criteria, to at least meet those needs.</i></p> <p><i>(3) Before making any decision with respect to a child whom it is looking after, or proposing to look after, a local authority must (in addition to the matters set out in sections 6(2) and (4) and 7(2) (other overarching duties)) have regard to—</i></p> <p><i>(a) the views, wishes and feelings of any person whose views, wishes and feelings the authority considers to be relevant;</i></p> <p><i>(b) the child's religious persuasion, racial origin and cultural and linguistic background.</i></p> <p><i>(4) If it appears to a local authority that it is necessary, for the purpose of protecting members of the public from serious injury, to exercise its powers with respect to a child whom it is looking after in a manner which may not be consistent with its duties under this section or section 6, it may do so."</i></p>	<p><i>functions within the meaning of] the <u>Local Authority Social Services Act 1970</u> [, apart from functions under [sections 17 , 23B and 24B]]</i></p> <p><i>(2) In subsection (1) "accommodation" means accommodation which is provided for a continuous period of more than 24 hours.</i></p> <p><i>(3) It shall be the duty of a local authority looking after any child—</i></p> <p><i>(a) to safeguard and promote his welfare; and</i></p> <p><i>(b) to make such use of services available for children cared for by their own parents as appears to the authority reasonable in his case.</i></p> <p><i>[</i></p> <p><i>(3A) The duty of a local authority under subsection (3)(a) to safeguard and promote the welfare of a child looked after by them includes in particular a duty to promote the child's educational achievement.</i></p> <p><i>]... (4) Before making any decision with respect to a child whom they are looking after, or proposing to look after, a local authority shall, so far as is reasonably practicable, ascertain the wishes and feelings of—</i></p> <p><i>(a) the child;</i></p> <p><i>(b) his parents;</i></p> <p><i>(c) any person who is not a parent of his but who has parental responsibility for him; and</i></p> <p><i>(d) any other person whose wishes and feelings the authority consider to be relevant, regarding the matter to be decided.</i></p> <p><i>(5) In making any such decision a local authority shall give due consideration—</i></p> <p><i>(a) having regard to his age and understanding, to such wishes and feelings of the child as they</i></p>	

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	<p><i>have been able to ascertain;</i> <i>(b) to such wishes and feelings of any person mentioned in subsection (4)(b) to (d) as they have been able to ascertain; and</i> <i>(c) to the child's religious persuasion, racial origin and cultural and linguistic background.</i> <i>(6) If it appears to a local authority that it is necessary, for the purpose of protecting members of the public from serious injury, to exercise their powers with respect to a child whom they are looking after in a manner which may not be consistent with their duties under this section, they may do so.</i> <i>(7) If the [Secretary of State] considers it necessary, for the purpose of protecting members of the public from serious injury, to give directions to a local authority with respect to the exercise of their powers with respect to a child whom they are looking after, [the [Secretary of State]] may give such directions to [the authority].</i> <i>(8) Where any such directions are given to an authority they shall comply with them even though doing so is inconsistent with their duties under this section”.</i></p>	
<p><u>Section 81 2014 Act</u> (regulation of placement facilities)</p> <p>A placement can be to a “<i>children’s home</i>”, which is a home in England within the meaning of Part Two of the <u>Care Standards Act 2000</u> or a “<i>care home service</i>” in Wales within the meaning of <u>Part One</u> of the <u>Regulation and Inspection of Social Care (Wales) Act 2016</u>: see definition in <u>section 197(1) 2014 Act</u>.</p>	<p><u>Section 22C 1989 Act</u> (regulation of placement facilities)</p> <p>Same. The equivalent Regulations in England for other accommodation under <u>section 22C(6)(d)</u> are the <u>Care Planning, Placement, and Case Review (England) Regulations 2010 (SI 959)</u>.</p>	None.

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<p>Other accommodation can be considered under <u>section 81(6)(d) 2014 Act</u>; the principles exercising the use of those powers are contained in <u>Regulation 30 and Schedule 7 Care Planning, Placement, and Case Review (Wales) Regulations 2015 (SI 1818)</u>.</p>		
<p><u>Section 119 2014 Act</u> (power to place a child in secure accommodation)</p> <p>A child may not be placed in secure accommodation “<i>unless it appears</i>” that the child either: (a) has a history of absconding, is likely to abscond from any other description of accommodation and is likely to suffer significant harm if s/he absconds, or (b) is likely to injure him/herself or other persons.</p> <p>Regulations may specify the maximum period a child may be held before it is necessary to apply to the Court, the conditions of any facility, etc. The important point is that the application of either set of Regulations depends on <i>where</i> the secure accommodation is, rather than whether a local authority in England or Wales looks after the child.</p> <p>Secure accommodation is <i>accommodation “...provided for the purpose of restricting liberty”</i> (<u>section 119(1)</u>).</p>	<p><u>Section 25 199 Act</u> (power to place a child in secure accommodation)</p> <p>Same.</p>	<p>None, save that the Welsh Ministers - rather than the Secretary of State - make the Regulations applicable in Wales.</p>
	<p><u>Section 53 1989 Act</u></p> <p>Local authorities to ensure the provision of “<i>community homes</i>” for looked after children.</p>	
	<p><u>Section 82(2) 1989 Act</u></p>	

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	The Secretary of State may award grants to local authorities, among other things, to meet the cost of securely accommodating a child in a “community home”.	
<u>Section 145 2014 Act</u> (legal effect of the Code) Power of the Welsh Ministers to issue Codes under the Act.		
<u>Sections 162-169 2014 Act</u> Duty to co-operate with local authorities and other bodies.		
<u>Section 3 Well-Being of Future Generations (Wales) Act 2015</u> (duties to future generations) Duty to take “ <i>all reasonable steps</i> ” to meet the objective of sustainable development in Wales.		

II. Secondary Legislation

Wales	England	Significant Differences
<u>Regulation 8 Children (Secure Accommodation) (Wales) Regulations 2015</u> (SI 1988) (as amended) (“ <u>2015 Regulations</u> ”) (regulated facilities) A local authority using powers under <u>section 119 2014 Act</u> may only place a child in a secure accommodation in Wales if that facility is operated by a registered provider (see <u>section 81 2014 Act</u>).	<u>Regulation 3 Children (Secure Accommodation) Regulations 1991</u> (SI 1505) (as amended) (“ <u>1991 Regulations</u> ”) regulated facilities) Any “ <i>children’s home</i> ” used to securely accommodate a child using powers under <u>section 25 1989 Act</u> must be approved by the Secretary of State for that use.	The Welsh Ministers may require different standards for secure accommodation facilities in Wales.

Wales	England	Significant Differences
<p>A local authority may only place a child in secure accommodation in England, under <u>section 119 2014 Act</u>, if that facility is registered under <u>Part Two</u> of the <u>Care Standards Act 2000</u> as a children's home providing accommodation for the purpose of restricting liberty.</p>		
<p><u>Regulation 13 2015 Regulations</u> (children under the age of 13)</p> <p>No child under the age of 13 may be placed in secure accommodation without the approval of the Welsh Ministers.</p>	<p><u>Regulation 4 1991 Regulations</u> (children under the age of 13)</p> <p>Same.</p>	<p>Same, save that the Secretary of State – rather than the Welsh Ministers – must approve the placement of children under <u>section 25 1989 Act</u>.</p>
<p><u>Regulation 14 2015 Regulations</u> (personal scope of the power to place)</p> <p>The local authority has no power to place a child in secure accommodation if that child is detained under the <u>Mental Health Act 1983</u>, serving sentence of imprisonment, or subject to a child assessment order under <u>section 43 1989 Act</u>.</p>	<p><u>Regulation 5 1991 Regulations</u> (personal scope of the power to place)</p> <p>The local authority has no power to place a child in secure accommodation if the conditions in the 'Wales' section are satisfied or <u>section 20(5) 1989 Act</u> applies to that child.</p>	<p>The power to place a child in secure accommodation under the statutory scheme in England does not extend to those accommodated in a "<i>community home</i>" by a local authority (<u>section 20(5) 1989 Act</u>).</p>
<p><u>Regulation 16 2015 Regulations</u> (personal scope of the power to place)</p> <p>The power to place a child in secure accommodation extends (<u>Regulation 16(1)(a)</u>) to children, other than those looked after by a local authority (including local authorities in England), accommodated by: (a) Local Health Boards; (b) NHS Trusts; (c) local authorities exercising education functions; and (d) children, other than</p>	<p><u>Regulation 7 1991 Regulations</u> (personal scope of the power to place)</p> <p>The power to place a child in secure accommodation extends (<u>Regulation 7(1)(a)</u>) to children, other than those looked after by a local authority (including a local authority in Wales), accommodated by: (a) health authorities, (b) NHS Trusts, (c) local authorities exercising education functions; (d) arrangements made by the Secretary</p>	<p>None.</p>

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those looked after by a local authority, accommodated in care homes or independent hospitals.	of State, the NHS Commissioning Board, or the clinical commissioning group; (e) children, other than those looked after by a local authority, accommodated in care homes and independent hospitals.	
<u>Regulation 17 2015 Regulations</u> The <u>2015 Regulations</u> apply to the placement of a child, looked after by an authority in Wales, in England.	<u>Regulation 1A 1991 Regulations</u> The <u>2015 Regulations</u> apply to placements by a local authority in Wales, in England, on the matters listed in <u>Regulation 1A(2)</u> , where the authority in Wales applies under <u>section 25 1989 Act</u> .	The <u>2015 Regulations</u> apply to the exclusion of the <u>1991 Regulations</u> whenever a child is placed in Wales. The <u>2015 Regulations</u> apply to local authorities in Wales placing children in England, even if that authority applies under <u>section 25 1989 Act</u> .
<u>Children's Homes (Wales) Regulations 2002</u> Regulations governing the standards for the registration of children's homes in Wales under <u>Part 2 of the Care Standards Act 2000</u> .	<u>Children's Homes (England) Regulations 2015</u> Regulations governing the standards for the registration of children's homes in England under <u>Part 2 of the Care Standards Act 2000</u>	None. The decision to retain that child at that home is the decision of the registered person or provider.