

National Assembly for Wales
Health and Social Care Committee

**Regulation and Inspection of Social
Care (Wales) Bill:
Stage 1 Committee Report**

July 2015

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



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The Health and Social Care Committee

The Committee was established on 22 June 2011 with a remit to examine legislation and hold the Welsh Government to account by scrutinising expenditure, administration and policy matters encompassing: the physical, mental and public health of the people of Wales, including the social care system.

Current Committee membership:



David Rees (Chair)
Welsh Labour
Aberavon



Alun Davies
Welsh Labour
Blaenau Gwent



John Griffiths
Welsh Labour
Newport East



Altaf Hussain
Welsh Conservatives
South Wales West



Elin Jones
Plaid Cymru
Ceredigion



Darren Millar
Welsh Conservatives
Clwyd West



Lynne Neagle
Welsh Labour
Torfaen



Gwyn R Price
Welsh Labour
Islwyn



Lindsay Whittle
Plaid Cymru
South Wales East



Kirsty Williams
Welsh Liberal Democrats
Brecon and Radnorshire

During the course of the Bill's scrutiny, the following Member was also a member of the Committee.



Janet Finch-Saunders
Welsh Conservatives
Aberconwy

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Chair's foreword

Many people in Wales, including some of the most vulnerable in our communities, rely on social care services and the people who deliver them. It is vital, therefore, that these services are provided with compassion, to a high standard, and in recognition of people's dignity, well-being, and preferred outcomes.

For some people, this is already the case. However, sadly, we have seen examples in which people have been let down by poor care.

We therefore support the general principles of the Regulation and Inspection of Social Care (Wales) Bill, which will reform the regulatory regime for care and support services in Wales. Provisions such as the identification of senior responsible individuals who will be personally accountable for the standard of regulated services, new duties on local authorities and CSSIW to oversee and shape the social care market, and powers to introduce quality ratings for regulated services and local authorities are welcome. We hope that they will serve to provide a more accountable, more transparent, and more stable social care sector in Wales.

However, to support the Bill in achieving its intentions, and ensure it reflects the ambitions of the Social Services and Well-being (Wales) Act 2014, there are some key areas in which we believe it needs to be strengthened, including, among others, workforce registration, the involvement and engagement of the public in the inspection and regulation regime, oversight of local authority commissioning functions, and arrangements for joint working and collaboration between relevant regulatory bodies and authorities.

We are grateful to all those who took the time to share their views with us. Our recommendations reflect the evidence we received, and we look forward to hearing the Minister's response.



David Rees AM

Chair of the Health and Social Care Committee

July 2015

The Committee's recommendations

The Committee's recommendations to the Welsh Government are listed below, in the order that they appear in this report. Please refer to the relevant pages of the report to see the supporting evidence and conclusions.

The Committee recommends:

Recommendation 1. that the Assembly agrees the general principles of the Bill. (Page 23)

Recommendation 2. that the Minister for Health and Social Services writes to the Committee following the publication of Dr Margaret Flynn's independent review of Operation Jasmine to set out his response to Dr Flynn's recommendations, including, where relevant, how each is either already taken into account in the Bill, or will be addressed by amendments. (Page 24)

Recommendation 3. that, before the end of the 2015 summer recess, the Minister for Health and Social Services sets out the proposed timetable for the implementation of the Bill. (Page 27)

Recommendation 4. that the Minister for Health and Social Services brings forward amendments to require all those who exercise functions under the Bill to have due regard to the United Nations Convention on the Rights of the Child, the United Nations Convention on the Rights of Disabled People, and the United Nations Principles for Older Persons. (Page 29)

Recommendation 5. that the Minister for Health and Social Services brings forward amendments to section 40(4) of the Bill to require the service regulator to include in its annual report reference to the impact of the United Nations Convention on the Rights of Disabled People, in addition to the United Nations Convention on the Rights of the Child and the United Nations Principles for Older Persons. (Page 30)

Recommendation 6. that the Minister for Health and Social Services makes a statement setting out his expectations for how the Care and Social Services Inspectorate Wales and Social Care Wales will engage and involve the public in their regulatory and other functions. (Page 34)

Recommendation 7. that the Minister for Health and Social Services considers whether additional requirements should be included on the face of the Bill to drive improvements in public involvement and engagement in the regulation and inspection of social care. (Page 34)

Recommendation 8. that the Minister for Health and Social Services brings forward amendments to ensure that carers are recognised throughout the Bill, for example, in sections 33, 39, 55, and 70. (Page 34)

Recommendation 9. that the Minister for Health and Social Services brings forward amendments to place a requirement on the face of the Bill for the Care and Social Services Inspectorate Wales to include the use of lay inspectors as an integral part of its approach to regulation and inspection. (Page 38)

Recommendation 10. that the Minister for Health and Social Services consults stakeholders on the format and content of the annual returns and annual reports required under section 8 of the Bill, and section 144A of the Social Services and Well-being (Wales) Act 2014 (to be inserted by section 55 of the Bill), before making regulations in relation to those sections. (Page 42)

Recommendation 11. that the Minister for Health and Social Services outlines, before the end of the 2015 summer recess, how the provisions relating to responsible individuals will apply to UK-wide or multi-national organisations which provide social care services within Wales. (Page 44)

Recommendation 12. that the Minister for Health and Social Services reviews the provisions in the Bill to ensure that there are sufficient protections to prevent unsuitable individuals from providing social care services in Wales. (Page 45)

Recommendation 13. that the Minister for Health and Social Services brings forward amendments to require that regulations under section 26 and guidance under section 28 include requirements for service providers to have appropriate whistle-blowing policies and procedures in place. (Page 48)

Recommendation 14. that the Minister for Health and Social Services keeps the arrangements set out in sections 19, 21, and 24 of the Social Services and Well-being (Wales) Act 2014 under review to ensure that the mechanisms for reassessment and review of decisions in relation to individuals' eligibility are robust and provide appropriate redress. (Page 49)

Recommendation 15. that the Minister for Health and Social Services brings forward amendments to include a requirement on the face of the Bill for advocacy services to register with the Care and Social Services Inspectorate Wales. (Page 53)

Recommendation 16. that the Minister for Health and Social Services makes a statement setting out how he intends to monitor and assess whether the requirement to register with the Care and Social Services Inspectorate Wales should be extended to preventative services, and innovative service delivery models emerging under the Social Services and Well-being (Wales) Act 2014. (Page 54)

Recommendation 17. that the Minister for Health and Social Services outlines the arrangements and support that will be in place for social care providers during the transition to the service-based model of registration under the Bill. (Page 56)

Recommendation 18. that the Minister for Health and Social Services outlines how the Bill will deliver a culture of regulation and inspection in which the supportive and improvement strands of Care and Social Services Inspectorate Wales' work do not compromise the delivery of robust and effective regulatory activity and enforcement. (Page 58)

Recommendation 19. that the Minister for Health and Social Services brings forward amendments to the definition of care in section 3 of the Bill to ensure that it takes account of the definition of well-being in the Social Services and Well-being (Wales) Act 2014. (Page 61)

Recommendation 20. that the Minister for Health and Social Services brings forward amendments to sections 26(1) and (3) to require that Welsh Ministers must, rather than may, make regulations in relation to regulated services. (Page 62)

Recommendation 21. that the Minister for Health and Social Services brings forward amendments to section 26 to require draft regulations relating to requirements on service providers, including the standard

of care and support that must be provided, to be accompanied by a statement about consultation undertaken under section 26(5).

(Page 62)

Recommendation 22. that the Minister for Health and Social Services provides more detail prior to the end of the 2015 summer recess about how he envisages the provisions in relation to outcomes-focused inspection will work in practice, and whether there are expected to be resource or capacity implications for the Care and Social Services Inspectorate Wales as a result.

(Page 66)

Recommendation 23. that the Minister for Health and Social Services brings forward amendments to include within section 33 of the Bill, and section 161 of the Social Services and Well-being (Wales) Act 2014 (to be inserted by section 56 of the Bill), provision for inspectors to be able to speak to service users' carers, family, or other relevant people in private.

(Page 67)

Recommendation 24. that the Minister for Health and Social Services includes requirements for inspectors to be appropriately trained to engage with service users with particular communication needs in the codes of practice in relation to inspection to be issued under section 32 of the Bill, and section 161A of the Social Services and Well-being (Wales) Act 2014 (to be inserted by section 56 of the Bill).

(Page 67)

Recommendation 25. that the Minister for Health and Social Services brings forward amendments to require the Welsh Ministers to consult widely with the social care sector before making regulations under section 35 in relation to the establishment of a quality ratings system.

(Page 72)

Recommendation 26. that the Minister for Health and Social Services, when making regulations under section 35, includes provision for:

- a right for service providers to request a re-inspection;
- fees for re-inspection on a full cost recovery basis; and
- appropriate safeguards to ensure that the timing of re-inspections are appropriate to support improvement and ensure that accurate and timely information is available to the public.

(Page 72)

Recommendation 27. that the Minister for Health and Social Services brings forward amendments to section 38 to require draft regulations establishing a fee regime to be accompanied by a statement about consultation undertaken under section 38(3). (Page 76)

Recommendation 28. that the Minister for Health and Social Services brings forward amendments to place a duty on Care and Social Services Inspectorate Wales to review local authority and health board commissioning of social care services against quality of life outcomes. (Page 83)

Recommendation 29. that the Minister for Health and Social Services brings forward amendments to require that local market stability reports include analysis of commissioning, the role of the third sector, cooperatives and social enterprises in service provision, and the labour market and workforce planning. (Page 90)

Recommendation 30. that the Minister for Health and Social Services brings forward amendments to include requirements on the face of the Bill for consultation with the social care sector prior to making regulations under section 144B of the Social Services and Well-being (Wales) Act 2014 (to be inserted by section 55 of the Bill) and section 62 of the Bill, in relation to the content and format of market stability reports. (Page 91)

Recommendation 31. that the Minister for Health and Social Services brings forward amendments to place a duty on local authorities to work collaboratively with other relevant local authorities and local health boards in the preparation of local market stability reports. (Page 93)

Recommendation 32. that the Minister for Health and Social Services sets out the support and resources that will be provided to local authorities and the Care and Social Services Inspectorate Wales to ensure that the right capacity and expertise is in place to prepare local and national market stability reports. (Page 93)

Recommendation 33. that the Minister for Health and Social Services brings forward amendments to include requirements for the Welsh Ministers to consult with relevant stakeholders before making regulations under section 58 in relation to market oversight. (Page 95)

Recommendation 34. that the Minister for Health and Social Services, when making regulations under section 58 to establish the criteria for providers to be subject to market oversight and financial sustainability checks, ensures that the criteria are sufficiently flexible to be appropriate for providers of all sizes which are of significance in their local markets. (Page 99)

Recommendation 35. that the Minister for Health and Social Services sets out how he will ensure that the Care and Social Services Inspectorate Wales is appropriately resourced and has the required expertise to undertake its duties in relation to the market oversight regime. (Page 100)

Recommendation 36. that the Minister for Health and Social Services makes a statement setting out how the governance arrangements for the newly-constituted Social Care Wales will ensure that there is no conflict of interest, or perceived conflict of interest, between the exercise of its regulatory and other functions. (Page 106)

Recommendation 37. that the Minister for Health and Social Services provides further detail about why there is a need to rebrand the Care Council for Wales as Social Care Wales. (Page 107)

Recommendation 38. that the Minister for Health and Social Services extends the requirements on the face of the Bill for registration with Social Care Wales to include domiciliary care workers and adults' residential care workers. (Page 117)

Recommendation 39. that the Minister for Health and Social Services undertakes further work to explore whether it would be appropriate to extend the requirement to register with Social Care Wales to foster carers. (Page 118)

Recommendation 40. that the Minister for Health and Social Services reconsiders whether the Bill as drafted provides sufficient flexibility to respond to the regulatory needs of the future social care workforce. (Page 122)

Recommendation 41. that the Minister for Health and Social Services ensures the terminology used in the Bill provides clarity to the social care sector and the public about which provisions relate to social care workers registered with Social Care Wales, which to social care workers registered with other regulators, and which to unregulated social care workers. (Page 125)

Recommendation 42. that the Minister for Health and Social Services explores opportunities for relevant social care and health regulatory bodies and authorities to work jointly and cooperate in the exercise of their education and workforce development functions. (Page 128)

Recommendation 43. that the Minister for Health and Social Services brings forward amendments to require the Welsh Ministers to consult with the social care sector and prepare a regulatory impact assessment prior to making regulations under section 163 to introduce prohibition orders. (Page 132)

Recommendation 44. that the Minister for Health and Social Services sets out the full list of regulatory authorities that he intends should be included in section 175, and provides an update on his discussions with the UK Government before the end of the 2015 summer recess. (Page 135)

Recommendation 45. that all relevant agreements and consents should, where possible, be obtained from the UK Government prior to the introduction of Welsh Government Bills. (Page 136)

Recommendation 46. that the Minister for Health and Social Services outlines how the provisions of the Bill will provide a basis for joint working between health and social care regulators, and ensure that the regulation and inspection of social care is sufficiently flexible to respond to the outcomes of the Green Paper on NHS Quality. (Page 138)

1. Introduction

Background

1. The [Regulation and Inspection of Social Care \(Wales\) Bill](#) (“the Bill”), and the accompanying [Explanatory Memorandum](#) (“the EM”), were introduced on 23 February 2015 by the Minister for Health and Social Services, Mark Drakeford AM (“the Minister”). As the Member in charge of the Bill, the Minister made a [statement](#) on the Bill in Plenary on 24 February 2015.
2. In accordance with Standing Order 26.9, the Assembly’s Business Committee agreed to refer the Bill to the Health and Social Care Committee (“the Committee”) for consideration of the general principles. The Business Committee agreed that the Committee should report by 3 July 2015.¹

Terms of reference

3. The Committee agreed, in its scrutiny of the Bill, to consider:
 - the general principles of the Regulation and Inspection of Social Care (Wales) Bill, and the need for legislation to make provision for:
 - o reform of the regulatory regime for care and support services;
 - o provision of a regulatory framework that requires an approach to the regulation of care and support services focused on outcomes for service users;
 - o reform of the inspection regime for local authority social services functions;
 - o the reconstitution and renaming of the Care Council for Wales as Social Care Wales and the broadening of its remit; and
 - o reform of the regulation of the social care workforce;
 - whether the Bill is the best way of achieving these purposes;
 - whether any additional provisions would be required to enable the Bill to achieve these purposes;

¹ National Assembly for Wales, Business Committee, [Report on the timetable for consideration of the Regulation and Inspection of Social Care \(Wales\) Bill](#), February 2015

- potential barriers to the implementation of these provisions and whether the Bill takes account of them;
- whether there may be any unintended consequences arising from the Bill;
- the financial implications of the Bill as set out in the Regulatory Impact Assessment within the Explanatory Memorandum; and
- the appropriateness of the powers in the Bill for the Welsh Ministers to make subordinate legislation and to issue guidance, and for Social Care Wales to make rules.

4. The Committee took oral evidence from a range of organisations and individuals (see Annex A). It also issued a general call for evidence and a targeted written consultation of key stakeholders (see Annex B). The Committee is grateful to all who contributed to its work.

2. Background to the Bill

Competence to legislate

5. The EM which accompanies the Bill states that the Assembly has the required legislative competence by virtue of [Schedule 7 of the Government of Wales Act 2006](#), specifically subject 15 (social welfare). Other relevant areas of competence are subject 12 (local government), subject 14 (public administration), and subject 5 (education and training).

6. The Presiding Officer issued a [statement](#) on 23 February 2015 which indicated that, in her view, the provisions of the Bill as introduced would be within the Assembly's legislative competence.

7. The Minister told the Committee that he was satisfied that all provisions in the Bill are compatible with the requirements of the European Convention on Human Rights ("ECHR").²

8. On the basis of these confirmations, and the evidence it has received, the Committee is satisfied that the Bill is compliant with Article 1 of Protocol 1 of the ECHR, and that it incorporates the requirements of fairness, independence and impartiality required by Article 6. It is also content that the objectives of the Bill are legitimate aims which justify any potential interference with the rights afforded to an individual by Article 8, and that any such interference is rendered proportionate by the provisions contained in the Bill. The Committee is satisfied that the benefits and disbenefits of any action which could amount to interference with the enjoyment of possessions, such as the revocation of a licence to operate a care home, is justified in the pursuance of the said aim.

Development of the Bill

9. The Welsh Government published [Sustainable Social Services for Wales: a Framework for Action](#) in 2011. This set out the Welsh Government's programme for reforming the provision of care and support in Wales, including proposals for legislative change. Originally, the Welsh Government intended to bring forward a single Social Services Bill for Wales. A [public consultation](#) on the legislative

² [RISC AI02 Correspondence from the Minister for Health and Social Services, 19 May 2015](#)

proposals was held in March 2012. Following the consultation, the then Deputy Minister for Social Services announced on 28 June 2012 that she intended to remove provisions relating to the regulation and inspection of the social care workforce and social care services in Wales from that Bill, and include them in separate legislation.³

10. A Social Services and Well-being (Wales) Bill was subsequently introduced in January 2013. The [Social Services and Well-being \(Wales\) Act 2014](#) (“the 2014 Act”) received Royal Assent in May 2014, and established a new legislative framework for social services in Wales.

11. In January 2014, the Welsh Government published a [White Paper on the Future of Regulation and Inspection of Care and Support in Wales](#). A [summary of the consultation responses](#) was published in April 2014.

Purpose and intended effect of the Bill

12. The EM states that the aims of the Bill are to secure well-being for citizens and to improve the quality of care and support in Wales. In Plenary on 24 February 2015, the Minister said that he intended that the Bill would provide “an effective legal framework for the regulation of the new approach established in the 2014 Act”.⁴

13. The Welsh Government highlights in the EM the need to learn lessons from Operation Jasmine – which is currently the subject of an independent review commissioned by the Welsh Government into abuse and neglect at care homes in South Wales – and serious incidents such as Southern Cross, Mid-Staffordshire and Winterbourne View, some of which involved the criminal abuse and neglect of vulnerable adults. The EM notes that such lessons include the importance of market stability, minimising the risks of provider failure, and recognising that culpability for abuse or neglect should not solely be held by those on the front line.

14. The EM further states that the Bill intends to review and streamline duplicate and unnecessary minimum standards, regulations and rules.

³ Welsh Government, Gwenda Thomas (Deputy Minister for Social Services), [Post-consultation update on the Social Services \(Wales\) Bill](#), Cabinet Written Statement, 28 June 2012

⁴ National Assembly for Wales, Plenary, [RoP](#), 24 February 2015

15. The Bill proposes to introduce changes to:

- reform the regulatory regime for care and support services – which includes a new service-based model of regulation, provisions to monitor the operation of the care market, provisions to improve public engagement, and powers to introduce inspection quality ratings and to charge fees;
- reform the inspection regime and regulation of local authority social services functions by amending the 2014 Act – which includes the consideration of outcomes for service users in reviews of social services performance, increased public involvement, and a new duty on local authorities to report on local markets for social care services;
- reconstitute and re-name the Care Council for Wales as Social Care Wales and broaden its remit in relation to service improvement; to include giving advice and assistance (including grants) to care and support service providers, and undertaking research studies; and
- reform regulation of the social care workforce – which includes the removal of voluntary registration, and the introduction of prohibition orders. It does not extend registration to new categories of staff but provides powers to do so.

3. General principles and the need for legislation

General principles

16. The Minister told the Committee that he believed that the Bill was necessary because regulation was the mechanism by which standards of service for vulnerable people were set, inspected against, and maintained.⁵ Stakeholders, including the regulators, service users, service providers, local authorities, local health boards and the third sector, agreed that legislation is required to reform the regulation and inspection of social care and drive up standards. They supported the Bill as an appropriate legislative vehicle to consolidate and streamline existing provision, and to introduce new powers to provide the required reform.

17. The Care and Social Services Inspectorate Wales (“CSSIW”) told the Committee that it sought to innovate and explore new approaches to its inspection and enforcement, but that the existing legislative framework constrained its ability to innovate.⁶ It noted that the majority of social services in Wales were meeting current standards,⁷ but welcomed the Bill as a modern and flexible framework for improvement through closer alignment between: individuals’ expectations, well-being and outcomes; social services delivery; and regulation.⁸

18. The Care Council for Wales (“the Care Council”) stated that much of the Bill consolidated and restated existing provisions in relation to workforce regulation. It noted however that the new service improvement remit for Social Care Wales (“SCW”) would provide greater coherence in driving improvement in the sector.⁹ Hywel Dda University Health Board (“Hywel Dda UHB”) noted that the Bill could help to streamline rules and regulations, and reduce duplication.¹⁰

⁵ Health and Social Care Committee, [RoP \[paras 7-8\]](#), 25 March 2015
NB: unless otherwise stated, subsequent references in this report to “RoP” refer to the proceedings of the Health and Social Care Committee.

⁶ [RISC05 Care and Social Services Inspectorate Wales](#)

⁷ [RoP \[para 123\]](#), 23 April 2015

⁸ [RoP \[para 110\]](#), 23 April 2015

⁹ [RISC04 Care Council for Wales](#)

¹⁰ [RISC31 Hywel Dda University Health Board](#)

19. A former service user and member of the CSSIW National Advisory Board (“the CSSIW NAB”), which is comprised of a range of CSSIW stakeholders including service users and carers, welcomed the opportunity the Bill provided for debate about the approach to regulation and inspection of social care in Wales.¹¹ Third sector organisations shared this view. They told the Committee that legislation would help ensure that vulnerable people receiving care and support services would not be overlooked,¹² and that the Bill provided an opportunity to develop a regulation and inspection regime which focused on the issues which mattered to service users.¹³

20. Speaking on behalf of social care service providers, the United Kingdom Homecare Association (“the UKHCA”) recognised the challenges of drafting person-centred legislation, but said that the Bill would provide an “enabling framework which will enable the aims and objectives to be delivered”.¹⁴

Recommendation 1: The Committee recommends that the Assembly agrees the general principles of the Bill.

21. Many stakeholders described the Bill as an opportunity to learn lessons from recent incidents and reviews, including the Older People’s Commissioner for Wales’ review of residential care for older people, Operation Jasmine, Winterbourne View and Southern Cross.¹⁵

22. The Minister wrote to the Committee to indicate that he had had discussions with Dr Margaret Flynn about her report on Operation Jasmine, and stated that he was content that the Bill would address the issues emerging from her report. He confirmed that Dr Flynn’s report was expected to be published in the first half of July, and outlined some of the key themes he anticipated that the report would raise.¹⁶ The Committee is firmly of the view that the Minister must consider Dr Flynn’s report and recommendations in detail. Where appropriate, he must bring forward amendments to the Bill to take account of those recommendations.

¹¹ [RoP \[para 246\]](#), 23 April 2015

¹² [RISC01 Disability Can Do Organisation](#)

¹³ [RISC26 Sense Cymru](#)

¹⁴ [RISC06 United Kingdom Homecare Association](#)

¹⁵ [RISC34 Hawliau](#), [RISC39 Macmillan Wales](#)

¹⁶ [RISC A109 Correspondence from the Minister for Health and Social Services, 2 June 2015](#)

Recommendation 2: The Committee recommends that the Minister for Health and Social Services writes to the Committee following the publication of Dr Margaret Flynn’s independent review of Operation Jasmine to set out his response to Dr Flynn’s recommendations, including, where relevant, how each is either already taken into account in the Bill, or will be addressed by amendments.

A companion to the 2014 Act?

23. Stakeholders stated that it was important that the Bill complemented existing legislation, including the 2014 Act and the [Well-being of Future Generations \(Wales\) Act 2015](#). The regulators, CSSIW and the Care Council, said that this was necessary to provide a coherent legal framework focused on achieving well-being and outcomes for people, and ensure that regulation, service improvement and development were coordinated.¹⁷ This view was shared by other stakeholders, including the Welsh Local Government Association (“the WLGA”) and the Association of Directors of Social Services Cymru (“ADSS Cymru”).¹⁸

24. The Minister described the Bill as “a companion” to the 2014 Act, and stated that it would ensure that the inspection and regulation regime was aligned to the new social care landscape that Act established. He noted that it would also consolidate the legal framework for the regulation and inspection of social care, allow lessons to be learned from high profile events which had taken place since the establishment of the current regulatory regime, and implement Law Commission recommendations in relation to the regulation of the social care workforce.¹⁹

25. However, other stakeholders, including the Older People’s Commissioner, raised queries about the extent to which the Bill reflected the 2014 Act’s policy intent and ambition.²⁰

26. Some were concerned about inconsistencies between the 2014 Act and the Bill, particularly in relation to definitions, and the potential

¹⁷ [RISC04 Care Council for Wales](#), [RISC05 Care and Social Services Inspectorate Wales](#)

¹⁸ [RISC08 Welsh Local Government Association and Association of Directors of Social Services Cymru](#)

¹⁹ [RoP \[paras 9-11\]](#), 25 March 2015

²⁰ [RoP \[para 80\]](#), 13 May 2015

for this to cause confusion.²¹ The Care Council stated that the language in the Bill tended to be “traditional” when compared to the 2014 Act, for example the focus on “services” rather than “provision”.²²

27. There were mixed views about whether it was appropriate to legislate in relation to regulation and inspection while the 2014 Act was still being implemented. Some stakeholders were concerned that the impact of the 2014 Act on the social care sector was not yet sufficiently clear,²³ while others stated that there were sufficient safeguards and flexibility in the Bill to accommodate new models of social care or changes to the social care workforce which might emerge under the 2014 Act.²⁴

Balance of subordinate legislation and transitional arrangements

28. There were concerns about the amount of detail left to subordinate legislation, particularly as the draft regulations, guidance, codes and rules are not available for consideration alongside the Bill. The Older People’s Commissioner questioned how effectively subordinate legislation could be scrutinised,²⁵ and other stakeholders said that they felt unable to comment in detail on whether the Bill would achieve its objectives without having sight of the regulations and standards which would underpin it.²⁶ The UKHCA emphasised that it was important for there to be collaboration and consultation with the social care sector and the public in the development of the subordinate legislation.²⁷

29. Conversely, the Care Council noted that it had concerns about whether the level of detail on the face of the Bill might restrict its ability to respond to new ways of working or groups of social care workers in the future.²⁸

30. CSSIW told the Committee that some existing providers would find it challenging to meet the service registration requirements under the Bill, and emphasised the importance of ensuring that there was a

²¹ [RISC23 Chartered Society of Physiotherapy](#), [RISC40 Alzheimer’s Society](#)

²² [RISC04 Care Council for Wales](#)

²³ [RoP \[para 17\]](#), 23 April 2015, [RoP \[para 52\]](#), 29 April 2015

²⁴ [RoP \[para 26\]](#), 23 April 2015, [RISC05 Care and Social Services Inspectorate Wales](#)

²⁵ [RoP \[para 45\]](#), 13 May 2015

²⁶ [RISC26 Sense Cymru](#), [RISC37 British Red Cross](#)

²⁷ [RISC06 United Kingdom Homecare Association](#)

²⁸ [RISC04 Care Council for Wales](#)

phased and managed transition to support existing providers to become compliant with new arrangements.²⁹

31. The Committee heard from two community adult placement schemes that implementation of any new arrangements must not have a detrimental impact on services which were currently working well.³⁰ This was echoed by RNIB Cymru, which emphasised the need to ensure that effective transitional arrangements sufficiently safeguarded service users during the new system's implementation.³¹

32. Some stakeholders raised concerns about the impact of new regulatory requirements at a time when the sector faced constrained resources and increasing demand. There was concern that these pressures might be a barrier to implementation, through reluctance to engage with the new arrangements.³² The Care Council noted that the Bill sought to mitigate against these barriers through market oversight provisions and a coordinated approach to improvement.³³

33. Some stakeholders highlighted the importance of robust and appropriate education and training for those in the social care sector about the changes brought about by the Bill.³⁴ Children in Wales told the Committee that:

“to be quite honest, there's such a lot of legislation at the moment [...] that we're struggling capacity-wise to keep up with all the different details of it”.³⁵

34. Similarly, Professor Dame June Clark noted that the complexity and length of the Bill and accompanying documentation could make it difficult for individuals or organisations to understand or comply with the new requirements.³⁶

The Committee's view

35. The Committee notes these concerns, and welcomes the provision of a [Statement of Policy Intent](#) which provides details of how the

²⁹ [RISC05 Care and Social Services Inspectorate Wales](#)

³⁰ [RISC15 Ategi Shared Lives](#), [RISC36 Shared Lives Plus](#)

³¹ [RISC28 RNIB Cymru](#)

³² [RISC01 Disability Can Do Organisation](#)

³³ [RISC04 Care Council for Wales](#)

³⁴ [RISC18 Royal College of Nursing](#)

³⁵ [RoP \[para 160\]](#), 21 May 2015

³⁶ [RISC42 Professor Dame June Clark](#)

Minister intends to use the subordinate legislation powers in the Bill. However, there are particular difficulties in understanding the implementation of this Bill, because the social care sector is in a state of transition as a result of the ongoing implementation of the 2014 Act.

36. The Committee recognises that it will not always be possible for legislation to be simple. However, it encourages the Minister to take steps to ensure that accessible and plain-language information about the Bill is available, in order to facilitate the social care sector, and individual service users and carers, to understand the arrangements for regulation and inspection.

Recommendation 3: The Committee recommends that, before the end of the 2015 summer recess, the Minister for Health and Social Services sets out the proposed timetable for the implementation of the Bill.

A rights-based approach

37. Section 40 of the Bill provides that the Welsh Ministers' annual reports must include details of how the exercise of their regulatory functions has been affected by certain duties, including those under section 149 of the [Equality Act 2010](#) (public sector equality duty) and section 1(1) of the [Rights of Children and Young Persons \(Wales\) Measure 2011](#) ("the Measure") (duty to have due regard to the United Nations Convention on the Rights of the Child ("UNCRC")). There is no equivalent duty for service providers in relation to their annual returns under section 8, or local authorities in relation to their annual reports under section 144A of the 2014 Act (to be inserted by section 55 of the Bill).

38. The Measure places a duty on the Welsh Ministers to have due regard to the UNCRC when exercising their functions. However, the Measure itself does not impose a duty on other bodies or organisations to have regard to the Convention. Section 7 of the 2014 Act places a duty on any person exercising functions under the Act to have due regard to the United Nations Principles for Older Persons and the UNCRC.

39. Many witnesses cited the approach taken in the 2014 Act, and suggested that the Bill should be amended to include similar duties.³⁷ Children in Wales stated that the inclusion of such duties would contribute to a “citizen-centred regulatory function” of the 2014 Act, and that an important element of the regulators’ improvement role was to lead and monitor the implementation of the UNCRC, and the associated cultural change.³⁸

40. Barnardo’s Cymru noted that while all those exercising functions under the 2014 Act have an explicit duty to have due regard to the UNCRC, there is currently no scrutiny process to ensure compliance. It suggested that inclusion of due regard to the UNCRC on the face of the Bill could serve to address this, and ensure that those delivering the legislation at an operational level could be held to account.³⁹

41. Some witnesses described the absence of such duties as barriers to the Bill’s implementation and its achievement of its well-being aims.⁴⁰ The Older People’s Commissioner told the Committee that the lack of a rights-based approach resulted in “a piece of legislation that is doing unto people”. She stated that she:

“would want to see all public bodies that have to take forward action, have duties, have to do so with due regard to the UN Principles for Older People. [...] It will fundamentally drive better care, better support and better outcomes through the system. And Welsh Government, of course, welcomed my work on the declaration of rights, took it for its own and published it. I guess that is my challenge to Welsh Government: make real your policy intent of a rights-based approach. This could be rights-based legislation, and I think that would fundamentally strengthen it”.⁴¹

42. The Children’s Commissioner for Wales stated that the inclusion of the duty could help to drive change, and ensure that regard for children and young people went beyond the right to participate and to be heard, also including the right to protection and for the provision of services which meet their needs. She said that inclusion of the UNCRC

³⁷ [RISC26 Sense Cymru](#)

³⁸ [RoP \[para 96\]](#), 21 May 2015

³⁹ [RoP \[paras 95 and 101\]](#), 21 May 2015

⁴⁰ [RoP \[para 93\]](#), 21 May 2015, [RISC28 RNIB Cymru](#)

⁴¹ [RoP \[para 80\]](#), 13 May 2015

on the face of the Bill would help to measure social services' performance in relation to children and young people. In addition, she stated that it would assist the Welsh Ministers in delivering on Article 42 of the UNCRC, which places a duty on governments to promote and raise awareness of the UNCRC.⁴²

43. Hywel Dafydd, the Children's Commissioner's policy officer, noted that the inclusion of the UNCRC on the face of the Bill would strengthen the rights of children and young people to seek recourse through the complaints processes if they felt that their rights had not been respected.⁴³

44. The Minister acknowledged the importance of individuals' rights, but stated that the focus needed to be on "effective rights" not just "declaratory rights". He stated that the Bill would place individuals' rights to achieve their well-being outcomes at the centre of service provision and inspection through requirements on service providers and regulators in relation to the code on well-being outcomes under section 9 of the 2014 Act.

45. The Minister told the Committee that the Welsh Ministers were already subject to duties to have due regard to the UNCRC, and that he was not keen to repeat such duties unnecessarily. He did give a commitment, however, to consider any gaps in the rights-based provisions which the Committee identified.⁴⁴

The Committee's view

46. The Committee acknowledges the Minister's view, but nevertheless agrees with stakeholders that there is a gap. People's rights, and the holding to account of service providers' enabling and respecting of those rights, would be strengthened by placing a due regard duty on the face of the Bill. The Committee agreed with the suggestion by some witnesses that a duty should also be included in relation to the United Nations Convention on the Rights of Disabled People.⁴⁵

Recommendation 4: The Committee recommends that the Minister for Health and Social Services brings forward amendments to

⁴² [RoP \[paras 9-11\]](#), 21 May 2015

⁴³ [RoP \[para 13\]](#), 21 May 2015

⁴⁴ [RoP \[paras 8-10\]](#), 3 June 2015

⁴⁵ [RISC28 RNIB Cymru](#), [RISC34 Hawliau](#)

require all those who exercise functions under the Bill to have due regard to the United Nations Convention on the Rights of the Child, the United Nations Convention on the Rights of Disabled People, and the United Nations Principles for Older Persons.

47. The Minister acknowledged that as currently drafted, section 40 of the Bill did not properly reflect the provisions of section 7 of the 2014 Act, as it excluded reference to the UN Principles for Older Persons. The Committee welcomes the Minister's commitment to bring forward amendments to address this disparity,⁴⁶ but believes that a duty should also be included in relation to the UN Convention on the Rights of Disabled People.

Recommendation 5: The Committee recommends that the Minister for Health and Social Services brings forward amendments to section 40(4) of the Bill to require the service regulator to include in its annual report reference to the impact of the United Nations Convention on the Rights of Disabled People, in addition to the United Nations Convention on the Rights of the Child and the United Nations Principles for Older Persons.

Welsh language provision

48. Section 40 of the Bill requires that the Welsh Ministers' annual reports include details of how the exercise of their regulatory functions has been affected by the duties set out in Part 4 of the [Welsh Language \(Wales\) Measure 2011](#). As for the equalities/human rights duties, there is no equivalent duty for service providers or local authorities in relation to their annual returns and reports.

49. The Welsh Language Commissioner welcomed the [Welsh language impact assessment](#) of the Bill. However, she noted her concern that the assessment appeared to run contrary to the concept of an "Active Offer", as it placed the onus on service users to identify the Welsh-medium services which could benefit them.

50. She also queried whether the absence of clear, sector-specific guidance to providers and regulators about Welsh language service provision under the Bill would have an adverse impact on the quality

⁴⁶ [RoP \[para 21\]](#), 3 June 2015

and availability of such services, and thereby on the achievement of the desired outcomes set out in the impact assessment.⁴⁷

51. The Minister told the Committee he agreed with the Welsh Language Commissioner that social care services should be available through the medium of Welsh for people who needed them. However, he said that rather than include reference to the Welsh language on the face of the Bill, he intended that standards for service provision under section 26, against which service providers would be inspected, would include standards in relation to Welsh language service provision.⁴⁸

⁴⁷ [RISC24 Welsh Language Commissioner](#)

⁴⁸ [RoP \[para 22\]](#), 3 June 2015

4. Engagement with the public

52. Section 39 provides that the Welsh Ministers must make information available to the public about the regulation system. They must also prepare and publish a statement of their policy on involving the public in the exercise of their regulatory functions. Section 70 places a similar duty on SCW.

53. Section 40 requires the Welsh Ministers to prepare and publish an annual report about progress on the exercise of their regulatory functions, including the extent to which they have “had regard to” the policy statement on involving the public. This report must be laid before the Assembly.

Public engagement

54. There was consensus about the importance of public involvement and engagement with the regulation and inspection of social care. In particular, stakeholders highlighted the need for providers and regulators to be available, and to listen to service users, their carers and their families.⁴⁹ The regulators’ duties to engage the public, and make information about their work available were welcomed.⁵⁰

55. However, stakeholders expressed concern about whether the Bill was sufficiently clear about how it would increase and ensure public involvement and engagement.⁵¹ There was also concern about a lack of recognition of carers.⁵² Some expressed concerns about how individuals’ communication and accessibility needs would be taken into account, to ensure that information was transparent and meaningful, and that all service users could be engaged, empowered and involved.⁵³ Potential solutions suggested included the use of advocates.⁵⁴

56. The Social Care and Well-being Alliance Wales and Welsh Reablement Alliance suggested that the Bill might be amended to

⁴⁹ [RoP \[para 188\]](#), 13 May 2015, [RISC01 Disability Can Do Organisation](#), [RISC05 Care and Social Services Inspectorate Wales](#), [RISC31 Hywel Dda University Health Board](#)

⁵⁰ [RISC26 Sense Cymru](#)

⁵¹ [RoP \[para 94\]](#), 29 April 2015

⁵² [RoP \[paras 83 and 97\]](#), 29 April 2015

⁵³ [RoP \[para 130\]](#), 13 May 2015, [RISC22 Civil Service Pensioners’ Alliance](#), [RISC26 Sense Cymru](#), [RISC40 Alzheimer’s Society](#)

⁵⁴ [RISC38 Public Health Wales](#)

include a duty to report on how service users and the public would be engaged and involved in the inspection regime.⁵⁵

57. The CSSIW NAB told the Committee that it was important for the voices of service users to be considered by the regulator, and as such it welcomed its role in influencing and informing the way that CSSIW works.⁵⁶ In oral evidence, Sheila Meadows, a carer member of the Board, told the Committee that the service users' and carers' input was valued. She said that they were able to bring their experiences to bear in positive ways to shape regulation and inspection within a forum which broke down traditional power relationships.⁵⁷ Christopher Dunn of Voices from Care agreed that the CSSIW NAB was a positive start, but said that it was still bedding in.⁵⁸

58. In a letter to the Committee, the Minister stated that he was confident that the Bill clearly established the Welsh Government's expectations for regulators to work closely with citizens, but that he did not think that it was appropriate for the Bill to be prescriptive about the way in which this was achieved, as that could risk constraining rather than encouraging greater citizen involvement.

59. He highlighted the establishment of the CSSIW NAB, and the lay-led approach to regulation by the Care Council, and said that the Bill would further this work, as well as place a new duty on regulators to publish public engagement policies and report annually on implementation. He described this approach as sufficiently flexible to allow the regulators to adapt to respond to public preferences and needs.⁵⁹

The Committee's view

60. The Committee agrees that meaningful citizen engagement requires multiple avenues for service user and carer input reflecting different needs and preferences; formal consultations or meetings might not be appropriate for all. It also agrees that individuals who

⁵⁵ [RISC10 Social Care and Well-being Alliance Wales and Welsh Reablement Alliance](#)

⁵⁶ [RISC21 Care and Social Services Inspectorate Wales National Advisory Board](#)

⁵⁷ [RoP \[paras 209 and 244\]](#), 23 April 2015

⁵⁸ [RoP \[para 238\]](#), 23 April 2015

⁵⁹ [RISC A102 Correspondence from the Minister for Health and Social Services, 19 May 2015](#)

contribute ideas or views need to be given feedback on the impact they have had.⁶⁰

Recommendation 6: The Committee recommends that the Minister for Health and Social Services makes a statement setting out his expectations for how the Care and Social Services Inspectorate Wales and Social Care Wales will engage and involve the public in their regulatory and other functions.

Recommendation 7: The Committee recommends that the Minister for Health and Social Services considers whether additional requirements should be included on the face of the Bill to drive improvements in public involvement and engagement in the regulation and inspection of social care.

Recognition of carers

61. Many stakeholders highlighted concerns about a lack of recognition throughout the Bill of the role of unpaid carers, their well-being and the support services they might receive. For example, stakeholders, including Age Alliance Wales, the Wales Carers Alliance and Carers Trust Wales, reported that there is no provision for inspectors to speak privately with the family or carers of those receiving care.⁶¹ Similarly, sections 39, 55 and 70, which place duties on CSSIW, local authorities, and SCW in relation to public engagement, do not refer to carers.⁶²

The Committee's view

62. The Committee agrees with stakeholders that the Bill needs to be amended to reflect the recognition for unpaid carers in the 2014 Act, and for there to be consistency in the way in which such carers are involved in the regulatory and inspection regime under the Bill.⁶³

Recommendation 8: The Committee recommends that the Minister for Health and Social Services brings forward amendments to ensure that carers are recognised throughout the Bill, for example, in sections 33, 39, 55, and 70.

⁶⁰ [RoP \[para 243\]](#), 23 April 2015

⁶¹ [RISC09 Wales Carers Alliance](#), [RISC32 Age Alliance Wales](#), [RISC 43 Carers Trust Wales](#)

⁶² [RISC09 Wales Carers Alliance](#), [RISC30 Age Cymru](#)

⁶³ [RoP \[para 40\]](#), 29 April 2015, [RISC09 Wales Carers Alliance](#), [RISC30 Age Cymru](#), [RISC40 Alzheimer's Society](#)

Lay inspectors

63. Many stakeholders expressed disappointment about the lack of reference to lay inspectors. They emphasised the importance of including the voice of service user and carer lay inspectors as part of teams with professionals with expertise in the relevant service, stating that additional perspectives could enrich the regulatory process.⁶⁴ The Welsh Reablement Alliance noted that the use of lay inspectors could mitigate against regulation being a “top-down process” by providing a voice for service users and carers.⁶⁵ Family members of older people who suffered abuse and neglect in care homes, representing the Justice for Jasmine Campaign Group, told the Committee that members of the public saw a different picture of services to that seen by social care professionals. They suggested that lay inspectors could play a role in undertaking ad hoc visits to supplement formal inspections.⁶⁶

64. CSSIW outlined its approach to public engagement, including consideration of lay assessor schemes in Wales and across the UK. It told the Committee that in addition to the CSSIW NAB, it intended to establish regional advisory boards to assist in quality assuring its work. It stated that it had concluded that the public could most effectively be engaged in its work by holding it to account and shaping its priorities, rather than routine involvement as lay inspectors, saying:

“We do not believe the routine use of citizens in inspections is cost effective (we do not have the resources to do this) and our feedback from previous schemes, and current schemes elsewhere, is that people who become involved in routine inspections do not remain “lay” for very long. Rather than pursue the routine use of lay inspectors, we believe that we need to maximise engagement and feedback from the natural communities around services when undertaking inspections. We need to encourage people to be our “eyes and ears”, and bring concerns to our attention [...] and we are, and have been,

⁶⁴ [RoP \[para 115\]](#), 13 May 2015, [RISC21 Care and Social Services Inspectorate Wales National Advisory Board](#), [RISC30 Age Cymru](#), [RISC 43 Carers Trust Wales](#)

⁶⁵ [RoP \[para 95\]](#), 29 April 2015

⁶⁶ [RoP \[paras 190 and 194\]](#), 13 May 2015

developing web based and social media solutions with some success”.⁶⁷

65. The Older People’s Commissioner told the Committee that she was concerned that the Bill does not require the use of lay inspectors or set out a role for community health councils.⁶⁸ Referring to the Care Quality Commission’s Experts by Experience programme, she noted that lay inspectors had been proven to offer a different perspective to that of those who worked in service regulation and inspection, which provided insight into service users’ quality of life and experience of care. She acknowledged that there was a cost involved in using lay inspectors, but said:

“Whilst the Explanatory Memorandum cites financial cost as a barrier (despite this being a low cost of £43,000 across all social care services), the cost of not addressing issues before they become significant is far greater”.⁶⁹

66. Age Alliance Wales expressed concern at CSSIW’s view that lay inspectors were not cost effective. It told the Committee that there needed to be investment to support stakeholder engagement, and that this investment should be assessed on evidence-based good practice, not solely on cost. It acknowledged that there would be ongoing costs associated with recruitment and training, but cited the benefits which could be realised by involving lay inspectors through a partnership approach to engage citizens at a voluntary level to complement the work of the inspectorate.⁷⁰

67. The Committee heard from Dan Pitt, a former service user who had taken part in a pilot lay inspector scheme, that he, and the young people he had spoken to during the pilot, had found it to be a very positive experience. He told the Committee that the use of lay inspectors added accountability to the inspection process, and was a valuable way of engaging young people, who might be better able to establish a rapport with a lay assessor because they shared similar experiences of being a young person within the social care system.⁷¹

⁶⁷ [RISC05 Care and Social Services Inspectorate Wales](#)

⁶⁸ [RoP \[para 71\]](#), 13 May 2015

⁶⁹ [RISC A108 Older People’s Commissioner for Wales](#)

⁷⁰ [RISC A105 Age Alliance Wales](#)

⁷¹ [RoP \[paras 202 and 239\]](#), 23 April 2015

68. This was echoed by the Independent Consultation Group to the West Wales Adult Placement Service, which said that it was likely that the carers and service users involved in its services would find it less intimidating to talk to lay inspectors with experience of the care sector than to professional inspectors.⁷²

69. The Children’s Commissioner told the Committee that in a previous role she had been involved in research which involved young people with experience of being peer inspectors. She said that they had brought their own unique perspectives to the role, and that their recent experiences of similar services meant that children and young people had been more comfortable speaking to them.⁷³

70. Christopher Dunn from Voices from Care noted that the use of former service users as lay inspectors was not only beneficial for the inspection process, but also for the service users or carers who were involved, provided that they received appropriate support from CSSIW and other agencies. They could gain valuable skills and confidence, whilst bringing an additional dimension and perspective to the process as a result of their own personal experiences of receiving services.⁷⁴

71. Kate Chamberlain of Healthcare Inspectorate Wales (“HIW”) told the Committee that HIW had piloted the use of lay inspectors as part of its inspection teams. She said that community health councils could play a valuable role in visiting, scrutinising and monitoring services, for example, by assisting in gathering patient views before thematic reviews, rather than taking part in formal inspections. She argued that it made sense for community health councils to be involved in gathering views in relation to both health and social care services, as they became increasingly integrated.⁷⁵

72. Stakeholders acknowledged the risk of ‘professionalising’ the lay person through involvement in the regulation and inspection process. They agreed that the independence of the lay inspector was vital, and noted that there needed to be a wide range of people involved.⁷⁶

73. The Minister acknowledged the effective contribution that lay inspectors could make, but said that he did not intend to put

⁷² [RISC41 Independent Consultation Group to the West Wales Adult Placement Scheme](#)

⁷³ [RoP \[para 43\]](#), 21 May 2015

⁷⁴ [RoP \[paras 204 and 216\]](#), 23 April 2015

⁷⁵ [RoP \[para 231\]](#), 21 May 2015

⁷⁶ [RoP \[paras 218-9\]](#), 23 April 2015

requirements for their use on the face of the Bill as he did not wish to restrict the regulator to a particular approach to public involvement. He also recognised the link which community health councils could provide between health, social care and citizens. He stated that, as drafted, the Bill did not prevent the involvement of community health councils in the inspection process, but said that he was not persuaded that it was appropriate to place a requirement for their involvement on the face of the Bill. He stated that he expected the role of community health councils in regulation and inspection to be part of the discussions which took place around the Green Paper on NHS quality (“the Green Paper”), due for publication before the 2015 summer recess.⁷⁷

The Committee’s view

74. The Committee believes that the use of lay inspectors can enrich the information available about service users’ quality of life and experience of care. This involvement should, like any participation by community health councils, be flexible and proportionate, perhaps following the voluntary partnership approach outlined by Age Alliance Wales. Although there is a cost involved in recruiting, training and supporting lay inspectors, account must also be taken of the impact on service users of receiving poor care, and the valuable perspectives and insights which lay inspectors can bring to bear.

75. The Committee accepts the Minister’s view that he does not wish to restrict the approaches the regulators might take to public engagement by prescribing the use of lay inspectors on the face of the Bill. However, the Committee thinks that CSSIW should be obliged to include the use of lay inspectors as an integral part of its approach to regulation and inspection.

Recommendation 9: The Committee recommends that the Minister for Health and Social Services brings forward amendments to place a requirement on the face of the Bill for the Care and Social Services Inspectorate Wales to include the use of lay inspectors as an integral part of its approach to regulation and inspection.

⁷⁷ [RISC AI02 Correspondence from the Minister for Health and Social Services, 19 May 2015](#)

5. Accountability and transparency

Annual returns

76. Section 8 of the Bill requires providers of regulated services to submit an annual return to the Welsh Ministers at the end of each financial year, which the Welsh Ministers must publish. The form and content of the return will be set out in regulations. It will be an offence:

- under section 45 to make false or misleading statements in an annual return; and
- under section 46 to fail to submit an annual return within a time limit to be prescribed by the Welsh Ministers.

77. Section 144A of the 2014 Act, to be inserted by section 55 of the Bill, requires local authorities to prepare, publish and submit to the Welsh Ministers, annual reports about the exercise of their social services functions. The Welsh Ministers may make regulations prescribing the content and format of the annual reports.

78. Stakeholders welcomed the provisions in the Bill for annual returns and reports as a means of improving transparency and accountability, supporting decision-making at local and national levels, improving public understanding of social care provision, and assisting individuals to make decisions about their care.⁷⁸ There was consensus that annual returns and reports must be citizen-centred, clearly written, and accessible to ensure that service users, including children and young people, were able to access them if they wished to do so.⁷⁹

79. The Children's Commissioner and children's third sector organisations told the Committee that they welcomed children and young people having access to information about the services they were receiving, including quality ratings which may be introduced under the Bill, but warned that the way in which information was provided to them, and the support provided, needed to be carefully considered to avoid creating undue distress or vulnerability,

⁷⁸ [RoP \[para 257\]](#), 23 April 2015, [RISC04 Care Council for Wales](#)

⁷⁹ [RoP \[para 227\]](#), 23 April 2015, [RoP \[para 118\]](#), 21 May 2015, [RISC21 Care and Social Services Inspectorate Wales National Advisory Board](#)

particularly because children and young people may not always have a choice about the services they receive.⁸⁰

80. The UKHCA agreed that the requirement for providers to make annual returns to the Welsh Ministers was reasonable. However, it noted that there was potential for the requirement to complete and coordinate such returns to place onerous demands on providers. It emphasised the need for the Welsh Ministers, in the prescription of the format and content of the returns, to request only information which was essential or beneficial, to ensure that the cost and efforts required for their completion are proportionate.⁸¹

81. Some stakeholders suggested particular elements for inclusion in service providers' annual reports, including:

- action plans demonstrating how service providers were working to improve where improvement was required;⁸²
- details of how service users, carers and other citizens had been involved in and impacted on the service, and evidence of how service users and carers had been involved in the design of their own individual care and support plans, as evidence of the way in which the achievement meaningful individual outcomes was supported;⁸³
- reporting against the delivery of service providers' duties under the *Equality Act 2010*, including reasonable adjustments made for service users with sensory loss.⁸⁴

82. Stakeholders welcomed the requirement on local authorities to produce annual reports which include a focus on service users' outcomes.⁸⁵ In written evidence, the WLGA and ADSS Cymru stated that to avoid creating undue burden, the annual reporting requirements under the Bill should build on and complement directors of social services' existing annual reporting requirements.⁸⁶

⁸⁰ [RoP \[paras 45 and 113-5\]](#), 21 May 2015

⁸¹ [RISC06 United Kingdom Homecare Association](#)

⁸² [RoP \[para 222\]](#), 23 April 2015

⁸³ [RISC16 Wales Alliance for Mental Health](#)

⁸⁴ [RISC26 Sense Cymru](#), [RISC28 RNIB Cymru](#)

⁸⁵ [RISC06 United Kingdom Homecare Association](#), [RISC38 Public Health Wales](#)

⁸⁶ [RISC08 Welsh Local Government Association and Association of Directors of Social Services Cymru](#)

83. The Wales Carers Alliance told the Committee that the Bill does not require local authorities to explain how they have involved carers when exercising their social services functions, and suggested that section 144A of the 2014 Act, to be inserted by section 55 of the Bill, should be amended to include this.⁸⁷

84. CSSIW welcomed the requirement in the Bill for local authorities' annual reports, and CSSIW's reviews of local authority social services functions, to be laid before the Assembly. It said that this would improve transparency, and both local and national scrutiny of local authority performance. However, it stated that the requirement for local authorities to report annually against locally and nationally identified objectives must not detract from their focus on delivering good care and outcomes for people. To assist in this, it suggested that the requirements for the format and content of the reports under this Bill, and other legislation, should be flexible and proportionate.⁸⁸

The Committee's view

85. The Committee welcomes the provisions in the Bill requiring service providers to prepare and submit annual returns, and for local authorities to prepare and publish annual reports. However, it notes the concerns expressed by providers and by local authorities about the potential for the requirement to be onerous or burdensome. It is important that in developing the required format and content of the returns and reports, consideration is given to building on existing duties, and on ensuring that the format is well-designed. Consideration must also be given to ensuring that the returns and reports are written and presented accessibly and clearly to ensure that service users, carers and other members of the public are able to access and understand them. Achieving this will require consultation with social care users and carers, social care providers, and local authorities.

86. The Committee agrees that providers' annual returns should include details of the actions that the provider is taking to make improvements where improvements are required, and the involvement and engagement of service users and carers, and that providers should be required to report against their duties under the *Equality Act 2010*.

⁸⁷ [RISC09 Wales Carers Alliance](#)

⁸⁸ [RISC05 Care and Social Services Inspectorate Wales](#)

Recommendation 10: The Committee recommends that the Minister for Health and Social Services consults stakeholders on the format and content of the annual returns and annual reports required under section 8 of the Bill, and section 144A of the Social Services and Well-being Wales Act 2014 (to be inserted by section 55 of the Bill), before making regulations in relation to those sections.

“Responsible individual”

87. The Bill seeks to increase corporate accountability through the establishment of the role of the “responsible individual”. This individual will be required to be a senior representative of the service provider. Welsh Ministers will have regulation-making powers to place duties on responsible individuals.

88. The Committee heard from stakeholders, including the Justice for Jasmine Campaign Group, about the difficulties which could arise when trying to identify who was accountable when poor care was received. The Campaign Group told the Committee that the provisions could be helpful to ensure that families and service users had clarity about who was accountable, provided that the individual was competent and professional.⁸⁹

89. Health boards and local authorities told the Committee that there were already clear lines of accountability in statutory bodies, and welcomed the extension of clear accountability into the independent sector, saying that it would assist their commissioning.⁹⁰ There was unanimous support among stakeholders for the role of responsible individual, to be held by individuals sufficiently senior to have the authority to effect change in an organisation.⁹¹ However, some stakeholders were concerned about whether responsible individuals would have the capacity to oversee multiple care services,⁹² and whether there could be a dilution of accountability at a setting-level.⁹³

90. CSSIW noted that it was sometimes challenging to identify clear lines of accountability in relation to service providers, and stated that

⁸⁹ [RoP \[paras 181 and 185\]](#), 13 May 2015

⁹⁰ [RoP \[para 68\]](#), 23 April 2015, [RoP \[para 278\]](#), 21 May 2015

⁹¹ [RoP \[para 185\]](#), 29 April 2015, [RISC18 Royal College of Nursing](#)

⁹² [RISC21 Care and Social Services Inspectorate Wales National Advisory Board](#)

⁹³ [RoP \[para 183\]](#), 29 April 2015

the identification of a responsible individual would put “accountability directly where it should be”.⁹⁴ The Care Council agreed, and told the Committee that the identification of people at “a more strategic level” would reduce inappropriate responsibilities being placed on social care managers.⁹⁵

91. The Committee heard some concerns about whether there were sufficient individuals who would have the competence, capacity and motivation to undertake a clear statutory role with duties and accountabilities defined in law, and about the time that might be required for the appropriate workforce capacity to develop.⁹⁶ The CSSIW NAB noted that it was concerned that frequent changes in responsible individuals could undermine the continuity and consistency of care services.⁹⁷

92. The Minister told the Committee that designation of a senior individual with significant legal responsibilities as a responsible individual would:

“properly distribute accountability amongst those people who, in the end, are making money out of the services that they provide to very vulnerable people”.⁹⁸

93. Concerns were also raised about whether provisions about the responsible individual, as drafted, focus too much on the statutory and independent sector. Third sector bodies argued that the Bill takes insufficient account of their structures and arrangements, particularly for organisations which operate on a UK-wide basis.⁹⁹ Barnardo’s Cymru told the Committee that it supported the principle of a responsible individual, but was unclear about how the provisions would operate in practice in relation to voluntary organisations which might not have the corporate positions described in section 19(2) of the Bill. In its case, it stated that because of its corporate structure and UK-wide registration with the Charity Commission, applying the Bill as drafted might require the responsible individual to be a member of its UK Corporate Management Board, rather than a senior manager in

⁹⁴ [RoP \[para 110\]](#), 23 April 2015

⁹⁵ [RoP \[para 260\]](#), 23 April 2015

⁹⁶ [RoP \[para 69\]](#), 23 April 2015, [RISC05 Care and Social Services Inspectorate Wales](#)

⁹⁷ [RISC21 Care and Social Services Inspectorate Wales National Advisory Board](#)

⁹⁸ [RoP \[para 119\]](#), 25 March 2015

⁹⁹ [RoP \[paras 143-4\]](#), 21 May 2015

Wales.¹⁰⁰ The Minister acknowledged these concerns and stated that his officials were having discussions with the third sector.¹⁰¹

The Committee's view

94. The Committee welcomes the establishment of the role of responsible individual to provide clarity about where accountability lies within a regulated service. Provided that the individual is sufficiently senior to bring about the cultural changes which might be required, these provisions should strengthen accountability at a corporate level.

95. The Committee would, however, welcome clarification from the Minister about how the provisions will relate to UK-wide or multi-national organisations. There will be a need to balance ensuring that the individual is senior enough within the organisation to effect change, but also sufficiently embedded within, or aware of, the Welsh context to ensure that there is adequate oversight of individual services and settings.

Recommendation 11: The Committee recommends that the Minister for Health and Social Services outlines, before the end of the 2015 summer recess, how the provisions relating to responsible individuals will apply to UK-wide or multi-national organisations which provide social care services within Wales.

Fitness to own

96. The Older People's Commissioner welcomed the provisions in relation to responsible individuals, which she said would strengthen corporate accountability. However, she questioned the extent to which it could be translated into practice, and whether cultural change would be achieved if a responsible individual for a failing service were replaced by another member of the existing board. She also told the Committee that she had concerns that unless the Bill made provision in relation to fitness to own a regulated service, with an appropriate suitability test which went beyond financial viability, there was a risk that unscrupulous owners might put undue pressure on the responsible individual.¹⁰² She said that the Bill should prevent individuals who had previously owned services that "have failed or are

¹⁰⁰ [RISC29 Barnardo's Cymru](#)

¹⁰¹ [RoP \[para 141\]](#), 3 June 2015

¹⁰² [RISC45 Older People's Commissioner for Wales](#)

failing due to poor care or financial instability [...] from entering the social care sector in Wales”.¹⁰³

97. When asked about a fitness to own test, Kelvyn Morris of the Justice for Jasmine Campaign Group said that he agreed that while most owners set up regulated services in order to provide good care, some owners were profit-driven. However, he acknowledged the difficulty of identifying unscrupulous owners before a problem arose, and noted the importance of regulatory inspections, whistle-blowing and feedback mechanisms to ensure that problems came to light.¹⁰⁴

98. The Minister told the Committee that he did not think that the Bill should have an impact on individuals’ rights to own property. He stated that in his view it was more appropriate to focus on fitness to provide care services. He outlined the provisions for the registration of service providers, and noted that the requirements for registration would go beyond financial viability, to take into account whether providers were fit and proper.¹⁰⁵

The Committee’s view

99. The Committee does not have sufficient evidence to identify whether there are widespread concerns about the owners of regulated services. However, it supports the principle that it should be possible to ensure that there are appropriate checks to ensure that unsuitable individuals are not able to provide social care services in Wales. The Committee welcomes the Minister’s evidence that requirements for the registration of service providers will go beyond financial viability. It believes such requirements must include a range of criteria to ensure that those providing regulated services are fit and proper to do so.

Recommendation 12: The Committee recommends that the Minister for Health and Social Services reviews the provisions in the Bill to ensure that there are sufficient protections to prevent unsuitable individuals from providing social care services in Wales.

¹⁰³ [RISC AI08 Older People’s Commissioner for Wales](#)

¹⁰⁴ [RoP \[para 184\]](#), 13 May 2015

¹⁰⁵ [RoP \[paras 126-8\]](#), 3 June 2015

Whistle-blowing

100. In its written evidence, the Justice for Jasmine Campaign Group noted that in its experience, social care workers had been unwilling to report the poor care to the regulators because they were afraid of losing their jobs.¹⁰⁶

101. Stakeholders told the Committee that they would welcome inclusion in the Bill of provisions relating to whistle-blowing, as part of broader changes to the ethos and culture within the social care sector. The Committee heard that there needed to be a culture in which everyone, including social care staff, other professionals, service users, and their families, felt able to speak up about poor practice, and in which regulators, providers and commissioners acted on those concerns.¹⁰⁷

102. The Children's Commissioner told the Committee that she thought that the Bill could be used to establish an expectation that social care workers must report abuse or neglect, for example by requiring regulators to ask as part of the inspection process about how whistle-blowing was enabled and supported in places they inspected.¹⁰⁸ ADSS Cymru agreed that there was scope to strengthen whistle-blowing arrangements through the Bill, and ensure that everyone working in social care felt able to make representations if they had concerns about the quality of care.¹⁰⁹

103. The Bill does not contain any specific provisions in relation to whistle-blowing. During scrutiny of the Social Services and Well-being (Wales) Bill, William Graham AM tabled amendments on whistle-blowing. He withdrew the amendments after the then Deputy Minister for Social Services stated:

“The Social Services and Well-being (Wales) Bill is not the appropriate vehicle to legislate on this matter. I have already committed to considering this issue in the context of the forthcoming legislation about regulation and inspection.

¹⁰⁶ [RISC49 Justice for Jasmine Campaign Group](#)

¹⁰⁷ [RoP \[para 70\]](#), 23 April 2015, [RoP \[paras 61, 184-5 and 234\]](#), 29 April 2015, [RoP \[paras 132 and 198-9\]](#), 13 May 2015, [RoP \[para 165\]](#), 21 May 2015

¹⁰⁸ [RoP \[para 68\]](#), 21 May 2015

¹⁰⁹ [RoP \[paras 70-2\]](#), 23 April 2015

I am, however, prepared to go further today, and to make a firm commitment that I will include whistle-blowing within the new legislative framework for regulation and inspection; if at all possible, on the face of the Bill, but if not, then through regulations or statutory guidance”.¹¹⁰

104. The whistle-blowing provisions in the [Employment Rights Act 1996](#) (as amended) (“the 1996 Act”) apply to a broad range of workers in England and Wales, including employees, contractors, agency workers, homeworkers and certain independently contracted NHS professionals such as doctors and dentists. The 1996 Act will therefore apply to workers performing functions under the Bill. If such workers make a protected disclosure (i.e. if they blow the whistle) they can rely on the protections set out in the 1996 Act. The intention of these provisions is to protect whistle-blowers from reprisal, and therefore to encourage workers to speak out when they are aware of wrongdoing in the workplace or dangers such as risks to health and safety.

105. In a letter to the Committee, the Minister stated that he intended to use the regulation-making power in section 26 to:

“place a duty on service providers to ensure that they have adequate policies and procedures in place with regard to whistle-blowing. Furthermore, the guidance which will be issued pursuant to section 28 of the Bill would then set out more detail in terms of what is expected from those policies and procedures”.¹¹¹

106. The Minister told the Committee that there was disagreement between the UK Government and Welsh Government about whether the Assembly had competence to legislate in relation to whistle-blowing.¹¹² He stated that the Welsh Government’s approach to whistle-blowing would be included in policy discussions on the Bill between Welsh Government and UK Government officials. Noting that competence in relation to any provisions relating to whistle-blowing would need to be assessed on the basis of the details of the specific provision, the

¹¹⁰ National Assembly for Wales, Plenary, [RoP](#), 11 February 2014

¹¹¹ [RISC A112 Correspondence from the Minister for Health and Social Services, 10 June 2015](#)

¹¹² [RoP \[para 95\]](#), 3 June 2015

Minister committed to sharing the Welsh Government's legal advice in relation to any specific legislative proposals that the Committee might recommend for the inclusion of whistle-blowing in the Bill.¹¹³

The Committee's view

107. The Committee believes that it is vital that individuals who wish to blow the whistle on poor practice which could put service users at risk are properly protected. It welcomes the Minister's stated intention to include requirements for providers to have policies to facilitate whistle-blowing and concern-raising.

108. The Committee notes the Minister's view that specific provisions in relation to the protection of whistle-blowers could give rise to questions about legislative competence, depending on the specific provisions proposed.

109. Legal advice received by the Committee indicates that provided that the purpose and effect of a whistle-blowing regime was sufficiently closely-related to serving social welfare or facilitating the protection and care of children or vulnerable persons, provisions relating to whistle-blowing could be within the Assembly's competence.

Recommendation 13: The Committee recommends that the Minister for Health and Social Services brings forward amendments to require that regulations under section 26 and guidance under section 28 include requirements for service providers to have appropriate whistle-blowing policies and procedures in place.

Right of appeal for service users

110. Part 10 of the 2014 Act provides that Welsh Ministers may make regulations about the consideration of complaints by individuals in relation to their care and/or support. There is no provision in the Act for service users or their carers to appeal against decisions made in relation to their assessment, care or support.

¹¹³ [*RISC All2 Correspondence from the Minister for Health and Social Services, 10 June 2015*](#)

111. The Committee heard some evidence from third sector witnesses that the lack of a right to appeal against decisions taken in relation to their assessment, care and support could be seen as inequitable in relation to social care workers' right to appeal against decisions taken about them in respect of their fitness to practise.¹¹⁴

112. In a letter to the Committee, the Minister stated that he did not consider that it would be appropriate for provisions in relation to appeals to be included in the Bill, as the issue was more properly a matter for the 2014 Act. He explained that the exclusion of an appeals process from the 2014 Act had been intentional, and outlined the provisions in the 2014 Act for assessment, re-assessment and review of an individual's eligibility on their request, and the recourse available through the relevant local authority's complaints procedure.¹¹⁵

The Committee's view

113. The Committee notes the concerns raised by some stakeholders in relation to the absence of an appeals process in the 2014 Act for people who are assessed, and found to be ineligible for services. Similar concerns have been raised in the context of the Committee's work on the [Care and Support \(Eligibility\) \(Wales\) Regulations 2015](#).

114. The Committee believes that there should be adequate provision for people who have been found ineligible for services to access redress. It notes the evidence provided by the Minister in relation to the provisions within the 2014 Act to give individuals the right to reassessment and review of their eligibility; it is important that these mechanisms are robust, and allow for appropriate redress.

Recommendation 14: The Committee recommends that the Minister for Health and Social Services keeps the arrangements set out in sections 19, 21, and 24 of the Social Services and Well-being (Wales) Act 2014 under review to ensure that the mechanisms for reassessment and review of decisions in relation to individuals' eligibility are robust and provide appropriate redress.

¹¹⁴ [RoP \[para 70\]](#), 29 April 2015

¹¹⁵ [RISC A112 Correspondence from the Minister for Health and Social Services, 10 June 2015](#)

6. Regulated services

115. Part 1 of the Bill relates to the regulation of social care services. It defines what is a ‘regulated service’ for the purposes of the Bill, and provides that the Welsh Ministers may, by regulation, specify additional services which are, or are not, to be regulated services.

116. Chapter 2 of Part 1 relates specifically to service registration, including the requirement to register, processes associated with the application, variation and cancellation of registration, and appeals. Under the Bill, service providers will no longer have to register separately for each service and at each location where the service is provided.

Extension of services required to be registered

117. The Minister has indicated that he does not intend to extend the requirement to register to any additional services on the face of the Bill, but that he intends that early consideration is given to extending regulation to advocacy, extra care and day care services using the regulation making power in section 2(1)(h). Such regulations are subject to the affirmative procedure, and a requirement under section 2(4) to consult such persons as the Welsh Ministers think appropriate.

118. Stakeholders welcomed the regulation-making power for the Welsh Ministers to extend the list of those services required to be registered with CSSIW, and the commitment made by the Minister to periodically review whether services should be added to the list.¹¹⁶ There was consensus that this would assist in ensuring that the regulatory regime was sufficiently flexible to respond to changes to the social care sector emerging from the 2014 Act.¹¹⁷

119. However, Sense Cymru emphasised the need to recognise the impact that a requirement to register could have on service providers. It suggested that regulations made under section 2(1)(h) should therefore be subject to a super-affirmative procedure.¹¹⁸

¹¹⁶ [RoP \[para 267\]](#), 13 May 2015

¹¹⁷ [RoP \[para 15\]](#), 23 April 2015, [RISC26 Sense Cymru](#)

¹¹⁸ [RISC26 Sense Cymru](#)

120. Witnesses thought that registration should be extended to a number of services, including the following:

- Children’s advocacy services

This was because these services are well-established, and because of the important role played by advocates.¹¹⁹ In addition the quality of these services is variable, and the applicable national standards are voluntary and rarely enforced.¹²⁰

- All advocacy services

Despite widespread support for this there were concerns about how to define regulation in this context, particularly as the impact of the 2014 Act was not yet clear.¹²¹ Furthermore, it was claimed that there were risks around damaging service users’ perceptions and undermining the independence of such services.¹²²

- Residential special schools

Children’s care homes which provide in-house education are required to register with both CSSIW and Estyn. However, boarding schools which accommodate or arrange accommodation for any child for more than 295 days a year are subject to different arrangements, even though children and young people may receive personal care in such schools. This was highlighted as an anomaly which could be addressed under the Bill.¹²³

- Housing support services

There was some concern about a lack of clarity,¹²⁴ and support for broader, service-based registration which would enable settings currently registered only for domiciliary care to be identified and inspected for the wider range of services they provided.¹²⁵

- Services procured through Direct Payments or the Independent Living Fund

The use of Direct Payments and the Independent Living Fund is

¹¹⁹ [RoP \[paras 104 and 106\]](#), 21 May 2015

¹²⁰ [RoP \[paras 21-4\]](#), 21 May 2015

¹²¹ [RoP \[para 20\]](#), 23 April 2015

¹²² [RISC21 Care and Social Services Inspectorate Wales National Advisory Board](#)

¹²³ [RoP \[para 55\]](#), 21 May 2015, [RISC51 Children’s Commissioner for Wales](#)

¹²⁴ [RoP \[para 16\]](#), 29 April 2015

¹²⁵ [RISC05 Care and Social Services Inspectorate Wales](#)

expected to increase under the 2014 Act.¹²⁶ Stakeholders were concerned that there is arguably higher risk for such service users than those whose care is purchased by public authorities, and is currently unregulated.¹²⁷

121. The Minister told the Committee that he intended that those services required to register under current arrangements would continue to be required to register under the Bill. He noted that the Welsh Ministers would have powers to extend registration by regulations, but that there was a need to be proportionate and take account of the financial implications.¹²⁸

122. He acknowledged that children's advocacy services were well-established and could perhaps be included on the face of the Bill as regulated services. He stated, however, that his intention was that the full range of advocacy services should be regulated at the same time, and confirmed that he intended advocacy services to be included in the first tranche of regulations made under the Bill in 2016, following discussions with the sector. He indicated that he would also consider whether extra care and day care services should be required to register.¹²⁹

123. Kate Johnson, a Welsh Government lawyer, stated that CSSIW was considering the issues raised by the Children's Commissioner in relation to the regulation of social care services provided by residential special schools. She stated that if the definition in the Bill required clarification, the Minister would bring forward amendments to this effect.¹³⁰

The Committee's view

124. The Committee is concerned about the anomaly raised in relation to residential special schools, and welcomes the Minister's commitment to clarify the definition if required.

125. The Committee notes the Minister's intentions to consider whether registration should be extended through regulations. It welcomes his stated intention to extend registration to the full range

¹²⁶ [RISC26 Sense Cymru](#)

¹²⁷ [RoP \[paras 11 and 18\]](#), 29 April 2015, [RISC47 British Association of Social Workers Cymru](#)

¹²⁸ [RoP \[para 17\]](#), 25 March 2015

¹²⁹ [RoP \[para 17\]](#), 25 March 2015, [RoP \[para 143\]](#), 3 June 2015

¹³⁰ [RoP \[para 145\]](#), 3 June 2015

of advocacy services through regulations, and accepts that this is a result of the developing maturity of some advocacy services.

126. However, the Committee also acknowledges the strong evidence put forward by stakeholders for the regulation of advocacy, particularly children's advocacy services. Advocates provide a vital service to vulnerable service users, and it is important that such service users can have confidence that the services provided are of the right quality. The Committee therefore believes that advocacy services should be included on the face of the Bill, rather than in regulations.

Recommendation 15: The Committee recommends that the Minister for Health and Social Services brings forward amendments to include a requirement on the face of the Bill for advocacy services to register with the Care and Social Services Inspectorate Wales.

Regulation of emerging models of service delivery

127. There was a general acknowledgement that one of the consequences of the 2014 Act was the emergence of preventative services and new models of service delivery. Stakeholders agreed that the Bill needed to be sufficiently flexible to ensure that there was appropriate regulation of such services, but there were mixed views about the extent to which it was.

128. Representatives of ADSS Cymru differed in their views on this. Sue Evans stated that the Bill adequately recognised the potential for new services to emerge. However, Phil Evans noted that there were already some issues arising in relation to services which were being transformed by the 2014 Act, such as extra care and day care services. He said that he was concerned that the Bill might not yet be fit for purpose.¹³¹

129. Some stakeholders expressed concern that the possibility of being regulated under the Bill might be a barrier to the emergence of innovative or user-led services and that regulation might not be appropriate for some services, such as peer networks or support groups.¹³² Macmillan Wales stated that the regulatory framework must

¹³¹ [RoP \[paras 13-4\]](#), 23 April 2015

¹³² [RoP \[para 27\]](#), 29 April 2015, [RISC26 Sense Cymru](#)

safeguard vulnerable service users, but also ensure that those developing innovative service models had sufficient autonomy.¹³³

130. The Minister reiterated that the Bill was a companion to the 2014 Act, which required local authorities to promote new models of service delivery such as cooperatives and social enterprises. He stated that the 2014 Act would not be fully implemented until April 2016, and that until it was fully in force it would not be clear what the social care landscape would look like. He told the Committee that the Bill would enable the regulatory regime to respond to the changing social care sector through the addition of new service models to the list of regulated services in the future if appropriate.¹³⁴

The Committee's view

131. The Committee shares stakeholders' concerns about whether the Bill will be able to adequately accommodate emerging models of service delivery and strike the right balance between encouraging service development and public protection.

Recommendation 16: The Committee recommends that the Minister for Health and Social Services makes a statement setting out how he intends to monitor and assess whether the requirement to register with the Care and Social Services Inspectorate Wales should be extended to preventative services, and innovative service delivery models emerging under the Social Services and Well-being (Wales) Act 2014.

Service-based model of registration

132. Currently services are regulated on an establishment basis. The Bill will establish a service-based model of registration. Providers of multiple services will be able to submit a single application for the registration of multiple services. Providers will also be able to apply to vary or cancel their registration.

133. There was general consensus among stakeholders, including service providers, professional bodies, and regulators, that a move towards a service-based model of registration for regulated services was a positive step which would simplify and streamline

¹³³ [RISC39 Macmillan Wales](#)

¹³⁴ [RoP \[para 19\]](#), 25 March 2015

arrangements,¹³⁵ and provide flexibility for local authorities and providers in relation to new models of service delivery.¹³⁶ However, some stakeholders cautioned that the new approach must not detract from a sense of local responsibility for services, site inspections or talking to individual service users.¹³⁷

134. CSSIW stated that the new model would enable:

- it to work with providers at provider or service level to undertake enforcement or pursue solutions, not just at the levels of individual settings;
- improved flexibility and proportionality in relation to the registration of new services or settings with existing providers; and
- it to hold the responsible individuals to account.¹³⁸

135. Phil Evans of ADSS Cymru told the Committee that service-based registration would increase accountability and efficiency, and enable local authorities to apply intelligence about one setting or service to others provided by the same provider. However, he noted that the structure of the social care market in Wales – which is largely comprised of small providers operating across only one or two settings – would limit the transformational impact of the service-based model.¹³⁹

136. Some stakeholders had concerns about the impact a service-based model of registration for social care might have on the integration with health, as health services would continue to be regulated on an establishment basis.¹⁴⁰ However, Lynda Williams of Cwm Taf University Health Board (“Cwm Taf UHB”) welcomed the new approach, saying that it would assist health boards and local authorities in making their commissioning decisions.¹⁴¹ Kate Chamberlain of HIW told the Committee that she did not foresee significant difficulties for integrated health and social care inspections

¹³⁵ [RoP \[para 139\]](#), 29 April 2015, [RISC18 Royal College of Nursing](#)

¹³⁶ [RoP \[paras 8 and 147\]](#), 23 April 2015

¹³⁷ [RoP \[para 140\]](#), 29 April 2015, [RISC08 Welsh Local Government Association and Association of Directors of Social Services Cymru](#), [RISC21 Care and Social Services Inspectorate Wales National Advisory Board](#)

¹³⁸ [RISC05 Care and Social Services Inspectorate Wales](#)

¹³⁹ [RoP \[paras 6-7\]](#), 23 April 2015

¹⁴⁰ [RoP \[para 225\]](#), 21 May 2015

¹⁴¹ [RoP \[para 255\]](#), 21 May 2015

of publicly-provided services, but that the inspection of integrated care services provided by independent healthcare providers might be more complex. She suggested that the alignment of the approaches taken in health and social care might need to be addressed in the forthcoming Green Paper.¹⁴²

137. The Committee heard some concerns from stakeholders about the impact of transition from the current registration model to the new service-based model. Citing financial and other transitional implications, some stakeholders, including CSSIW and the WLGA, questioned whether some providers might choose to cease trading rather than register under the new arrangements.¹⁴³ David Francis of CSSIW told the Committee that this might particularly be the case for providers which structured themselves for tax purposes rather than along service lines. He suggested that such businesses might be unwilling to enter into the new model of registration.¹⁴⁴

The Committee's view

138. The Committee welcomes the move to a service-based model of regulation, which it believes will help avoid duplication and increase flexibility for service providers and the regulator. It will be important however that the introduction of the new approach to registration does not detract from the focus on individual settings. The impact of the new model of service-based regulation on the regulation of integrated health and social care services must be carefully monitored, and taken into account in the development of any future legislative proposals in relation to the regulation of health services.

139. The Committee believes that robust transitional arrangements are needed to address these concerns, and respond to any gaps in service provision which may emerge if service providers choose to cease trading rather than register with CSSIW under the new arrangements.

Recommendation 17: The Committee recommends that the Minister for Health and Social Services outlines the arrangements and support that will be in place for social care providers during the transition to the service-based model of registration under the Bill.

¹⁴² [RoP \[paras 191-2\]](#), 21 May 2015

¹⁴³ [RoP \[paras 9 and 113\]](#), 23 April 2015, [RISC38 Public Health Wales](#)

¹⁴⁴ [RoP \[para 114\]](#), 23 April 2015

Culture of regulation in the social care sector

140. Several stakeholders referred to the importance of the culture of regulation. CSSIW told the Committee that there was a need for all parts of the social care sector, including regulators, providers, and local authority and health board commissioners, to share accountability and work together systematically.¹⁴⁵ In written evidence, the WLGA and ADSS Cymru described the need for cultural change within organisations as potentially one of the biggest barriers to the implementation of the Bill.¹⁴⁶

141. Rhian Huws Williams of the Care Council stated that the Minister’s intention was that the Bill should help to change the ethos underpinning the regulation of social care services. She said that the intention was to move to a model of:

“regulation for improvement, for success, as opposed to regulation that defines and focuses on failure – becomes an important component of that to create that culture of transparency and openness from the point of determining the services that are required, and the move to working together across boundaries with a co-production model right through to evidencing whether something continues to be viable”.¹⁴⁷

142. Phil Evans of ADSS Cymru told the Committee cultural change was underway, but that it would take time for there to be behavioural and culture change among service providers, commissioners, and service and workforce regulators.¹⁴⁸

143. The Minister said that he believed that service providers would characterise their relationship with CSSIW as “gritty” rather than “cosy”. He acknowledged that there was a risk in a relatively small sector that:

“relationships that ought to be constructive and challenging can shade into being too cosy, and we have to make sure that that doesn’t happen”.¹⁴⁹

¹⁴⁵ [RoP \[para 109\]](#), 23 April 2015

¹⁴⁶ [RISC08 Welsh Local Government Association and Association of Directors of Social Services Cymru](#)

¹⁴⁷ [RoP \[para 269\]](#), 23 April 2015

¹⁴⁸ [RoP \[para 49\]](#), 23 April 2015

¹⁴⁹ [RoP \[para 81\]](#), 3 June 2015

144. He stated that he did not want a situation in which the regulator was perceived by providers as an enemy; rather that he wanted to see a focus on improvement, not on the exposure of failure. The Minister also indicated that he thought that the “step change” in the involvement of service users and lay people in the social care and inspection regime would help to “keep the system honest” while enabling the regulator to support improvement.¹⁵⁰

The Committee’s view

145. The Committee believes that there needs to be fundamental change to the culture and ethos of regulation and inspection. While it recognises the need for stakeholders within the sector to work together to drive improvement, it is clear that for regulation to function effectively there must also be sufficiently robust challenge by regulators of service providers. There is a risk that this robust challenge could be compromised if there is too close a relationship between regulators and the sector.

146. The Committee is not persuaded by the Minister’s view that the involvement of service users and lay people will, alone, bring the required “grit” to the regulation and inspection regime. Public engagement and involvement is vital, but it should not be seen as a substitute for robust regulation and challenge by the regulator.

Recommendation 18: The Committee recommends that the Minister for Health and Social Services outlines how the Bill will deliver a culture of regulation and inspection in which the supportive and improvement strands of Care and Social Services Inspectorate Wales’ work do not compromise the delivery of robust and effective regulatory activity and enforcement.

¹⁵⁰ [RoP \[paras 81-2\]](#), 3 June 2015

7. Definition of care

Definition of care

147. Section 3 of the Bill defines ‘care’ and ‘support’ for the purposes of the Bill. The Bill states that care relates to the day-to-day physical tasks and needs of the person cared for; and the mental processes related to those tasks and needs. It defines ‘support’ to mean counselling, advice or any other help provided as part of a prepared plan.

148. Many stakeholders were concerned about the extent to which the definition of care in the Bill was aligned with the ethos and approach of the 2014 Act, particularly in relation to engaging service users, and recognising their cognitive and emotional well-being, their needs, and their right to voice and control.¹⁵¹ Some drew attention to the ambiguity about whose mental processes were being referred to in section 3(1)(b) – the service user’s or the social care worker’s.¹⁵² Stakeholders were concerned that the definition was restrictive, narrowly drawn, and old-fashioned in focus,¹⁵³ and told the Committee that the broader well-being approach in the 2014 Act would be more likely to incentivise high quality care.¹⁵⁴

149. Age Alliance Wales told the Committee that it was concerned that an overly task-based approach to defining care could lead to overly task-based approaches to commissioning services which would fail to take sufficient account of the achievement and support of personal outcomes.¹⁵⁵ In common with other stakeholders, the Children’s Commissioner believed that the focus on physical tasks appears to disproportionately prioritise physical needs rather than emotional well-being.¹⁵⁶

150. Speaking for service providers, the UKHCA told the Committee that the definition in the Bill was disappointing, and that its preference

¹⁵¹ [RoP \[para 31\]](#), 29 April 2015, [RoP \[para 37\]](#), 13 May 2015, [RISC03 College of Occupational Therapists](#)

¹⁵² [RoP \[para 32\]](#), 29 April 2015

¹⁵³ [RoP \[paras 36-8\]](#), 29 April 2015

¹⁵⁴ [RoP \[para 65\]](#), 21 May 2015, [RISC40 Alzheimer’s Society](#)

¹⁵⁵ [RoP \[para 122\]](#), 13 May 2015

¹⁵⁶ [RISC51 Children’s Commissioner for Wales](#)

would be a more holistic definition of care which included social engagement services and assistance with health-related tasks.¹⁵⁷

151. However, CSSIW told the Committee that the definition in the Bill as drafted should be seen as a starting point for the quality standards and codes which would be made under the Bill and provide markers for the quality of care.¹⁵⁸

152. The Welsh Government's Statement of Policy Intent notes that the purpose of the definition is to set the parameters around which services may be the subject of regulation in the future. In evidence to the Committee, the Minister acknowledged the concerns raised by those who had given evidence, but argued that the concerns resulted from a misunderstanding of the Bill's intentions. He told the Committee that the definition of care in section 3 should be considered in the context of section 26.

153. Section 26 provides that the Welsh Ministers may, by regulation, impose requirements on service providers in relation to regulated services. Subsection (3) provides that such regulations may include provisions specifying the standard of care and support that must be provided. Subsection (4) provides that when making regulations under subsection (3), the Welsh Ministers must have regard to the quality standards included in any code issued under section 9 of the 2014 Act (codes to help achieve well-being outcomes).

154. The Minister told the Committee that in this way "the Bill does put a whole new emphasis on well-being and on improvement". He stated that:

"the standards that will be set through the Regulation and Inspection of Social Care (Wales) Bill will be standards that have to take account of not just the physical but the mental health and the well-being of users of the services. The standards will reflect that and the inspection regime will report against it".¹⁵⁹

155. In a note to the Committee following the Minister's evidence, the Welsh Reablement Alliance, Wales Carers Alliance and Social Care and

¹⁵⁷ [RISC06 United Kingdom Homecare Association](#)

¹⁵⁸ [RoP \[para 159\]](#), 23 April 2015

¹⁵⁹ [RoP \[paras 27-9\]](#), 25 March 2015

Wellbeing Alliance Wales said that they accepted the Minister’s clarification. However, the Alliances said that they:

“would continue to recommend that it [the definition of care] be removed or altered and replaced with a definition which supports more explicitly the intent of the 2014 Act [...] The definition needs to provide users with a real understanding of what care means and what they can expect”.¹⁶⁰

The Committee’s view

156. The Committee shares the concerns of stakeholders that the definition of care in the Bill is too task-focused, and does not take sufficient account of individuals’ holistic needs, or the importance of human interaction.

157. It acknowledges the Minister’s explanation, but is concerned that the legislation is drafted in such a way that this is not clear to so many of those who have given evidence to the Committee, including service providers, the third sector and the Older People’s and Children’s Commissioners. If the care provided to people in Wales is to take full account of their well-being, the legislation must be clearly understood by those responsible for the delivery of such care, and those who hold them to account, as well as the people who receive the care.

Recommendation 19: The Committee recommends that the Minister for Health and Social Services brings forward amendments to the definition of care in section 3 of the Bill to ensure that it takes account of the definition of well-being in the Social Services and Well-being (Wales) Act 2014.

158. The Committee notes that the regulation making powers under section 26(1) and (3) of the Bill are both discretionary powers. In the Statement of Policy Intent, the Minister has indicated that he intends to use these powers. Given the importance of these regulations to ensuring that individuals’ well-being is taken into account when inspecting the quality of care, the Committee considers that these provisions should be amended to say that the Welsh Ministers must, rather than may, make such regulations.

¹⁶⁰ [RISC AI01 Welsh Reablement Alliance, Wales Carers Alliance and Social Care and Wellbeing Alliance Wales](#)

Recommendation 20: The Committee recommends that the Minister for Health and Social Services brings forward amendments to sections 26(1) and (3) to require that Welsh Ministers must, rather than may, make regulations in relation to regulated services.

159. Regulations under section 26(1) are subject to the affirmative procedure. The Committee notes that before making regulations under section 26, section 26(5) provides that the Welsh Ministers must consult those persons they think appropriate, unless, under section 26(6) those regulations make only minor changes to other regulations made under the section. Given the significance of the regulations to be made under the section, the Committee believes that it would be appropriate for the Welsh Ministers to be required to publish a statement setting out how the consultation outcomes have influenced the regulations made under sections 26(1) and (3).

Recommendation 21: The Committee recommends that the Minister for Health and Social Services brings forward amendments to section 26 to require draft regulations relating to requirements on service providers, including the standard of care and support that must be provided, to be accompanied by a statement about consultation undertaken under section 26(5).

8. Inspections

The inspection regime

160. Part 1, chapter 3 sets out the Welsh Ministers' powers to require information, and the powers and functions of authorised inspectors carrying out service inspections. This includes allowing inspectors to obtain information, inspect services, interview staff in private, and seize documents.

161. Stakeholders told the Committee that the extent to which regulation and inspections impacted on the quality of care services would depend on the extent to which the regulator's recommendations for improvement were implemented and followed up. Dame June Clark stated that the Bill did not sufficiently address this, and that:

“there are many reports of failure by the service providers to implement recommendations, infrequency of follow-up inspections, and lack of appropriate sanctions or incentives to ensure implementation”.¹⁶¹

162. Dan Pitt, a former service user and member of the CSSIW National Advisory Board, agreed that there needed to be a focus on follow up of inspections. However, he said that where standards were failing, rather than focus on sanctions or punitive action, the focus should be on rehabilitation. He told the Committee that:

“What we need to have is a creative and positive outlook in helping services to become consistent, wherever they are in Wales”.¹⁶²

163. There was general consensus in the evidence that the regulatory and inspection regime should focus on quality of life, individuals' outcomes, and ensuring that those outcomes are achieved in a dignified and caring way.¹⁶³ The move away from a compliance-based approach to one which focuses on people, and their outcomes and

¹⁶¹ [RISC42 Professor Dame June Clark](#)

¹⁶² [RoP \[para 224\]](#), 23 April 2015

¹⁶³ [RoP \[para 235\]](#), 23 April 2015, [RoP \[para 143\]](#), 29 April 2015, [RoP \[para 128\]](#), 13 May 2015, [RISC22 Civil Service Pensioners' Alliance](#)

needs, was broadly welcomed as necessary to achieve the aspirations of the 2014 Act.¹⁶⁴

164. However, there was concern that establishing an outcomes-focused approach would be challenging in practice and would require culture change, as well as changes to systems and processes.¹⁶⁵ Colin Angel of the UKHCA said that local markets could be destabilised unless there was careful thought about how a payment-by-results model based on outcomes would work.¹⁶⁶ Melanie Minty of Care Forum Wales told the Committee that the approach would require significant cultural change for providers and commissioners, and that it would be important to get the details of the approach right.¹⁶⁷

165. Care Forum Wales told the Committee that it would welcome an approach similar to that adopted in the regulation of food hygiene, in which providers were given support by local authorities to improve their service. Melanie Minty contrasted this with what she described as CSSIW's "regulatory focus", saying that providers wanted to provide good service, but might need help and support to achieve this.¹⁶⁸

166. Stewart Blythe of the WLGA said that the outcomes-focused approach was one that was being pursued in other countries as well, notably Scotland. However, he said that in Scotland the regulator was not yet involved, which could result in:

"almost two systems [...]: you've got social care practice, which is focusing on an outcomes-based approach, but you've got a regulator which is then looking at almost some of the other issues which aren't being focused on by the social workers or social care. So, you end up with local authorities and social care having to demonstrate two different practices: one to appease the regulators and one to say, 'This is the approach that we are taking and this is why we're doing it'".¹⁶⁹

167. CSSIW told the Committee that the Bill sought to rebalance the application of regulation to give primacy to the well-being of people

¹⁶⁴ [RoP \[para 32\]](#), 23 April 2015

¹⁶⁵ [RISC04 Care Council for Wales](#), [RISC08 Welsh Local Government Association and Association of Directors of Social Services Cymru](#), [RISC26 Sense Cymru](#)

¹⁶⁶ [RoP \[para 145\]](#), 29 April 2015

¹⁶⁷ [RoP \[para 144\]](#), 29 April 2015

¹⁶⁸ [RoP \[para 163\]](#), 29 April 2015

¹⁶⁹ [RoP \[paras 40-2\]](#), 23 April 2015

using social care services. Imelda Richardson said that CSSIW had been working on including individuals' outcomes in its inspection methodology since 2012, and stated that:

“it’s very important to understand that the quality and safety of services is protected, promoted and maintained throughout a service, and I think it’s really important to focus on the impact of those services for the people who receive them”.¹⁷⁰

168. David Francis of CSSIW told the Committee that feedback from providers following the initial pilots of outcome-based inspections had indicated that sharing the reports with staff could help to motivate staff and raise morale.¹⁷¹

169. The Committee heard that, to be effective, the outcomes-focused approach would require a shared understanding among commissioners, providers, regulators, the workforce and citizens (including children and young people) about what “good” looked like.¹⁷² Witnesses noted that this might be challenging, because service users might have very different views from professionals.¹⁷³

170. Concerns were also raised about the challenges of aggregating individuals' outcomes in a meaningful way for the purposes of service inspection. Sue Evans of ADSS Cymru told the Committee that:

“speaking to real people about what matters to them and the impact of a service or support they’re receiving is absolutely the right thing to do, underpinned by activity data so you get some of that quantitative analysis. So, it is the right way, but it’s making sure it’s proportionate to what we get out of it, I think”.¹⁷⁴

171. Phil Evans, also of ADSS Cymru, welcomed the move towards a blend of quantitative and qualitative assessment of services, but stated that he was concerned that there would be an increase the costs of

¹⁷⁰ [RoP \[paras 108-9\]](#), 23 April 2015

¹⁷¹ [RoP \[paras 137-8\]](#), 23 April 2015

¹⁷² [RISC08 Welsh Local Government Association and Association of Directors of Social Services Cymru](#)

¹⁷³ [RoP \[para 128\]](#), 21 May 2015

¹⁷⁴ [RoP \[para 36\]](#), 23 April 2015

regulation and a corresponding reduction in the scale of regulation carried out.¹⁷⁵

The Committee's view

172. The Committee welcomes the focus on individuals' outcomes in the inspection arrangements under the Bill, but acknowledges stakeholders' concerns.

Recommendation 22: The Committee recommends that the Minister for Health and Social Services provides more detail prior to the end of the 2015 summer recess about how he envisages the provisions in relation to outcomes-focused inspection will work in practice, and whether there are expected to be resource or capacity implications for the Care and Social Services Inspectorate Wales as a result.

Provision to speak in private with inspectors

173. Stakeholders generally welcomed the provisions for inspectors to speak directly and privately with those in receipt of services as part of the inspection process. However, concerns were raised about the lack of clarity about whether inspectors would be sufficiently trained to engage with service users who had communication difficulties, for example as a result of dementia, and a lack of provision for inspectors to speak with carers.¹⁷⁶ It was also suggested that it would be appropriate for independent advocates to be available to support service users' engagement with the inspection process, or for inspectors to return at a later date to speak to service users, their carers or other relevant individuals.¹⁷⁷

The Committee's view

174. The Committee agrees that all relevant perspectives should be taken into account as part of inspections, including service users, carers, families, social care workers and other relevant professionals, service providers and commissioners. The Committee agrees with stakeholders that there must be arrangements in place to support the participation of these groups, whether by return visits following

¹⁷⁵ [RoP \[para 34\]](#), 25 March 2015

¹⁷⁶ [RoP \[para 97\]](#), 29 April 2015, [RISC09 Wales Carers Alliance](#), [RISC15 Ategi Shared Lives](#), [RISC40 Alzheimer's Society](#)

¹⁷⁷ [RoP \[para 194\]](#), 13 May 2015, [RoP \[paras 36-7 and 42\]](#), 21 May 2015, [RISC35 Cardiff and Vale of Glamorgan Community Health Council](#)

unannounced inspections, online forms, support from advocates, or other means.

Recommendation 23: The Committee recommends that the Minister for Health and Social Services brings forward amendments to include within section 33 of the Bill, and section 161 of the Social Services and Well-being (Wales) Act 2014 (to be inserted by section 56 of the Bill), provision for inspectors to be able to speak to service users' carers, family, or other relevant people in private.

Recommendation 24: The Committee recommends that the Minister for Health and Social Services includes requirements for inspectors to be appropriately trained to engage with service users with particular communication needs in the codes of practice in relation to inspection to be issued under section 32 of the Bill, and section 161A of the Social Services and Well-being (Wales) Act 2014 (to be inserted by section 56 of the Bill).

Quality ratings

175. Section 35 provides that the Welsh Ministers may, by regulations, make provision about inspection ratings in relation to the quality of care and support provided by a service provider. Section 149B of the 2014 Act (to be inserted by section 56 of the Bill) makes similar provision in relation to local authorities.

176. The EM characterises the proposal for quality ratings as the most significant change to inspections. It says that prior to the power being used there will be significant consultation with stakeholders and the public. The regulations under section 35(1) are subject to the affirmative procedure, but there is no requirement to consult on the face of the Bill.

177. There was general consensus that the use of quality ratings would be positive, provided that there could be confidence that the ratings were consistent, robust and meaningful. CSSIW told the Committee that it would be valuable to identify trends in quality ratings over time in order to consider provider performance across settings and assess the performance of commissioners.¹⁷⁸

¹⁷⁸ [RISC05 Care and Social Services Inspectorate Wales](#)

178. Stakeholders noted that it was important that there was sufficient objectivity and consistency of quality ratings to avoid causing confusion for service users or other stakeholders.¹⁷⁹ Some concerns were raised about how rapid fluctuations in service quality would be captured by quality ratings, which would represent a snapshot of a particular service at a particular time.¹⁸⁰

179. There was consensus that the quality ratings must be available in clear, easy to read and accessible formats to avoid misinterpretation or misunderstanding by service users.¹⁸¹ The UKHCA said that as well as being of benefit to providers, quality ratings would provide better information for the public than the current inspection reports, which it described as:

“not always particularly eloquently or logically written, which then leads to: ‘Yes, but what does this mean if I’m the person using the service?’”¹⁸²

180. Care Forum Wales also supported the introduction of a quality ratings system as a means of encouraging continuous improvement. It drew parallels with the food hygiene rating system, which it said was simple and well-understood. Melanie Minty, on behalf of Care Forum Wales, told the Committee that establishing a rating system for social care providers would be more complicated, and emphasised the need for cooperation and joint working with the social care sector in working out the detail.¹⁸³ Christopher Dunn of Voices from Care noted that it would be important to ensure that current and former service users were involved in establishing the quality framework and what each rating might look like.¹⁸⁴

181. Imelda Richardson told the Committee that the quality ratings framework CSSIW was discussing with the social care sector would provide ratings on well-being of people, leadership and management, the quality of care and support, and the quality of the environment.

¹⁷⁹ [RoP \[para 93\]](#), 23 April 2015, [RoP \[paras 135-6\]](#), 13 May 2015

¹⁸⁰ [RoP \[paras 93-4\]](#), 23 April 2015

¹⁸¹ [RISC26 Sense Cymru](#), [RISC28 RNIB Cymru](#), [RISC37 British Red Cross](#)

¹⁸² [RoP \[para 149\]](#), 29 April 2015

¹⁸³ [RoP \[para 150\]](#), 29 April 2015

¹⁸⁴ [RoP \[paras 227-9\]](#), 23 April 2015

She said that this would “provide an opportunity to have a transparent and open account of every part of the business”.¹⁸⁵

182. There was consensus among stakeholders, including provider organisations, that quality ratings would be welcomed by providers as a means of gaining recognition and reward for their services.¹⁸⁶ Evidence suggested that the ratings would act as an incentive to improve quality beyond minimum standards and drive up the quality of social care.¹⁸⁷ John Moore of Age Cymru and My Home Life Cymru noted that he had been involved in the development of a regional quality framework for care homes in the Western Bay region. He said that the focus had been to identify what performance at each standard would look like, in order to help services to aspire to higher standards of provision, and incentivise investment and improvement.¹⁸⁸

183. CSSIW told the Committee that the introduction of quality ratings would drive improvement in regulated services and local authority social service functions, including commissioning.¹⁸⁹ David Francis noted that the Commission for Social Care Inspection had piloted quality ratings in England. The result had been a reduction in the level of poor providers from 22 per cent to between 3 and 5 per cent. However, he said that ratings had focused more on safety and security than on aspects such as emotional well-being. He said that CSSIW was committed to taking greater account of people’s quality of life.¹⁹⁰

184. However, stakeholders told the Committee that quality ratings alone were not sufficient to enable people to make decisions about which service was right for them. John Moore of My Home Life Cymru noted that different service users had different needs, and might therefore prefer different services.¹⁹¹

185. Concerns were also raised about the risk of focus being on the score or rating, rather on any accompanying narrative about the quality of service or what might need improvement,¹⁹² with some

¹⁸⁵ [RoP \[para 136\]](#), 23 April 2015

¹⁸⁶ [RoP \[para 119\]](#), 23 April 2015

¹⁸⁷ [RoP \[paras 137-8\]](#), 23 April 2015

¹⁸⁸ [RoP \[paras 138-9\]](#), 13 May 2015

¹⁸⁹ [RISC05 Care and Social Services Inspectorate Wales](#)

¹⁹⁰ [RoP \[paras 137-8\]](#), 23 April 2015

¹⁹¹ [RoP \[paras 141-3\]](#), 13 May 2015

¹⁹² [RoP \[paras 206-7\]](#), 21 May 2015

stakeholders saying that they would prefer a succinct narrative which would capture performance and support informed decision-making.¹⁹³

186. Kate Chamberlain of HIW told the Committee that the transition to a quality rating framework might expose shortcomings which had previously not come to light. She said that while the identification of poor quality care through the ratings framework could impact on the demand for or availability of some services in the short term, this was not an argument against introducing ratings which could drive up quality in the longer term.¹⁹⁴

187. Some stakeholders raised concerns about the possible impact on service users and their families if their service providers received poor ratings, and said that thought needed to be given to managing the impact.¹⁹⁵ Some said that if services received poor ratings, it would be important for the service provider to publish details of what it was going to do to address the issues and improve practice.¹⁹⁶ The CSSIW NAB said that it recognised the benefits of access to clear and transparent information, but stated that there could be tension about the options available to people in areas where there were limited choices of good care available.¹⁹⁷

188. Lin Slater of Aneurin Bevan University Health Board acknowledged that there might be unintended consequences for service users and social care workers within services whose rating dropped. She also said that there might be an impact on the charges for particular services as their ratings increased or decreased, as providers might seek to charge more for higher-rated services.¹⁹⁸

189. The UKCHA emphasised the importance of service users being able to provide feedback on the services they were receiving. Colin Angel said that the use of feedback websites to collect service users' views tended however to result in a low volume of comments expressing quite polarised views. He said that this could result in disproportionate responses to small numbers of comments, and

¹⁹³ [RISC08 Welsh Local Government Association and Association of Directors of Social Services Cymru](#)

¹⁹⁴ [RoP \[paras 206-7\]](#), 21 May 2015

¹⁹⁵ [RoP \[para 93\]](#), 23 April 2015

¹⁹⁶ [RoP \[para 226\]](#), 23 April 2015, [RoP \[para 129\]](#), 21 May 2015

¹⁹⁷ [RISC21 Care and Social Services Inspectorate Wales National Advisory Board](#)

¹⁹⁸ [RoP \[paras 319-21\]](#), 21 May 2015

suggested that it would be more effective for the regulator to collect and use evidence from service users about their experiences and outcomes.¹⁹⁹

190. There was a general consensus that a quality ratings system must include provision for providers to appeal against their rating, and to be able to request a re-inspection (for a fee).²⁰⁰ The UKHCA noted that there needed to be sufficient balances in the system to prevent inappropriate repeat requests,²⁰¹ and HIW stated that to encourage sustained improvement, suitable intervals should be put in place before re-inspection took place.²⁰²

191. The Minister said that it was important to ensure that individuals making decisions about their care, or care for their families, had good information, and that he anticipated that a quality rating system would be introduced in relation to service providers and local authorities. He explained that the intention was that the rating system would drive improvement in the quality of social care as providers aspired to achieve higher ratings. He told the Committee that the White Paper consultation had demonstrated that there was strong support across the social care sector for quality ratings, particularly from providers wanting to advertise the quality of their care services.

192. The Minister stated that he was alert to the possible unintended consequences. He said that the introduction of an unreliable quality rating system would be damaging, and before introduction there was a need to ensure that the framework could be applied consistently.

193. The Minister agreed that it would be important for re-inspection to be available to providers, and stated that it might be appropriate for this to be on the basis of a fee. David Pritchard, Head of Regulation and Workforce Development in the Welsh Government's Social Services and Integration Directorate, noted that detail about any re-inspection process would be set out in regulations following consultation with the sector. The Minister indicated that he was willing to listen to the

¹⁹⁹ [RoP \[para 155\]](#), 29 April 2015

²⁰⁰ [RoP \[paras 141-3\]](#), 13 May 2015, [RISC35 Cardiff and Vale of Glamorgan Community Health Council](#)

²⁰¹ [RoP \[para 161\]](#), 29 April 2015

²⁰² [RoP \[para 211\]](#), 21 May 2015

Committee's views on whether a super-affirmative procedure should be applied to regulations under section 35.²⁰³

The Committee's view

194. The Committee supports the introduction of quality ratings for social care services and local authorities. It welcomes the Minister's commitment to wide consultation, but believes that requirements for this should be set out on the face of the Bill. This is justified because of the impact of the quality rating framework and the need for judgements made under it to be consistent, objective and meaningful if providers and the public are to have confidence in them.

Recommendation 25: The Committee recommends that the Minister for Health and Social Services brings forward amendments to require the Welsh Ministers to consult widely with the social care sector before making regulations under section 35 in relation to the establishment of a quality ratings system.

195. The Committee notes the Minister's evidence that the details of a ratings regime would be set out in regulations. It agrees with stakeholders that such regulations should provide a right for service providers to request re-inspections. However, it believes that this should be for a fee, on a full cost recovery basis, and that there should be appropriate safeguards in place to provide that there is sufficient time for improvement to take place, while also ensuring the availability of accurate and timely information to the public.

Recommendation 26: The Committee recommends that the Minister for Health and Social Services, when making regulations under section 35, includes provision for:

- a right for service providers to request a re-inspection;
- fees for re-inspection on a full cost recovery basis; and
- appropriate safeguards to ensure that the timing of re-inspections are appropriate to support improvement and ensure that accurate and timely information is available to the public.

²⁰³ [RoP \[paras 79, 82, 85-6, 88-9 and 91-2\]](#), 25 March 2015

9. Power to charge fees

Power to charge fees

196. The Bill provides a general and broad power for the Welsh Ministers to charge fees for regulatory activities. Section 38 sets out that the Welsh Ministers may, by regulations, make provision for a fee to be paid for various provisions including applying for registration, or receiving a copy of an inspection report. Section 38(3) provides that before making regulations in relation to fees, the Welsh Ministers must take reasonable steps to consult people they consider likely to be affected, and any others they deem appropriate.

197. Many stakeholders supported the inclusion in the Bill of the power to charge fees for registration, but there was consensus that if fees were introduced, it should only be done in a phased way after consultation.

198. The Care Council, in written evidence, stated that it may be appropriate to introduce fees for regulatory activities, but not if the collection or administration of fees outweighed the income received.²⁰⁴

199. CSSIW welcomed the power within the Bill for a fees regime to be introduced through regulations. It stated that if fees were to be introduced (in a phased way), the financial model would need to be both fair and flexible so as to ensure that fees reflected the cost of services and appropriate subsidies were provided. It said that fees, used proportionately, could be a mechanism to strengthen providers' and commissioners' responsibilities in the improvement of social care in Wales, for example if providers required significant enforcement activity or intervention.²⁰⁵

200. The WLGA and ADSS Cymru opposed the introduction of fees. In written evidence they stated that fees would add to the burden on providers, and would ultimately be passed on to service users.²⁰⁶

201. The British Red Cross highlighted the importance of a consultative process in relation to fees. It said that it supported the principle of

²⁰⁴ [RISC04 Care Council for Wales](#)

²⁰⁵ [RISC05 Care and Social Services Inspectorate Wales](#)

²⁰⁶ [RISC08 Welsh Local Government Association and Association of Directors of Social Services Cymru](#)

fees, but that the introduction of fees should not deter providers from delivering services, which could reduce the choice of services available for citizens.²⁰⁷ Public Health Wales shared the concern that there could be a detrimental effect on providers as a result of introducing fees.²⁰⁸

202. The UKHCA told the Committee that Wales was unusual within the UK in that providers were not charged registration fees. It acknowledged that this was a sensible approach because of the risk of simply moving public money around. Colin Angel stated that if fees were to be introduced, it would be important for this to be done in a phased way which gave providers and the social care workforce adequate notice to be able to plan so as to avoid destabilising small and medium businesses, or making them financially unviable.²⁰⁹

203. Barnardo's Cymru indicated that implementing change within the social care sector as a result of the 2014 Act in a time of financial constraint and austerity was placing pressures on the statutory, third and independent sectors already. It stated that adding additional financial demands through the imposition of fees could risk undermining the policy intentions of the Bill.²¹⁰

204. NSPCC Wales, in written evidence, noted its concern about the impact on third sector social care providers of the introduction of fees for the registration of care and support services.²¹¹ This concern was shared by the Wales Carers Trust, which said that fees would:

“disproportionately impact quality-focused, small, third sector services who are already operating in difficult and constrained economic climate”.²¹²

205. Care Forum Wales agreed that there could be risks to the sector if fees were to be introduced. Melanie Minty told the Committee that the social care sector was underfunded, and if fees were to be introduced, it would be important for commissioners to be held to account for

²⁰⁷ [RISC37 British Red Cross](#)

²⁰⁸ [RISC38 Public Health Wales](#)

²⁰⁹ [RoP \[para 189\]](#), 29 April 2015

²¹⁰ [RISC29 Barnardo's Cymru](#)

²¹¹ [RISC20 NSPCC Cymru](#)

²¹² [RISC43 Carers Trust Wales](#)

commissioning for quality and not just on the basis of cost.²¹³ In written evidence, Care Forum Wales stated:

“Given that the majority of care is funded by the statutory sector we see this as simply moving money around the system without improving the quality of regulation and increasing public expenditure on collection”.²¹⁴

206. There was some concern about the powers in the Bill to charge for policy documents or copies of reports, which was considered to be a possible barrier for public engagement and understanding of social care.²¹⁵

207. The Minister told the Committee that Wales was the only part of the UK which did not charge provider registration fees. He stated that providers benefited from inspection, but that they currently made no contribution to the cost. He told the Committee however that he did not intend to introduce fees in the short term because the majority of social care service users in Wales are funded by local authorities. This meant that charging fees would result in the circulation of public money and increased bureaucracy. The Minister noted that this was why fees had previously been abolished in Wales. He told the Committee that before introducing fees he:

“would need to be convinced that there was an income stream being generated and that it wasn’t just local authorities being charged higher fees in order to pay the fees that we’re now charging them for”.²¹⁶

208. He noted that introducing fees might adjust the balance between providers and the regulator, and create a more professional relationship between the two. He acknowledged that during the transition to the arrangements under the Bill, fees might be destabilising to the market, but stated that the power should be included in the Bill, as if circumstances changed it might be appropriate for fees to be charged.²¹⁷

²¹³ [RoP \[para 191\]](#), 29 April 2015

²¹⁴ [RISC11 Care Forum Wales](#)

²¹⁵ [RISC35 Cardiff and Vale of Glamorgan Community Health Council](#)

²¹⁶ [RoP \[paras 47-8\]](#), 25 March 2015

²¹⁷ [RoP \[para 50\]](#), 25 March 2015

The Committee's view

209. The Committee notes that the Minister does not intend currently to use the powers in the Bill to charge registration or other fees. It agrees that as a large proportion of social care in Wales is funded by local authorities, it would be inefficient for a fee regime to be introduced.

210. However, if the Minister were intending to introduce a fee regime in the future, it is clear from the evidence received that there would need to be a proportionate approach to avoid a detrimental impact on small and medium enterprises, and third sector service providers. The regime would also need to be subject to full consultation with the social care sector. The Committee notes that regulations under section 38(1) to introduce fees are subject to the affirmative procedure, and additional statutory requirements to consult those who might be affected under section 38(3). The Committee welcomes the inclusion of the requirement to consult on the face of the Bill, but believes that it would be appropriate for the requirement to be amended so as to require the Welsh Ministers to publish a statement indicating how the outcomes of the consultation have been taken into account in the draft regulations, at the same time as they lay the draft regulations.

Recommendation 27: The Committee recommends that the Minister for Health and Social Services brings forward amendments to section 38 to require draft regulations establishing a fee regime to be accompanied by a statement about consultation undertaken under section 38(3).

10. Local authority social services

Local authority social services

211. Chapter 6 of Part 1 amends the 2014 Act in relation to the social services functions of local authorities. This includes provision:

- enabling the Welsh Ministers to conduct reviews of local authority social services functions;
- in relation to powers to authorise inspectors to enter and inspect premises;
- for the Welsh Ministers to require information relating to the exercise of social services functions;
- for offences in connection with inspections or requirements to provide information; and
- for the regulation of the exercise of local authority functions relating to looked after and accommodated children.

212. CSSIW told the Committee that the Bill, in combination with the 2014 Act, would enable it to assess the performance of local authorities' social services functions, including assessment, care planning, commissioning, and oversight and delivery of regulated care.²¹⁸ However, the British Association of Social Workers Cymru ("BASW Cymru") stated that the Bill represented a missed opportunity to regulate the quality of management support and professional standards in local authorities. It said that this would undermine the achievement of the expectations of the 2014 Act.²¹⁹

213. The UKHCA welcomed the power in the Bill for the Welsh Ministers to undertake reviews of local authorities' social services functions. However, it said that its preference would be for a regular programme of reviews to be established, which included consideration of the local authority's impact on its local market.²²⁰ RNIB Cymru agreed that there should be routine reviews of local authority social service functions by Welsh Ministers. It stated that this would be "instrumental in raising standards of social care commissioning".²²¹

²¹⁸ [RISC05 Care and Social Services Inspectorate Wales](#)

²¹⁹ [RISC47 British Association of Social Workers Cymru](#)

²²⁰ [RISC06 United Kingdom Homecare Association](#)

²²¹ [RISC28 RNIB Cymru](#)

214. Age Alliance Wales cited the trend for local authorities to increasingly commission rather than provide services. It stated that older people were increasingly receiving services to help them remain independent in their own homes. Rosanne Palmer stated that these trends meant that there needed to be a focus on the way in which preventative services and domiciliary care are commissioned, and whether there are appropriate providers available with the viability to deliver quality care which enhanced the quality of service users' lives.²²²

215. Many stakeholders told the Committee that effective commissioning of services was vital to ensuring that service users received high quality services.²²³ They said that commissioning standards were missing from the Bill as drafted, and that this must be addressed if the Bill's aims to secure well-being for citizens and improve the quality of care and support in Wales were to be achieved. Sue Evans of ADSS Cymru noted that closer links between commissioners and providers, which took account of what service users, social workers, and the regulator were saying about a service, could help drive up quality through the provision of practical help, support and guidance.²²⁴

216. The Older People's Commissioner described the absence of specific reference to commissioning as a significant omission, noting the importance of effective commissioning to ensuring that people receive the services that they need, and the trust which service users have to place in commissioners in times of vulnerability. She stressed the need for quality of life and well-being to be part of commissioning as well as regulation and inspection to ensure that:

“we all have eyes on the same thing and so that commissioning, regulation and inspection and provision are consistent”.²²⁵

217. The Minister acknowledged that commissioning of social care was an important part of ensuring that service users received high quality social care and had their needs met, but stated that provision for

²²² [RoP \[para 160\]](#), 13 May 2015

²²³ [RoP \[para 195\]](#), 29 April 2015

²²⁴ [RoP \[para 63\]](#), 23 April 2015

²²⁵ [RoP \[paras 36 and 45\]](#), 13 May 2015

commissioning was made in the 2014 Act and the 2010 guidance on commissioning.²²⁶ He stated that the Bill provided for the regulation and inspection of local authorities' social functions, and would therefore give people confidence that the regulator was attending to the way in which local authorities discharged their commissioning responsibilities. He said that he would consider carefully any recommendations made by the Committee in relation to the inclusion of commissioning in the Bill.²²⁷

218. ADSS Cymru stated that there was guidance in place for local authority commissioners, and that commissioners were in dialogue with service providers to identify appropriate fees. However, Phil Evans noted that balancing increasing demand with austerity and tightening local authority budgets was challenging.²²⁸

219. Care Forum Wales told the Committee that the commissioners of social care services are not held to account against the commissioning guidance which is in place. It stated that in order to ensure that outcomes are effectively built into commissioning and contract monitoring, the inspection and regulation regime should inspect commissioning, as well as providers. At present, it said that most local authorities do not commission at a rate which supports quality outcomes, or payment of wages which encourage a professional social care workforce.²²⁹ Other witnesses shared these concerns about the impact of commissioning for cost rather than quality, and told the Committee that the result was poor quality care and demotivated staff.²³⁰

220. BASW Cymru stated that where issues had arisen in the past, such as those investigated by Operation Jasmine, there was commissioning for costs rather than outcomes, and a disconnect between social care professionals and the commissioning of services. Robin Moulster stated that this needed to be clarified and strengthened in order to

²²⁶ [Fulfilled Lives, Supportive Communities: Commissioning Framework Guidance and Good Practice](#) (currently being updated)

²²⁷ [RoP \[paras 87-9\]](#), 3 June 2015

²²⁸ [RoP \[para 84\]](#), 23 April 2015

²²⁹ [RISC11 Care Forum Wales](#)

²³⁰ [RoP \[paras 102 and 106\]](#), 29 April 2015

take into account the outcomes that service users and their carers wanted to achieve.²³¹

221. The Minister told the Committee that the Bill would impact on commissioning for quality rather than cost. He acknowledged the evidence provided by Care Forum Wales, but stated that in his view there was not a simple opposing relationship between commissioning for cost and commissioning for quality, because poor quality care would lead to higher costs in any case.²³²

222. There was general consensus that there needed to be an outcomes-focused approach to commissioning. John Moore of Age Cymru and My Home Life Cymru noted the need to consistently focus on outcomes for individuals across service planning, commissioning and delivery, saying:

“We can’t plant one thing and expect to reap something different; we’ve got to have consistency through what we plan at the beginning, support that process and we’ll get the benefits at the very end of that”.²³³

223. The Wales Carers Alliance said that third sector care services reported that commissioning on price alone was putting their services at risk, as these care services were prioritising quality. Kieron Rees said that this would worsen further if the powers in the Bill to charge fees were exercised, as third sector and smaller providers would struggle to absorb the additional costs.²³⁴

224. CSSIW stated that it was working with projects in Monmouthshire and Western Bay to consider how commissioning and commissioners could be held to account, to aid understanding of where poor care might be the result of poor commissioning.²³⁵

225. In its written evidence, CSSIW stated that the Bill, in combination with the 2014 Act, would increase its line of sight and powers of intervention across the social care sector. It acknowledged the importance and responsibilities of commissioners, and stated that

²³¹ [RoP \[para 257\]](#), 13 May 2015

²³² [RoP \[paras 107-8\]](#), 25 March 2015

²³³ [RoP \[paras 168-9\]](#), 13 May 2015

²³⁴ [RoP \[para 110\]](#), 29 April 2015

²³⁵ [RoP \[para 140\]](#), 23 April 2015

commissioning was presently too often short-term and focused on responding to budgetary pressures. The regulator stated that local authorities' commissioning arrangements could be complex, but said that the strengthened powers it will have under the Bill to hold directors of social services to account would assist with this.²³⁶

226. The Minister noted that the social services functions of local authorities were set out in Schedule 2 of the 2014 Act, and stated that sections 9 and 145 of that Act provided that the Welsh Ministers could issue codes in relation to well-being outcomes and the exercise of social services functions respectively. In a letter to the Committee he said that the codes would establish a requirement for local authorities to ensure that the care and support provided to service users adequately meet their needs.²³⁷

227. The UKHCA agreed that there were already powers in the Bill to enable the regulator to scrutinise commissioning, and that it wanted to see Ministers exercising these powers routinely. It told the Committee that on a UK-wide level, its research showed that domiciliary care was routinely being commissioned at £2 per hour less than what it considered to be the minimum rate required for the provision of a quality service. It said that this had a direct impact on the working terms and conditions for the social care workforce.²³⁸

228. UNISON agreed that in undertaking commissioning, greater account should be taken of policies such as the payment of the living wage when commissioning services from social care providers.²³⁹

229. Children in Wales said that it would like to see the Bill specify that in the commissioning of services for children the workforce was appropriately trained to work with children and young people. Catriona Williams noted that a focus on all-age legislation could result in a loss of impetus for the focus on child development.²⁴⁰

230. David Francis of CSSIW told the Committee that one of the strengths of the Bill was the increased focus on local authorities'

²³⁶ [RISC05 Care and Social Services Inspectorate Wales](#)

²³⁷ [RoP \[para 110\]](#), 25 March 2015, [RISC AI02 Correspondence from the Minister for Health and Social Services, 19 May 2015](#)

²³⁸ [RoP \[para 194\]](#), 29 April 2015

²³⁹ [RoP \[para 234\]](#), 29 April 2015

²⁴⁰ [RoP \[paras 159-60\]](#), 21 May 2015

functions. He noted that health commissioning was not covered by the Bill, but that this was something that he would like to see considered in the Green Paper.²⁴¹

231. Other stakeholders also raised the role of local health boards in the commissioning of social care,²⁴² with Cwm Taf UHB stating that it was responsible for commissioning approximately 1,000 care home placements in its area. Lynda Williams of Cwm Taf UHB stated that the Bill needed strengthening in regard to the role of local health boards in jointly or solely commissioning social care services. She noted that while health commissioning functions were considered as part of HIW's themed inspections of health services, the focus is on the delivery of services, not other core functions such as commissioning and planning practices.²⁴³

232. Kate Chamberlain of HIW said that there was already oversight of local health boards' commissioning processes, as well those of local authorities. She said that HIW was increasingly working with health boards in relation to their oversight and governance roles, and with CSSIW to share intelligence when required. She said that she was "unclear" on what would be added by the inclusion of commissioning arrangements within the Bill, but acknowledged that an increase in focus and attention on commissioning could be helpful.²⁴⁴

233. CSSIW acknowledged that local health boards also have responsibility for the commissioning of social care services, and that commissioning and procurement structures can differ across health boards. It stated that there needed to be arrangements in place to include health commissioners within the regulatory system, and said that the Green Paper, expected later this year would provide an opportunity for this to be considered.²⁴⁵

The Committee's view

234. The Committee welcomes the clarification from the Minister about how the Bill will address commissioning. If the standards of commissioning are to improve, and there is to be commissioning for outcomes rather than on the basis of cost, oversight from the

²⁴¹ [RoP \[para 151\]](#), 23 April 2015

²⁴² [RISC31 Hywel Dda University Health Board](#)

²⁴³ [RoP \[paras 260 and 293\]](#), 21 May 2015

²⁴⁴ [RoP \[paras 194-5 and 236-8\]](#), 21 May 2015

²⁴⁵ [RISC05 Care and Social Services Inspectorate Wales](#)

regulator is needed. The Committee also welcomes the evidence it heard that section 149B to be inserted into the 2014 Act by section 56 of the Bill would enable CSSIW to inspect local authorities in relation to the exercise of their social services functions, which include commissioning.²⁴⁶

235. The Committee believes that improving the standard of local authority and local health board commissioning is key to the improvement of social care services. However, it is not yet persuaded that the Bill gives sufficient attention to the commissioning of social care, either by local authorities, or by local health boards.

236. It believes that the Bill needs to be strengthened to ensure it addresses commissioning appropriately, so that the public, and the social care sector, can be reassured that local authorities' commissioning responsibilities are being discharged properly and effectively.

Recommendation 28: The Committee recommends that the Minister for Health and Social Services brings forward amendments to place a duty on Care and Social Services Inspectorate Wales to review local authority and health board commissioning of social care services against quality of life outcomes.

“15-minute care”

237. During the scrutiny of the 2014 Act, the then Deputy Minister committed to examine 15-minute care visits as part of the Bill, stating:

“I expect commissioning and contracting practice to be focused on the quality of care provision, and that this is managed and monitored appropriately. [...] I have asked my officials to consider this amendment in the context of the work that they are undertaking in the forthcoming regulation and inspection legislation, which the Government will bring forward before the end of this Assembly”.²⁴⁷

238. Some stakeholders, including Age Cymru, expressed the view that the Bill should address inappropriately short home care visits.²⁴⁸ These

²⁴⁶ [RoP \[para 119\]](#), 3 June 2015

²⁴⁷ [RoP \[para 146\]](#), 13 November 2013

²⁴⁸ [RISC30 Age Cymru](#), [RISC44 Leonard Cheshire Disability](#)

are often referred to as “15-minute care visits” but some stakeholders, including the Older People’s Commissioner, noted that it is not about specifying a time limit, rather the focus should be on meeting the person’s needs and outcomes.²⁴⁹

239. The MS Society Cymru agreed that greater regulation under the Bill would mean that service providers would work to develop “high quality and sustainable services”, and that inappropriately short home care visits would not be commissioned.²⁵⁰

240. The Minister told the Committee that sections 34(3) and (4) of the 2014 Act placed a duty on local authorities to ensure that the length of time social care workers had to discharge their duties was sufficient for those duties to be discharged. He stated that he was reluctant to include reference to specific time periods on the face of the Bill.²⁵¹

241. Section 26(4) of the Bill provides that if and when the Welsh Ministers make regulations under section 26(1) specifying the standard of care and support that must be provided by social care providers, the Welsh Ministers must have regard to the quality standards included in any code issued under section 9 of the 2014 Act (codes to help achieve well-being outcomes). In response to a question about whether references to sections 34(3) and (4) should be included in the Bill to ensure inspection against these provisions, the Minister said that he was not yet persuaded that a ‘double lock’ of this nature would be the best approach to avoiding inappropriately short visits. He stated that this could complicate the accountabilities in the system, and that:

“It is local authorities that are required to ensure visits are of a suitable length, and this should be reflected through their commissioning. The local authority has a responsibility to be satisfied that its contractual requirements are being met, and I am not convinced that the Inspectorate should act, effectively, as their contract managers in this case. [...] The general system that will be established under regulations will therefore ensure that the service regulator inspects a provider with regard to the

²⁴⁹ [RoP \[para 112\]](#), 29 April 2015, [RoP \[para 37\]](#), 13 May 2015

²⁵⁰ [RISC33 MS Society Cymru](#)

²⁵¹ [RoP \[para 112\]](#), 25 March 2015

quality of the care that is provided without the need for a specific provision to be made on this”.²⁵²

The Committee’s view

242. The Committee agrees with stakeholders that the commissioning of inappropriately short home care visits can have a detrimental impact on those in receipt of care if the duration of the visit is insufficient to provide the care which the service user needs. It believes that rather than focusing on the specific duration of visits, the priority must be ensuring that people’s holistic needs are met, and their well-being and preferred outcomes supported. It believes that this principle should underpin the commissioning and inspection of such services.

²⁵² [RISC AI02 Correspondence from the Minister for Health and Social Services, 19 May 2015](#)

11. Market stability and financial sustainability

The social care market in Wales

243. The Committee heard from stakeholders that the social care market in Wales is complex and fragile, and that there was a need in the exercise of the market oversight and stability functions under the Bill to avoid risking undermining or destabilising the market.²⁵³

Witnesses told the Committee that the care home market in Wales differs significantly from that in England in terms of its diversity. The market in Wales comprises between 70-80 per cent independent care providers, of which 70 per cent have only one or two homes.²⁵⁴

244. In relation to the market for domiciliary care, the Committee was told that the market was heavily dependent on how services were commissioned. John Moore of My Home Life Cymru spoke about the mix of local authority and independent providers, and referred to the potential distortions caused by some providers “cherry-picking” to avoid complex cases.²⁵⁵

Market stability reports

245. Section 144B to be inserted into the 2014 Act by section 55 of the Bill requires local authorities to prepare and publish annual market stability reports which must include an assessment of the sufficiency of the provision of care and support in the area. The Welsh Ministers will be required under section 62 to prepare and publish national reports about the stability of the market for social care services in Wales.

Requirement for market stability reports

246. The duties in the Bill for local authorities and the Welsh Ministers to produce local and national market stability reports were welcomed. Stakeholders commented that there was potential, if the reports were acted upon, to identify gaps in service provision, support forward planning, and build public confidence in the stability of social care services.²⁵⁶

²⁵³ [RoP \[para 49\]](#), 23 April 2015

²⁵⁴ [RoP \[para 157\]](#), 13 May 2015

²⁵⁵ [RoP \[para 161\]](#), 13 May 2015

²⁵⁶ [RISC04 Care Council for Wales](#), [RISC28 RNIB Cymru](#), [RISC39 Macmillan Wales](#)

247. However, CSSIW emphasised that it would not be possible to “offer complete assurance or be sighted on the unknown”. It stated that in relation to UK-wide provider organisations there would be a need to cooperate with other regulators across the UK.²⁵⁷ The Care Council noted that:

“the only way forward will be by sharing information, working in a concerted fashion to try and ensure that the services are, and that the sector is, as stable as possible”.²⁵⁸

248. The UKHCA sounded a note of caution, however, that while the national market stability report could encourage service providers to enter the market or adjust their service provision, it could also deter some providers from entering the market.²⁵⁹

249. The Minister told the Committee that the Bill aimed:

“to strengthen the capacity of public authorities to shape the market in the future, rather than simply to be dealing always with the consequences of the way that markets operate”.²⁶⁰

250. He stated that the provisions strongly reflected the provisions established in England in response to the collapse of Southern Cross, and noted that:

“The Southern Cross experience is that, when a private provider goes bad, it’s the public sector that ends up picking up the pieces. The purpose of these parts of this Bill is to put the public, through its regulators and inspectors, in a much more powerful position”.²⁶¹

251. In a letter to the Committee, the Minister stated that inclusion of a statutory duty to produce market stability reports would ensure compliance and improve consistency across Wales, but that it would also:

“provide local authorities with the levers to more readily bring partners around the table to develop a more collaborative

²⁵⁷ [RISC05 Care and Social Services Inspectorate Wales](#)

²⁵⁸ [RoP \[para 264\]](#), 23 April 2015

²⁵⁹ [RISC06 United Kingdom Homecare Association](#)

²⁶⁰ [RoP \[para 118\]](#), 25 March 2015

²⁶¹ [RoP \[para 119\]](#), 25 March 2015

approach to identifying and meeting the specific needs of their communities”.²⁶²

252. The Committee welcomes this approach.

Local health boards

253. In oral evidence, health board representatives spoke about the need to have regard for health boards’ planning and commissioning role in social care, and for them to be involved in working collaboratively with local authorities in the market analysis work. They indicated that a duty for local authorities to consider collaboration and engagement with local health boards could be helpful.²⁶³ Lynda Williams of Cwm Taf UHB stated that local health boards had a vested interest in ensuring that the market provided high-quality and reliable care services because it directly impacted on the patient pathway into and through primary and secondary health care services.²⁶⁴ HIW also highlighted the importance of market stability reports taking account of the interface between health and social care services, and of involving local health boards and Public Service Boards in their preparation.²⁶⁵

Content and frequency of market stability reports

254. Some stakeholders commented on what should be included in the market stability reports:

– Commissioning

Stakeholders stated that market stability reports should include the type of social care and the cost at which it was being commissioned,²⁶⁶ and an analysis of the impact of the commissioning on local providers and social care workers.²⁶⁷

– Third sector and social enterprises

To ensure consistency with the 2014 Act, Macmillan Wales

²⁶² [RISC AI02 Correspondence from the Minister for Health and Social Services, 19 May 2015](#)

²⁶³ [RoP \[paras 314-6\]](#), 21 May 2015

²⁶⁴ [RoP \[para 307\]](#), 21 May 2015

²⁶⁵ [RoP \[para 198\]](#), 21 May 2015

²⁶⁶ [RISC09 Wales Carers Alliance](#), [RISC30 Age Cymru](#)

²⁶⁷ [RISC06 United Kingdom Homecare Association](#)

stated that the reports should include consideration of the role of third sector and social enterprises in service provision.²⁶⁸

- Labour market

Stakeholders noted concerns about the effectiveness of workforce planning across adults' and children's social services in Wales, and called for the market stability reports to consider the social care labour market.²⁶⁹

255. The Minister stated that the market stability reports would improve the information available to support commissioners in making effective decisions within their local markets.²⁷⁰

256. The Minister referred to an [SSIA guidance paper on 'Developing a Market Position Statement'](#) which he said demonstrated that local authorities in Wales had already given careful consideration to the issue. The paper includes an indication of the content of market stability reports, although in a letter to the Committee the Minister stated that he intended there to be engagement and consultation in relation to the requirements for market stability reports which would likely result in differences from the model outlined in the paper.²⁷¹

257. The Minister told the Committee that he did not intend that the face of the Bill would prescribe the timing of the market stability reporting cycle, as there was a need to ensure flexibility and responsiveness, and "calibrate the reporting cycle against changes in the marketplace".²⁷²

258. Mari Williams, a Welsh Government lawyer, stated that the duty under the Bill to produce market stability reports was linked to the duty on local authorities and local health boards under section 14 of the 2014 Act to assess the needs for care and support within their areas. She noted that the regulations prescribing the details of the duty under section 14 were yet to be drafted, but said that they would feed into the regulations to be drafted under section 144B of the 2014 Act, to be inserted by section 55 of the Bill.²⁷³

²⁶⁸ [RISC39 Macmillan Wales](#)

²⁶⁹ [RoP \[paras 282-5\]](#), 13 May 2015, [RISC18 Royal College of Nursing](#)

²⁷⁰ [RoP \[para 118\]](#), 25 March 2015

²⁷¹ [RISC A102 Correspondence from the Minister for Health and Social Services, 19 May 2015](#)

²⁷² [RoP \[para 124\]](#), 25 March 2015

²⁷³ [RoP \[para 125\]](#), 25 March 2015

259. The Minister stated that the intention of the provisions was to ensure that commissioners were able to identify and source providers to fill gaps in service provision, and to enable the social care sector to identify areas of opportunity for service provision.²⁷⁴ He told the Committee that he was willing to consider bringing forward amendments to make explicit requirement for local market stability reports to include analysis of local commissioning.²⁷⁵

The Committee's view

260. The Committee is concerned that there is little indication at present about what the market stability reports might contain or the frequency with which they will be produced. It acknowledges the Minister's evidence that there needs to be some flexibility to accommodate market conditions, and to take into account the regulations which are still emerging from the 2014 Act.

261. It notes and endorses the evidence raised by stakeholders that market stability reports should include consideration of commissioning, the role of the third sector, cooperatives and social enterprises in service provision, and the labour market and workforce planning.

262. The Committee welcomes the Minister's commitment for full consultation with the sector before making regulations and issuing guidance in relation to the market stability reports. It notes that the regulations under section 144B of the 2014 Act (to be inserted by section 55) and section 62 of the Bill are subject to the negative procedure, and that there is no requirement on the face of the Bill for the Minister to consult before making the regulations.

Recommendation 29: The Committee recommends that the Minister for Health and Social Services brings forward amendments to require that local market stability reports include analysis of commissioning, the role of the third sector, cooperatives and social enterprises in service provision, and the labour market and workforce planning.

²⁷⁴ [RISC AI02 Correspondence from the Minister for Health and Social Services, 19 May 2015](#)

²⁷⁵ [RoP \[para 91\]](#), 3 June 2015

Recommendation 30: The Committee recommends that the Minister for Health and Social Services brings forward amendments to include requirements on the face of the Bill for consultation with the social care sector prior to making regulations under section 144B of the Social Services and Well-being (Wales) Act 2014 (to be inserted by section 55 of the Bill) and section 62 of the Bill, in relation to the content and format of market stability reports.

Capacity to prepare market stability reports

263. The Committee heard concerns from stakeholders about the capacity of local authorities and CSSIW to prepare local and national market stability reports. The WLGA and ADSS Cymru noted the need to ensure that there was no duplication with local authorities' existing reporting duties and population assessments under the 2014 Act. They said that the preparation of such reports would require specialist research and financial modelling skills, and that it would take time, expertise and resources for the duty to be effectively met.²⁷⁶

264. CSSIW told the Committee that it anticipated that local authorities would find the preparation of market stability reports “challenging”.²⁷⁷

265. ADSS Cymru acknowledged that local authorities would need to develop the capability and capacity to produce local market stability reports. Representatives told the Committee that, across Wales, there were pockets of expertise in some local authorities, and that it would be more effective for them to work collaboratively along national, regional or partnership lines rather than individually, which could result in them all competing for the same specialist resource. They said that a national commissioning board had been established to help to aggregate intelligence, coordinate activity, and pool resources to commission external expertise where appropriate.²⁷⁸

266. When asked whether it would be helpful for there to be a duty on the face of the Bill for local authorities to collaborate in the production of local market stability reports, Sue Evans of ADSS Cymru stated that:

²⁷⁶ [RISC08 Welsh Local Government Association and Association of Directors of Social Services Cymru](#)

²⁷⁷ [RISC05 Care and Social Services Inspectorate Wales](#)

²⁷⁸ [RoP \[paras 77, 80 and 82\]](#), 23 April 2015

“the difficulty in enforcing it is that you may force the wrong partners. You may have different needs in neighbouring authorities, and there’s no point trying to aggregate that if the needs are completely different. So I think it is about enabling that to happen, where it makes sense for different services”.²⁷⁹

267. Local health boards indicated that the preparation of the national market stability report would help to identify the appropriate sub-national, regional or partnership level within the social care market for the preparation of local reports.²⁸⁰

268. CSSIW emphasised the complexity of the social care market, and the structural and governance arrangements of some social care providers. It told the Committee that the provisions in the Bill were reasonable and would enable it to provide a comprehensive view of the market. However, it emphasised that there were limitations to the approach, and that:

“we are not forensic accountants. We can’t be forensic accountants. We can account for whether sufficient moneys are being spent on the business to run the business properly”.²⁸¹

269. In written evidence, CSSIW outlined some of the potential barriers to the production and effectiveness of market stability reports, including:

- the complexity and significant costs of setting up secure systems and procuring sufficient financial expertise;
- the complexity of the social care market in Wales and the burden on small providers of supplying the required information;
- technical considerations and potential time lags in accessing accurate financial information.

270. It stated that it would be possible for it to deliver simple market profiles of general oversight and trends and identify known and quantifiable risks, where financial markers were perverse or concerns raised. However, it said that it would not “be able to collect or analyse more sophisticated financial data and trading indicators”.²⁸² The CSSIW

²⁷⁹ [RoP \[paras 78-9\]](#), 23 April 2015

²⁸⁰ [RoP \[para 325\]](#), 21 May 2015

²⁸¹ [RoP \[paras 164 and 174\]](#), 23 April 2015

²⁸² [RISC05 Care and Social Services Inspectorate Wales](#)

NAB noted that the production of market stability reports would require a particular skill set, which might be challenging for CSSIW.²⁸³

271. The Minister told the Committee that the Bill would require local authorities to increase their capacity in relation to the skills required to produce market stability reports. However, he stated that he anticipated that local authorities would collaborate rather than prepare individual market stability reports, and that there was already best practice among some local authorities which could be shared.²⁸⁴ He told the Committee that he did not intend to place requirements on the face of the Bill as to how local authorities should seek to collaborate, as the appropriate levels of collaboration might vary across Wales depending on local circumstances.²⁸⁵

The Committee's view

272. The Committee shares the concerns of stakeholders that local authorities and CSSIW do not have the right expertise and skills to undertake this work at present. It also believes that in preparing local market stability reports, local authorities must consider collaborating with each other along appropriate regional or sub-national lines, and with the relevant local health boards. The particular joint working arrangements will depend on local circumstances, but the Committee considers that there should be a duty on the face of the Bill to require due regard be given to a collaborative approach.

Recommendation 31: The Committee recommends that the Minister for Health and Social Services brings forward amendments to place a duty on local authorities to work collaboratively with other relevant local authorities and local health boards in the preparation of local market stability reports.

Recommendation 32: The Committee recommends that the Minister for Health and Social Services sets out the support and resources that will be provided to local authorities and the Care and Social Services Inspectorate Wales to ensure that the right capacity and expertise is in place to prepare local and national market stability reports.

²⁸³ [RISC21 Care and Social Services Inspectorate Wales National Advisory Board](#)

²⁸⁴ [RoP \[para 123\]](#), 25 March 2015

²⁸⁵ [RoP \[para 66\]](#), 3 June 2015

Financial sustainability of social care providers

273. Chapter 7 makes provision for the Welsh Ministers to monitor and review the financial sustainability of certain service providers. Section 58 gives the Welsh Ministers powers to establish criteria. Section 60 states that the Welsh Ministers must assess the financial sustainability of certain service providers' businesses. Following this, the Welsh Ministers may require CSSIW to undertake a 'due diligence' exercise of the business, and CSSIW will have the power to require the provider to undergo a business review and/or provide contingency plan arrangements.

Criteria for providers

274. The Minister told the Committee that the provisions were an important safeguard for the public, and had been included as part of the learning from the collapse of Southern Cross. He said that he anticipated they would be rarely used in practice.²⁸⁶

275. The Minister noted that he intended the provisions in the Bill to be applied only to large national providers, rather than to smaller providers which were dominant in their local markets,²⁸⁷ and stated that he was confident that the provisions requiring the providers to disclose information, when it was in the public interest, were proportionate and compliant with the [Human Rights Act 1998](#).²⁸⁸

276. David Pritchard, Head of Regulation and Workforce Development in the Welsh Government's Social Services and Integration Directorate, noted that when making regulations under section 58 to specify the criteria for the application of a market oversight scheme to a provider, the Welsh Ministers must have regard to the specialist nature of a provider. Those regulations would be subject to the affirmative procedure.²⁸⁹ The Minister told the Committee that he intended that consultation on these provisions would be undertaken at an early stage, with draft regulations brought forward early in 2016.²⁹⁰

²⁸⁶ [RoP \[para 148\]](#), 25 March 2015

²⁸⁷ [RoP \[para 59\]](#), 3 June 2015

²⁸⁸ [RoP \[para 141\]](#), 25 March 2015

²⁸⁹ [RoP \[para 61\]](#), 3 June 2015

²⁹⁰ [RISC AI02 Correspondence from the Minister for Health and Social Services, 19 May 2015](#)

The Committee's view

277. The Committee notes that there is no requirement for the Welsh Ministers to consult with experts or stakeholders when defining the criteria. Given the potential impact of the market oversight regime, the Committee believes that the criteria should be the subject of broad consultation, and that requirements for this should be set out on the face of the Bill.

Recommendation 33: The Committee recommends that the Minister for Health and Social Services brings forward amendments to include requirements for the Welsh Ministers to consult with relevant stakeholders before making regulations under section 58 in relation to market oversight.

Impact of market oversight regime

278. Stakeholders generally welcomed the provisions for market oversight of the financial sustainability of providers. Stakeholders cited the significant impact that the sudden withdrawal of services by a major provider could have on service users and the local market.²⁹¹

279. The British Red Cross stated that the sustainability of providers could depend on the funding terms provided by statutory commissioners. It noted that third sector funding was sometimes on a yearly basis, that full-cost recovery was not always achieved, and that services were subsidised by charitable funds. It suggested that assessments of financial sustainability might be used to encourage longer term funding awards by statutory commissioners to the third sector.²⁹²

280. In its written evidence, CSSIW sets out what it describes as “major technical problems” with market oversight schemes. In oral evidence, CSSIW told the Committee that some care businesses have complex structures based around their taxation arrangements rather than service models and that, whilst CSSIW has the capability to collect good service-level information, acquiring good information on larger organisational structures and finance is more challenging. CSSIW told the Committee:

²⁹¹ [RISC18 Royal College of Nursing](#)

²⁹² [RISC37 British Red Cross](#)

“What we’re saying is that we are already sighted on that with local authorities for escalating concerns, but we can provide a basic level of financial assurance about services and watch for these indicators and watch for things, but could we anticipate another Southern Cross around the corner? That would be very difficult, even [with] a major investment by the Welsh Government”.²⁹³

281. Melanie Minty of Care Forum Wales noted:

“I think there is an issue there—well, three issues, really. One is the fact that we want a system that is straightforward and doesn’t add too much to the existing level of paperwork that care homes have to wade through when they want to be getting on with the business of looking after people. The second is that, yes, for larger businesses, it is more difficult to work out the individual costs of care homes, and there are different levels of efficiencies and so on. The third is, yes, I don’t think that, as it stands, there is sufficient expertise within, for instance, CSSIW, or even local authorities, possibly, to make judgements about sustainability. I think there needs to be an element of professionalism brought in that isn’t there at the moment”.²⁹⁴

282. David Francis of CSSIW told the Committee that the complexity of social care providers’ structures and financial arrangements, and the UK-wide services some provided, meant that it was important that the Bill gave the regulator the power to share information with other regulators across the UK.²⁹⁵ He told the Committee that CSSIW was monitoring the Care Quality Commission’s review of its model for market oversight in England, and that the Welsh regulator would aim to learn lessons from it.²⁹⁶

283. The Minister acknowledged that for providers which provided multiple services, there could be circumstances in which the company as a whole was financially viable, but that one particular service or setting was at risk of failure, and the potential for adverse consequences as a result of assessment of the provider’s financial

²⁹³ [RoP \[para 167\]](#), 23 April 2015

²⁹⁴ [RoP \[para 172\]](#), 29 April 2015

²⁹⁵ [RoP \[para 165\]](#), 23 April 2015

²⁹⁶ [RoP \[para 167\]](#), 23 April 2015

viability. He stated that there would need to be appropriate restrictions on access to the information gathered in relation to the market oversight regime, and how that information was shared. He told the Committee that the regime would largely mirror that in place in England, with the same safeguards.²⁹⁷

284. Colin Angel of the UKHCA told the Committee that the provisions in the Bill regarding the Welsh Ministers' oversight of the financial sustainability of certain providers was sensible, but that some providers did not believe that possible provider failure would be identified sufficiently quickly. He noted that the Bill provided for intervention by the regulator in services at risk of failure at the point of failure. He stated that this would reduce the risk of unintended consequences of earlier intervention bringing about provider failure through the withdrawal by concerned commissioners.²⁹⁸ The Minister acknowledged the risk, and said that he was confident that the system would include sufficient safeguards to mitigate against it.²⁹⁹

285. Some stakeholders suggested that the provisions should go further, both in terms of when checks were carried out, and which providers should be subject to them. The GMB told the Committee about the importance of ensuring that there was appropriate financial scrutiny of providers prior to the commissioning of services, and said that it would welcome periodic checks being carried out in relation to all providers. Mike Payne stated that this would lead to greater transparency, and give the public, service users and the social care workforce confidence in the sustainability of services in the longer term.³⁰⁰

286. Age Alliance Wales acknowledged the impact of the failure of a large provider, but noted that if there were limited services in a particular area of Wales, even the failure of small providers could have a significant impact on the local market. Rosanne Palmer suggested that in assessing which providers should be included in the market oversight regime under section 58, consideration should be given to the population needs assessment under the 2014 Act.³⁰¹

²⁹⁷ [RoP \[para 64\]](#), 3 June 2015

²⁹⁸ [RoP \[paras 169-70\]](#), 29 April 2015

²⁹⁹ [RoP \[para 148\]](#), 25 March 2015

³⁰⁰ [RoP \[paras 278-80\]](#), 29 April 2015

³⁰¹ [RoP \[paras 152-4\]](#), 13 May 2015

287. The Care Council told the Committee that it was “critical” for small providers to be able to demonstrate their financial viability as well as larger providers.³⁰² This was supported by the WLGA and ADSS Cymru, who stated that consideration should also be given to market oversight of smaller providers, particularly in regional markets which might be easily destabilised.³⁰³

288. David Francis of CSSIW agreed, stating that:

“the feedback that they had in England from the local authorities, is that they were just as concerned about very local market failure as they were about big companies failing. We would suggest that, actually, that’s the situation in Wales. We know of certain areas, certain communities, where there are only two or three large nursing homes, two of which are financially distressed, and the impact for that local community could be just as significant”.³⁰⁴

289. The UKHCA stated in written evidence that the provisions in the Bill were proportionate to achieve the Welsh Government’s stated policy objective. It agreed that business volume, geography and provider specialism were appropriate measures, but noted its concern that the Welsh Ministers would not be required to consult with experts or stakeholders when defining the criteria for a provider to be subject to the market oversight regime. It also noted that there are no provisions for providers to exit the market oversight scheme if their circumstances change. The UKHCA emphasised that the advising of a local authority by the Welsh Ministers in relation to financial sustainability under section 61 would require sensitive and confidential handling of data to avoid precipitating service failure.³⁰⁵

290. Colin Angel of the UKHCA told the Committee that in the exercise of market oversight functions, CSSIW needed to take into account the different margins for financial viability for different sizes and models of social care provider.³⁰⁶

³⁰² [RoP \[para 268\]](#), 23 April 2015

³⁰³ [RISC08 Welsh Local Government Association and Association of Directors of Social Services Cymru](#)

³⁰⁴ [RoP \[para 166\]](#), 23 April 2015

³⁰⁵ [RoP \[para 175\]](#), 29 April 2015, [RISC06 United Kingdom Homecare Association](#)

³⁰⁶ [RoP \[para 173\]](#), 29 April 2015

The Committee's view

291. The Committee is persuaded by stakeholders' evidence and believes that when making regulations under section 58 to establish the criteria for market oversight, the Minister should ensure that providers of significance in their local markets are included, not just large providers. It believes that the inclusion of locally significant providers, whether significant by virtue of their size or specialism, will encourage local market stability.

292. The Committee also notes the evidence it received that there could be merit in periodic financial sustainability checks being undertaken in relation to all providers. However, it acknowledges that this would have significant resource implications.

Recommendation 34: The Committee recommends that the Minister for Health and Social Services, when making regulations under section 58 to establish the criteria for providers to be subject to market oversight and financial sustainability checks, ensures that the criteria are sufficiently flexible to be appropriate for providers of all sizes which are of significance in their local markets.

Capacity to undertake market oversight

293. Hywel Dda UHB welcomed the financial and corporate oversight role for CSSIW, but noted that there would be a need for specific expertise to be sought which would require additional resourcing.³⁰⁷ Care Forum Wales told the Committee that it did not believe that CSSIW currently had the expertise to make judgements about financial sustainability. Colin Angel of UKHCA agreed, but noted that this was to be expected as this was not a function that it currently undertook.³⁰⁸

294. David Francis of CSSIW welcomed the provisions in the Bill enabling the regulator to require providers to undertake financial due-diligence tests for the purposes of providing CSSIW with assurance of its financial sustainability.³⁰⁹

³⁰⁷ [RISC31 Hywel Dda University Health Board](#)

³⁰⁸ [RoP \[paras 172-3\]](#), 29 April 2015

³⁰⁹ [RoP \[para 171\]](#), 23 April 2015

295. The Minister told the Committee that while he acknowledged the particular nature of the social care sector, some capacity and experience was already in place within the Welsh Government to undertake financial viability assessments, citing its experience in assessing the financial viability of housing associations.³¹⁰ He stated that CSSIW would also need to work closely with the Care Quality Commission, which undertakes a similar assessment role in relation to social care providers in England. In addition to opportunities to learn lessons and share good practice, the UK-wide nature of some social care providers would require joint working to avoid duplication and share intelligence in relation to big providers.³¹¹

296. The RIA estimates that the additional cost to CSSIW of undertaking assessments of the financial stability of the ten providers in Wales operating services in ten or more settings (excluding housing associations), would be approximately £217,000 in the first year, and £200,000 per year thereafter. However, the Minister told the Committee that additional resources would be provided to CSSIW to enable it to undertake this work. He noted that he anticipated that in the short term CSSIW would need to buy in expertise while it built its own capacity.³¹²

The Committee's view

297. The Committee shares the concerns raised by stakeholders about whether CSSIW will have the capacity, skills or expertise to undertake its new market oversight duties.

Recommendation 35: The Committee recommends that the Minister for Health and Social Services sets out how he will ensure that the Care and Social Services Inspectorate Wales is appropriately resourced and has the required expertise to undertake its duties in relation to the market oversight regime.

³¹⁰ [RoP \[para 141\]](#), 25 March 2015

³¹¹ [RoP \[para 54\]](#), 3 June 2015

³¹² [RoP \[para 53\]](#), 3 June 2015

12. Social Care Wales

298. Part 3 and Schedule 2 of the Bill make provision in relation to the reconstitution of the Care Council as Social Care Wales. Schedule 2 sets out arrangements for the structure, membership, governance and operation of SCW.

299. Section 67(2) sets out SCW's objectives "to protect, promote and maintain the safety and well-being of the public in Wales", and provides that in the exercise of its functions, SCW must promote and maintain:

- "(a) high standards in the provision of care and support services,
- (b) high standards of conduct and practice among social care workers,
- (c) high standards in the training of social care workers, and
- (d) public confidence in social care workers".

300. Part 3 further provides that SCW may give advice and assistance to care and support service providers to encourage improvement in service provision, and may undertake research studies to enable it to make recommendations for improving the economy, efficiency and effectiveness of services. Section 70 focuses on engagement with the public and social care workers, requiring SCW to make information available, and to publish a statement of its policy on involving the public and social care workers in the exercise of its functions.

301. Part 3 also gives SCW broad powers to make new rules, and sets out the consultation and other requirements with which it must comply when making rules. Rules made by SCW are not subject to Assembly scrutiny procedures.

Remit of Social Care Wales

302. Sounding a note of caution that the details are yet to be determined, and that it will need to be properly resourced, the Care Council nonetheless welcomed the extended remit for SCW, stating that:

"The additional elements of service improvement, research and public information will bring further key levers into a cross-

sectoral, coordinated approach to raising the quality of provision”.³¹³

303. Other stakeholders also welcomed the expansion to the Care Council’s remit,³¹⁴ with Sense Cymru stating that it would reduce duplication with other Welsh Government-funded agencies,³¹⁵ and RNIB Cymru noting that it had the potential to drive up standards and ensure that workers had the right skills to deliver high quality social care.³¹⁶

304. The WLGA and ADSS Cymru stated in written evidence that it was important for service users and local government to continue to be represented in the new SCW, which it said must build on the strengths of the Care Council, including “giving service users a voice and a part to play in the education of social workers and other social care workers”.³¹⁷

305. The Older People’s Commissioner said that evidence she had received in the course of her review of care homes had indicated that the Care Council did not have the powers required to drive “the relentless and systematic cultural change needed to be a strong champion for the development and professionalization of the social care workforce”. She therefore welcomed the creation of SCW and its extended remit, although she noted that without significant additional resources she had concerns that its impact on current practice would be limited.³¹⁸

306. Other stakeholders had concerns about the breadth of the new remit. The College of Occupational Therapists (“COT”) told the Committee that the remit set out in section 67(1) for the protection, promotion and maintenance of the safety and well-being of the public was not limited solely to social care matters. Further, it said that the functions set out in section 67(2) applied more broadly to the social care workforce than those workers who will be required to register with SCW. The College noted that it was concerned about the way that

³¹³ [RISC04 Care Council for Wales](#)

³¹⁴ [RISC06 United Kingdom Homecare Association](#)

³¹⁵ [RISC26 Sense Cymru](#)

³¹⁶ [RISC28 RNIB Cymru](#)

³¹⁷ [RISC08 Welsh Local Government Association and Association of Directors of Social Services Cymru](#)

³¹⁸ [RISC45 Older People’s Commissioner for Wales](#)

the Bill would affect arrangements for those parts of the social care workforce which are regulated by other regulators.³¹⁹ This issue is explored in more depth in the next chapter.

307. Some stakeholders suggested that there were additional areas which could be included in SCW's remit. The Disability Reference Group noted that the Care Council currently has a role as the voice of employers in the sector, but said that the Bill was silent on whether this would be part of SCW's role.³²⁰ My Home Life Cymru told the Committee that it thought that SCW should have a role in bringing together social care regulators and commissioners, as well as registering, training and supporting the workforce.³²¹

308. SCW's new remit in relation to undertaking studies to improve the effectiveness, efficiency and/or economy of care and support was welcomed by the WLGA and ADSS Cymru.³²² HIW told the Committee that in exercising its improvement functions, SCW would have to work closely with partner organisations in the health service as well as within social care to ensure that there was sufficient focus on how to identify improvements and new models of service delivery in line with moves towards more-integrated services. Kate Chamberlain said that:

“by having an improvement function that focuses on social care, and an improvement function that focuses on healthcare, we are at risk of reinforcing sectoral boundaries, whereas, actually, we want to be trying to break them down. It's important to cut across that boundary”.³²³

309. Rhian Huws Williams of the Care Council told the Committee that she welcomed the intention under the Bill for the funding of improvement and development of the social care workforce to be coordinated by SCW. She said that this would enable better strategic prioritisation of the funds. In addition, she noted that the new research functions would enable SCW to undertake horizon scanning and forecasting to ensure that the improvement element of its remit was “innovation development” as opposed to “sending the cavalry in”. She

³¹⁹ [RISC03 College of Occupational Therapists](#)

³²⁰ [RoP \[para 124\]](#), 29 April 2015

³²¹ [RoP \[para 150\]](#), 13 May 2015

³²² [RISC08 Welsh Local Government Association and Association of Directors of Social Services Cymru](#)

³²³ [RoP \[para 244\]](#), 21 May 2015

told the Committee that in terms of delivering on the new improvement element of its remit, SCW needed to have the resources available to match the Welsh Government's vision and expectations.³²⁴ The Minister stated that the resources allocated to SCW would be double that which the Care Council currently receives, in order to help it undertake its improvement agenda.³²⁵

310. CSSIW stated that in regard to SCW's power in section 68 to provide advice and support, including grants, to those providing care and support services, there was a need for clarity about how the role was discharged. It noted that protocols would need to be put in place to prevent its service regulation role coming into conflict with SCW's improvement functions.³²⁶

311. Some stakeholders were concerned that elements of SCW's remit would come into conflict with each other, particularly functions in relation to the regulation and development of the social care workforce.³²⁷ There was consensus that SCW's primary function was to protect the public. Age Alliance Wales stated that this function should be kept operationally separate through robust governance arrangements and safeguards from the other functions, for example those in relation to training or improvement.³²⁸ The Chartered Society of Physiotherapy highlighted that it had previously undertaken a dual role as professional and regulatory body, but that arrangements had since been changed so that physiotherapists were regulated by the Health and Care Professions Council with a view to preventing conflicts from arising.³²⁹

312. The Royal College of Nursing ("RCN") agreed that the primary function of the regulator should be the protection of the public. It noted the possibility for conflicts, or perceived conflicts, of interest as a result of the broad remit for SCW. In written evidence, it stated that the improvement and public information roles were not necessarily incompatible with SCW's regulatory functions, but that it would require careful wording.³³⁰

³²⁴ [RoP \[paras 273-4\]](#), 23 April 2015

³²⁵ [RoP \[para 102\]](#), 25 March 2015

³²⁶ [RISC05 Care and Social Services Inspectorate Wales](#)

³²⁷ [RISC03 College of Occupational Therapists](#), [RISC40 Alzheimer's Society](#)

³²⁸ [RoP \[paras 147-8\]](#), 13 May 2015

³²⁹ [RISC23 Chartered Society of Physiotherapy](#)

³³⁰ [RISC18 Royal College of Nursing](#)

313. Gerry Evans of the Care Council said that from its origins the Care Council had balanced regulatory and workforce development functions. He acknowledged that the inclusion of service improvement in SCW's remit would bring new challenges, but said that the risks would be outweighed by the benefits in terms of the strengthened role in driving improvement. He said that the potential conflict of interest could be managed through the way that SCW structured itself and its work.³³¹ Rhian Huws Williams agreed, saying that:

“The crucial thing is to ensure that the governance model, as well as the operational model, is robust”.³³²

314. The WLGA and ADSS recognised the potential for conflicts of interest between the regulatory and improvement roles, but stated that these could be addressed through:

“mature conversation about the distinction between improvement, that requires current arrangements to deliver better outcomes, and innovation, that requires that new responses are developed to meet changing expectations and demands, as well as new legislative requirements”.³³³

315. Speaking on behalf of UNISON however, Ruth Crowder told the Committee that the regulatory functions needed to be “strongly separated” from the improvement, development and research functions. She said that there needed to be a supportive culture of improvement, but that there also needed to be effective regulation to address poor performance when it was needed.³³⁴

316. Sense Cymru stated that other bodies with potentially conflicting responsibilities had sought to respond by only carrying out their improvement roles in relation to individuals or groups for which they did not have regulatory responsibilities. It noted that this was not possible for SCW, which would have explicit improvement and development duties in relation to social care workers, including those whom it regulated.³³⁵

³³¹ [RoP \[paras 278-9\]](#), 23 April 2015

³³² [RoP \[para 280\]](#), 23 April 2015

³³³ [RISC08 Welsh Local Government Association and Association of Directors of Social Services Cymru](#)

³³⁴ [RoP \[para 226\]](#), 29 April 2015

³³⁵ [RISC26 Sense Cymru](#)

317. The Minister told the Committee that the Care Council had built confidence among the sector and service users about the way in which it discharged its responsibilities. He outlined his ambition for SCW to help build a social care workforce which felt valued and recognised, and which provided for training and progression. The Minister acknowledged stakeholder concerns about possible conflicts of interest, but stated that there had always been an improvement strand in its work, in addition to its regulatory functions.³³⁶

The Committee's view

318. The Committee notes that the majority of stakeholders were content with the remit allocated to SCW under the Bill, but that some were concerned about the potential for conflicts of interest between SCW's regulatory and improvement roles. Both elements of SCW's role are of importance to public protection and driving up standards of care. It will be important that the new SCW has robust governance arrangements in place to build public confidence, and the confidence of the social care sector, that it is undertaking all of its remit appropriately.

Recommendation 36: The Committee recommends that the Minister for Health and Social Services makes a statement setting out how the governance arrangements for the newly-constituted Social Care Wales will ensure that there is no conflict of interest, or perceived conflict of interest, between the exercise of its regulatory and other functions.

Rebranding the Care Council for Wales

319. Some stakeholders were concerned about the proposal to rebrand the Care Council as SCW. Concerns included the cost of rebranding,³³⁷ and the new name itself, which some stakeholders thought did not accurately encompass the workforce regulator's role and remit.³³⁸ CSSIW stated that while it had no firm views on the name for the Care Council, the proposal for it to be renamed as SCW failed to

³³⁶ [RoP \[para 102\]](#), 25 March 2015

³³⁷ [RISC01 Disability Can Do Organisation](#)

³³⁸ [RISC42 Professor Dame June Clark](#)

acknowledge its role in supporting and building capacity in workforce standards and qualifications in the broader childcare sector in Wales.³³⁹

320. In written evidence, the Care Council said that it, and its stakeholders, regretted the loss of its branding.³⁴⁰ Rhian Huws Williams of the Care Council stated that there was a need to balance the brand recognition of its current name against the opportunity to create a new brand and vision for the future. She noted that there was a cost associated with rebranding, and said that:

“there is a need to balance that carefully at a period where a lot is changing all at once for the organisation and for the sector and to think about where there are pragmatic approaches to continuing with the brand for the areas of business that it has been associated with today”.³⁴¹

321. The EM states that the new name is “a consequence of the conferral of new functions on Social Care Wales”. The Minister confirmed this to the Committee, stating that the new name would signal the workforce regulator’s new responsibilities.³⁴²

The Committee’s view

322. The Committee notes the indications in the EM and from the Minister that the new name for the Care Council is a result of the new functions. However, in the light of stakeholders’ concerns, the Committee is not yet persuaded that it has sufficient detail to justify why a potentially costly rebrand is necessary.

Recommendation 37: The Committee recommends that the Minister for Health and Social Services provides further detail about why there is a need to rebrand the Care Council for Wales as Social Care Wales.

Rules-making powers

323. The Committee received mixed evidence on the powers for SCW to make rules without Ministerial oversight.

³³⁹ [RISC05 Care and Social Services Inspectorate Wales](#)

³⁴⁰ [RISC04 Care Council for Wales](#)

³⁴¹ [RoP \[para 276\]](#), 23 April 2015

³⁴² [RoP \[para 102\]](#), 25 March 2015

324. The UKHCA, in its written evidence, noted what it characterised as “the high degree of autonomy which will be given to Social Care Wales”. It highlighted that the Welsh Ministers’ powers in relation to SCW would predominantly be powers of intervention after the fact, rather than sign-off of proposals. It stated that it was concerned about the lack of Ministerial oversight and involvement in rules relating to fees payable by the social care workforce under section 73, citing the possible impact on a workforce which tends to be relatively low-paid.³⁴³

325. The RCN said that the Care Council has not always taken account of the contribution of the wider social care workforce to the social care sector. It stated that it strongly opposed the rules-making powers for SCW, and that:

“we do not think it is at all appropriate for any such body to have this wide autonomous policy making ability without democratic oversight”.³⁴⁴

326. Conversely, some stakeholders, including the WLGA and ADSS Cymru welcomed SCW’s increased autonomy to make rules governing the process of regulation.³⁴⁵ The Health and Care Professions Council supported the explicit outlining of the registration and fitness to practise procedures on the face of the Bill, stating that this would provide a legislative framework within which SCW could develop its own rules. It noted that being able to make rules autonomously within this framework without recourse to the Welsh Ministers would enable SCW to respond to changing circumstances more flexibly and in a more timely fashion.³⁴⁶

The Committee’s view

327. The Committee notes the concerns raised by some stakeholders about the autonomy of SCW in relation to its rules-making powers. In its continuing scrutiny of the Bill the Committee will play close attention to any recommendation or comment made about the rules-making powers by the Constitutional and Legislative Affairs Committee.

³⁴³ [RISC06 United Kingdom Homecare Association](#)

³⁴⁴ [RISC18 Royal College of Nursing](#)

³⁴⁵ [RISC08 Welsh Local Government Association and Association of Directors of Social Services Cymru](#)

³⁴⁶ [RISC07 Health and Care Professions Council](#)

13. Social care workforce

Registration

328. Part 4 of the Bill defines a 'social care worker'. It provides for the maintenance of a register of relevant social workers, social care workers, and visiting social workers from relevant European states, and outlines arrangements for the registration of such workers. Under section 79, social workers (i.e. those with a social work qualification) and visiting social workers from relevant European states will be required to register with SCW. The Welsh Government also intends to make regulations under section 78 to require student social workers, managers of regulated services (e.g. care homes), and residential child care workers to register. These are the same groups as are currently registered.

329. Section 85 of the Bill provides that SCW may make rules to the effect that registration is for a specified period only, thereby requiring registration to be renewed. Section 109 requires SCW to keep a list of persons who have been removed from the register. Section 110 applies protections to the title of 'social worker', and enables Welsh Ministers, by regulations, to afford similar protection of title to other specified social care workers.

330. Figure 1 sets out the role of SCW in relation to the social care workforce.

Figure 1 Categories of social care workers for the purposes of the Bill

	Category of social care worker				
	Social workers (section 79(1)(a))	Manages a place where a regulated service is provided (section 79(1)(b))	Provides care and support in the course of employment (section 79(1)(c))	Provides care and support under a contract for services (section 79(1)(d))	Potential social care workers as specified in section 78(3) who may be defined as social care workers in future
Social Care Wales may: – give advice and assistance; – engage with social care workers; – make rules requiring training; – approve courses for training purposes; – make prohibition orders? (sections 67, 38, 70, 74, 113, 163)	Yes	Yes	Yes	Yes	Not currently, but may be added by regulations made under section 78(2).
Subject to code of practice of standards issued by Social Care Wales? (section 111)	Yes	Yes	Yes. They may also be subject to other codes of practice.	Yes. They may also be subject to other codes of practice.	Not currently, but could be added in the future by regulations made under section 78(2).
Required to register with Social Care Wales and subject to fitness to practise procedures? (sections 79, 116, 122, 135, 158)	Yes. On face of the Bill.	Yes. The Minister has stated that all managers of regulated services will be included in regulations.	Children’s residential care workers, student social workers: yes – the Minister has stated these groups will be included in regulations Other social care workers: not currently, but could be added in the future by regulations.	Not currently, but could be added in the future by regulations under section 79(1)(b).	Not currently, but could be added in the future by regulations under made sections 78(2) and 79(1)(b).
Required to register with other regulators?	No	Maybe. The Minister has stated that social care workers registered with other regulators will not be required to register with Social Care Wales.			

Impact of registration

331. Many stakeholders told the Committee about the benefits of registration for social care workers, including recognition of their value, and the professionalization of the social care workforce.³⁴⁷

332. Care Forum Wales stated that registration provided assurance for service users, and assisted providers in recruiting and retaining a high quality workforce.³⁴⁸ Colin Angel of the UKHCA said that the primary purpose of registration was safeguarding. He cited his personal experience as a registered nurse, and described the impact registration had on his sense of aspiration in training and the quality of his practice to ensure that he maintained his registration.³⁴⁹ The Older People's Commissioner described registration as a gateway to a mandatory code of practice, and the associated training and support which could drive a focus on improving skills, knowledge and professionalism.³⁵⁰

333. The Wales Alliance for Mental Health told the Committee that it would be important that any processes of registration for social care workers did not preclude former service users from working as registered social care workers. Alun Thomas of the Alliance stated that former service users could be beneficial as social care workers because of their ability to empathise and engage with current service users.³⁵¹

334. The Wales Carers Alliance stated that registration had a financial impact on individual social care workers or providers because of the fees associated with registration. It noted that for small third sector organisations, such as those promoted by the 2014 Act, there were challenges in identifying where the financial burden should sit.³⁵²

335. The RIA included models for the extension of mandatory registration to the whole social care workforce under the existing or increased fee structures. In response to the Committee's questions, the Minister provided further estimates of the financial implications of

³⁴⁷ [RoP \[para 109\]](#), 13 May 2015

³⁴⁸ [RoP \[para 130\]](#), 29 April 2015

³⁴⁹ [RoP \[para 131\]](#), 29 April 2015

³⁵⁰ [RoP \[para 49\]](#), 13 May 2015

³⁵¹ [RoP \[para 66\]](#), 29 April 2015

³⁵² [RoP \[para 57\]](#), 29 April 2015

extending mandatory registration to domiciliary care workers and adults' residential care workers (see Table 1 below).

Table 1 Estimated financial implications for the Care Council of extension of mandatory registration to include domiciliary care workers and adults' residential care workers³⁵³

	Estimated cost per registrant	Estimated cost	Estimated income from fees	Estimated grant in aid required	Current grant in aid (2012-13)	Additional cost
Existing fee level (£10)	85.24	4,020,174	471,630	3,548,544	2,905,825	642,719
	130	6,131,190	471,630	5,659,560	2,905,825	2,753,735
	273.31	12,890,120	471,630	12,418,490	2,905,825	9,512,665
Increased fee level (£25)	85.24	4,020,174	1,179,075	2,841,099	2,905,825	-64,726
	130	6,131,190	1,179,075	4,952,115	2,905,825	2,046,290
	273.31	12,890,120	1,179,075	11,711,045	2,905,825	8,805,220

336. The Minister highlighted that the estimates were based on the achievement of substantial economies of scale by the Care Council, from £273.31 per registrant to £85.24. On this basis, retaining the current £10 fee per registrant could result in additional costs of between £642,719 and £9,512,665. Increasing the fee to £25 could result in savings of £64,726, or additional costs of up to £8,805,220.

337. The Minister further noted that these estimates did not take account of the impact on the supply of domiciliary care workers and adults' residential care workers, or the costs to employers, for example those related to enabling staff to achieve particular qualifications.³⁵⁴

Extension of registration

338. The Bill removes the ability for social care workers who are not currently required to register, to register voluntarily. Stakeholders generally welcomed the removal of voluntary registration, stating that it was not effective and offered few benefits for public protection.³⁵⁵ However, some, including the WLGA and ADSS Cymru, and the British Red Cross, raised concerns about the impact of removing voluntary

³⁵³ Table prepared based on data provided in [RISC A102 Correspondence from the Minister for Health and Social Services, 19 May 2015](#)

³⁵⁴ [RISC A102 Correspondence from the Minister for Health and Social Services, 19 May 2015](#)

³⁵⁵ [RISC06 United Kingdom Homecare Association, RISC07 Health and Care Professions Council](#)

registration without a corresponding increase in the extension of mandatory registration.³⁵⁶ They stated that requiring domiciliary care managers to register, but not their staff, would create a gap in which the training, competence and performance of domiciliary care workers would not be monitored.³⁵⁷

339. There was consensus among stakeholders welcoming the regulation-making power in section 78 which would enable Welsh Ministers to extend the requirement to register with SCW to other categories of social care worker. There were mixed views, however, about whether registration should be extended to some or all of the social care workforce.

340. Some stakeholders stated that registration should be extended to the whole social care workforce (other than those workers already regulated by other regulators).³⁵⁸ UNISON told the Committee that it recognised the scale of the process, but that “it would probably be the safest and most coherent to register absolutely everybody”.³⁵⁹

341. Some stakeholders, including Kelvyn Morris of the Justice for Jasmine Campaign Group, and the MS Society Cymru, emphasised the link between registration and access to training to ensure that performance was at an appropriate level.³⁶⁰

342. A number of stakeholders highlighted that service users procuring their own social care services through Direct Payments, the Independent Living Fund, or self-funding, did not receive regulated services. John Moore of My Home Life Cymru stated that to ensure that those service users were appropriately protected, there should be full mandatory registration of all social care workers.³⁶¹

343. However, other stakeholders, including the WLGA and ADSS Cymru, told the Committee that there would be significant costs associated with extending registration to the whole social care

³⁵⁶ [RISC08 Welsh Local Government Association and Association of Directors of Social Services Cymru](#)

³⁵⁷ [RISC37 British Red Cross](#)

³⁵⁸ [RoP \[para 63\]](#), 29 April 2015, [RoP \[para 108\]](#), 13 May 2015, [RISC06 United Kingdom Homecare Association](#)

³⁵⁹ [RoP \[para 206\]](#), 29 April 2015

³⁶⁰ [RoP \[para 214\]](#), 13 May 2015, [RISC33 MS Society Cymru](#)

³⁶¹ [RoP \[para 108\]](#), 13 May 2015

workforce.³⁶² BASW Cymru acknowledged the benefits of extending registration in terms of additional protections, but stated that this could more effectively be achieved through developing working cultures which provided proper management, support and advice to social care workers, and through appropriate commissioning for individuals' outcomes rather than cost.³⁶³

344. Some stakeholders raised concerns about potential impacts of extending registration. Lynda Williams of Cwm Taf UHB spoke positively about the impacts of registration on healthcare professionals, but acknowledged that, if not appropriately applied, it could become "cumbersome".³⁶⁴ NSPCC Wales stated that while it supported registration as a mechanism for ensuring that people working in social care were properly qualified and checked, "over-extending" registration could be an obstacle to bringing new people into the social care workforce or reduce innovation.³⁶⁵ Carers Trust Wales highlighted the risks of shifting responsibility for service quality away from providers and onto staff, and of disproportionately increasing burdens on small or third sector providers if consideration were not also given to improving the commissioning process.³⁶⁶

345. Other witnesses stated that more time was needed before deciding whether to extend registration to other categories of social care workers. The RCN suggested that account should first be taken of the impact of the new system of regulation and inspection, and anticipated changes to local government and health and social care.³⁶⁷

346. There were a number of specific categories of social care workers to which witnesses believed registration should be extended, including:

– Adults' residential care workers

Children's residential care workers are already required to register. Stakeholders noted that although there is little evidence of a specific risk, public perception and equity of treatment for

³⁶² [RISC08 Welsh Local Government Association and Association of Directors of Social Services Cymru](#)

³⁶³ [RoP \[paras 241 and 250-1\]](#), 13 May 2015

³⁶⁴ [RoP \[para 329\]](#), 21 May 2015

³⁶⁵ [RISC A111 NSPCC Wales](#)

³⁶⁶ [RISC A103 Carers Trust Wales](#)

³⁶⁷ [RISC18 Royal College of Nursing](#)

vulnerable adults and children is important. They stated that there is no mechanism in place to exclude those who are unfit to work as residential care workers, and that cases such as Winterbourne View and Operation Jasmine demonstrate that current arrangements do not sufficiently protect vulnerable older people.³⁶⁸

- Personal care assistants and domiciliary care workers

These workers (including those working in Wales for England-based agencies³⁶⁹), work without supervision with some of the most vulnerable older people in their own homes³⁷⁰ and can sometimes find work in the sector even after demonstrating inadequate care or unsuitability for the work.³⁷¹ Age Cymru told the Committee that a recent ICM survey revealed that 92 per cent of the 1000 respondents believed that domiciliary care workers should be registered.³⁷²

- Healthcare support workers

Stakeholders noted that healthcare support workers' work is sometimes indistinguishable from social care workers, with roles defined more by the employer and setting than the type of care provided.³⁷³

347. The Minister told the Committee that while workforce registration was not by itself a guarantee of care standards, he did intend to extend the requirements for mandatory registration to other groups of social care workers. However, he said that he intended to do this by use of the regulation-making powers under section 78, not inclusion of additional groups on the face of the Bill. He cited concerns raised by Carers Trust Wales that an extension of mandatory reporting would be burdensome for small social care providers, and stated that the registration system was "still absorbing" the extension of registration to the most recent groups required to register, domiciliary care managers. He told the Committee that the Bill would bring about a

³⁶⁸ [RoP \[paras 55 and 107\]](#), 13 May 2015, [RISC02 Age Cymru](#), [RISC26 Sense Cymru](#), [RISC32 Age Alliance Wales](#), [RISC40 Alzheimer's Society](#), [RISC45 Older People's Commissioner for Wales](#)

³⁶⁹ [RISC38 Public Health Wales](#)

³⁷⁰ [RoP \[paras 48, 107 and 212\]](#), 13 May 2015, [RoP \[para 303\]](#), 21 May 2015 [RISC02 Age Cymru](#), [RISC37 British Red Cross](#), [RISC40 Alzheimer's Society](#)

³⁷¹ [RoP \[paras 136-7\]](#), 29 April 2015

³⁷² [RISC30 Age Cymru](#)

³⁷³ [RoP \[paras 303 and 331-4\]](#), 21 May 2015

period of transition for the social care workforce,³⁷⁴ and that in the short term he wanted:

“Social Care Wales to be able to concentrate on the things that it’s already being asked to do through the Bill”.³⁷⁵

348. The Minister acknowledged stakeholders’ views that registration should be extended to domiciliary care workers. He stated that if there were sufficient resources available, the extension of registration of such workers, who he said “practise their craft completely unsupervised in people’s own homes”, would be a priority for him.³⁷⁶

349. He acknowledged stakeholders’ views that registration should be extended to adults’ residential care workers. However, he told the Committee that there was a distinction to be drawn between adults’ and children’s care homes, stating that:

“the sad history tells us that children’s homes tend to attract people to work there whose conduct in the discharge of their duties isn’t what we would like it to be. So, you know, there’s a vulnerable group of people, and it can attract people who trade on that vulnerability. There’s no real evidence that the adult care home sector attracts people who have abuse as part of their purpose in being there. It may attract people who are not good enough at the job and who are careless in the way that they go about things, but it isn’t abuse in the sense that we’ve come to recognise it in children’s homes”.³⁷⁷

350. The Minister told the Committee that there was a risk that an overreliance on registration could risk placing responsibility for the standards of care provided by the workforce on individual staff and the regulator, rather than employers. He reported that his officials were considering other mechanisms to improve transparency about the unregistered social care workforce, for example requiring providers to publish information about the number of staff employed, their training and qualifications, and staff turnover.³⁷⁸

³⁷⁴ [RoP \[para 25\]](#), 3 June 2015

³⁷⁵ [RoP \[para 39\]](#), 25 March 2015

³⁷⁶ [RoP \[para 42\]](#), 25 March 2015

³⁷⁷ [RoP \[paras 39 and 42\]](#), 25 March 2015

³⁷⁸ [RoP \[para 26\]](#), 3 June 2015

The Committee's view

351. The Committee notes the Minister's evidence that he intends to consider requiring providers to publish information about their staff. However, it considers that this would not provide protection, and would be inappropriate, for service users who procure services through Direct Payments or the Independent Living Fund – these are not regulated services, and the service user is the employer. There could also be complications in relation to part time workers who work for a number of different employers.

352. The Committee believes that both adults' residential care workers and domiciliary care workers should be registered, because they provide intimate personal care to some of the most vulnerable older people in Wales. It acknowledges that there is a cost associated with this, but believes that in assessing whether these costs would represent value for money, the impact on service users must be taken into account in terms of protection from harm, and public confidence that the workforce is appropriately registered and regulated.

Recommendation 38: The Committee recommends that the Minister for Health and Social Services extends the requirements on the face of the Bill for registration with Social Care Wales to include domiciliary care workers and adults' residential care workers.

Foster carers

353. There were mixed views about whether foster carers should be required to register. Stakeholders including the Children's Commissioner and children's third sector organisations noted that there were already requirements for foster carers to undertake assessment and approval in relation to their fitness to work with vulnerable children and young people. There was concern that extension of registration and the associated requirements might discourage people from wanting to be foster carers.³⁷⁹ NSPCC Wales told the Committee that the Scottish Government had recently decided not to regulate foster carers because of concerns about the burdens that would ensue and the risk of causing delays in the placement of children and young people,³⁸⁰ and Children in Wales noted that

³⁷⁹ [RoP \[paras 58-60\]](#), 21 May 2015

³⁸⁰ [RoP \[paras 154-5\]](#), 21 May 2015

requiring foster carers to register could reduce the services available to children.³⁸¹

354. However, there was also recognition of the importance of the role undertaken by foster carers, and the need for them to have access to quality support and training. It was also suggested that registration might provide greater flexibility for foster carers to passport their approved status between local authority areas within Wales.³⁸² However, other witnesses suggested that having to seek re-approval helped provide accountability.³⁸³

355. The Fostering Network noted that there would be advantages for registering foster carers with a national body, particularly in the light of anticipated local government reorganisation. It noted however that it was a complex matter, and that a full impact assessment would need to be carried out before registration was extended to foster carers to ensure that regulation was effective rather than burdensome.³⁸⁴ The British Association for Adoption and Fostering agreed that it was a complex issue needing further consideration to identify whether there were sufficient benefits for foster carers, or children and young people. It cited the risk of overlap or duplication with current arrangements for foster carers, and the potential to increase administrative burdens for local authorities.³⁸⁵

The Committee's view

356. Due to the mixed evidence it received in relation to the regulation of foster carers, the Committee does not believe it would be appropriate for registration to be extended to foster carers on the face of the Bill. However, further work should be done to consider whether there would be benefits to foster carers and the children and young people they support from the registration of foster carers with SCW.

Recommendation 39: The Committee recommends that the Minister for Health and Social Services undertakes further work to explore whether it would be appropriate to extend the requirement to register with Social Care Wales to foster carers.

³⁸¹ [RISC A110 Children in Wales](#)

³⁸² [RoP \[paras 58-60\]](#), 21 May 2015

³⁸³ [RoP \[para 156\]](#), 21 May 2015

³⁸⁴ [RISC A107 The Fostering Network](#)

³⁸⁵ [RISC A106 British Association for Adoption and Fostering](#)

Alternative models of regulation

357. Rhian Huws Williams of the Care Council told the Committee that regulation of the social care workforce could be an effective tool for supporting and developing social care workers. She said that she was eager for the whole workforce to be regulated, but that the Care Council was also considering an alternative licensing model of vocational regulation.³⁸⁶

358. The licensing model proposed by the Care Council aims to address concerns raised by the experience of voluntary registration of domiciliary care workers and care home workers that full registration could be disproportionate,³⁸⁷ and about financial barriers to extending mandatory registration.³⁸⁸ The Care Council outlined its proposed licensing model, stating that it would focus on providing accredited training and guidance to support care workers, while addressing poor or dangerous practice by removing those workers from the workforce. Under the proposed model, disciplinary action and fitness to practise would be a matter for the employer, who would inform the regulator of the outcome. The regulator would be able to remove the care worker's licence if appropriate.³⁸⁹

359. Gerry Evans of the Care Council told the Committee that the Bill might not be sufficiently flexible to enable the application of different registration or licensing models more appropriate for particular categories of social care workers. He noted that discussions with the Law Commission had indicated that it could be achieved, but that it would be costly or legalistic as the Bill is currently drafted.³⁹⁰ Rhian Huws Williams explained that:

“The concern that we have, perhaps, is that the level of detail in this part of the Bill is too stringent to create the flexibility that we are seeking. Something more general in nature in order to create flexibility in the future would be more beneficial in a period of great change”.³⁹¹

³⁸⁶ [RoP \[para 282\]](#), 23 April 2015

³⁸⁷ [RoP \[para 283\]](#), 23 April 2015

³⁸⁸ [RISC04 Care Council for Wales](#)

³⁸⁹ [RISC04 Care Council for Wales](#)

³⁹⁰ [RoP \[paras 283 and 286-8\]](#), 23 April 2015

³⁹¹ [RoP \[para 290\]](#), 23 April 2015

360. The GMB told the Committee that it thought that the public would expect, and probably believed, that all social care workers were already regulated. It said that its preferred option would be for all social care workers to be regulated, but that if that were not possible the next best option would be for alternative arrangements to be identified. The GMB told the Committee that it would welcome the adoption of the licensing model proposed by the Care Council as a means of monitoring workers within a growing social care workforce which had high staff turnover.³⁹² It cited the successful use of similar schemes in other sectors, including ‘Gas Safe’ and the Security Industry Authority.³⁹³

361. There was mixed evidence about Part 6 of the Bill, which provides for fitness to practise procedures. The Care Council stated that as registration might be extended to other parts of the social care workforce in future, it was:

“uncertain whether the level of detail on fitness to practise processes on the face of the Bill may restrict the future consideration of alternative approaches to regulating these groups of workers”.³⁹⁴

362. The Care Council noted that the Law Commission’s review of the regulation of health care and social care professionals in England was yet to be translated into law. It therefore suggested that consideration be given to amending the Bill to provide powers for the Welsh Ministers to extend regulation to other groups of workers through alternative regulatory and fitness to practise models to ensure that there was sufficient flexibility for SCW to respond to changes in UK approaches to workforce regulation and facilitate future collaboration between UK regulatory bodies.³⁹⁵

363. However, other stakeholders, including the WLGA and ADSS Cymru, welcomed the provisions’ inclusion on the face of the Bill.³⁹⁶ The Health and Care Professions Council stated that Part 6 of the Bill

³⁹² [RoP \[paras 202 and 212\]](#), 29 April 2015

³⁹³ [RISC17 GMB](#)

³⁹⁴ [RISC04 Care Council for Wales](#)

³⁹⁵ [RISC04 Care Council for Wales](#)

³⁹⁶ [RISC08 Welsh Local Government Association and Association of Directors of Social Services Cymru](#)

would provide a framework within which the workforce regulator could determine its own operational procedures through rules.³⁹⁷

364. The Minister told the Committee that he had considered the Care Council’s licensing model. He stated that in his view, the licensing model would result in SCW being “judge and jury” because it would be responsible for investigating and determining fitness to practise cases, and therefore deciding whether social care workers would have their right to practise, and thereby their livelihoods, removed.³⁹⁸

365. However, the Committee understands that in fact the employer would undertake disciplinary action and fitness to practise procedures in the first instance, and the regulator would be responsible only for the removal or otherwise of a social care worker’s licence. The model also proposes establishing internal and external appeals processes to ensure compliance with Article 6 of the European Convention on Human Rights.³⁹⁹

366. The Minister said that the lay-led panel approach set out in the Bill would provide greater protections for the rights of social care workers. He noted that the Bill gave effect to proposals made by the Law Commission for the regulation of social care workers, but acknowledged that the model under the Bill was more expensive to operate than the licensing model proposed by Care Council, because of the additional costs involved in the use of lay-led panels in relation to fitness to practise.⁴⁰⁰

The Committee’s view

367. The Committee notes the concerns raised by the Care Council that the level of detail included on the face of the Bill may restrict the flexibility for SCW in relation to fitness to practise procedures for groups of social care workers who may be required to register in the future. It believes that whether or not alternative models such as that proposed by the Care Council are implemented, it is important that the Bill is sufficiently flexible and future-proofed to respond to the regulatory needs of the future social care workforce.

³⁹⁷ [RISC07 Health and Care Professions Council](#)

³⁹⁸ [RoP \[paras 43-4\]](#), 3 June 2015

³⁹⁹ [RISC04 Care Council for Wales](#)

⁴⁰⁰ [RoP \[paras 43-4\]](#), 3 June 2015

Recommendation 40: The Committee recommends that the Minister for Health and Social Services reconsiders whether the Bill as drafted provides sufficient flexibility to respond to the regulatory needs of the future social care workforce.

Clarity of terminology relating to the social care workforce

368. While some stakeholders noted that they were clear on which social care workers were required to register,⁴⁰¹ many more raised concerns about the lack of clarity about how the provisions in the Bill relate to different groups within the social care workforce.⁴⁰² They noted that there were three groups which made up the total social care workforce:

- social care workers regulated by SCW;
- social care workers regulated by regulators other than SCW;
- unregulated social care workers.⁴⁰³

369. Stakeholders stated that the Bill must be clearer in setting out if and when provisions relate to all three groups, and when only to the first.⁴⁰⁴ For example, the COT noted that it was not clear whether codes under section 111(1)(a) relating to standards of conduct and practice for 'social care workers' related to unregistered social care workers, or social care workers regulated by other regulators.⁴⁰⁵ Similarly, the Alzheimer's Society noted that SCW's improvement and education functions in relation to social care workers related to the entire social care workforce, whereas in relation to regulatory functions it meant only social care workers registered with SCW.⁴⁰⁶

370. Sense Cymru noted that the use of the term 'social care worker' to describe registered social care workers, and the social care workforce more widely, could be misleading to the public, who would assume that all social care workers were regulated. It suggested that the use of a generic term like social care worker to mean a specific group within the wider social care workforce, could be problematic.⁴⁰⁷

⁴⁰¹ [RoP \[paras 336-7\]](#), 21 May 2015, [RISC A11 NSPCC Wales](#)

⁴⁰² [RoP \[paras 135 and 336-7\]](#), 21 May 2015

⁴⁰³ [RoP \[para 120\]](#), 29 April 2015

⁴⁰⁴ [RISC09 Wales Carers Alliance](#), [RISC23 Chartered Society of Physiotherapy](#)

⁴⁰⁵ [RISC03 College of Occupational Therapists](#)

⁴⁰⁶ [RISC40 Alzheimer's Society](#)

⁴⁰⁷ [RISC26 Sense Cymru](#)

371. The RCN agreed, stating that that a rigid approach to defining social care could frustrate a multi-disciplinary approach, and that:

“The concept of ‘social care workforce’ must be clearly and legally understood as entirely separate from the concept of the ‘people who work in health and social care in the community’”.⁴⁰⁸

372. There was also concern from some stakeholders about the responsibility of SCW in relation to the fitness to practise of parts of the social care workforce subject to regulation by other regulators.⁴⁰⁹ The COT suggested that Part 6 of the Bill should be renamed so as to be clear that it related only to social care workers registered with SCW.⁴¹⁰

373. The Minister told the Committee that the Bill transposed existing provisions in the [Care Standards Act 2000](#), and that these provisions were well-understood in practice. He acknowledged that parts of the Bill were complex in nature, but said that:

“sometimes complex matters end up with complexity in the way that the law has to respond to them”.⁴¹¹

374. The Minister said he was willing to consider whether amendments needed to be brought forward to improve the clarity about which groups of social workers or social care workers were included in which provisions of the Bill. Mari Williams, a lawyer for the Welsh Government, told the Committee that the definition of a social care worker in section 78 was derived from the *Care Standards Act 2000*. She said that section 78(1) provided for the groups of social care workers who would always be treated as social care workers for the purposes of the Bill, and that sections 78(2) and (3) provided that additional groups within the social care workforce could be brought into the definition by regulations.⁴¹²

375. Stakeholders told the Committee that the definition in section 78 of a social care worker was widely drawn, and did not sufficiently

⁴⁰⁸ [RISC18 Royal College of Nursing](#)

⁴⁰⁹ [RISC18 Royal College of Nursing](#)

⁴¹⁰ [RISC03 College of Occupational Therapists](#)

⁴¹¹ [RoP \[para 47\]](#), 3 June 2015

⁴¹² [RoP \[paras 48-9\]](#), 3 June 2015

acknowledge that some professionals within the social care workforce are already registered with, and regulated by, other regulators.⁴¹³ The COT told the Committee that greater clarity was needed on the role of SCW in relation to those groups.⁴¹⁴

376. The RCN agreed that there needed to be recognition of the regulation of certain groups of workers by other regulators. It stated that such professionals did not require additional regulation by SCW, and that dual regulation would be costly and administratively burdensome without providing any additional protection to the public. It emphasised the importance of:

“a clear policy statement that whilst regulated health professionals will need to be registered with Social Care Wales regulation remains with the appropriate professional regulator”.⁴¹⁵

377. BASW Cymru noted that there can be barriers for social workers registered and practising in England who wish to come and work in Wales. Robin Moulster told the Committee that there was a risk that unless the Bill addressed this, the additional barriers would prevent cross-border working or movement for social workers.⁴¹⁶

378. The Minister acknowledged the concerns raised by stakeholders about how the Bill would apply to those working within social care who were subject to regulation by other regulators. He told the Committee that the fitness to practise procedures set out in Part 6 of the Bill only applied to social care workers registered with SCW. He stated that:

“I just want to be completely clear that the Bill is explicit that, if you are an occupational therapist or a registered nurse, and something to do with your professional practice has to be investigated, that will be done by the organisation with which you are registered. So, there will be no duplication; there will be no two processes you have to go through”.⁴¹⁷

⁴¹³ [RoP \[para 60\]](#), 29 April 2015, [RoP \[paras 270-1\]](#), 13 May 2015, [RoP \[para 215\]](#), 21 May 2015, [RISC25 ATL Cymru](#), [RISC40 Alzheimer's Society](#)

⁴¹⁴ [RISC03 College of Occupational Therapists](#)

⁴¹⁵ [RISC18 Royal College of Nursing](#)

⁴¹⁶ [RoP \[paras 270-1\]](#), 13 May 2015

⁴¹⁷ [RoP \[para 38\]](#), 25 March 2015

The Committee's view

379. The Committee welcomes the clarification from the Minister. However, the level of concern and confusion which has arisen among stakeholders indicates that the Bill is not sufficiently clear in this regard, either in relation to unregulated social care workers, or to social care workers regulated by other regulators.

380. The Committee agrees with those stakeholders who suggest that the use of a generic term such as “social care worker” to mean only those members of the social care workforce who are registered with SCW risks inadvertently misleading those in the social care sector, or the public, who may be led to believe that the whole social care workforce is registered and regulated. The Committee believes that the Minister should review the wording used throughout the Bill for the purpose of making it clearer.

Recommendation 41: The Committee recommends that the Minister for Health and Social Services ensures the terminology used in the Bill provides clarity to the social care sector and the public about which provisions relate to social care workers registered with Social Care Wales, which to social care workers registered with other regulators, and which to unregulated social care workers.

Standards of conduct and education

381. Part 5 of the Bill focuses on standards of conduct, professional development and education for social care workers. It provides that SCW must prepare, publish and review codes of practice on standards of conduct and practice expected of social care workers and their employers. SCW may also make rules to require registered social care workers to undertake training and continued professional development. Sections 113 and 114 enable SCW to approve and inspect relevant courses, and publish lists of courses which it has approved. Section 115 provides that SCW may provide, or secure the provision of, new courses if required, and may make grants available for the securing and provision of training.

Professionalization of the social care workforce

382. Stakeholders stated that in order to build a high quality and professional social care workforce which provided more than the

minimum acceptable standard of care, social care workers needed to be properly valued and remunerated, and treated as professionals. Proper access to training, support, and career structures were also highlighted, as was the need to address the high levels of staff turnover.⁴¹⁸ The Disability Reference Group noted that in cases where abuse had been identified, the staff had frequently lacked training.⁴¹⁹ The MS Society Cymru noted that a survey of its members had indicated that 75 per cent thought better training and education for social care workers would help to protect adults in receipt of social care.⁴²⁰

383. The Committee heard that bringing about cultural change should be a priority for the new SCW.⁴²¹ However, the CSSIW NAB was concerned that the establishment of SCW's improvement role in relation to workforce standards might take time, and would not be able to counteract the impact of public sector austerity on the social care workforce.⁴²²

384. The WLGA and ADSS Cymru emphasised the importance of ensuring that social care workers working for third sector and independent providers have proper access to grants and assistance from SCW to support their improvement, facilitate continuing professional development, and establish proper career pathways.⁴²³

385. Melanie Minty of Care Forum Wales stated that the social care sector faced challenges in attracting staff of the appropriate calibre, and that this was exacerbated by the poor conditions which resulted from the cost-based approach to commissioning.⁴²⁴

386. RNIB Cymru stated that the skills of the regulatory workforce and inspectors were also important to ensure that there was public confidence in the new regulatory regime established by the Bill. It

⁴¹⁸ [RoP \[para 248\]](#), 23 April 2015, [RoP \[paras 214-6\]](#), 13 May 2015, [RISC27 One Voice Wales](#), [RISC33 MS Society Cymru](#)

⁴¹⁹ [RoP \[para 63\]](#), 29 April 2015

⁴²⁰ [RISC33 MS Society Cymru](#)

⁴²¹ [RISC28 RNIB Cymru](#)

⁴²² [RISC21 Care and Social Services Inspectorate Wales National Advisory Board](#)

⁴²³ [RISC08 Welsh Local Government Association and Association of Directors of Social Services Cymru](#)

⁴²⁴ [RoP \[para 133\]](#), 29 April 2015

noted that this would be particularly important for the transition to the new arrangements.⁴²⁵

Joint working and cooperation in relation to education and training

387. The Committee heard from stakeholders that there was a need for joint working between regulators in relation to the education and training elements of SCW's remit, to improve education and career opportunities for social care workers, improve standards through the monitoring of courses, facilitate integrated workforce planning, joint course development, and integrated career frameworks.⁴²⁶ The Alzheimer's Society described the Bill as a missed opportunity to achieve this.⁴²⁷

388. The Health and Care Professions Council said that it welcomed powers within the Bill for SCW to regulate training for a wider section of the social care workforce, which it believed would help enhance the quality of care provided by ensuring that standards of training were maintained.⁴²⁸

389. Kate Chamberlain of HIW agreed that there was a need for regulators to work together in this regard, stating that as services become more integrated, the skills mix of the social care workforce needed to reflect this.⁴²⁹ The Chartered Society of Physiotherapy highlighted preventative services as an area where it would be particularly important for the wider social care workforce to be taken into account.⁴³⁰

390. Some stakeholders highlighted that the training for social care workers regulated by regulators other than SCW would be subject to approval by those regulators. They noted that the lack of equivalence or mutual recognition of qualifications between regulators was a barrier to integrated career frameworks, mobility within the social care sector, and health and social care integration.⁴³¹

⁴²⁵ [RISC28 RNIB Cymru](#)

⁴²⁶ [RISC03 College of Occupational Therapists](#)

⁴²⁷ [RISC40 Alzheimer's Society](#)

⁴²⁸ [RISC07 Health and Care Professions Council](#)

⁴²⁹ [RoP \[para 214\]](#), 21 May 2015

⁴³⁰ [RISC23 Chartered Society of Physiotherapy](#)

⁴³¹ [RISC40 Alzheimer's Society](#), [RISC47 British Association of Social Workers Cymru](#)

391. The COT noted that some provisions within the Bill, for example section 83 relating to the qualifications a social care worker must hold when applying for registration with SCW, require completion of specific courses approved by SCW.⁴³²

392. However, as outlined by the RCN, if social care workers wish to move around within the social care sector, and wish to apply for registration with SCW, it could require highly experienced and qualified individuals to take basic level qualifications. The RCN stated that this would have consequential time and financial implications, and could act as a disincentive to nurses considering pursuing careers in health and social care in the community.⁴³³

393. Speaking on behalf of UNISON, Ruth Crowder told the Committee that there needed to be strong links between the Welsh Government's workforce and education development services and SCW to improve inter-sectoral recognition of qualifications and competencies in order to enable flexibility and mobility of staff within the social care sector and the development of more flexible service models. She said that in this aspect of its work, it was important that SCW was working on behalf of the whole social care workforce, including those registered with other regulators.⁴³⁴

The Committee's view

394. The Committee believes that to support the integration of health and social care, and mobility within the social care workforce, there must be increased joint working between regulators in relation to education, training and qualifications to remove unnecessary sectoral barriers.

Recommendation 42: The Committee recommends that the Minister for Health and Social Services explores opportunities for relevant social care and health regulatory bodies and authorities to work jointly and cooperate in the exercise of their education and workforce development functions.

⁴³² [RISC03 College of Occupational Therapists](#)

⁴³³ [RISC18 Royal College of Nursing](#)

⁴³⁴ [RoP \[para 254\]](#), 29 April 2015

Zero hours contracts

395. The Minister stated that he believed that the Bill would have an impact on the use of zero hours contracts within the social care sector as a result of its focus on the quality of care. He told the Committee that, in his view, the standards established by regulations under section 26 would track back to the nature of contracts offered by social care providers.

396. David Pritchard, Head of Regulation and Workforce Development in the Welsh Government's Social Services and Integration Directorate, told the Committee that the Welsh Government was currently undertaking research on zero hours contracts. The Minister committed to provide a note to the Committee setting out the results of the research and the way in which the Bill would impact on the use of zero hours contracts in the social care sector.⁴³⁵

The Committee's view

397. The Committee believes that poor terms and conditions for social care staff, including zero hours contracts, can lead to high levels of turnover in the social care workforce and have a detrimental impact on the standard of social care provision. It therefore welcomes the Minister's commitment to provide further information about the Welsh Government's research on zero hours contracts, including how he intends that the Bill will impact on the use of zero hours contracts in the social care sector. It expects that this information will be available prior to the end of the 2015 summer recess.

Prohibition orders

398. Part 7 of the Bill provides that the Welsh Ministers may, by regulation, enable fitness to practise panels to make prohibition orders to prevent certain people from carrying out a regulated activity (social care work). Any regulations made by the Welsh Ministers under section 163 to enable the making of prohibition orders must prescribe the circumstances under which such orders may be made and provide for the making of interim prohibition orders. Part 7 also provides for the review of interim prohibition orders, and for the right of appeal to the tribunal against a prohibition order or relevant decision. Part 7 further provides that SCW must establish and maintain a list of

⁴³⁵ [RoP \[paras 120-4\]](#), 3 June 2015

persons subject to prohibition orders. Section 171 provides that the Welsh Ministers may, by regulations, require SCW to determine the standards of conduct expected of a person carrying out a regulated activity.

399. There were mixed views on the provisions in the Bill relating to prohibition orders. Some stakeholders were concerned that the use of prohibition orders would not provide sufficient protection for vulnerable service users,⁴³⁶ whereas others thought that they would be a useful mechanism to ensure the safeguarding of vulnerable people.⁴³⁷

400. The Care Council stated that the use of prohibition orders, or negative registers, would yield few benefits, but would result in significant costs which would not be offset by fees. It stated in written evidence that the use of prohibition orders would not be a viable alternative to mandatory registration, as it would create a focus on negative practice without supporting high quality provision or recognising high quality social care practitioners.⁴³⁸ The RCN stated that it was not clear how prohibition orders might apply in relation to members of the social care workforce who were regulated by regulators other than SCW.⁴³⁹

401. In contrast, other stakeholders, including the UKHCA and Public Health Wales, supported the introduction of prohibition orders as a mechanism to ensure that unsuitable practitioners were unable to work in the social care sector.⁴⁴⁰ The Health and Care Professions Council similarly welcomed the provisions in Part 7, stating that it was:

“a proportionate way of providing public protection and assurance about the suitability of those working in social care [and would] provide an important ‘safety net’ and a system of accountability similar to that of professional statutory regulation but in a more proportionate manner”.⁴⁴¹

⁴³⁶ [RISC30 Age Cymru](#)

⁴³⁷ [RISC29 Barnardo's Cymru](#)

⁴³⁸ [RISC04 Care Council for Wales](#)

⁴³⁹ [RISC18 Royal College of Nursing](#)

⁴⁴⁰ [RISC06 United Kingdom Homecare Association](#), [RISC38 Public Health Wales](#)

⁴⁴¹ [RISC07 Health and Care Professions Council](#)

402. The WLGA and ADSS Cymru welcomed the duty for SCW to hold a list of people barred from social care practice, but they, and other stakeholders were concerned that there was a risk of confusion or duplication with the Disclosure and Barring Service. The Minister's stated intention to undertake full consultation with the sector before deciding whether to introduce prohibition orders was welcomed.⁴⁴²

403. The Minister acknowledged that there were very mixed views in the social care sector about the use of negative registration, including strong concerns from the Care Council. However, he stated that, by including provisions relating to prohibition orders in the Bill, he was acting on advice from the Law Commission to future proof the legislation to adapt to potential future needs. He noted that the regulation-making power under section 163 was subject to the affirmative procedure.⁴⁴³

The Committee's view

404. The Committee acknowledges the importance of ensuring that the Bill is sufficiently flexible to respond to changes to the social care sector in the future. It therefore accepts the inclusion of prohibition orders in the Bill.

405. However, the mixed evidence from stakeholders about the use of prohibition orders, coupled with the strong evidence that full mandatory registration should be extended to all social care workers (other than those registered with regulators other than SCW), makes it clear that if prohibition orders are to be introduced there should first be full and effective consultation with the sector. The Committee welcomes the Minister's commitment to this effect, and to undertaking a cost benefit analysis. It notes that while the regulations are subject to the affirmative procedure, there is no requirement on the face of the Bill for consultation or a regulatory impact assessment.

⁴⁴² [RISC08 Welsh Local Government Association and Association of Directors of Social Services Cymru, RISC20 NSPCC Cymru](#)

⁴⁴³ [RoP \[paras 55, 57 and 59\]](#), 25 March 2015

Recommendation 43: The Committee recommends that the Minister for Health and Social Services brings forward amendments to require the Welsh Ministers to consult with the social care sector and prepare a regulatory impact assessment prior to making regulations under section 163 to introduce prohibition orders.

14. Cooperation and joint working

406. Part 9 makes provision for cooperation and joint working between regulatory bodies (the Welsh Ministers (CSSIW), and SCW) and relevant authorities (including local authorities and local health boards).

407. Section 176 provides that regulatory bodies must cooperate with each other, and must seek to cooperate with relevant authorities, if the regulatory body thinks that doing so will have a positive effect on the manner in which it exercises its functions or will assist it in achieving its general objectives. It further outlines circumstances in which a regulatory body can refuse to comply with a request for cooperation with a relevant authority.

408. Part 9 also provides that regulatory bodies may arrange to exercise their functions jointly, or delegate regulatory functions, with the exception of SCW's rules-making and fitness to practise proceedings functions. Section 179 outlines arrangements for the sharing of information between regulatory bodies and relevant authorities. Section 180 requires that regulatory bodies must disclose information if they think that the disclosure is necessary or expedient to protect the well-being of an individual in Wales (unless prohibited by law from doing so).

Cooperation and joint working with other regulators

409. Many stakeholders believed that the objective to improve information sharing and cooperation would be best achieved by the inclusion of a more explicit expectation to work with all other relevant regulatory bodies in Wales and the rest of the UK, which would also facilitate mobility for social care workers within the social care workforce. This included UK-wide bodies which regulate other members of the social care workforce, existing workforce and improvement bodies, and health inspectorates.

410. Stakeholders suggested that amendments should be brought forward to include other regulators within the Bill, such as the Health and Care Professions Council and the Nursing and Midwifery Council, in order to encourage and improve cooperation whilst providing clarity about responsibilities, and retaining flexibility for different regulatory

bodies to take different approaches as required by the services and workforces for which they were responsible.⁴⁴⁴

411. The Committee heard from the Health and Care Professions Council that it saw value in joint working and sharing information between regulators across the UK to increase assurance about the quality of care and fitness to practise of social care practitioners, and would support the inclusion of references in the Bill to the importance of cooperation between CSSIW, SCW, and other regulatory bodies.⁴⁴⁵

412. The Care Council welcomed the provisions in Part 9, stating that they would further enhance its collaboration with CSSIW.⁴⁴⁶ It told the Committee that UK Government agreement was needed before duties could be placed on some other regulators, but noted that, as far as was possible within the competence of the Assembly, the provisions were in place in the Bill to enable it to work closely with other regulatory bodies.⁴⁴⁷

413. The duty for regulatory bodies and authorities to share information was particularly welcomed by the WLGA and ADSS Cymru, who described it as “hugely helpful”.⁴⁴⁸ However, while welcoming the provisions, the Older People’s Commissioner noted that there needed to be sufficient confidentiality so as not to deter self-referrals from social care providers.⁴⁴⁹

414. Some stakeholders did not feel that the provisions in the Bill for cooperation and joint working went far enough, and suggested that the Bill should also provide for integrated working between regulators in relation to service improvement and development,⁴⁵⁰ or workforce planning, recognition of qualifications and establishment of career frameworks across the social care sector.⁴⁵¹

415. CSSIW noted that it already worked collaboratively and shared information with the Care Council and other regulatory bodies, as well

⁴⁴⁴ [RoP \[para 220\]](#), 29 April 2015, [RISC03 College of Occupational Therapists](#), [RISC18 Royal College of Nursing](#), [RISC47 British Association of Social Workers Cymru](#)

⁴⁴⁵ [RISC07 Health and Care Professions Council](#)

⁴⁴⁶ [RISC04 Care Council for Wales](#)

⁴⁴⁷ [RoP \[para 300\]](#), 23 April 2015

⁴⁴⁸ [RISC08 Welsh Local Government Association and Association of Directors of Social Services Cymru](#)

⁴⁴⁹ [RISC45 Older People’s Commissioner for Wales](#)

⁴⁵⁰ [RoP \[para 225\]](#), 29 April 2015

⁴⁵¹ [RISC40 Alzheimer’s Society](#)

as local authorities and health boards. It welcomed the provisions in Part 9, which it said promoted reciprocal arrangements to share intelligence and take joint action to improve people's well-being, but stated that work would be needed to see how the delegation of functions between CSSIW and SCW would work in practice.⁴⁵²

416. The Minister told the Committee that he was confident that the Bill provided for improved information sharing and joint working between regulators and other bodies. He said that while legislation alone could not ensure collaborative working, the provisions in Part 9 of the Bill, particularly those in section 180 in relation to information sharing, would be powerful and would mean that:

“there can be no excuses for these organisations failing to work in partnership and failing to share information, where this is appropriate”.⁴⁵³

417. The Minister told the Committee that, as introduced, section 175, which identifies relevant authorities for the purposes of cooperation and joint working, includes Wales-only bodies. In a letter to the Committee he stated that subject to ongoing discussions with the UK Government, he intended to bring forward amendments to include UK bodies which are integral to social care regulation in Wales such as the Care Quality Commission and the Health and Care Professions Council.⁴⁵⁴

The Committee's view

418. The Committee welcomes the Minister's confirmation that he is in discussion with the UK Government about the inclusion of relevant UK-wide regulatory bodies in the Bill as regulatory authorities for the purposes of section 175, but believes that the necessary agreements should have been attained earlier so that other regulators could have been included on the face of the Bill from introduction.

Recommendation 44: The Committee recommends that the Minister for Health and Social Services sets out the full list of regulatory authorities that he intends should be included in

⁴⁵² [RISC05 Care and Social Services Inspectorate Wales](#)

⁴⁵³ [RISC A102 Correspondence from the Minister for Health and Social Services, 19 May 2015](#)

⁴⁵⁴ [RISC A102 Correspondence from the Minister for Health and Social Services, 19 May 2015](#)

section 175, and provides an update on his discussions with the UK Government before the end of the 2015 summer recess.

Recommendation 45: The Committee recommends that all relevant agreements and consents should, where possible, be obtained from the UK Government prior to the introduction of Welsh Government Bills.

Integration of health and social care

419. Many stakeholders expressed disappointment that the Bill did not sufficiently recognise that services were increasingly being jointly commissioned by health and social care services, or advance integration between health and social care in alignment with the Welsh Government’s policy direction.⁴⁵⁵ There was concern that there was insufficient clarity about how increased coordination between HIW and CSSIW would be achieved.⁴⁵⁶

420. Some witnesses told the Committee that there was a risk that a segregated inspection regime would lead to duplication and confusion for the public, rather than transparency. Sue Evans of ADSS Cymru told the Committee that it:

“would seem beneficial if some of the regulation and inspection were aligned with that public service footprint; so the whole range of public services delivering services to people in their community”.⁴⁵⁷

421. The Older People’s Commissioner stated that this could be addressed by the inclusion of a joint and equal duty on health and social care bodies in relation to inspection, on the basis of a shared understanding of ‘good’, and of the impact of health and social care on individuals’ well-being and outcomes.⁴⁵⁸

422. Other stakeholders were concerned that the current arrangements in the Bill might not sufficiently enable the carrying out of joint inspections, with some suggesting that a more streamlined approach, including joint inspections and integrated standards, was required to

⁴⁵⁵ [RoP \[para 90\]](#), 29 April 2015, [RoP \[para 279\]](#), 21 May 2015

⁴⁵⁶ [RISC26 Sense Cymru](#)

⁴⁵⁷ [RoP \[para 26\]](#), 23 April 2015

⁴⁵⁸ [RoP \[para 69\]](#), 13 May 2015

reduce duplication in monitoring by CSSIW, HIW and local authorities.⁴⁵⁹

423. HIW told the Committee it already worked closely with CSSIW. Kate Chamberlain acknowledged that there was nothing in the Bill which specifically facilitated collaborative working between the service regulators, but said that there were no organisational barriers in place at the moment. She told the Committee that joint standards and shared expectations were being developed across the health and social care sectors, but that there was scope for improvement.⁴⁶⁰

424. Phil Evans of ADSS Cymru agreed that there were already examples of good practice in relation to joined-up approaches to inspections, but that they could be supported by appropriate institutional arrangements.⁴⁶¹

425. Imelda Richardson of CSSIW welcomed the additional flexibility she said that the Bill would provide for the integration of health and social care regulation, but noted that the Green Paper would address this issue further.⁴⁶²

426. The Minister stated that the Bill provided new duties for CSSIW and HIW to collaborate in the exercise of their functions, but reminded the Committee that the focus of the Bill was the regulation and inspection of social care.⁴⁶³ He noted that there were differing views as to whether there should be a single regulator for health and social care in Wales. He explained that in England the functions had been brought together in the Care Quality Commission, but that the functions were beginning to be disaggregated within the organisation into two regulatory streams.⁴⁶⁴

427. The Minister confirmed that the Green Paper would seek views on whether merging the inspectorates was required to support the policy of closer integration between health and social care. However, he told the Committee that the Bill as drafted was sufficiently flexible to

⁴⁵⁹ [RISC03 College of Occupational Therapists](#), [RISC28 RNIB Cymru](#), [RISC38 Public Health Wales](#), [RISC40 Alzheimer's Society](#)

⁴⁶⁰ [RoP \[paras 220-1\]](#), 21 May 2015

⁴⁶¹ [RoP \[para 29\]](#), 23 April 2015

⁴⁶² [RoP \[para 145\]](#), 23 April 2015

⁴⁶³ [RoP \[para 62\]](#), 25 March 2015, [RoP \[para 73\]](#), 3 June 2015

⁴⁶⁴ [RoP \[para 74\]](#), 3 June 2015

accommodate future developments in the integration of health and social care:

“We don’t have to put that on the face of the Bill because we already have the powers to do that now. I have the powers now, as a Minister. If I want to merge them, I can do it now with the powers that we already have”.⁴⁶⁵

428. Mari Williams, a Welsh Government lawyer, confirmed that as CSSIW and HIW both operate under the functions of the Welsh Ministers, the Minister could direct them to work together or separately without needing further primary legislation.⁴⁶⁶

The Committee’s view

429. The Committee notes the evidence it has received that the ever increasing integration of health and social care inevitably requires closer working relationships and responsibilities of the two regulatory bodies. The Committee acknowledges the Minister’s intention to bring forward a Green Paper, which will provide opportunities to explore issues around the integration of health and social care regulation. The Committee recognises however that this process could take some years, and believes that this Bill could provide an opportunity to establish a regulatory regime for social care which is consistent with the move towards greater integration.

Recommendation 46: The Committee recommends that the Minister for Health and Social Services outlines how the provisions of the Bill will provide a basis for joint working between health and social care regulators, and ensure that the regulation and inspection of social care is sufficiently flexible to respond to the outcomes of the Green Paper on NHS Quality.

⁴⁶⁵ [RoP \[paras 63-5\]](#), 25 March 2015

⁴⁶⁶ [RoP \[para 68\]](#), 25 March 2015

15. Financial implications

430. The Regulatory Impact Assessment (“RIA”) is structured around the five main elements of the Bill: registration, inspection, enforcement, social care market and workforce. It presents a range of options under each section, along with the costs and benefits of each option and an assessment of how far they meet the Bill’s aims. The RIA also breaks the costs down by the following groups who are affected by each option: the Welsh Government, CSSIW, service providers, the workforce regulator (currently the Care Council, to become SCW), social care workers, the criminal justice system and service users.

431. The RIA acknowledges that the costs are best estimates based on information that is currently available, but calculates that the total additional costs arising from the Bill would be approximately £9.1 million over the first five years. This figure includes transitional costs of £3.3 million. However, in a letter to the Finance Committee, the Minister identified three areas of the RIA in which the estimated costs had changed since the Bill’s introduction, with a resultant increase on the total cost of the Bill over the five-year period to £9.5 million:

- ending dual registration of social care managers – updated estimated costs once they are required to register only with the workforce regulator;
- assessment of financial sustainability of key providers – correction of errors in relation to the assessment of anticipated savings between 2016-17 and 2020-21;
- grant funding to SCW – correction of presentation within RIA.⁴⁶⁷

432. The RIA states that service users are expected to benefit the most from the preferred options, by £738,400 between 2016-17 and 2020-21. However, the only benefits to service users that have been quantified are when a care home provider suddenly exits the market. The RIA, in common with those for most Bills, states that it has not been possible to quantify all of the identified benefits. Qualitative descriptions have therefore been provided for many of the benefits. The RIA acknowledges that:

⁴⁶⁷ [*Correspondence from the Minister for Health and Social Services to the Finance Committee, 5 May 2015*](#)

“the lack of quantified benefits means that it is difficult to compare the costs and benefits in an objective way. In such a situation, a judgement has to be made on whether the additional costs are justified by the benefits”.

433. The Minister stated in a letter to the Finance Committee on 5 May, that the RIA was based on work undertaken with stakeholders to ensure that the estimates made, and their underlying assumptions, are evidenced-based. He committed to continual review of the RIA, and for any changes identified to be included in a revised EM to be laid following the completion of Stage 2 proceedings, should the general principles of the Bill be agreed at Stage 1.

Financial concerns

434. Some stakeholders referred to anticipated increases to the cost of care, and the historical underfunding of the social care sector as potential barriers to the Bill’s implementation.⁴⁶⁸ Others cited increasing pressure on existing resources,⁴⁶⁹ not least because of the additional requirements brought about by the implementation of the 2014 Act,⁴⁷⁰ and the cultural change required by the Bill.⁴⁷¹

435. There were also concerns about whether the assumptions made in the RIA in relation to staff, hours and the workforce are sufficiently robust,⁴⁷² with Age Cymru expressing concern that the RIA was “overly optimistic” in its assertion that costs will only be incurred during the transition stages.⁴⁷³

The Regulatory Impact Assessment

436. In his consultation response, the Auditor General for Wales set out his views on the clarity of the financial information provided in the EM, and questioned why costs were calculated over a five-year period. He stated that he was concerned that the summary table setting out the costs and benefits of the Bill (table 42 in the EM) did not give a

⁴⁶⁸ [RISC28 RNIB Cymru](#), [RISC40 Alzheimer’s Society](#)

⁴⁶⁹ [RISC08 Welsh Local Government Association and Association of Directors of Social Services Cymru](#), [RISC14 UNISON and the College of Occupational Therapists](#), [RISC38 Public Health Wales](#)

⁴⁷⁰ [RISC21 Care and Social Services Inspectorate Wales National Advisory Board](#)

⁴⁷¹ [RISC08 Welsh Local Government Association and Association of Directors of Social Services Cymru](#)

⁴⁷² [RISC14 UNISON and the College of Occupational Therapists](#), [RISC30 Age Cymru](#)

⁴⁷³ [RISC30 Age Cymru](#)

clear view of the costs, and questioned whether the savings had been correctly detailed. He said:

“There is nothing wrong with providing monetised valuations of benefits, but I consider it potentially misleading for such benefits to be mixed in the middle of a table of cash figures”.⁴⁷⁴

437. In evidence to the Finance Committee, the Minister stated:

“There’s certainly absolutely no intention to mislead, but we will look at it and we will look at his comments, and if there’s a better way of doing it in future, then we’ll be, obviously, happy to try to do that”.⁴⁷⁵

The Committee’s view

438. The Committee notes the evidence given by the Minister to the Finance Committee, but is, nevertheless, concerned by the issues raised by the Auditor General for Wales. Legislation can have significant and far-reaching financial implications. It is important that the Welsh Government provides clear and accurate information about the costs and benefits to assist the Assembly and its Committees in scrutinising Bills and considering the associated financial resolutions.

Financial implications for the service regulator

439. There is variation in the level of detail provided in relation to transitional costs for CSSIW within the RIA. The estimates for transitional costs for the introduction of a service-based model of regulation (£1,471,000) and the cost of training and development for the CSSIW workforce (£455,200) include details of the underlying assumptions. In contrast, there is no detail underpinning the estimated £200,000 transitional costs relating to ICT, developing guidance and tools, and disseminating information to the public, inspectors and service providers.

440. CSSIW highlighted the “significant and inevitable costs related to transition”, and the importance of robust transitional arrangements for the re-registration of service providers. However, both the UKHCA and Care Forum Wales noted the difficulty of estimating with any accuracy

⁴⁷⁴ [RISC48 Auditor General for Wales](#)

⁴⁷⁵ Finance Committee, [RoP \[para 27\]](#), 13 May 2015

the transitional costs associated with the implementation of the Bill without knowing the details of the reporting requirements to which providers will be subject.⁴⁷⁶

441. In its consultation response, CSSIW detailed the £2.1 million efficiency savings it had achieved over the past three years. It noted that the potential for further efficiency savings would be limited if, as a result of the Bill, it needed to operate two different regulatory systems (one for childcare and one for care and support).⁴⁷⁷

442. The EM states that CSSIW is currently allocated a budget of £14.4 million for its regulation and inspection of social care establishments and agencies, of which £8,064,000 (56 per cent) is attributable to registration, inspection, enforcement and administration functions in respect of the services which are within the scope of the Bill.

443. The RIA states that the majority of the additional costs which will be incurred under the Bill will fall on CSSIW – approximately £9.2 million between 2016-17 and 2020-21, of which £2.1 million are transitional costs. In a letter to the Committee, the Minister indicated that the Welsh Government had provided an additional £3 million to the social care sector in 2015-16 to support the change agenda, including the implementation of the 2014 Act, and transitional costs for the Bill. In relation to ongoing costs, the Minister's letter stated that the majority of the estimated £1.7 million annual additional costs to CSSIW, £1.4 million, would relate to the implementation of a quality ratings framework. He noted that further work on developing the system suggested that the actual additional costs of the quality ratings system were likely to be less than this.

444. The Minister also reiterated that while the Bill would give him the power to introduce a quality rating framework, he intended that before it was introduced a full regulatory impact assessment would be prepared. He stated that this, through the affirmative procedure to be applied to the regulations, would enable the Assembly to satisfy itself that the system would be adequately resourced and represent value for money.

⁴⁷⁶ [RISC06 United Kingdom Homecare Association, RISC11 Care Forum Wales](#)

⁴⁷⁷ [RISC05 Care and Social Services Inspectorate Wales](#)

445. In a letter to the Committee, the Minister noted that he was working closely with other Ministers in relation to CSSIW, which also has responsibility for early years and childcare regulation.⁴⁷⁸ The Minister stated that he was confident that the Welsh Government would be able to fund the additional costs which fell on CSSIW as a result of the Bill.⁴⁷⁹

Financial implications for the workforce regulator

446. The RIA estimates that approximately £100,000 transitional costs will be associated with the introduction of SCW, including administrative processes, functions and governance, and communications and marketing activity. This estimate is based on the estimates made in the RIA for the [Education \(Wales\) Act 2014](#) in relation to the move from the General Teaching Council to the Education Workforce Council.

447. The Care Council stated in its consultation response that the details of the transition to SCW were yet to be determined. It acknowledged that the RIA identified a range of existing funding streams which would be coordinated by SCW, but said that “there is limited evidence regarding the infrastructure required to support the breadth of remit proposed, in addition to the transitional costs”.⁴⁸⁰ In oral evidence, Rhian Huws Williams of the Care Council noted that there needed to be “certainty that the resources are consistent with the scope of the new body”. She also stated that there was a need to ensure that SCW’s work was prioritised appropriately in partnership with the Welsh Government, and other partners, and that resources were allocated accordingly.⁴⁸¹

Financial implications for local authorities

448. Several stakeholders, including CSSIW, and the WLGA and ADSS Cymru, highlighted the additional burden which reporting requirements under the Bill could place on local authorities.⁴⁸²

⁴⁷⁸ The Welsh Government is currently consulting on proposals for the reform of early years and childcare regulation.

⁴⁷⁹ [RISC A102 Correspondence from the Minister for Health and Social Services, 19 May 2015](#)

⁴⁸⁰ [RISC04 Care Council for Wales](#)

⁴⁸¹ [RoP \[para 302\]](#), 23 April 2015

⁴⁸² [RISC05 Care and Social Services Inspectorate Wales, RISC08 Welsh Local Government Association and Association of Directors of Social Services Cymru](#)

449. The RIA acknowledges that it has not been possible to estimate the costs to local authorities of producing annual reports, or the costs of introducing market stability reporting duties. However, it states that the duties in the Bill in relation to annual reporting by local authorities are not expected to incur additional transitional or ongoing costs, as directors of social services are already required to produce annual reports.

450. The WLGA and ADSS Cymru acknowledged the existing duty, and noted that local authorities will, under the 2014 Act, be required to produce a population assessment at local health board level. They noted their concern that the new reporting requirements could be burdensome and duplicate existing work. They also highlighted that the annual statement of the social care market will require specialist research skills, meaning that the production of these reports will need time and expert resources.⁴⁸³

Additional costs for service providers

451. The RIA states that the bulk of the additional costs falling on service providers are transitional costs of £1.1 million comprised of £726,300 for integrating the new approach to registration, and £240,100 for introducing annual reporting. A further £107,600 is for introducing the service based model of registration which includes an enhanced role for the responsible individual.

452. Additional ongoing costs are estimated to be £45,880 per annum, reflecting additional costs for the quality judgement framework along with estimated savings from introducing the service based model of registration. The RIA states that this equates to an estimated additional ongoing cost to each service provider of £40 per annum. However both the UKHCA and Care Forum Wales have indicated that without the detail of the reporting requirements it is not possible to estimate with any accuracy the transition costs associated with implementation.⁴⁸⁴

453. The competition assessment in the RIA states that the transitional costs are likely to have a disproportionate impact on smaller providers.

⁴⁸³ [RISC08 Welsh Local Government Association and Association of Directors of Social Services Cymru](#)

⁴⁸⁴ [RISC06 United Kingdom Homecare Association, RISC11 Care Forum Wales](#)

This was echoed by Cardiff and the Vale of Glamorgan Community Health Council, which stated:

“While there are no additional ongoing costs to providers and the CSSIW for the changes, it is noted that there will be additional transitional costs to the service providers for amending the data collection tools. This will have the biggest impact on small service providers”.⁴⁸⁵

454. The UKHCA noted that it had concerns about whether the additional costs for service providers would be reflected in the fees paid by commissioners. It stated that consideration needed to be given to ensuring that services were funded sustainably.⁴⁸⁶ There were also concerns raised about whether the additional costs on service providers would be passed on to service users, which could act as a barrier to them accessing high quality services.⁴⁸⁷

455. When asked by the Committee whether the regulatory burden on service providers should be increased, given that apart from transitional costs the ongoing additional costs to service providers are not significant, the Minister responded:

“The cost of inspection and regulation in the sector is £34 million a year now. In hard times, and with the next Assembly, depending on the outcomes of elections and so on, but facing a potential further 10% reduction in real terms in the budget available to us, any question of spending more money on one thing can only be answered by spending less on something else. So, we have very carefully crafted the regime in the Bill not to be one that costs vast amounts of extra money, but allows regulators to work more closely together, to share information more easily together and to drive some of the costs that are currently in the system out of the system to release some money to do more of the things that we think are effective in helping to improve quality, and are effective in providing information to the public. But, myself, I cannot see how the answer to doing some of the things we would like to do in this field will be to find lots of extra money for this in the future”.⁴⁸⁸

⁴⁸⁵ [RISC35 Cardiff and Vale of Glamorgan Community Health Council](#)

⁴⁸⁶ [RISC06 United Kingdom Homecare Association](#)

⁴⁸⁷ [RISC33 MS Society Cymru](#)

⁴⁸⁸ [RoP \[para 116\]](#), 25 March 2015

456. In a letter to the Committee, the Minister indicated that the additional cost to social care providers per annum was anticipated to be approximately £50 per provider from 2017-18 onwards. He said that it was expected that most providers would be able to absorb this cost without having direct cash impacts on their business. He stated that if regulations were used to introduce fees for provider registration, it would be done proportionately to avoid unfairly penalising smaller providers.⁴⁸⁹

Financial implications of subordinate legislation

457. In a letter to the Committee, the Finance Committee noted its concerns that there are two provisions in the Bill which give Welsh Ministers powers to make subordinate legislation which have not been costed: protection of title, and prohibition orders.⁴⁹⁰ The RIA provides estimates for the costs to the Welsh Government of developing the subordinate legislation, but notes that because of the number of approaches which could be taken, it is not possible to provide detailed costings for the implementation of the provisions. It states that should the powers be used, the Minister intends that they would be subject to full consultation and the preparation of cost-benefit analyses. However, there are no requirements for this on the face of the Bill.

458. CSSIW highlighted that the costs accruing under the Bill will vary depending on the detailed arrangements established through regulations, codes of practice, and CSSIW's own operating policies and procedures.⁴⁹¹ The Care Council noted that it was particularly noticeable that no RIA had been undertaken on the cost of introducing prohibition orders.⁴⁹²

459. Other stakeholders also highlighted the difficulty of predicting the financial implications of a Bill which includes so many subordinate legislation-making powers, but there were differing views on whether the financial estimates were robust. The WLGAs and ADSS Cymru noted that it was difficult to assess the financial implications at this stage,⁴⁹³

⁴⁸⁹ [RISC A102 Correspondence from the Minister for Health and Social Services, 19 May 2015](#)

⁴⁹⁰ [RISC A113 Correspondence from the Finance Committee, 11 June 2015](#)

⁴⁹¹ [RISC05 Care and Social Services Inspectorate Wales](#)

⁴⁹² [RISC04 Care Council for Wales](#)

⁴⁹³ [RISC08 Welsh Local Government Association and Association of Directors of Social Services Cymru](#)

whereas the UKHCA said that it believed that the process of estimating the cost of the Bill, whilst challenging, had been “suitably rigorous”.⁴⁹⁴

The Committee’s view

460. The Committee welcomes the Minister’s commitment to undertaking full consultation and cost-benefit analyses of the provisions in relation to protection of title and prohibition orders should he intend to use those powers. However, it shares the Finance Committee’s view that all costs in legislation should be accounted for, regardless of whether there is any immediate intention to use the powers.

⁴⁹⁴ [RISC06 United Kingdom Homecare Association](#)

Annex A – Witnesses

The following witnesses provided oral evidence to the Committee. [Transcripts of all oral evidence sessions](#) can be viewed on the Committee's website.

25 March 2015	Organisation
Mark Drakeford AM	Minister for Health and Social Services, and Member in charge of the Bill
David Pritchard	Head of Regulation and Workforce Development, Social Services Legislation and Supporting Delivery Division, Welsh Government
Kate Johnson	Lawyer, Welsh Government
Mari Williams	Lawyer, Welsh Government
23 April 2015	Organisation
Stewart Blythe	Welsh Local Government Association
Phil Evans	Association of Directors of Social Services Cymru
Sue Evans	Association of Directors of Social Services Cymru
Imelda Richardson	Care and Social Services Inspectorate Wales
David Francis	Care and Social Services Inspectorate Wales
Christopher Dunn	Voices from Care
Shelia Meadows	Carer, and member of the CSSIW National Advisory Board
Dan Pitt	Former service user and member of the CSSIW National Advisory Board
Rhian Huws Williams	Care Council for Wales
Gerry Evans	Care Council for Wales

29 April 2015

Ruth Crowder

Jim Crowe

Kieron Rees

Tim Ruscoe

Alun Thomas

Colin Angel

Melanie Minty

Kelly Andrews

Mike Payne

Organisation

Welsh Reablement Alliance/UNISON

Disability Reference Group

Wales Carers Alliance

Social Care and Wellbeing Alliance Wales

Wales Alliance for Mental Health

UK Home Care Association

Care Forum Wales

GMB

GMB

13 May 2015

Sarah Rochira

Nicola Edmunds

Rosanne Palmer

John Moore

Lorraine Brannan

Pamela Cook

Kelvyn Morris

Robin Moulster

Organisation

Older People's Commissioner for Wales

Older People's Commissioner for Wales

Age Alliance Wales

My Home Life Cymru

'Justice for Jasmine' Campaign Group

'Justice for Jasmine' Campaign Group

'Justice for Jasmine' Campaign Group

British Association of Social Workers Cymru

21 May 2015

Sally Holland

Hywel Dafydd

Samantha Clutton

Cecile Gwilym

Catriona Williams

Kate Chamberlain

Nia Roberts

Lin Slater

Lynda Williams

Organisation

Children's Commissioner for Wales

Children's Commissioner for Wales

Barnardo's Cymru

NSPCC Wales

Children in Wales

Healthcare Inspectorate Wales

Healthcare Inspectorate Wales

Aneurin Bevan University Health Board

Cwm Taf University Health Board

3 June 2015

Organisation

Mark Drakeford AM

Minister for Health and Social Services, and
Member in charge of the Bill

David Pritchard

Head of Regulation and Workforce Development,
Social Services Legislation and Supporting
Delivery Division, Welsh Government

Kate Johnson

Lawyer, Welsh Government

Mari Williams

Lawyer, Welsh Government

Annex B – Written evidence

The following people and organisations provided written evidence to the Committee. All [consultation responses and additional written information](#) can be viewed in full on the Committee’s website.

Organisation	Reference
Disability Can Do Organisation	RISC01
Age Cymru	RISC02
College of Occupational Therapists	RISC03
Care Council for Wales	RISC04
Care and Social Services Inspectorate Wales	RISC05
United Kingdom Homecare Association	RISC06
Health and Care Professions Council	RISC07
Welsh Local Government Association and the Association of Directors of Social Services Cymru	RISC08
Wales Carers Alliance	RISC09
Welsh Reablement Alliance and Social Care and Wellbeing Alliance Wales	RISC10
Care Forum Wales	RISC11
Health and Safety Executive	RISC12
Velindre NHS Trust	RISC13
UNISON and the College of Occupational Therapists	RISC14
ategi Shared Lives Scheme	RISC15
Wales Alliance for Mental Health	RISC16
GMB	RISC17
Royal College of Nursing	RISC18
Mid and West Wales Fire and Rescue Service	RISC19
NSPCC Cymru	RISC20
Care and Social Services Inspectorate Wales National Advisory Board	RISC21

Organisation	Reference
Civil Service Pensioners' Alliance	RISC22
Chartered Society of Physiotherapy	RISC23
Welsh Language Commissioner	RISC24
ATL Cymru	RISC25
Sense Cymru	RISC26
One Voice Wales	RISC27
RNIB Cymru	RISC28
Barnardo's Cymru	RISC29
Age Cymru	RISC30
Hywel Dda University Health Board	RISC31
Age Alliance Wales	RISC32
Multiple Sclerosis Society Wales	RISC33
Hawliau	RISC34
Cardiff and Vale of Glamorgan Community Health Council	RISC35
Shared Lives Plus	RISC36
British Red Cross	RISC37
Public Health Wales	RISC38
Macmillan Wales	RISC39
Alzheimer's Society	RISC40
West Wales Adult Placement Scheme Independent Consultative Group	RISC41
Professor Dame June Clark	RISC42
Carers Trust Wales	RISC43
Leonard Cheshire Disability	RISC44
Older People's Commissioner for Wales	RISC45
My Home Life Cymru	RISC46
British Association of Social Workers Cymru	RISC47
Auditor General for Wales	RISC48

Organisation	Reference
Justice for Jasmine Campaign Group	RISC49
Healthcare Inspectorate Wales	RISC50
Children’s Commissioner for Wales	RISC51

The following people and organisations provided additional written information to the Committee:

Organisation	Reference
Welsh Reablement Alliance, Wales Carers Alliance, and Social Care and Wellbeing Alliance Wales	RISC AI01
Mark Drakeford AM, Minister for Health and Social Services, and Member in charge of the Bill	RISC AI02
Carers Trust Wales	RISC AI03
Age Cymru	RISC AI04
Age Alliance Wales	RISC AI05
British Association for Adoption and Fostering	RISC AI06
The Fostering Network	RISC AI07
Older People's Commissioner for Wales	RISC AI08
Mark Drakeford AM, Minister for Health and Social Services, and Member in charge of the Bill	RISC AI09
Children in Wales	RISC AI10
NSPCC Cymru	RISC AI11
Mark Drakeford AM, Minister for Health and Social Services, and Member in charge of the Bill	RISC AI12
National Assembly for Wales’ Finance Committee	RISC AI13