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Llywodraeth Cymru  
Welsh Government

# **REGULATION AND INSPECTION OF SOCIAL CARE (WALES) BILL**

**Explanatory Memorandum**  
incorporating the Regulatory Impact Assessment and  
Explanatory Notes

November 2015

# **REGULATION AND INSPECTION OF SOCIAL CARE (WALES) BILL**

Explanatory Memorandum to the Regulation and Inspection of Social Care (Wales) Bill

This Explanatory Memorandum had been prepared by the Department for Health and Social Services and is laid before the National Assembly for Wales.

It was originally prepared and laid in accordance with Standing Order 26.6 in February 2015 and a revised Memorandum is now laid in accordance with Standing Order 26.28.

## **Member's Declaration**

In my view, the provisions of the Regulation and Inspection of Social Care (Wales) Bill introduced by me on 23 February 2015 would be within the legislative competence of the National Assembly for Wales.

## **Mark Drakeford AM**

Minister for Health and Social Services  
Assembly Member in charge of the Bill

10 November 2015

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## **Section 1: Description**

- 1.1 The Regulation and Inspection of Social Care (Wales) Bill (The Bill) is a set of provisions derived from both an extensive evidence base and stakeholder consultation that will provide a revised and streamlined legislative framework for the regulation and inspection of care and support in Wales. The required transformation of social care in Wales was set out in Sustainable Social Services: A Framework for Action, published by the Welsh Government in February 2011.
- 1.2 It built upon Fulfilled Lives, Supportive Communities: a strategy for social services in Wales over the next decade (Welsh Assembly Government, 2007) published four years earlier, and was also a direct response to the work of an independent commission established to review Social Services in Wales (Independent Commission on Social Services in Wales, 2010).
- 1.3 The Bill proposes to introduce changes that will:
- reform the regulatory regime for care and support services;
  - provide a regulatory framework that requires an approach to the regulation of care and support services focussed on outcomes for service users;
  - reform the inspection regime for local authority social services functions;
  - reconstitute and re-name the Care Council for Wales as Social Care Wales and broaden its remit; and
  - reform regulation of the social care workforce.

## **Section 2: Legislative background**

2.1 The National Assembly for Wales (“the Assembly”) has the legislative competence to make provision for, and in connection with social welfare by virtue of Part 4 of the Government of Wales Act 2006 (“the Act”). The relevant provisions of the Act are set out in section 108 and Schedule 7. Heading 15 of Part 1 of Schedule 7 sets out the following subjects on which the Assembly may legislate under the heading “Social welfare”,

“Social welfare including social services. Protection and well-being of children (including adoption and fostering) [and of young adults]. Care of children, young adults, vulnerable persons and older persons, including care standards”.

2.2 The Assembly also has legislative competence to make provisions concerning “Local Government” by virtue of Heading 12 of Part 1 of Schedule 7, which specifies the following subjects,

“Powers and duties of local authorities and their members and officers”.

2.3 The Assembly also has legislative competence to make provision concerning “Public administration” by virtue of Heading 14 of Part 1 of Schedule 7, which specifies the following subjects,

“Audit, examination, regulation and inspection of auditable public authorities. Inquiries in respect of matters in relation to which the Welsh Ministers, the First Ministers or the Counsel General exercise functions”.

2.4 The Assembly also has legislative competence to make provision concerning “Education and training” by virtue of Heading 5 of Part 1 of Schedule 7, which specifies the following subjects,

“Education, vocational, social and physical training and the career service. Promotion of advancement and application of knowledge”.

2.5 The above subjects provide the Assembly with the competence to make the provisions contained in the Regulation and Inspection of Social Care (Wales) Bill.

## **Section 3: Purpose and intended effect of the legislation**

### **Context**

#### **Provision of social care**

##### **Users of care and support services**

3.1 There were 600,630 adults living in Wales in 2014 who were aged 65 or over. Of these, 9% (55,263) received publicly funded care and support either in the community or in care homes (StatsWales, 2014b)<sup>1</sup>. A total of 43,638 adults aged 65 or over were supported in the community and 11,625 adults aged 65 or over were supported in care homes (StatsWales, 2014b)<sup>2</sup>. In addition, 28,557 adults ages 18 to 64 were either supported in the community or in care homes during 2013/14 (StatsWales, 2014b).

3.2 At March 2014, there were 5,755 children who were looked after by the state (commonly referred to as looked after children). Of these, 4,950 used services which are regulated. 290 children and young people were placed for adoption, 4,405 had foster placements, 225 resided in local authority children's homes and 30 children and young people resided in independent children's homes (StatsWales, 2014c).

##### **Service provision in Wales**

3.3 There are 968 providers in respect of establishments and agencies in Wales, of which 22 are local authorities. There are a total of 1,780 regulated social care and support settings in Wales which fall within the scope of the current regulatory regime, made up of:

- 1,132 adult residential care homes
- 147 residential care homes for children and young people
- 417 domiciliary care agencies<sup>3</sup>
- 11 adult placement agencies
- 73 fostering service providers and voluntary adoption agencies<sup>4</sup>.

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<sup>1</sup> As at 31 March 2014.

<sup>2</sup> As at 31 March 2014.

<sup>3</sup> data provided by CSSIW.

<sup>4</sup> StatsWales, 2014.

3.4 Of the 1,780 settings, 1,562 are owned by the independent sector and 218 are owned by local authorities.

3.5 In 2011/12, a total of 11,916,648 hours of publicly funded domiciliary care was delivered in Wales. Of this, 3,594,021 hours was delivered by local authorities (Stats Wales 2012b) and 8,322,627 hours was delivered by the independent sector (Stats Wales 2012b).

### **Service regulation**

3.6 The purpose of service regulation is to ensure that service providers achieve required quality standards in order to protect service users from abuse and neglect and to promote well-being. The Welsh Ministers currently have the function of regulating social care services in Wales. The Care and Social Services Inspectorate Wales (CSSIW), the service regulator, is an operationally separate arm of Welsh Government that is responsible for regulating establishments and agencies as set out in the Care Standards Act 2000. Regulation of social care currently encompasses the following:

- The requirement to register as a service provider with the Welsh Ministers;
- The requirement to comply with regulatory requirements in order to maintain registration as a service provider;
- The ability of the regulator to inspect regulated services to determine whether a service is being provided in compliance with the regulatory requirements;
- The ability of the regulator to take civil action to cancel the registration of a service provider who is not providing a service in accordance with the regulatory requirements; and
- The ability of the regulator to take criminal enforcement action in relation to service providers who commit regulatory offences.

3.7 The establishments and agencies currently regulated by the service regulator, which fall within the scope of the Bill, are:

- Children's homes including those that provide accommodation for the purpose of restricting liberty (secure accommodation);
- Care homes, (including nursing homes);
- Residential family centres;

- Domiciliary care agencies;
- Fostering agencies;
- Voluntary adoption agencies;
- Adoption support agencies; and
- Adult placement schemes.

3.8 Voluntary adoption agencies in England are required to register with Ofsted where the main branch is based in England. However, where an English voluntary adoption agency opens a branch in Wales, that branch is not currently required to register with Welsh Ministers and vice versa. Despite not being registered in Wales the branch office of an English voluntary adoption agency will be regulated by Ofsted.

3.9 A “loophole” exists in relation to the English equivalent of a domiciliary care agency. Domiciliary care is an adult social care service. In England, adult social care is no longer regulated by virtue of powers in the Care Standards Act but is instead regulated by virtue of powers in the Health and Social Care Act 2008. That Act makes provision for the regulation of “regulated activities”. The equivalent to a domiciliary care agency in England is a personal care service. However, the Care Quality Commission (CQC) only has the power to regulate that service where it operates in England. This means that if a branch of that service comes over the border and operates in Wales CQC do not regulate it. Unless that service registers with CSSIW as a domiciliary care agency then the service provision in Wales is unregulated.

3.10 Local authorities providing adoption and fostering services are not required to register with the Welsh Ministers because they are under statutory duties to provide those services. However, they are regulated. That regulation is achieved by reviewing and inspecting those services and the ability of CSSIW to take enforcement action where necessary.

### **Workforce regulation**

3.11 Workforce regulation is undertaken by the Care Council for Wales (the workforce regulator), a Welsh Government Sponsored Body, who work to ensure that the people of Wales can receive assurance that social services being provided by a professional, skilled and confident care and support workforce.



3.12 The workforce regulator has a duty to safeguard the public by promoting and securing high standards of conduct and practice among social workers and social care workers. In addition, the workforce regulator has the role of workforce planning and developing the professionalism of those who provide services, mainly through the publication of codes of practice, the approval of training and knowledge-sharing.

### **The need for legislation**

3.13 Sustainable Social Services (Welsh Assembly Government, 2011) was at the heart of the commitment to delivery set out in the Programme for Government in 2011. Its aims were to:

- Deliver better social services by providing users and carers with a much stronger voice and greater control over the services they receive.
- Ensure people receive the help they need to live fulfilled lives.

3.14 The transformation set out by the Welsh Government was a sector-wide one. It was for those on the front-line, for managers and providers, for commissioners and for professionals. It was also for those that provided the regulatory oversight, those that ensured delivery was safe and effective. Sustainable Social Services recognised that transformation was needed in our regulation and inspection as well as in our delivery. This is because:

1. Regulation is a key driver for transformation. It sets out the expectations of our society and ensures that services meet them. To deliver change, the way our inspectors and regulators work must change too. The emphasis should move from simply compliance, to quality and impact on people.
2. The Social Services and Well-being (Wales) Act 2014 changes fundamentally the legislative foundations of the sector, and therefore our regulatory regime must change to reflect this. The expectations that the Act place on social services in Wales need to be at the heart of our regulatory regime. This is most apparent in the Act's placing of well-being at the heart of care and support. This means that we must, as a sector, understand the impact our actions have on the lives of users and carers.

3. Enabling and empowering citizens and service professionals has been recognised as a major contributor to effective public services. The involvement of citizens provides greater assurance, as well as bringing into the process an understanding of the needs and wishes of those who do or could receive services. Citizens can also bring in new skills, perspectives and experiences into the regulatory process as well as requiring the regulator to ensure information and evidence is available in a transparent and meaningful way. Finally, the involvement of citizens in the regulatory regime sends a clear message to the sector that the primary aspiration of our care and support sector is to deliver outcomes for people.
4. We need to learn from serious incidents such as Southern Cross, Mid Staffs and Winterbourne all of which involved the criminal abuse and neglect of vulnerable adults in England, and 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. We should not build our regulatory systems on the back of failure – but we cannot ignore the many clear lessons that these cases tell us. From Southern Cross we have to understand our social care is not immune to the impact of the market, and we need to understand the risks that provider failure carries. From Mid Staffs we must ensure that disparate information is not overlooked and that we listen to those most directly involved in our care services. From Winterbourne we recognised that the culpability for abuse could not be solely held by those on the front line. These lessons and those we are yet to learn, require us to reframe our regulatory regime.
5. We need to ensure our regulatory regime reflects modern practice. Social care has changed significantly since the last major regulatory change in Wales in 2000. We have seen more people cared for in their community and a commensurate rise in acuity for those in residential care. We have seen the growth of extra care and other mixed forms of support that cross over boundaries in our legal system. Our current system is based on care a decade ago, but we cannot simply replace it with one that meets today's reality. We must recognise that for the law to maintain its relevance it must allow for our

regulation to continue to evolve. We therefore need a more responsive approach that combines strength with flexibility.

6. We need to bring our legislation up to date and provide consistency. At the time of its enactment the Care Standards Act 2000 provided the basis for social care in both England and Wales. However in the intervening period, England has abandoned the Care Standards Act 2000 for adults and moved in a new direction. This has caused significant anomalies between the regulatory regimes in the different countries. It means that it would be possible for services to be delivered in Wales that are not regulated in Wales. There are also outstanding questions under the current regime in respect of European Union directives. The current system is also based on a much amended and disparate legal basis that was created prior to changes in the Welsh devolution settlement and to the Government of Wales Act 2006 and the 2011 referendum. It does not provide a coherent Welsh statute.
7. Finally, the legislative basis for regulation and inspection of care in Wales has become complex and unwieldy. Duplicative and unnecessary minimum standards, regulations and rules have been created that are in need of review and streamlining. A new legal basis will provide an opportunity for Wales to deliver a more effective and efficient legal framework for care and support.

### **The Regulation and Inspection of Social Care (Wales) Bill**

3.15 The key aims of the Bill are to secure well-being for citizens and to improve the quality of care and support in Wales. To achieve these aims, nine objectives have been set out:

- To place the citizen at the heart of the system.
- To create a system that understands the impact of services on the lives of people.
- To ensure providers of services are appropriately accountable.
- To improve information sharing and co-operation.
- To understand better the future and avoid unexpected failures.
- To make a step change in the improvement agenda.
- To support the development of the best workforce possible.

- To deliver a robust and transparent system of regulation for service providers and for the workforce.
- To reduce complexity of the law and provide future flexibility.

3.16 The above objectives have informed the development of the Bill.

### **The elements of the Bill**

3.17 The Bill has five significant areas of provisions:

- a. Service Regulation (see part one, chapters one to five of the Regulation and Inspection of Social Care (Wales) Bill).
- b. Local Authority Social Services (see part one, chapter six of the Regulation and Inspection of Social Care (Wales) Bill).
- c. Market Oversight (see part one, chapter seven of the Regulation and Inspection of Social Care (Wales) Bill).
- d. Social Care Wales (see part three of the Regulation and Inspection of Social Care (Wales) Bill).
- e. Workforce Registration (see part four of the Regulation and Inspection of Social Care (Wales) Bill).

#### **a. Service regulation**

3.18 The approach to service regulation within this Bill seeks to:

- Consolidate existing powers into a single piece of legislation so that the Welsh approach to regulation of services is in one place.
- Ensure our regulatory system allows us to understand the impact that services have on people's lives.
- Provide greater transparency and comparability across services in Wales.
- Rebalance the accountability within the system so that the appropriate agencies or individuals are held responsible in law.
- Move beyond an approach based on compliance towards one that also reflects the quality of provision.
- Move towards a system of regulation that focuses on services, allowing future flexibility to respond to changes in the sector.

- Ensure our regulation regime is compliant with the principles and practices contained in the framework of human rights established in legislation.
- Deliver a cost-effective approach to service regulation that continues to provide public assurance.

## **Introduction, including definitions and powers of Welsh Ministers**

### **Background**

3.19 The responsibility for functions associated with the regulation of social care varies across the UK.

3.20 In Scotland and Northern Ireland the bodies responsible for regulating care services (Social Care and Social Work Improvement Scotland (SCSWIS) and The Regulation and Quality Improvement Authority (RQIA) respectively) are both independent bodies with their own Board. The same governance applies to the Care Quality Commission (CQC) which regulates adult social care in England. Ofsted, which regulates children's social care in England reports directly to the UK Parliament.

3.21 To carry out these functions, regulators require clear direction in terms of their objectives and the meaning of legislation.

### **Current Position**

3.22 In Wales, the functions of regulating care services are retained by Welsh Ministers, exercised through the service regulator. Their powers and the interpretation of those powers are drawn from existing legislation, most notably the Care Standards Act 2000.

### **Purpose of the Legislation**

3.23 The Bill sets out two key objectives for the Welsh Ministers:

- To protect, promote and maintain the safety and well-being of people who use regulated services.
- To promote and maintain high standards in the provision of regulated services.

## **Intended Effect**

3.24 The definitions and objectives within these provisions are intended to provide a framework for the Welsh Ministers in the delivery of their functions.

## **Service based model of regulation**

### **Background**

3.25 The required transformation of social care in Wales was set out in Sustainable Social Services: a framework for action (Welsh Assembly Government, 2011).

3.26 Social care has itself changed significantly over the last decade, with more people cared for in their community and a corresponding rise in acuity for those in residential care; the growth of extra care and other mixed forms of support that cross over boundaries in our current legal system, which is based on care a decade ago. At the time of its enactment, the Care Standards Act 2000 provided the basis for social care in both England and Wales. However in the intervening period, England has moved away from the Care Standards Act 2000 in a new direction in respect of adult care and support, via the Health and Social Care Act 2008, that has caused significant anomalies between the regulatory regimes in the different countries; it also means that, theoretically, services can be delivered in Wales that are not regulated in Wales. The current system is also based on a much amended and disparate legal basis that was created prior to changes in the Welsh devolution settlement and to the Government of Wales Act 2006 and the 2011 referendum; all of which does not provide a coherent Welsh statute. We recognise that, for the law to maintain its relevance, it must allow for regulation to follow these changes and have a more responsive approach that combines strength with flexibility but removes duplication and undue complexity. We therefore need to bring our legislation up to date and make it consistent.

### **Current position**

3.27 The existing regulatory model of service regulation in Wales is based on establishments and agencies. That is, service providers have to individually register each establishment or agency they provide services to or operate from. This requirement applies to the independent sector and to the state sector, where local authorities directly provide services.

3.28 However, not all of these services are required to register with the Care and Social Services Inspectorate Wales. Local authority fostering agencies and local authority adoption agencies are inspected by the service regulator but they are not required to register, as local authorities carry out these functions as part of their statutory duties.

### **Purpose of the legislation**

3.29 The proposal is to move from an agency and establishment model to a service based regime. This model means that providers are required to register if they wish to deliver regulated services in Wales. Whilst providers would still be required to identify the place(s) at, from or in relation to which a service is being provided, the new system would only require individuals or organisations to register once with the regulator. If a provider wishes to provide further services or the same service from different places then they would apply to vary their initial registration.

### **Intended effect**

3.30 This move from the current model of establishments and agencies, as set out in the Care Standards Act 2000, towards the regulation of “care and support services” will provide greater flexibility and transparency. A service-based model is the basis for regulation in England and Scotland, although the two countries take different approaches to its implementation.

3.31 The English model is built around a wide definition of personal care into which a number of services can fall and incorporates healthcare services; whilst the Scottish model has a more discrete list of specific services that are to be regulated. Engagement with key stakeholders has revealed that the general consensus of the stakeholders is that a regulatory model informed by the model used in Scotland would enhance the requirements of a service based model in Wales. There are a number of reasons for this conclusion, which include:

- The use of familiar terminology to that used in the current regulatory regime in Wales under the Care Standards Act 2000, such as that used in the Scotland model, would reduce the confusion caused by this and other significant changes to the regulatory regime in Wales. Citizens would identify clearly with this more specific terminology thus increasing transparency and clarity.

- A legislative model similar to that used in Scotland would provide the most flexible option for bringing new services into the regulatory regime in the future. The terminology used for services will match closely the current ‘establishments/agencies’ model to a service regime, and will limit the complexity of the change process.

3.32 The Bill therefore sets out (and within a schedule provides further definitions) the services that would be regulated by the Welsh Ministers using powers elsewhere in the Bill. These services are in line with understanding within the sector of the types of services currently provided, such as care home service and domiciliary support service. However the Bill also recognises that a robust regime must be able to respond to changes in provision. It therefore provides Ministers with a regulation-making power to amend the regulated services should it be necessary to do so in the future.

3.33 Through this service-based model, the Bill will provide flexibility for service providers in terms of registering the services they wish to provide and the ability to expand their operations without having to go through a duplicate registration process. The service regulator will have flexibility to take action when things go wrong at the appropriate level i.e. cancelling the part(s) of the service providers registration that may be consistently non-compliant whilst allowing them to maintain the parts of their registration which remain compliant be that either a service or place.

3.34 The service based model also allows other changes set out in this Bill, including the establishment of new duties on service providers and responsible individuals.

3.35 The exception that local authority fostering and adoption agencies do not need to register will be retained. This is because local authorities have a statutory obligation to provide those services. Whilst they will still be regulated, where failures in those services are identified, cancellation would be inappropriate but enforcement action can be taken by virtue of other provisions within this Bill.



## **An outcome based approach to regulation and inspection, and quality standards**

### **Background**

3.36 Over the past decade, there has been a shift in social care practice in Wales from needs-led to outcome-focused assessment, planning and review (Miller, 2010). Social care services for adults are increasingly focusing on achieving the outcomes that users aspire to (Glendinning et al, 2008).

3.37 The Social Services and Well-being (Wales) Act 2014 introduces the concept that a statement of the outcomes to be achieved in terms of the well-being of people who need care and support and carers who need support will be issued by the Welsh Government. These national outcomes statements will apply not only to care and support provided by local authorities, but also to care and support provided by others.

### **Current position**

3.38 The regulation and inspection regime in Wales has gradually moved towards an outcome based approach. Currently, the approach takes into account National Minimum Standards but in practice is increasingly more focused on the experiences of services users around the quality themes of:

- Quality of life.
- Staffing.
- Leadership and management.
- Environment.

3.39 The Care Standards Act 2000 provides a framework for regulation but does not give significant detail about the standards expected of providers. These are set out in regulations and non-statutory minimum standards. The relevant regulations are:

- Care Homes (Wales) Regulations (2002).
- Children's Homes (Wales) Regulations (2002).
- Fostering Services (Wales) Regulations (2003).
- Residential Family Centres (Wales) Regulations (2003).
- Adult Placement Scheme (Wales) Regulations (2004).

- Domiciliary Care Agencies (Wales) Regulations (2004).
- Adoption Support Agencies (Wales) Regulations (2005).

3.40 The Care Standards Act 2000 provides that the Welsh Ministers may prepare and publish statements of the national minimum standards applicable to establishments or agencies. The standards are to be taken into account by the registration authority in making decisions under Part II of the 2000 Act. There are currently 14 relevant sets of detailed minimum standards that set out the precise requirements for establishments and agencies delivering social care for adults and children. For example, the National Minimum Standards for Children's Homes contains 38 standards detailed over 92 pages.

### **Purpose of the legislation**

3.41 The legislation explicitly links the regulatory regime for services to Section 8 of the Social Services and Well-being (Wales) Act 2014, which relates to the concept of a well-being statement and associated outcomes. By adopting this approach it is intended to ensure that the regulation of care and support in Wales is joined up with the fundamental principle of achieving outcomes for service users set out in existing legislation. The Bill will allow the Welsh Ministers to set out, through regulations, the legal requirements that will be placed on service providers. It is intended that those requirements will establish a set of standards that providers will be required to comply with in order to satisfy the regulator that the service is being provided in accordance with wellbeing outcomes of service users.

### **Intended effect**

3.42 Whilst subjective indicators of the quality of care are difficult to assess, measure and regulate, they provide an early sign of procedural failings that will eventually harm people, but are typically assessed after harm has occurred (such as through retrospective serious case reviews) (Reader and Gillespie, 2013).

3.43 In addition, there is a lack of fit between the existing regulatory regime and outcomes-focused approaches to care and support. Whilst social care practice is shifting towards an outcomes-focused model of assessment, planning and review (Glendinning et al, 2006; Miller, 2010), with the aim of achieving outcomes from the

perspective of the service user, the inspection and regulation of care and support in Wales is predominately focused on compliance to prescribed processes and practices, such as those set out in minimum standards, with the aim of ensuring vulnerable people are safe from harm and abuse.

3.44 The fundamental intent of the Bill is therefore to link the concept of well-being and an outcomes approach from the Social Services and Well-being (Wales) Act 2014 to the regulatory regime. It will allow the Welsh Ministers to rewrite, through regulations, the framework of standards for the sector, linking them clearly to the idea of outcomes for people.

3.45 The Bill will also allow the Welsh Ministers to reduce significantly the levels of regulation in social care. It will be the aim to replace the nine sets of regulations and 14 sets of minimum standards with two sets of regulations setting out the quality standards and requirements that all regulated care and support services will be required to adhere to, underpinned by a code which is intended to provide service specific guidance on how to meet the standards where appropriate. Each of these two sets of Regulations will focus on one of these two areas – one will focus on the well-being of the individual and the other will deal with the operational practices of the service. In this way, the intention is to move the regulatory regime away from a focus on inputs, to an understanding of outcomes.

## **Annual reports**

### **Background**

3.46 The provision of genuine voice and control for citizens was a key aim of Sustainable Social Services. To exercise this voice and control, it is recognised that citizens must have access to accurate and comparable information.

3.47 Citizens do not presently have access to the information provided by independent service providers to the service regulator to allow them to examine and compare this information with other service providers. They therefore do not have the opportunity to use this information to determine the best services for their needs. We will therefore require the regulator to provide citizens with a straightforward way to access

meaningful and transparent information about care and support providers and staff. A citizen will then be able to better understand the quality of service of a particular provider through reference to both the provider's annual report and the relevant inspection report from the service regulator.

### **Current position**

3.48 Independent care and support service providers are currently required to provide the service regulator with a Self-assessment of Service Statement and a Quality Report for each of their establishments or agencies, upon request, however there is no statutory requirement for these to be done annually in current legislation. The reports produced by independent service providers are not published but are used to inform the inspections. Following inspection and review of information provided, the service regulator produces an inspection report for each independent care and support establishment or agency.

### **Purpose of the legislation**

3.49 The existing system does not provide service users or the public generally, with comprehensive, comparable and robust information on the quality of care and support services. The lack of robust information does not enable service users or the public generally to assess, or challenge, the performance of service providers and places responsibility for this completely with the service regulator. As noted by CSSIW et al (2011), the role of inspection is fundamental in assuring the quality of care and support services in light of the lack of public access to robust information about the quality of care and support provision in the context of a non-competitive care and support market:

“The Welsh model of public service delivery requires a more significant role for IAR [inspection, audit and review] bodies in providing assurance about the efficiency, quality and safety of public services in the absence of competition, and contestability, and in the context of the limited and variable information on performance available to the public” (Care and Social Services Inspectorate Wales et al, 2011:4).

3.50 We propose to create a standardised format for all annual reports. The contents and format of these annual reports will be set out in regulations, but we would expect them to be evidence-based and include information on such areas as:

- detail and evidence about how providers have delivered care with reference to the practical well-being outcomes of service users;
- staff employed, turnover and their development; and
- number of complaints received (from citizens and staff) and the action taken in relation to those complaints.

3.51 The reports would have to be signed off and submitted by the registered service provider, who would have overall accountability for the content of this report. The Responsible Individual for each place at which a service is provided would be responsible for the content of the relevant part of the report. The report will also be required to be submitted within specified time limits.

3.52 We intend to ensure the submission and accuracy of the information provided in the reports produced by the service provider by introducing two new offences. Firstly an offence of failing to submit of an annual report and secondly, the provision of false or misleading information in the annual report. The service regulator will be required to publish this report. The service regulator will not be required to test the truthfulness of the report prior to publication. However if the service regulator becomes concerned about or aware of any inaccuracies in the report or relevant omissions through its normal course of inspections or through representations from third parties, through regulations it will have powers to seek additional information, require a revised submission or implement further actions that could lead to eventual civil or criminal action.

### **Intended effect**

3.53 Importantly, we want to make these annual reports available to the public, alongside the inspection reports from the regulator. We strongly believe that citizens have the right to this level of information about the care they can expect to receive. This transparency is vital for the citizen and we will therefore require the regulator to provide citizens with a straightforward way to access meaningful and transparent information about care and support providers and staff. A citizen will then be able to understand better the quality of service of a particular provider through reference to both the provider's annual report and the relevant report from the service regulator.

3.54 In this way, we will provide the transparent and comparable information to the public that will enhance and strengthen their voice and control. This will provide a further lever in the system to improve services and the outcomes for individuals.

## **Requirement to register, the application process, variation and cancellation of registration**

### **Background**

3.55 In order to provide suitable powers and duties, as well as clarity and transparency, the approach to regulation of care and support services is required to be set out in legislation.

### **Current position**

3.56 The Care Standards Act 2000 makes provision in relation to the current process of registration. The requirement to register arises from section 11 of the Care Standards Act 2000 which makes it a criminal offence to carry on or manage an establishment or agency without being registered to do so. This applies to all establishments and agencies regulated under the Act save for Voluntary Adoption Agencies, whose principal office is located in England.

### **Purpose of the legislation**

3.57 The Bill establishes a revised set of processes in terms of registration by service providers. This includes the requirement to register and processes associated with application, variation and cancellation of registration.

3.58 In this way, the legislation provides the Welsh Ministers with a framework to carry out its functions in respect of service regulation.

3.59 The revised processes also put into effect the opportunity of the service-based regime to streamline registration for providers. No longer will they have to register separately in respect of each service at each place at which the service is provided. A provider will instead make one application for registration which may be varied so as to authorise the provision of further services at further locations.

## **Intended effect**

3.60 The effect of the legislation is to provide an enhanced and more flexible version of the current, broadly successful system of regulation based on the fundamental premise that if a person seeks to provide a regulated service in Wales then the provider of that service is required to register in Wales.

3.61 The legislation reflects the intention to streamline regulatory processes associated for providers. Instead of multiple registrations, providers will have to submit a single application. This new approach to registration is aimed at:

- Providing flexibility to providers with regard to the services that they seek to provide and the places at which they wish to provide them.
- Avoiding duplication in relation the information and documentation that must be provided to the regulator.
- Providing flexibility to the regulator in the way that it carries out enforcement procedures.

## **Notice Requirements**

### **Background**

3.62 Key elements of regulation are the processes by which the regulator provides notice of its decisions and intentions, particularly in relation to enforcement action.

### **Current position**

3.63 Currently, where a service provider is not compliant with standards and regulations, the service regulator can issue non-statutory, non-compliance notices. Non-compliance notices set out the areas where the service provider needs to take corrective action, together with the timescales within which those actions need to take place. If the corrective actions are taken, no further action is taken by the service regulator. Where the corrective actions have not been taken, the service regulator escalates the issue to undertake service of concern processes with a view to taking enforcement action to cancel the service provider's registration. If despite the service of concern processes the service provider remains in breach of regulations, the service regulator will issue a Notice of Proposal to cancel the service provider's

registration and will afford them with 28 days in which to make written representations against the proposal. If no representations are forthcoming, or the service provider confirms none will be submitted, then a Notice of Decision is issued. The service provider has a further 28 days with which to appeal this decision to a tribunal. If improvements are made and regulatory compliance is achieved within 28 days the regulator's hands are tied even if it knows that compliance cannot be sustained.

### **Purpose of the legislation**

3.64 The Bill provides the Welsh Ministers with the additional powers to address the problem of providers who, following non compliance being identified by the regulator, are able to achieve short term compliance but are not able to sustain compliance so as to remove them from being of concern to the regulator.

3.65 The proposal will also afford the service regulator with greater opportunities to work with service providers to help them improve in areas that will see them deliver quality services for the citizens they serve. The proposals will not prevent the regulator from taking urgent action if it is required, but are designed to help strengthen the partnership between the regulator and the sector that will help drive forward service quality and delivery improvements. The procedure will be more transparent than it is currently because it will be placed on a statutory footing.

3.66 The first statutory step for the service regulator in respect of certain specified regulatory breaches, where improvement is required, is the issuing of an improvement notice. The remainder of the process remains essentially as is, although an important change is that the regulator can, after improvements have been made, now provide a time-frame in which the provider must demonstrate the sustainability of those improvements. The purpose is to provide the service regulator with an alternative option to immediate cancellation of registration where civil action is being taken against a service provider.

### **Intended effect**

3.67 The overall intended effect is to provide the Welsh Ministers with a range of flexible powers and duties to allow suitable and proportionate approaches to regulation that are compliant with human rights legislation.



3.68 It is our intention that the service regulator is able to employ a range of tools in dealing with regulatory breaches which are open and transparent. These include the use of fixed penalty notices for certain, specified regulatory breaches, for instance failure to display a certificate of registration. For minor technical breaches of regulations the service regulator remains able to employ non- statutory methods to seek improvement, such as through comments in the inspection report. However for any regulatory breaches of a more serious nature cancellation processes should be commenced which will then include the issuing of an improvement notice and time limited registration, if appropriate. This will afford service providers the opportunity to demonstrate and implement any necessary improvements to the services they provide within a timeframe determined by the regulator before any cancellation action is taken.

3.69 The focus on improvement is intended to align the inspection process to the proposed performance based regulatory regime. Inspectors will be required to focus on areas where improvements could be made, in terms of outcomes for service users.

## **Responsible Individuals**

### **Background**

3.70 It is important that accountability is appropriately attributed in the care and support sector. Sustainable Social Services (Welsh Assembly Government, 2011) set out that,

‘We must recognise more clearly that the prime responsibility for ensuring quality, a clear voice and control by service users, safeguarding and protection lies with organisations themselves, with professionals and with commissioners of services - and not with regulators and inspectors. Regulation plays an important role, and we expect regulators to take robust action where necessary. We also understand that it is by focusing on the wider arrangements that long term change and protection will happen. The time is now right to shift the balance of regulation and inspection from the point of service delivery to the organisation which provides the service and to specific professional roles in the workforce’ (Welsh Assembly Government, 2011:29).

### **Current position**

3.71 The concept of the responsible individual is not new. Each of the numerous setting specific regulations that currently apply to the establishments and agencies that are required to register under the Care Standards Act 2000 are required to have a

responsible individual. See for example, regulation 6 of the Children's Homes (Wales) Regulations 2002 and regulation 8 of the Domiciliary Care Agencies (Wales) Regulations 2004. However, the nomination of a responsible individual, who will be subject to fitness and suitability checking, is not currently a specific regulatory requirement of the service provider's registration. One of the consequences of this is that while the Welsh Ministers have a role in assessing the person who has been nominated as the responsible individual as at the time of registration, the Welsh Ministers as regulator have limited powers available if, post registration, the Welsh Ministers consider that the registered responsible individual is no longer suitable.

3.72 The Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry chaired by Roberts Francis Q.C. (the Francis inquiry report) made a number of recommendations in relation to directors and the ability of the regulator to take action against directors. The U.K. Government's response to those recommendations has been to make amendments to Regulations made pursuant to powers in the Health and Social Care Act 2008 to make it a requirement for directors to satisfy a requirement of fitness. Those regulations currently only apply to health service bodies but will be extended to all Care Quality Commission (CQC) registered independent healthcare and adult social care providers from April 2015. A health service body that fails to comply with this requirement could have a condition imposed on its registration with CQC.

### **Purpose of the legislation**

3.73 The Bill establishes the concept the 'responsible individual' (RI) in primary legislation. This person will be directly accountable for a range of duties set out in regulations made under powers in the Bill. This individual will be required to be a senior representative of the provider – either the owner, partner, member of the company's board or senior official of the local authority. The Welsh Ministers will have the power, through regulations, to place important duties on the RI, such as the appointment of a suitable and fit manager, supervision of the management and the requirement to undertake regular visits to services or reporting to the Board.

### **Intended effect**

3.74 The new arrangement is intended to ensure accountability for service quality and compliance is held at the most appropriate level within an organisation. By placing

specific duties on the RI, the regulator can ensure that the provider takes an active interest in the services provided. They can also be reassured that the Board of a company acting as a provider has a clear channel of communication and oversight to the front line of services. In this way we can ensure that the enforcement action taken by the regulator (or others) is not, in effect, limited to those directly delivering services, such as social care workers. Registered managers and corporate providers will retain accountability, but the new statutory role of RI will allow a clear chain of appropriate accountability from the board room to the front line.

## **Urgent action**

### **Background**

3.75 Although it is rare, there are occasions when the Inspectorate considers a service to be failing so significantly that urgent action is required.

### **Current position**

3.76 The Care Standards Act 2000 provides for the Welsh Ministers to apply to a Justice of the Peace for the immediate cancellation of a service because of a serious risk to a person's life, health or well-being. This is exercised rarely (two to three times a year). This is always a final and extreme option, bringing as it does major change for those receiving services and providing significant logistical challenges to local authorities.

### **Purpose of the legislation**

3.77 The Bill makes similar provision with one important change. The Bill allows the justice of the peace to provide some leeway in timing so that the order may come into effect 'at such other time as the justice of the peace considers appropriate'.

### **Intended effect**

3.78 The broad intention of the legislation is to maintain the current position whereby, in extreme circumstances, the Welsh Ministers can move to end a service and stop significant harm. This provides a level of public assurance that where serious concerns are raised action can be swift and decisive.

- 3.79 The change to allow a time period before implementation of the order was requested specifically by the service regulator. This is because the current provision does not provide the Court with the power to specify when an order will take effect. The result is that service providers are able to respond to applications to cancel with human rights based arguments about the detrimental effect to service users of being moved from their homes in an unplanned way if the service provision is brought to an end on the day that the order is made. It is envisaged that a justice of the peace may utilise the ability to ‘stay’ the decision in order that service users can be moved in a planned way in order to have the least detrimental effect on their well being.
- 3.80 Such an approach will also allow providers the opportunity to lodge an appeal with the First Tier tribunal. While it is currently possible to appeal the decision of the Court, such a measure has very little practical effect when an order to cancel a provider’s registration takes effect on the day that the order is made resulting (in most cases) in the provider’s business ending on that day.

## **Information and Inspections**

### **Background**

- 3.81 To carry out their work effectively, Inspectors require a clear set of powers in order to inspect services and to report on their effectiveness.

### **Current position**

- 3.82 The Welsh Ministers have a wide range of inspection powers under sections 31 and 32 of the Care Standards Act 2000. The powers include rights of entry, search and seizure. Section 32(5) provides that where a social care service has been inspected under section 31, the registration authority must prepare a report of that inspection, copies of which are provided to the registered persons. Copies must also be made available at the registration authority’s offices together with any other steps they consider appropriate to make the report available to the public. In practice, the reports are published on the service regulator’s website.
- 3.83 Currently, inspectors do not form a judgement or rating in terms of the quality of the service being delivered. Rather, the inspection reports provide a narrative of the

quality of specific services around four main themes (Quality of Life, Quality of Staffing, Quality of Leadership and Management and Quality of Environment). Consequently, it is not easy for those who have an interest in the quality of individual service settings, such as service users and commissioners of services, to undertake a comparative assessment between, for example, two care homes of a very similar size and description.

### **Purpose of the legislation**

3.84 The current system operates well and no substantial change is required to the broad powers of the Welsh Ministers. The legislation therefore broadly restates these powers with some updating of language, thereby allowing inspectors to obtain information, inspect services and seize documents. A key additional provision within the proposal however is to provide powers to the Welsh Ministers to introduce via regulations ‘quality ratings’ following an inspection. The criteria for these ratings and the method for appeals against them would be set out in regulations.

### **Intended effect**

3.85 The broad intent is to provide the inspectors with the same range of powers currently available, so that they can ensure they have access to all the information they require in their work. However the most significant change this proposal will bring about will be the power, through regulations, for the Welsh Ministers to apply ratings to services following inspections.

3.86 Prior to this power being utilised it is intended that there will need to be significant consultation with stakeholders and the public in order to establish the right approach. In due course, the intention is to provide citizens with a clear understanding of the quality of service provision, and in doing so provide an incentive and framework for providers to work towards any necessary improvement. This is not intended to create any sort of league table for care and support providers – the intention is to support and inspire improvements across all providers.

3.87 We would expect the service regulator to express these judgements in the context of the expectations and outcomes for the users of that service and their carers; that

these judgements would form part of the inspection report and that they would be available publicly.

- 3.88 Responses to the White Paper consultation showed that many respondents were in favour of the approach to introduce such a quality judgement, although some advised caution to ensure that the framework is carefully developed to enable a reliable and consistent judgement of service delivery and quality.

## **General Functions including fees, involving citizens and annual report of the regulator**

### **Background**

- 3.89 This section incorporates four disparate areas – providing information to local authorities, fees, annual reports and engagement with the public.

### **Current position**

- 3.90 Under the Care Standards Act 2000, the service regulator (Welsh Ministers) has a duty to inform local authorities of its findings under certain circumstances.

- 3.91 In terms of citizen involvement, Welsh Government policy is to engage citizens in the development and delivery of policy. The service regulator is part of the Welsh Government and, as such, is required to engage citizens in the work it undertakes. Section 39 sets out the requirement for the service regulator to make information about the exercise of their regulatory functions available for the public and to prepare and publish a statement of their policy on involving the public in the exercise of those functions.

- 3.92 The service regulator's Participation Plan (CSSIW, 2012) sets out the changes the service regulator has made to their governance and inspection work with the aim of providing people with voice and control in the work the regulator undertakes. Central to these changes is the creation of a National Advisory Board, which will oversee the work undertaken by the regulator and help shape priorities. In addition, the service regulator annual report (CSSIW, 2014) sets out the intention to extend the use of

independent visitors with the aim of providing additional perspectives on social care and support services.

3.93 The powers to charge fees are currently scattered throughout Parts I and II of the Care Standards Act 2000 with no stand alone provision concerned with the power to charge fees. The power to charge fees in connection with an application for registration can be found in section 12(2) of the Care Standards Act 2000. Other powers related to setting fees include:

- section 15(3) and section 15(5) - relating to varying or removing a condition, to cancel a registration, to cancel a suspension of a registration;
- section 16 (3) and (4) – for setting fees for registration;
- section 22 (i) - for fees connected with notifications; and
- section 36(4) - to charge fees in connection with a request for a copy of any register kept.

3.94 The Welsh Ministers have previously set fees under the Registration of Social Care and Independent Healthcare (Fees) (Wales) Regulations 2002. However, these were repealed in 2006 as evidence suggested that only a small percentage of service providers were required to pay them and were subsequently subsidising the regulation of the rest of the sector.

3.95 Finally, in respect of an annual report, although this is not a statutory requirement it is normal practice for the Welsh Ministers to publish such a report through its service regulation arm. However, the format and content of this report is not set out in regulation and is not standardised.

### **Purpose of the legislation**

3.96 The proposal retains the current duties on the Welsh Ministers to notify local authorities of certain actions. The proposal provides a general and broad power for the Welsh Ministers to charge fees for its regulatory activities.

3.97 The Bill sets a duty on the Welsh Ministers, in carrying out the functions of the Bill, to engage with citizens. How it engages with citizens will be included in the new

requirement for the Welsh Ministers to report annually on the carrying out of functions in this Bill.

### **Intended effect**

3.98 The introduction of a fee system would bring Wales into line with the rest of the UK, as it is currently the only administration that does not charge service providers a proportionate fee for registration but instead meets the financial cost for the registration of providers wholly through the public purse. The proposal does not seek to transfer all of the financial cost of regulation to the sector, but will provide the powers to introduce, if deemed appropriate, a proportionate fee that will help offset the financial pressure of extending the register to more services in the future. Any regulations made under this provision will set the fees at specific rates that differ for various service descriptions and specify a time by which the fees will be paid. Ultimately, the Welsh Government believes that regulation provides significant benefits for providers, and it is only right that they contribute to its cost. Regulation ensures that providers can operate with a level of confidence in the sector. They can use their regulatory status to attract and operate services, and to offer assurance to commissioners and citizens of their quality.

3.99 Regulation offers clear frameworks to improve the skills of staff, alongside training programmes and qualifications. Service regulation also offers clear, impartial information that can be used to improve their services. By identifying good provision it offers intelligence and information for the sector on best practice and new models of care. Finally, by removing bad practice and eliminating poor provision, regulation maintains a quality within the sector and limits the potential for the sector's reputation to be defined by poor provision.

3.100 The Welsh Government also believes that a reasonable fee level will change, for the better, the relationship between provider and regulator. It will create a more professional and balanced relationship where both sides recognise the value each can bring to the sector. Ultimately we believe charging can deliver a number of benefits. These include:

- A more professional relationship between the registration authority and the provider;



- The offsetting of some additional resource requirements of the regulator;
- A closer balance between the situation for providers in Wales with other parts of the UK; and
- The removal of non-functioning registrations from the register (there is currently no disincentive to remove service or providers from the register).

3.101 However, it is recognised that the introduction of any fee regime would need to understand the costs, as well as the impact of such a change. Wales has a higher level of publicly funded social care provision than England, and there is potential that any fee regime might simply see money received on the one hand by the public purse paid out in increased contract costs for provision. In these circumstances the cost of introducing a fee-collection bureaucracy would be an inefficient use of public funds. In addition, we are aware of the pressures faced by many private and voluntary providers in Wales. Any introduction of fees should only take place if the impact on the market is understood and worked through. For these reasons the Welsh Government will seek to work closely with the sector before deciding whether to introduce a fee regime. It is recognised that this change will require significant engagement with those across the social care sector in Wales, particularly the provider network.

3.102 There are a number of potential benefits associated with introducing a requirement for the service regulator, as one of its objectives, to involve citizens in its work at both the strategic and operational levels and to report publicly on an annual basis on the progress achieved in relation to that objective. The involvement of citizens can provide the regulator with both challenge and support to understand better the experience of citizens in the sector, and can ensure it builds systems that reflect their needs. Having a legal requirement should ensure that the existing momentum to involve citizens is maintained and does not fall away.

3.103 The requirement that the service regulator reports annually to the public on the progress it has made in relation to the objective of involving the citizen in its work should result in greater public awareness of what the service regulator sets out to achieve in terms of citizen involvement and the effectiveness of the regulator in achieving this.

3.104 Putting the annual report of the service regulator on a statutory status will provide additional transparency to the sector about how regulation works and what it is finding in its work. It also provides a mechanism for scrutiny of the work the regulator undertakes.

## **Offences**

### **Background**

3.105 A key element of regulation is the ability to enforce appropriately any regulatory breaches. Enforcement encompasses both civil and criminal actions being available to the regulator.

### **Current position**

3.106 The Care Standards Act 2000 provides for a range of criminal offences as follows:

- Carrying on or managing an agency without being registered to do so.
- Failure to comply with conditions of registration without reasonable excuse.
- Carrying on or managing an establishment or agency whilst registration is suspended.
- Applying a false description to an establishment or agency.
- Making false statements in registration applications.
- Failing to display a certificate of registration.
- Intentionally obstructing the exercise of power under sections 31 and 32 or failing without reasonable excuse to comply with a requirement made under those sections.

3.107 Section 25 of the 2000 Act makes provision for regulations to provide that a contravention of or failure to comply with any specified provision of the regulations shall be an offence. The setting specific regulations made under the power in section 22 then establish offences in relation to certain regulations. For example regulation 40 of the Children's Homes (Wales) Regulations 2002 provides that a contravention or failure to comply with the provisions of regulations 4 to 37 shall be an offence.

3.108 All of the offences under the 2000 Act are summary offences only. Generally the penalties are fines not exceeding either level 4 or level 5 on the standard scale. The only offence which can in certain circumstances include imprisonment (to a term not exceeding 6 months) is the carrying on of an establishment or agency without being registered to do so.

### **Purpose of the legislation**

3.109 The Bill makes provision in relation to offences in respect of regulation of services.

The offences that appear on the face of the Bill that are to be summary only are:

- Failure to submit an annual return.
- Failure to display a certificate of registration.

3.110 The offences that are to be either way, capable of trial in either the Magistrates' Court or Crown Court, are:

- The provision of a regulated service without being registered.
- Failure to comply with a condition (to include a failure to have a responsible individual registered in respect of a place at, from or in relation to which a service provider provides a regulated service).
- False descriptions.
- False statements
- Failure to provide information.
- Intentionally obstructing an inspector.
- Failing to comply with any requirement imposed on a person by an Inspector.

3.111 In addition there is similar provision to section 25 of the 2000 Act for the Welsh Ministers to provide in regulations that it is an offence for a service provider or a responsible individual to contravene or fail to comply with a specified provision of regulations.

3.112 The persons who can be prosecuted for the offences will be the registered persons. That is, the registered provider and where appropriate Responsible Individuals.

3.113 The proposal is to retain the existing power to make regulations prescribing certain offences where fixed penalty notices may be issued as an alternative to, or in lieu of prosecution. It is our intention that failure to submit an annual return or making a false statement in an annual report will be dealt with initially via fixed penalty notice.

### **Intended effect**

3.114 In general the intention is to establish “like for like” criminal sanctions to those that are currently in the 2000 Act but in order to reflect the severity of the circumstances under which certain of those offences are committed, the policy intention is to provide for certain offences to be “either way” offences. This means that certain offences can be tried in either the Magistrates Court or the Crown Court. In this way the enforcement options available to the regulator will be strengthened so that “the punishment can fit the crime”. In the case of recent prosecutions brought by the service regulator against registered persons, it is felt that the applicable penalties do not reflect the seriousness of the offence and/or the consequence of the offence e.g. where a provider’s failure to comply with regulatory requirements (offences created by virtue of section 25 of the 2000 Act) results in the death or serious injury of a service user. The policy intention is to make provision for such offences (which are rare) to be capable of being tried in the Crown Court thereby having the ability to attract a appropriately severe sentence.

3.115 Either way offences in the Bill are capable of attracting an unlimited fine or imprisonment for up to 2 years. This brings offences under the Bill in line with offences established in Health and Safety legislation and other comparable regulatory regimes.

## **b. Local Authority Social Services**

3.116 The approach to the regulation of local authority social services within this proposal seeks to:

- Recognise the statutory role that local authorities play in the provision and/or acquisition of care and support.
- Ensure our regulatory system allows us to understand the impact that services have on people’s lives.

- Move beyond an approach based on compliance towards one that also reflects the quality of provision.
- Provides greater transparency and comparability across local authorities in Wales.
- Deliver a cost-effective approach to service regulation that continues to provide public assurance.

3.117 It is important to note that the sections relating to local authority social services will, in fact, be inserted via amendments to the Social Services and Well-being (Wales) Act 2014, given that they correspond to functions for local authorities set out in that legislation. It is felt that for the consistency and clarity of the statute these provisions should be added to that Act.

## **Review and investigation of local authority social services**

### **Background**

3.118 Local Authorities have a range of statutory functions in relation to social services. These are set out in a number of pieces of legislation, most notably the Social Services and Well-being (Wales) Act 2014. The delivery by local authorities of these functions is reviewed through inspection and reporting by the Welsh Ministers on a regular basis.

### **Current position**

3.119 The Welsh Ministers have the function of reviewing and investigating local authorities' social services. Those powers can be found in Chapter 6 of the Health and Social Care (Community Health and Standards) Act 2003 (the 2003 Act). This sets out the Welsh Ministers general function of encouraging improvement in the provisions of Welsh local authority social services. The functions set out include the power to undertake studies and research, assess performance against set criteria and award performance ratings, charge fees, promoting or undertaking studies with regards to economy and efficiency.

3.120 The 2003 Act also provides the Welsh Ministers with significant powers associated with inspections of local authorities, including entry and access to documentation.

Finally the Act provides the Welsh Ministers with a power to make regulations that make provision for an explanation to be provided in relation to documents, information provided or any other matter in relation to the Welsh Ministers functions under that Chapter of the Act. The National Assembly for Wales (Social Services Explanations) Regulations 2005 have been made pursuant to this provision. The 2003 Act also provides for offences that arise from contravention of these provisions.

3.121 When exercising these powers, the 2003 Act sets out the considerations to be taken into account in particular:

- (a) the availability of, and access to, the services;
- (b) the quality and effectiveness of the services;
- (c) the management of the services;
- (d) the economy and efficiency of their provision and their value for money;
- (e) the availability and quality of information provided to the public about the services;
- (f) the need to safeguard and promote the rights and welfare of children; and
- (g) the effectiveness of measures taken by local authorities for the purpose specified in paragraph (f).

3.122 The Welsh Ministers currently exercise these powers through the service regulator who review and inspect local authority children and adult social services and report on the effectiveness of the services.

### **Purpose of the legislation**

3.123 The broad purpose of the Bill is to restate the powers of the 2003 Act, but within the revised legislative Welsh statute for social care. However, there are some proposed changes.

3.124 The Bill does not seek to restate current provision in section 95 of the 2003 Act that provides a power to the Welsh Ministers to conduct studies in order for it to make recommendations for improving efficiency and economy.

3.125 The considerations that should be taken into account by the Welsh Ministers when carrying out these functions have also been somewhat amended to reflect changes in approach. The new considerations are:

- The availability of, and access to, the services.
- The quality and effectiveness of the services.
- The management of the services.
- The economy and efficiency of the provision of services and their value for money.
- The availability and quality of information provided to the public about the services.
- The duties imposed on local authorities by sections 5 (duty to promote well being), 6 (other overarching duties) and 7 (duties relating to UN Principles and Convention) in so far as they are relevant to services
- The effectiveness of measures taken by the local authority to fulfil those duties
- The need to safeguard and promote the well being of people.
- The effectiveness of measures taken by local authorities to safeguard and promote the well being of people with reference to the outcomes framework.
- The extent to which a local authority has involved people in the design, delivery and review of services.

### **Intended effect**

3.126 The intent of the Bill is to retain the powers of the Welsh Ministers to inspect effectively and report on the carrying out of their functions by local authorities in relation to social services. It is considered that the current range of powers has provided an effective framework for the Welsh Ministers (through the service regulator) over the past decade and should be retained.

3.127 The changes that are proposed are to bring the law into line with current approaches to care and support, in particular the Social Services and Well-being (Wales) Act 2014. This means that the considerations to be taken into account now include a direct reference to outcomes and a new addition relating to the involvement of people in the delivery of those functions by local authorities. References to welfare have been replaced by well-being and to children by people.

3.128 The proposal to not restate section 95 of the 2003 Act in relation to studies of economy and efficiency is because Social Care Wales will have as one of its new

functions the power to carry out such studies in relation to care and support services. This new body will therefore be able to carry out studies previously carried out by the Welsh Ministers in order to make recommendations for improving the economy, efficiency and effectiveness of local authority social services. Furthermore, the Welsh Ministers can utilise other powers, if necessary, to carry out such studies such as Section 60 of the Government of Wales Act 2006.

## **Annual reports of local authorities**

### **Background**

3.129 This section of the Bill deals with the reporting requirements of local authorities in relation to their statutory duties and to their insight into the market for care and support in their area.

### **Current position**

3.130 Local authorities are required to produce and publish an annual report on their delivery of care and support, commonly known as the Annual Report of the Director of Social Services. Currently, this duty is established in guidance issued under section 7 Local Authority and Social Services Act 1970 on the Role and accountabilities of the Director of Social Services. The reports are prepared in line with the Annual Council Reporting Framework (ACRF), a non-statutory toolkit for local authorities and are intended to provide an analysis of the effectiveness of social care and support in each of the 22 local authorities in Wales. The reports have two key purposes:

- To provide a mechanism for accountability. The annual reports provide an opportunity for local authority directors of social services to inform citizens and stakeholders how well they think their arrangements for delivering social care and support are working, and to set out their priorities for improvement.
- To inform and help the service regulator focus its inspection of local authority social care and support services and to highlight specific action that is necessary to rectify any issues.

3.131 The service regulator uses the Annual Report of the Director of Social Services, as well as other information provided by local authorities such as performance data, when producing the Annual Review and Evaluation of Performance for each local authority



in Wales. To ensure a consistent, transparent and proportionate approach to the review and evaluation of local authority performance, the service regulator uses an independent moderator to moderate the performance of each local authority.

3.132 There is currently no statutory requirement in Wales for local authorities to undertake market planning or to develop market position statements. Market planning is a fundamental aspect of commissioning and is central to the realisation of a number of Welsh Government social care and support strategic objectives. Fulfilled Lives Supportive Communities Commissioning Framework and Guidance (WG, 2010) recognises, for example, that commissioning for social care is one of the most important activities undertaken by a local authority. The guidance includes standards, which centre on the development and delivery of evidence-based, outcome-focused, commissioning plans; and highlights the need for commissioners to make judgements, based on their analysis of the existing market, about the most appropriate approaches to market development and procurement in their local area, including different contract forms, grants or in-house provision.

3.133 The Social Services Improvement Agency (2014) has, however, issued guidance to local authorities to support the development of market position statements. The market position statements are described as having the following characteristics:

- Presenting a picture of current demand and supply and possible future trends.
- Being a brief, analytical document that is clear about the distinction between description and analysis. It explains the local authority's priorities based on an evaluation of the data and evidence.
- Supporting analysis by bringing together material from a range of sources such as Joint Strategic Needs Assessments, surveys, contract monitoring, market reviews and statistics into a single document. The data presented should help providers to develop effective business plans.
- Covering all potential and actual users of services in the local area, not just those accessing state funds.

3.134 The market position statements are aimed at providers, acting as a basis for dialogue about commissioning intention and on that basis, they will be public documents.

## **Purpose of the legislation**

3.135 The legislation places a requirement on local authorities to produce an Annual Report. The legislation sets out that the report should contain information on the exercise of its statutory social service functions, and also allows for regulations to set out that report. The report will also be used to fulfil the policy intention for local authorities to report on the market for social services in their area, currently and in the future.

## **Intended effect**

3.136 Whilst Directors of Social Services are required to report on a prescribed range of subjects, there is no prescribed reporting template. This makes it difficult for service users and the public generally to make comparisons of service quality across local authorities. In a recent review of social care and support provision in local authority areas across Wales using the reports of Directors of Social Services, Garthwaite et al (2011), for example, noted that the use of the reports as the data source for their analysis created significant challenges in research terms as it involved the analysis of over 700 pages of free text. A standard approach to reporting would make comparability of services, across local authorities, easier for both the service regulator and for citizens.

3.137 The intent of this legislation is to standardise and make proportionate the reporting requirements across local authorities to provide clarity and straightforward comparisons for citizens in respect of outcome and impact.

3.138 The reporting framework is also intended to provide a platform for information from the local authority on its approach to the provision of care and support in the area, both currently and in the future. This will consolidate work already undertaken by local authorities in Wales with the Social Services Improvement Agency to develop market position statements. The rationale for the requirement for such a report stems partly from the failure of a large provider, Southern Cross in 2011, which highlighted the challenges associated with monitoring and managing transition and continuity of service if a provider that operates across the country with complex financial structures fails. The collapse of Southern Cross highlighted that there was no early warning system to anticipate failure and put plans in place to oversee continuity of care for

individual people receiving care. It demonstrated that many parties held partial information that could be helpful to a central oversight regime but no one party had a complete picture or the responsibility to predict or manage failure.

3.139 It is considered that understanding the social care market – demand and supply – is an important contributor to effective policy and operational delivery. The policy intention is that the market should not be left to its own devices. Sustainable Social Services recognised that while independent providers play a crucial role in social care, the market should not be allowed solely to dictate the choices that are available to people.

### **c. Market oversight**

3.140 Currently, there is no requirement in primary legislation that allows the regulator to establish an effective system of oversight on the social care market in Wales. The approach to market oversight in the Bill seeks to:

- Recognise that social care is a sector that embraces the private, voluntary and public sectors.
- Recognise that the market should not determine priorities in social care and that collectively, we should shape the market, not allow market choices to drive us.
- Provide information to current providers, prospective providers and local authorities to allow all those in the sector to respond to changes in the market.
- Deliver a cost-effective and proportionate approach to intervention in the case of difficult to replace services.

3.141 It is important to note that this section is closely linked to the provider failure provisions in sections 189 to 191 of the Social Services and Well-being (Wales) Act 2014. These provisions place duties on the local authority to meet the needs of adults in its area as a result of a service provider's business failure.

### **Due diligence of strategic providers**

#### **Background**

3.142 There is currently no formal mechanism in place for checking how well a care provider is placed in terms of its financial and corporate governance. The result of this

is that there is no early warning that there may a problem nor are there measures in place to alleviate problems that ensue when a provider is on the verge of failing.

3.143 The financial distress of Southern Cross (the then largest provider of residential care in the UK) and Castlebeck have highlighted the need for greater oversight of the social care market to protect the welfare of service users; and for additional measures to support service continuity in cases where a provider of care services fails or chooses to exit the market. Without such oversight, there are significant risks not only to the supply of social care services but also the resource costs associated with finding alternative services. More importantly, it is likely that unexpected closure of services will result in anxiety for service users, their families and carers and will, therefore, have significant impacts on their well-being outcomes.

### **Current position**

3.144 Local authorities will have legal powers and duties to arrange for people to continue to receive the care they need if a provider fails via sections 189 to 192 of the Social Services and Well-being (Wales) Act 2014 (when commenced). Section 189(2) places a duty on a local authority for so long as it considers necessary to meet an adult's needs for care and support which were being met in the authority's area by an establishment or agency registered under Part 2 of the Care Standards Act 2000 before that establishment or agency became unable to do so because of business failure. The duty is subject to a number of exceptions set out in section 190. Section 191(1) places the duty on local authorities as soon as it becomes aware of the business failure.

3.145 In terms of the Welsh Ministers' role, the service regulator currently regulates establishments and agencies registered under the Care Standards Act 2000. Any person who carries on or manages an establishment or agency must register with the service regulator and meet the registration requirements for quality and safety which are set out in setting-specific regulations as previously listed. Section 22 of the Care Standards Act 2000 sets out the matters which may be the subject of regulations and subsection 2(j) provides a power to make regulations that "impose requirements as to the financial position of an establishment or agency". In addition, Section 22(7) (b) sets out that regulations may make provision "as to the keeping of accounts" and

Section 22(7)(h) to “make provision as to the giving of notice by a person registered in respect of an establishment or agency which is carried on by a body corporate of changes in the ownership of the body or the identity of its officers.” Each of the setting specific regulations then contains provision in relation to these matters.

3.146 In practice, the service regulator does have working links with major providers through its offices. These links have been used to identify arising issues and to put in place measures to mitigate or respond to the effects.

### **Purpose of the legislation**

3.147 In general terms the purpose of the legislation is to provide effective but proportionate powers to the Welsh Ministers formally to oversee the financial and corporate health of the larger players in the social care market in Wales. Such powers would enable the regulator to require specific information from those providers in order to undertake a review of their financial and/or corporate governance.

3.148 Following such a review, the regulator would be in a position to require contingency plans to be drawn up by that provider to put in place arrangements in the event of business failure or alternatively to require the provider to undergo an independent business review.

3.149 The intention is that the regulator would have the power to share information with local authorities and there would be a power to require local authorities to undertake contingency planning arrangements if it was considered by the regulator that the business was likely to fail. The proposals are similar to those established in England in the Care Act 2014 in relation to market oversight.

### **Intended effect**

3.150 The intent of this provision is to provide opportunities for the regulator to identify and take mitigating action should a major provider in Wales be on the threshold of exiting the market. Local authorities would remain responsible for local commissioning and procurement, and for ensuring suppliers are capable of delivering against contractual requirements. There is no intention to create a national list of approved suppliers.

- 3.151 Using current figures, it is considered unlikely that more than 15 suppliers in the current market would meet any envisaged criteria for being captured by these provisions.
- 3.152 In terms of the process undertaken it is envisaged that there would be a four stage process. Firstly in order to be subject to such provisions, a provider would have to meet criteria that would be set out in regulations. The regulator will obtain this information from three separate sources:
- The register it holds of all care and support services.
  - The sector stability report produced by local authorities.
  - Other intelligence and information gathered as part of the preparation of other elements of the national sector stability report.
- 3.153 The criteria are likely to be linked to levels of supply but not necessarily by volume as there could be specialist providers in the market whose absence would cause difficulties in meeting demand for such a service.
- 3.154 The intention is that the regulator will have access to a provider's accounts and any financial reports prepared. There would then be a "due diligence" exercise undertaken by the regulator. It is envisaged that the regulator could either employ staff to undertake such reviews or alternatively such assessments could be carried out by external third parties such as a firm of accountants. The purpose of the review would be to form a professional opinion about the state of the business. In that respect, it is not a report that is intended to set out the historical position of the business but one that sets out the likely future of the business.
- 3.155 If that assessment together with other information that the regulator has leads the regulator to form the view that the business is at significant risk of failure, then the regulator will have the power to require the provider to undergo a business review and/or provide the regulator with contingency planning arrangements.
- 3.156 If, following receipt of that business review and/or contingency plans, the Welsh Ministers are of the view that the business is failing or is likely to fail then they will then

have a duty to inform local authorities who have corresponding duties that are set out in sections 189 to 192 of the 2014 Act to manage that failure.

3.157 It is not considered that the Bill will set out the circumstances as to when local authorities should be informed that a business is likely to fail. The intention is that the regulator should establish that threshold for itself as this decision is likely to involve many different factors. It is acknowledged that the decision to inform a local authority carries with it a risk of accelerating or causing the very problem that this provision is seeking to avoid – i.e. sudden exit from the market of a major supplier (due to a reluctance of a local authority to commission services from a service under question). This would therefore be part of the consideration of the regulator when making a decision to inform a local authority.

3.158 Given that such a provision is new, and these are new powers and duties that are being placed on the service regulator, the policy intention is to provide the Welsh Ministers with a power to issue guidance in relation to the exercise of this function.

3.159 While it is anticipated that the main driver for providers in co-operating with such provisions will be the fear of the likely effect on market confidence in that provider, particular with local authority commissioners, the intention is that a failure to comply with the market oversight requirements will be grounds for cancellation of a service or provider or responsible individual on the basis of a failure to comply with the relevant regulatory requirements.

## **National Market Stability Report**

### **Background**

3.160 The delivery of care and support has, over recent decades, increasingly been through the private and voluntary sector. Today, around three-quarters of social care workers are employed by the independent sectors. This change, allied to changes in demography and public expectations, as well as the growth of direct payments, has meant that the care and support market has become complex and fast-changing. In Sustainable Social Services, the Welsh Government stated,

“We recognise that private and independent providers play a crucial role in social care but do not believe that the market should determine priorities. We believe that, collectively, we should drive the market, not allow market choices to drive us. Social care must be delivered within a public service ethos and we will expect those who wish to be service providers to embrace this value base (Welsh Assembly Government, 2011:12)“.

### **Current position**

3.161 The Welsh Ministers currently have a requirement to publish reports on the carrying out of functions in relation to relevant Parts of the Health and Social Care Act 2003 and the Care Standards Act 2000 on an annual basis. However no requirement is made for any reports to undertake analysis of the care and support market now or in the future.

### **Purpose of the legislation**

3.162 The legislation will place a duty on the Welsh Ministers to produce a national sector stability report. This is intended to be a report on the social care market in Wales made up of information from whatever source is considered relevant, but with regard to the local market reports produced by local authorities under requirements set out elsewhere in this Bill. Importantly, the Bill sets out that this report should be the result of joint working between the Welsh Ministers and Social Care Wales. The report must contain information such as:

- The sufficiency of services provided in Wales.
- Details on the extent of regulated services provided by those for whom the market oversight provisions elsewhere in this Bill apply.
- Any other information as set out in regulations.

### **Intended effect**

3.163 These provisions are intended to ensure that the Welsh Ministers and others in Wales have the information required about the care and support market that will allow effective operational and strategic decisions. It is anticipated that the Welsh Ministers will use the information to inform policy decisions, but it is also considered that the report will be of use to others such as the independent sector when making decisions regarding future investment and training.



3.164 Such information is not necessarily available at the moment, and it is considered important that this gap is filled.

3.165 It is not intended that the report will comment on the quality and effectiveness of the care that is available. The intention is to provide a national picture of the care and support market, including an analysis of the future trends and direction of travel.

#### **d. Social Care Wales**

3.166 The approach to Social Care Wales within this proposal seeks to:

- Build upon the success of the Care Council for Wales, the current workforce regulator.
- Develop opportunities to support a more strategic approach to improvement across the sector.
- Recognise the broad nature of the workforce within the sector, including those with other professional oversight.
- Take into account the recommendations of the Law Commission (2014) in its recent work on the regulation of health and social care workers.

3.167 Although not a lengthy set of provisions, this is an important part of the Bill as it proposes to strengthen significantly the powers and remit in order to transform an existing corporate body. For clarity, the operational and governance proposals for the newly constituted body have been set out in a Schedule to the Bill and are, therefore, dealt with separately.

#### **Background**

3.168 The current workforce regulator was established following the introduction of the Care Standards Act 2000 to oversee regulation of social care workers and to promote their development. This Part of the Bill seeks to rename and reconstitute the workforce regulator as Social Care Wales and extend its remit.

#### **Current position**

3.169 The workforce regulator is a body corporate established under section 54(1)(b) of the Care Standards Act 2000. The workforce regulator is a Welsh Government Sponsored Body (WGSB). As such has to comply with a governance statement setting

out detailed governance and accountability processes, management arrangements, and financial responsibilities.

3.170 The functions of the workforce regulator set out in the Care Standards Act 2000 are related to the social care workforce. The two key duties set out are to promote:

- High standards of practice amongst social care workers.
- High standards in their training.

3.171 The work of the workforce regulator is almost wholly funded through funding from the Welsh Government, and is agreed on an annual basis through a remit letter provided by Welsh Ministers.

3.172 The Welsh Ministers also support improvement within the sector through a variety of policy initiatives and funding streams. The Welsh Government currently funds five organisations to support service improvement and workforce development:

- **Social Services Improvement Agency:** to support local authority social services to improve.
- **Association of Directors of Social Services Cymru:** to provide professional leadership to directors.
- **Social Care Institute for Excellence:** to provide the evidence base for what works in practice.
- **Care Council for Wales:** to encourage improvement in the social care workforce, including funding streams for social work bursaries.
- **Care and Social Services Inspectorate Wales:** to encourage improvement in social care and social services.

3.173 In addition to these bodies, the National Institute for Social Care and Health Research (NISCHR) is a part of the Welsh Government that develops, in consultation with partners, strategy and policy for research in social care and the NHS in Wales.

3.174 Funding is also provided to local authorities and independent sector organisations through the following grants:

- Social Care Workforce Development Programme.

- Children and Families Organisations Grant.
- Sustainable Social Services Partnership Fund.

3.175 The fragmented approach to service improvement and workforce development is likely to result in inefficiencies due to duplication and lack of co-ordination. For example, workforce development is currently being undertaken by the workforce regulator, the Social Services Improvement Agency and by local authorities using workforce development programme funding. Likewise, there is potential for duplication and/or a lack of a co-ordinated approach between the service improvement work being undertaken by the Social Services Improvement Agency and the work of the service regulator.

3.176 At the same time, aspects of service improvement which are intrinsically linked are delivered by separate organisations. Service improvement, for example, is dependant on having a qualified and experienced workforce which bases its practice on evidence, but service improvement, workforce development and research are delivered by numerous organisations.

### **Purpose of the legislation**

3.177 The purpose of the legislation is to retain the existing duties, powers and functions of the workforce regulator but with important extensions. The objectives of the organisation have been extended and will promote:

- High standards in the provision of care and support services.
- High standards of practice amongst social care workers.
- High standards in the training of social care workers.
- Public confidence in the social care workforce.

3.178 These objectives are supported by additional functions that are proposed for the organisation. These effectively provide the organisation with the power to:

- Provide information or advice to persons providing care and support services to encourage improvement in the service.
- Provide grants and assistance to persons providing care and support services to encourage improvement.

- Undertake studies to improve the effectiveness, efficiency or economy of care and support services.

3.179 An additional duty is placed on the new body to make information about its work available to the public and to engage with the public in its work. This duty parallels that placed on the Welsh Ministers in relation to their functions as the service regulator elsewhere in the Bill.

### **Intended effect**

3.180 The mix of existing and new powers and duties set out will allow the new body to become the strategic driver of improvement across the sector, for both the workforce and for services. It will allow the Welsh Ministers to consolidate its funding for improvement through a single body, improving efficiency and impact.

3.181 Social Care Wales will combine many of the elements that have been, up until now fragmented. It is envisaged that Social Care Wales will use the powers and functions in this Bill to undertake the following activities:

- Regulating the workforce.  
Overseeing workforce planning, standards, development and learning schemes including the regulation of training.
- Supporting the development of research capacity and applied research, and assisting policy makers locally and nationally in developing best practice.
- Learning from and involving people who use services.
- Enabling collaborative partnership working across the social care sector, wider local government and health.
- Acting as an information hub in support of the sector for best evidence-based practice and promoting this practice across the sector.
- Implementing social services improvement schemes to deliver national improvement priorities as identified by the Welsh Government through its strategic improvement framework for well-being.
- Providing information to the public on standards and authoritative frameworks.
- Providing information to the public, media and government on social care and social work.

- 3.182 Social Care Wales will contribute to promoting and sustaining excellence in care and support by securing the next steps in service development and the professionalization of the workforce, without placing any significant new pressures on our limited resources. Sustainable improvement will occur where there is integrated thinking across service and workforce development. Social Care Wales will therefore act as a consolidated improvement hub, replacing the more dispersed and fragmented approach of the past.
- 3.183 We will deliver Social Care Wales' functions through developing the current work of the workforce regulator. This organisation, with its record of workforce development and clear governance is the logical locus to take forward this approach. The workforce regulator will be reconstituted to become Social Care Wales. It will retain its current functions, including workforce regulation, but will also lead the new integrated approach to improvement we have set out. It will remain a lay-led organisation, with a smaller board, but we will expect it to provide the professions with a genuine ownership of the improvement development activities. Social Care Wales will be a WGSB and this means that its accountability arrangements to Welsh Ministers will continue.
- 3.184 Social Care Wales will be empowered both to provide and to commission activity in order to carry out its functions. In this way Social Care Wales will not necessarily replace the contribution of existing service improvement bodies e.g. SSIA and SCIE, but it will be able to commission their services where necessary to enable delivery of the improvement programme.
- 3.185 Social Care Wales will also have an important role in supporting research and development. It will be in a strong position to define the areas in which research and development are needed to inform the implementation of national improvement priorities, assisting policy makers locally and nationally in developing best practice. It will also play a critical role in facilitating the move to embed a culture of research skills and activity within and across the social care workforce.

## **e. Workforce Regulation**

3.186 The approach to workforce regulation within this Bill builds upon the success of regulation over the past 15 years. It seeks to:

- Consolidate existing powers into a single statutory provision so that the Welsh approach to regulation of the workforce is in one place.
- Raise into primary legislation the fundamental principles and processes that apply to registered workers. This Bill therefore is much more explicit about the procedures for the registration and fitness to practise processes that apply than current legislation.
- Provide greater autonomy to the workforce regulator in the development of the rules that govern the operational processes of regulation, within a more explicit primary legislative framework.
- Take on board, where appropriate, the work of the Law Commission (2014) in its review of the regulation of health and social care professionals. Although this review did not cover the regulation of social care professionals in Wales (as they are devolved) it did provide significant evidence and advice regarding best legislative practice in relation to regulation of such professionals.
- Ensure our regulatory regime is compliant with the principles and practice of the framework of human rights established in legislation.
- Provide flexibility for the regulatory regime to respond to changes in the care and support sector going forward.
- Recognise the broad nature of the social care workforce, and to build a regulatory regime that can respond to that breadth.
- Deliver a cost-effective approach to workforce regulation that continues to provide public assurance.

## **Registration**

### **Background**

3.187 A detailed and lengthy exercise undertaken by the Law Commission has recently been concluded that sought to provide consistency and promote best practice in the regulation of social care and health professionals. Although this work did not cover

social care workers in Wales, it is considered to have provided significant evidence and guidance for the development of workforce regulation in this Bill.

### **Current Position**

3.188 The processes that govern workforce regulation are not set out in primary legislation or regulations, but rather within rules that have been agreed between the workforce regulator and the Minister. The power to make rules, subject to the Welsh Ministers' approval derives from the Care Standards Act 2000. The Bill offers an opportunity to clarify and streamline these processes, ensuring that their importance is appropriately reflected in legislation.

### **Purpose of the Legislation**

3.189 The purpose of the Bill is to set out in primary legislation the key processes of workforce regulation.

3.190 The Bill sets how the register and the processes regarding application, format etc. will work. The revised processes set out in the Bill are described in the diagrams below. The Explanatory Notes section at annex A describes these processes in detail (see paragraphs 113-191).

## **What is the Register?**

The workforce regulator is required by law to maintain and publish a register of social workers, visiting social workers from EEA countries and certain care and support workers. The register is available for anyone to check the registration status of a social worker or care and support worker.

Everyone on the register will have shown that they are suitable to work as a care and support worker. The register must show the date on which a person was registered and the qualification which enables them to practise as a social worker or care and support worker. The register can also show information relating to a person's fitness to practise such as whether a person is suspended.

The workforce regulator must maintain a register of social workers who work in Wales, European social workers who practise on a temporary basis in Wales and any other care and support worker specified in regulations. It is the intention to specify that the workforce regulator must maintain a register of managers of regulated services, care workers in children's homes and student social worker. Applications for registration are made to the registrar.

## **Who can apply to register?**

## **What are the criteria for being on the register?**

Following an application for registration, the registrar can refuse the application or grant it. In order to be registered the applicant must demonstrate that they are appropriately qualified and fit to practise.

Registrants can be removed from the register if it is found that their fitness to practise is impaired by a fitness to practise panel (see Fitness to Practise chart). The registrar can also remove registrants under certain circumstances – if the individual requests removal and is not under investigation, following the death of the registrant, if the entry was based on false or misleading information and if the person's fitness to practise was impaired at the time they applied for registration but this was not made known at the time.

## **Removing individuals from the Register?**



## Staying on the register?

Registration must be renewed periodically, according to timescales set out in the workforce regulator's rules. The registrar must renew if the registrant has made a proper application, paid their fees, has carried out required CPD and remains fit to practise. If no application is received for renewal, the individual's registration will lapse unless there are ongoing proceedings or investigations relating to the individual's fitness to practise.

Individuals who have been removed from the register for reasons unrelated to their fitness to practise can apply to be restored to the register. For those removed following fitness to practise hearings, restoration can only be made after five years and then only one application for restoration will be allowed per year. Restoration in these cases can only be made by a fitness to practise panel. A fitness to practise panel may suspend an individual's right to apply for restoration following two unsuccessful applications.

## Restoring individuals to the Register?

## Appealing

Individuals can in certain circumstances appeal decisions of the registrar to the registration appeals panel, a panel of at least three externally appointed persons, within 28 days of any decision. An individual can appeal against the decision of the registration appeals panel to the Care Standards Tribunal.

A care and support worker's fitness to practise may be regarded as impaired by reason of:

- Deficient performance in their work, including negligence or breach of an undertaking
- Serious misconduct in or outside of work
- Inclusion on a barred list
- A relevant decision by another regulator
- Adverse physical or mental health
- A caution or conviction for a criminal offence

## When may fitness to practise be impaired?

## **If it is deemed that fitness to practise is not impaired?**

Following an investigation the workforce regulator can –

- Take no action
- Give advice to the registrant or any other person involved
- Issue a warning, with rights to a hearing
- Agree undertakings with the registrant, according to procedures set out in rules
- Agree to a voluntary removal with the registrant

The workforce regulator can –

- Refer to the Fitness to Practise panel
- Refer to the Interim Orders panel

The Institute will also have a new power within this Bill to undertake mediation with the registrant, subject to procedures set out in regulations.

## **If it is deemed that fitness to practise is impaired?**

The Fitness to Practise panel must decide if a person's fitness to practise is impaired. The panel will comprise externally appointed persons, the majority of whom are not, or have not been registrants. Where no impairment is found it can –

- Take no further action
- Give advice to any relevant persons
- Give a warning
- Agree voluntary removal from the register with the registrant

Where the panel finds impairment it can –

- Take no further action
- Give advice to any relevant persons
- Give a warning
- Agree voluntary removal from the register with the registrant
- Issue a conditional registration order (max. 3 years)
- Issue a suspension for up to 12 months
- Remove the registrant from the register (but not on health grounds alone)

## **Fitness to practise panel**

Any decision of the Fitness to Practise Panel where impairment has been found can be appealed to the First –Tier Tribunal.

## **Can the decision of the Fitness to Practise Panel be appealed?**

## **Interim orders panel**

An interim orders panel may impose an interim order which is effectively an immediate suspension of registrants or the imposition of conditions on registrants where the panel believes such an order will –

- Protect the public
- Is in the public's interest
- Is in the interests of the registrant

Interim orders allow the public to have reassurance that immediate action can be taken where necessary, while at the same time ensuring that due process can be followed. An interim order must be revoked by the Fitness to Practise panel when it considers the case.

Current process is set out in The Care Council for Wales (Fitness to Practise) Rules 2014. The procedure will now be set out on the face of the Bill and some key changes are made to the process -

- An interim order cannot extend beyond 18 months without recourse to independent tribunal
- A six monthly review must be held of any order.

## **Duty to Establish Panels**

### **Purpose**

3.191 The panel process is central to the activity of the workforce regulator as panels will make many of the key decisions in relation to registrants. These provisions ensure that important principles are applied to the way in which panels operate.

### **Intended effect**

3.192 The provisions affect matters such as the number of members and that there must be a majority of lay members. Certain persons are also excluded from being members in order to ensure that panels are unbiased in their work. Beyond these basic principles, the workforce regulator has freedom to set out how the panels will operate in rules.

### **Reviews**

3.193 The Bill provides for a range of new review processes to ensure that decisions taken by the workforce regulator continue to be appropriate to the circumstances of each case. This reflects good practice as set out in the Law Commission review. Details of the review processes are set out in the Explanatory Notes at annex A (see paragraphs 188-190).

### **Rules**

3.194 Any rules made by the workforce regulator no longer need to be approved by the Welsh Ministers. Instead they will be required to consult with the Welsh Ministers and with social care workers that may be affected by the proposals and any other relevant persons.

### **Intended Effect**

3.195 The legislation puts in place a fair process for consideration of a registrant's fitness to practise, through a lay-led approach.

3.196 The legislation is intended to provide, for the first time, a step by step process of workforce regulation which is compliant with key overarching requirements such as the Human Rights Act. Although much of the Bill restates existing processes which are

contained in rules it is intended to provide more clarity about the process in legislation and to provide assurance that the system is robust and not subject to sudden change.

3.197 A key intended effect of this detailed statement of the processes on the face of the Bill is to provide a legislative framework within which the workforce regulator can develop its rules. Currently the workforce regulators rules must be approved by the Welsh Ministers therefore any change to the rules, whether minor or major, requires the approval of the Welsh Ministers. Under this new overarching framework in the Bill, the workforce regulator will be free to establish its own operational procedures and to therefore significantly reduce the current burdens of approvals.

## **Removal of voluntary registration**

### **Background**

3.198 Sustainable Social Services recommended the removal of voluntary registers, as take-up of voluntary registration of domiciliary care workers and adult residential home care workers has been low and voluntary registration can provide a misleading impression of the safety of the workforce, potentially undermining public assurance. Of the estimated 47,163 domiciliary care workers and adult care home workers, only 1,226 were registered in 2013 (Care Council Wales, 2013a).

### **Current position**

3.199 Domiciliary care workers and adult residential home care workers can choose to register with the workforce regulator, but this is not compulsory. The process for registering is similar to other processes for registering with the workforce regulator, and is based around having appropriate qualifications, meeting continuing professional development requirements and evidencing fitness to practise.

### **Purpose of the legislation**

3.200 Under provision in the Bill the workforce regulator is under a duty to maintain a register of social care workers specified by the Welsh Ministers in regulation. The Welsh Ministers can therefore specify which categories of social care workers the workforce regulator is required to keep a register of.

**Intended effect**

3.201 The current voluntary register for domiciliary care workers and care home workers has limitations. There is no intention therefore to specify in regulations that the workforce regulator must maintain a register of such workers. Domiciliary care workers and care home workers will be unable therefore to register. This is consistent with part of the Law Commission's recommendation: "The regulators' powers to keep voluntary registers should be removed" (LC26).

## **Removal of dual registration for managers**

### **Background**

3.202 This section deals with the intended use of the powers in this Bill rather than the powers themselves.

3.203 The powers in regulations from the Care Standards Act 2000 require a manager of a residential care home or domiciliary service to register with both the workforce and service regulators. The registration with the service regulator is intended to provide assurance about the quality of the managers in our services. To this end, the service regulator undertakes interviews and other checks in order to be satisfied that the manager is appropriate and competent to take up the role.

### **Current position**

3.204 The workforce regulator requires managers of residential care homes and domiciliary services to register providing evidence of relevant qualifications etc. and this must be renewed every three years. An annual fee must be paid to maintain this registration.

3.205 The service regulator assesses the fitness of a manager in respect of a specific post via interview, prior to the manager taking up the role, however, dispensation is currently given due to a backlog on outstanding interviews and shortage of suitably qualified managers.

3.206 There has been a considerable lobby to change this system, for a number of reasons:

- The system is unnecessarily bureaucratic and complex.
- The system has not worked. A significant proportion of care provision is being delivered without any registered manager in place.
- The movement of managers across our sector is discouraged by the system. Any movement of managers requires re-registration etc.
- Because of the focus on the managers they are considered to be the accountable point in our system. Those who employ them can escape scrutiny when things go wrong.

- The system focuses on compliance of individuals, not on developing a suitable cadre of professionals with the right skills.

### **Purpose of the legislation**

3.207 The Bill will provide a framework for clear duties of service providers, responsible individuals and managers in the delivery of regulated services. This framework will allow Ministers to refocus the oversight of the regulator towards the service providers and responsible individuals, recognising that the role of manager is a professional one that can be subject to regulation through the workforce regulator.

### **Intended effect**

3.208 The Bill will provide Ministers with the appropriate powers to reshape the system of accountabilities and duties within care and support. A new system will therefore be able to place the registration of managers solely within the remit, of the workforce regulator. Set out in Rules, managers will have to demonstrate that they meet the qualification requirements, although we will expect the workforce regulator to look carefully at extending the equivalence of related managerial qualifications such as MBAs.

3.209 We will expect the service regulator, to refocus its efforts on the providers of care and support. Its thorough process of interviews should look at the key role of the Responsible Individual (the appointer of the manager) and their fitness to operate in our sector. We expect the service regulator to take a much stronger oversight of the providers of care and support, rather than on the professional abilities of individuals.

3.210 We will expect the workforce regulator to use its new powers and role in the area of workforce training and development to focus on the managers of care and support – building development capacity in Wales and understanding demand and supply in the future.



## **Registration of the workforce**

### **Background**

3.211 The workforce regulator keeps a register that includes social workers and some other groups of social care workers. The aim of the register is to make sure that the registered groups are suitable for work in social care. The register puts the registered workforce on a similar footing to other public service professions such as medicine and teaching.

### **Current position**

3.212 Currently, the following groups of workers must register with the workforce regulator in order to practice:

- People who hold a social work qualification and, either practice social work or call themselves a social worker;
- Students participating in an approved social work degree course in Wales;
- Residential child care managers and workers; and
- Adult care home and Domiciliary care managers.

3.213 The following groups of social care workers can register on a voluntary basis:

- Adult care home workers
- Domiciliary care workers.

3.214 11, 649 of the estimated 67,069 care and support workforce in Wales were registered with the workforce regulator in March 2013 (CCW, 2013a). This is approximately 17% of the care and support workforce in Wales<sup>5</sup>. Table one below provides a breakdown of these groups.

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<sup>5</sup> Registered social workers are not necessarily employed within the care and support workforce.

**Table 1: registered care workforce by group**

<b>Workforce group</b>	<b>Number registered</b>
Qualified social workers*	5,881
Social Work Student	769
Residential child care managers	169
Residential child care workers	2,088
Adult care home managers	1,211
Adult care home workers	464
Domiciliary care managers	305
Domiciliary care workers	762
<b>Total</b>	<b>11,649</b>

Source: Care Council Wales (2013a)

\*Qualified in the UK.

3.215 The register is qualification based and allows the incorporation of individuals with varying routes into the profession from inside and outside Wales. Registrants need to demonstrate continuous professional development in order to renew registration periodically. The regulator has powers to remove registrants.

### **Purpose of the legislation**

3.216 This Bill requires the workforce regulator to maintain a register of social workers. It also retains the power of the Welsh Ministers, through regulations, to set out the categories of the workforce who can be registered with the workforce regulator.

### **Intended effect**

3.217 Registrants must demonstrate that they are appropriately qualified to gain entry onto the register. The appropriate qualification will vary according to the type of the social care worker. In this way the regulatory regime can continue to provide the public assurance that is intended. It is not the intention of Ministers to use these powers to extend registration of the workforce at this time, other than to ensure that all regulated services have a registered manager (currently this only applies to Domiciliary and Residential Care).

3.218 The Bill will also allow Ministers in the future to respond to changes in the care and support sector. The Bill will allow, through affirmative regulations, Ministers to extend (or reduce, with the exception of social workers) those categories of the workforce who can be registered with the workforce regulator. This effectively future proofs the legislation, giving the Welsh Ministers sufficient powers to take account of service modernisation and new categories of workers within the definition of social care worker, and to keep pace with the emergence of new social care services and models of care.

3.219 This will enable the professionalization of the workforce to proceed at a pace that is sustainable and achievable. It will assist us in further developing a high quality, high status workforce that will deliver for the people in need of care and support in Wales.

## **Protection of title**

### **Background**

3.220 Protection of title is a significant aspect of workforce regulation contributing to public protection.

### **Current Position**

3.221 The Care Standards Act 2000 protects the title of social worker so that anyone not registered as a social worker who uses the title with the intention to deceive is guilty of an offence.

### **Purpose of the legislation**

3.222 The Law Commission recommends that,

“The protected titles and functions, and relevant offences, should be set out on the face of the draft Bill. The Government’s regulation-making powers should include the ability to amend or remove any of these titles and functions” (Law Commission 2014:221).

3.223 The Bill will replicate the current position established in the Care Standards Act 2000 and provide powers for Ministers to expand protection of title to other social care workers.

### **Intended effect**

3.224 The Bill will enable the continuation of protection of title for social work and allow other social care worker titles to be protected in the future if this is deemed necessary for public protection.

## **Extension of regulation of workforce training**

### **Background**

3.225 The Law Commission report (2014) on regulating the health and social care workforce recommends that “The regulators should be required to set standards for education and training and ensure the maintenance of those standards” (LC43). It also provides a series of other recommendations relating to workforce training. The Bill incorporates a number of these.

### **Current Position**

3.226 Training for social workers is currently regulated by the workforce regulator. However, training for the rest of the social care workforce is not.

### **Purpose of the legislation**

3.227 The Bill would give extended powers to the workforce regulator to regulate education and training for social care workers, set standards in these areas, and ensure the maintenance of those standards in respect of the rest of the social care workforce. This reflects the Law Commission’s recommendations in this area, and will ensure there is more consistent attention to the quality of qualifications across the social care workforce.

### **Intended effect**

3.228 These powers will give the workforce regulator the flexibility to ensure the social care qualifications available are of a sufficient standard. It will also ensure there is sufficient capacity in the system for the workforce to be trained. More particularly, it will assist in ensuring training of the non-social worker registered workforce is of a sufficient standard.

3.229 When utilised, this power will offer the opportunity for the workforce regulator to develop a strategic, long-term approach to the raising of quality of the workforce in care and support.

## **Prohibition Orders**

### **Background**

3.230 The use of prohibition orders, or ‘negative registration’ has been the subject of significant discussion across regulatory systems in recent years. Essentially such a scheme is already in existence through the Disclosure and Barring System (DBS), but there have been calls for a sector-specific approach in social care that could go beyond the limited criteria within DBS.

3.231 In February 2013 the final report of the Mid Staffordshire NHS Foundation Trust Public Inquiry was published. This opened up another debate on registration by recommending that health care support workers should be registered as follows:

“A registration system...should be created under which no unregistered person should be permitted to provide, for reward, direct physical care to patients currently under the care and treatment of a registered nurse or a registered doctor, (or who are dependent on such care by reason of disability and/or infirmity). The system should apply to HCSWs whether they are working for the NHS or for independent healthcare providers, in the community, for agencies or as independent agents.”

3.232 The Law Commission examined this issue in its 2014 consultation on the regulation of health and social care professionals. It concluded that,

“The Government should have regulation-making powers to establish barring schemes, to be run by the regulators. Such a scheme could be introduced in respect of a prescribed health or social care profession, a specified field of activity, a role involving supervision or management, and prescribed title”.

### **Current Position/Purpose of the legislation**

3.233 It is similar to the DBS approach in being a register that only includes people being excluded from certain types of work, but it differs from the DBS approach by being able to reference standards of conduct that workers should adhere to. The provisions currently in the Bill are referred to as ‘prohibition orders’ and are very similar to those in the Law Commission Bill on the Regulation of Health Care Professionals and the

Regulation of Social Care Professionals in England. They provide the regulator with the ability to remove those whose conduct makes them unsuitable to remain in the workforce, without impacting on the workforce as a whole. A negative registration scheme of this kind does not restrict entry to practice, but allows action to be taken against a person who fails to comply with proper standards of conduct.

3.234 The provisions set out how individuals can be added to such a list, following consideration of a Fitness to Practise panel. The provisions set out that such a list cannot be populated by social workers or other professionals currently required to register via regulation making powers elsewhere in the Bill.

3.235 The provisions include regulation-making powers for Welsh Ministers to:

- Designate activities which can be the subject of prohibition orders. These activities would apply to parts of the workforce that are not subject to full statutory registration. So for example, this could be applied to domiciliary care workers.
- Establish conditions for making a prohibition order. These include prescribed offences; inclusion on a barred list, such as DBS; a decision by the regulator that the person's fitness to practise is impaired or that they have failed to meet the standard of conduct specified for the scheme.
- Make interim prohibition orders that can be made with immediate effect whilst the regulator considers whether to make a prohibition order.
- Enable reviews of and appeals against prohibition orders.
- Establish offences for individuals and employers not complying with prohibition orders.
- Maintain a list of persons subject to prohibition orders.
- Set out standards of conduct that if breached could lead to a prohibition order.

### **Intended effect**

3.236 The intention of these provisions is to provide the regulator with an alternative model to that of full registration when seeking to provide public assurance about the workforce operating in the social care sector in Wales.

3.237 This will be one of the regulatory options available to the Welsh Government as the workforce in social care changes and adapts to changing demands. The Bill provides the regulator and Welsh Government with a variety of options for regulation of the diverse workforce in social care, and will allow a proportionate and balanced consideration of these options should new groups need to be brought within the regulatory regime in future.

3.238 It is considered possible that such a system could provide public assurance alongside a lower cost for the public purse, as well as providing fewer burdens on those working within the sector.

3.239 Given the views of those in the sector on this form of regulation it would be the intention of Ministers to introduce such a scheme only after full and open consultation across the sector.

## **Co-operation and joint working by the regulatory bodies**

### **Background**

3.240 The approach to the co-operation and joint working within this proposal seeks to:

- Allow, within the full extent of wider statute, the regulatory bodies to work together and to share information in the pursuit of their objectives.
- To provide clarity in law as to the importance of such joint working and sharing of information

3.241 Throughout the consultation process, the need for effective collaboration between the regulators themselves and between the regulators and others was repeatedly emphasised across the sector.

### **Current Position**

3.242 Regulators have broad powers to share information, but these are generally implicit and on occasion questions have been raised regarding the legal scope for co-operation, sharing of information and joint working. The Care Standards Act is broadly silent on such issues.

### **Purpose of the legislation**

3.243 The legislation is designed to provide specific powers for the regulators to co-operate in the exercise of their functions, to jointly exercise those functions if beneficial and to delegate functions to each other.

3.244 In addition, the Bill sets out a number of relevant authorities with whom the regulators can share information. Finally, the Bill introduces a powerful duty on regulators to share information with any other person should such a disclosure be necessary or expedient to protect the well-being of an individual.

### **Intended Effect**

3.245 The intention of this section of the Bill is to improve the sharing of information, joint working and collaboration between the regulators and others. The information that the regulators gather is often the same and a key intention of this legislation is to allow them to work together to reduce both costs and the burden placed on those that are regulated. It is also considered likely that by sharing such information, assurance can be provided as to its veracity. It is intended that these provisions will ensure that the regulators take every opportunity to work together as a matter of general policy.

3.246 Similarly, the provisions allowing sharing of information with other bodies is to encourage a more collaborative approach across the sector. The final set of provisions in this section relate to sharing of information where doing so will improve well-being. This is a powerful new duty on the regulators – its intention is to change the behaviour of the regulators towards a greater readiness to share information and to provide a clear legislative framework for them to undertake such sharing of information.



## **Section 4: Consultation**

### **The Future of Regulation and Inspection of Care and Support in Wales – White Paper**

- 4.1 On the 30 September 2013, the Deputy Minister issued a Written Ministerial Statement that launched a consultation on the Welsh Government White Paper, The Future of the Regulation and Inspection of Care and Support in Wales. The exercise ran for over 12 weeks and ended on 6 January 2014. To help engage with as wide an audience as possible, the Welsh Government commissioned two voluntary organisations (Learning Disability Wales and Youth Friendly) to produce an Easy Read and Children and Young People's version of the consultation document to help facilitate the participation of vulnerable children and adults in this process.
- 4.2 The consultation exercise received 99 responses, together with a number of additional contributions that fell outside the standard process. In addition to the consultation, officials held a number of events across Wales, including three major stakeholder events (in Cardiff, Llanelli and Llandudno) which were attended by over 200 individuals. As well as receiving 99 formal responses, officials also held significant discussions with other Welsh Government departments and sponsored bodies, including the Care and Social Services Inspectorate Wales (CSSIW) and Health Inspectorate Wales (HIW); which, when taken together with the broad range of engagement received from the consultation, has provided Welsh Government Ministers with a rich basis for developing the policy of our forthcoming Bill on the regulation and inspection of social care in Wales.
- 4.3 The consultation concluded that there was overall broad support for the proposals set out in the White Paper. However, there were requests for clarification and more details on certain elements and a number of respondents identified that they would be keen to engage with Welsh Government in the further development of our proposals. Some areas of the consultation were unpopular with respondents, such as the potential charging of fees for service providers' registration.

## **Other consultations**

4.4 The draft proposals for the Bill (which formed the basis of the consultation document) were informed by discussions with key stakeholders. It also included comments from debates in the National Assembly for Wales and elsewhere, following the publication of Sustainable Social Services: a framework for action (Welsh Assembly Government, 2011) and the passage of the Social Services and Well-being (Wales) Bill through the National Assembly for Wales legislative process. There have been continued communication and engagement with key stakeholders and these talks have been undertaken through a range of individual one to one meetings and regular group meetings in the form of a general forum known as the Policy Advisory Group.

4.5 During June and July 2014, officials held a series of technical workgroups with stakeholders in which to test specific key areas of policy that would be subject to regulations required for implementation of the Bill. They focused on specific policy areas within the four main areas of the Bill, which included:

- Services, Regulation and Enforcement;
- Standards;
- Sector Stability; and
- Workforce.

4.6 The first of the two meetings focused on asking stakeholders questions around specific topics within each policy area. Stakeholders then discussed these questions with colleagues and wider partners before feeding back at the second meeting.

4.7 The services, regulation and enforcement group were asked questions around the proposals on the quality judgement framework, the new emphasis on accountability, annual reports, service-based regulation, time limited registration, strengthened offences and stronger penalties; the standards group were asked questions around the outcomes standards framework and associated risks and benefits in relation to regulation and inspection; the sector stability group were asked questions about the sector stability reports and due diligence proposals; and the Workforce group were asked for views about which groups of the workforce should be regulated and were asked for views about the protection of role and function of social care workers.

4.8 As well as careful analysis of the formal consultation responses and ongoing engagement with key stakeholders, Welsh Government officials have also given consideration to the evidence of the Independent Commission on Social Services in Wales (2010); the Law Commission (2011) review of adult social care legislation; and the Welsh Government review into safeguarding (Safeguarding Advisory Panel, 2013), which has also provided further evidence to draw upon in the development of the final Bill's proposals.

4.9 The full consultation summary document can be found at:

<http://wales.gov.uk/consultations/healthsocialcare/support/?lang=en>

4.10 A brief summary of the responses received for each of the main issues follows.

### **An outcome based approach to regulation and inspection**

4.11 The White Paper consultation sought comments on the potential challenges and benefits of the introduction of an outcomes-based approach to regulations and inspection. The response to the consultation indicated that there was strong support for a change towards an outcomes-based format for social care in Wales. The majority of responses focused on the necessity for any outcomes-based approach to have a clear, concise and consistent approach across the sector, and have a similar inspection process that not only measures the delivery of these services against outcomes but also ensures that standards are retained and drives forward improvements.

### **Annual reports**

4.12 The majority of responses within the consultation welcomed the proposals for a new, uniform annual reporting regime across the social care sector (i.e. public, independent and voluntary). It was felt that a standardised format, accessible to all, would also provide a greater transparency of information that would help potential service users to compare the services they require across those providing them within their communities. However, some answers highlighted potential concerns about whether the reports would be separate to, or additional to, existing reports by service providers – particularly in respect of Local Authorities. It was clear that respondents felt that the production of these reports should minimise the risk that providers incur

additional costs or have to duplicate information provided in other reports to either the regulators or Welsh Government.

- 4.13 Further discussion during the technical working group also raised the question of whether it would be possible to develop an “online dashboard” facility to provide a one-stop shop for information. This could help secure the simplification in terms of reporting requirements and the timing of the submission of this information.

### **Offence of provision of false or misleading information**

- 4.14 Over half of the responses to the consultation outlined their support for the expansion of the offence of providing false or misleading information to include the information contained within the annual report. They argued that, if the information contained within the reports was to help citizens make informed decisions and choices over the services they receive, they should be assured that the information they receive as part of these reports is accurate and reliable. If it was found to be false or misleading, it would provide reassurance to them that the regulator could impose an appropriate sanction on those found abusing this requirement.

### **Quality judgement framework**

- 4.15 Whilst there was overwhelming support for this proposal, particularly in light of the move towards an outcomes-based regime, some responses outlined the need for a robust and concise inspection framework that would be able to deliver quality judgments that are both consistent and reliable. Concern was raised that, without robust and concise guidance, different inspectors might otherwise have differing opinions on what would constitute a poor or an outstanding service. Some respondents also believed that the succinct quality judgment framework would also provide citizens with a further tool to compare organisations and the services they provide. One response went so far as to highlight that a ratings system (e.g. poor, adequate, outstanding, etc.) would not only provide an easy way for citizens to compare the quality and safety of services but also foster a culture within the social care sector to drive forward improvement to achieving excellence rather than simply meeting a set of minimum standards.

## **Citizen involvement**

4.16 Whilst the proposals to involve the citizen in the inspection process received some mixed responses, the majority of respondents were in favour of using citizens with previous experience of social care services to act as “independent visitors” or “lay inspectors” to work alongside the regulator during the inspection process. They felt that this insight would help to provide a broader understanding of the service and whether they were delivering the agreed outcomes for users. However, they urged that these roles would require a clear definition of purpose and a reporting framework/guidance to be developed to ensure that they provided a useful contribution to inspections.

4.17 However, like those that argued against the idea, the majority of respondents to this question recognised that there would be additional costs with introducing such a scheme that would ultimately fall onto the regulator. The main concern was that the regulator would need to ensure that there was adequate training and guidance available to all potential “independent visitors” or “lay inspectors” if we were to avoid inconsistent inspections (or “ratings”). Several respondents also raised concerns that there was the potential that some citizens who wished to take on this role might require an advocate or support to help them participate in the inspection process effectively. The cost of including this support and the provision of suitable training would need to be carefully examined and resourced.

## **Service based model of regulation**

4.18 In general, responses to these proposals were positive, although some respondents did seek greater clarity over which types of services would be included in this new regime. Officials have undertaken a number of one to one meetings and technical workgroups with key stakeholders to help clarify the details and outline the types of services that will be included in the new regime. Whilst some responses felt that the risks of the new system could lead to a tick box exercise or simply place an additional administrative burden on the sector, many felt that there were greater benefits to such a move. Some responses felt that the new regulatory model would be more efficient and cost effective, leading to potential administrative savings for both the regulator and providers. Others felt that the service-based model provided greater flexibility, leading to improved business continuity as the proposals would lead to less disruption

to service users if problems arose in only one of several locations owned by a single operator; and it was felt that it also promoted emerging service models.

4.19 Responding to the question of what additional services should be included in the regulatory regime, many responses highlighted “Group” day care services for adults (e.g. dementia day care centres), advocacy services, personal assistants and direct payment services as being some of the key areas for consideration. Further discussion with key stakeholders through the technical working groups has helped clarify some of the details of this proposal and there is now a consensus view on the way forward.

### **Statutory improvement notices**

4.20 No issues were raised in respect of the strengthening of penalties for offences.

### **Time limited registration**

4.21 It became apparent from the consultation that the lack of clarity over the proposals on this issue within the White Paper caused a lot of confusion and misunderstanding around the meaning that officials had attached to “time limited registration.” Some respondents were unsure whether the introduction of a system of registration for licenses meant that each registration would last for a specific duration, which could have financial consequences for businesses trying to secure investment or loans for improvements from financial institutions; whilst others were unclear whether it would be used to curtail “outmoded” or “failing” services. Even where some respondents correctly understood the proposal, they urged caution over its use and sought the development of clearly defined instances when such measures should be introduced. If not correctly applied, it could have negative effects - i.e. it could lead to the decommissioning of a viable service if there is a perception of risk that prevents financial investment.

4.22 Further work on this area was taken forward in the technical workgroups, which, whilst helped clarify the proposals, saw stakeholders reiterate the need for a clearly defined set of circumstances before the regulator would implement a time bound registration to help secure improvements.

## **Provider registration fees**

4.23 The majority of responses to the consultation objected to the introduction of registration fees. However, what is surprising is the reason that some respondents gave for objecting to this idea – i.e. not that businesses do not want the extra cost but a recognition that they believe that the significant proportion of social care in Wales was still purchased from the public purse. Many argued that the proposal would simply force the independent sector to pass on the costs of any registration process to local authority commissioners and place a further strain on already tight public sector funding streams.

4.24 The small number of responses that supported the approach argued that any fees would need to be both reasonable and proportionate so as to not create a barrier to innovation or preventing new service providers from entering or registering their new service models into the market. Some responses felt that the introduction of a fee could be used to offset the additional costs that would be required to check the registration and the quality of services provided by the registering organisation.

## **Local authority annual statement of the social care market**

4.25 There was agreement that the preparation of this information would be a useful tool to help understand the wider market in Wales. However, many respondents to the consultation and the technical workgroup on sector stability felt that, as local authorities already provided a number of reports to various groups (service regulator, Welsh Government, WLGA, etc.), care would be needed to ensure that this did not lead to duplication of effort. Many agreed that this would also require a greater deal of flexibility in its creation and planning, as it would need to reflect not only the increasing use of regional approaches to commissioning and the benefits of joint planning with healthcare partners but also potential changes to local authority boundaries. It was felt that lessons should be learned from previous attempts at building a wider picture of social care services across Wales (i.e. the Children's Commissioning Support Resource and Daffodil database), and the work being proposed by the UK Government in England, which could also prove useful as this proposal is taken forward.

## **National annual statement of the social care market**

4.26 As mentioned above, many agreed that better understanding the wider market and future trends was a good idea. However, it was acknowledged that strong leadership would be required not only to drive it forward but to also instigate the necessary change in the culture of social care planning.

4.27 The service regulator was seen as the appropriate place to draw together and hold the market statements, as it already held good intelligence on the sector and regularly met with local authorities, the independent and voluntary service providers. It would also be the obvious place to gather all of the annual reports and formulate a national picture of the market. It was also uniquely placed to understand wider factors such as Welsh Government (and, where appropriate, UK Government) policy. However, many key stakeholders acknowledged that it might not be possible to get an accurate picture, as the market did not operate as a true market by simply answering supply and demand pressures. The sector also faces a range of other impacts including the introduction of new Welsh Government strategies and directives (such as the £50 cap on domiciliary care and sustainable social services) that need to be better understood and taken into account when developing an analysis of the market.

## **Due diligence of key providers**

4.28 The responses to this proposal during the technical workgroup highlighted the importance that the regulator recognises the need to be able and willing to take into account information and intelligence gained beyond any formal due diligence exercises. It was recognised that the social care sector will pose some particular challenges in this area, as some organisational models (e.g. satellite companies, parent companies, franchises, etc.) were complex and will make monitoring difficult. Therefore any system will need to be flexible enough to accommodate these intricacies together with an understanding of the differential impact on different services of any sudden cessation. This flexibleness was also extended to the regulator's role, as key stakeholders felt it was important that the regulator should not be constrained when considering the viability of providers, but flexible when considering issues of financial and corporate robustness.



4.29 However, some concerns were raised that this role could create failure by default as any indication of an “investigation” into a company could have unintended consequences if not carefully thought through (e.g. if informed too early, a commissioning local authority might not send anyone to the organisations facilities for fear it was failing and eventually lead to decreasing viability for the company). Whilst the close working relationships between the service regulator and the local authorities was a good thing, there should be a clearly defined point when information should be shared between them to ensure that it does not create issues where there might not be any.

### **Removal of voluntary registration**

4.30 The overwhelming majority of respondents were in favour of removing voluntary registers with many arguing that they did not provide the public with any assurance of safety that those on such registers were suitably qualified to deliver quality services. However, others argued contrary to this by pointing out possible benefits to continuing with a voluntary register, citing that they can provide employers and employees with an impetus and shared commitment to staff development and the consequent improvement of standards. Whilst the majority called for compulsory registration, some respondents cautioned that careful consideration would be needed to mitigate the impact on those already on a voluntary register, particularly if it would entail a financial penalty or increase the perception that they were unqualified or had done anything wrong.

4.31 One respondent suggested the possibility that voluntary registration could provide a useful exploration tool to test the effect of registration on new groups and gauge what resources would be required to introduce compulsory registration at a later stage. They also felt that voluntary registration could also provide the opportunity to test different models of registration to see if more proportionate, cost efficient models could be developed. This was reflected by another respondent who felt that voluntary registration could also allow for the testing of a different model of regulation for some groups in the future.

## **Removal of dual registration for managers**

4.32 The majority of respondents supported this proposal on the grounds that it would rectify a number of issues that currently affect the registration process and make it more proportionate and transparent – i.e. simplify the process, reduce the cost and remove duplication of time and effort. Some respondents felt that the registration body should be the workforce regulator, but recommended that the new regime should combine some of the elements of both the service and workforce regulator's registration practices in order to continue to provide public assurance that managers were properly qualified to carry out their roles. In particular, respondents felt that the service regulator's fit person interview, legal responsibility and provisions for dealing with non-compliance of National Minimum Standards should continue to be an integral part of the registration process. Some argued that, if the proposal were to see the main registration role be undertaken by the workforce regulator, greater and more effective information sharing between the two regulators would be required to ensure that any concerns raised during the service inspection were brought to the attention of the registration body. Others argued that the sole registration role should lay with the service regulator, as they felt it would be difficult to detach the registered manager from their situational context.

4.33 Some comments were also received that highlighted the need for flexibility in the registration process concerning the requirement for qualifications, recognising that the ongoing process of integration within the health and social care services would see greater opportunities for services to be managed by a wider range of professionals with backgrounds from the health and social care sectors. Many felt it would be imperative that qualifications will need to be transferrable and accepted between the two sectors.

## **Extending mandatory registration of the workforce**

4.34 The majority of responses to this question were positive about extending the registration of the whole of the social care workforce, but they also urged that any expansion of the register would need to be carefully handled so as to minimise the costs to the workforce, sector and the regulator. Many of them highlighted a number of those currently unregistered workforce groups (residential and domiciliary care workers, social work assistants, day service staff, etc.) as being ones that should be

mandatorily registered; although several responses also identified a wider list of groups than outlined in the White Paper (e.g. inspectors, personal assistants, advocacy workers, etc.) as candidates to be registered. Reasons for extending the register included that it would strengthen safeguarding procedures ensure consistent competence of the workforce and positively influence behaviour and attitudes. Others were more specific and highlighted that the extension of the registration process would be beneficial to the workforce as it would add a sense of value, reinforce self esteem and encourage people to enter the service. They also argued that it would benefit employers by providing a useful tool to check on past employment and training to ensure that they are operating to the right standards.

4.35 In contrast, a small number of respondents highlighted that, if the proposals were to introduce a qualifications based approach to regulation, qualifications do not necessarily lead to qualified staff being free from bad practice or likewise mean that all capable but unqualified staff are bad. Others felt that there were a number of potential risks with trying to register the whole workforce besides increased costs for employers, the workforce and the regulator. In respect of the social care sector these included the potential for the proposal to increase transience within the workforce, or to create barriers that prevent the portability of staff between the health and social care sectors. In answer to this, some suggested whether a possible solution to this issue could be to simply allow for cross-registration which would eliminate dual registration and reduce the potential costs by focusing attention on those who were not registered elsewhere. They also argued that employers would face increased financial pressures to ensure that their staff met the mandatory professional development requirements whilst the employees would be faced with having to pay the cost of registration. In respect of the regulator, there was the potential for disproportionate costs in registering large numbers of the social care workforce, not only for the transitional arrangements but for continued monitoring and recording of training and qualifications.

### **Inclusion of categories on the register**

4.36 During the technical working group on the regulation of the workforce, key stakeholders raised some concern at the apparent contradiction of proposing to regulate staff in children's homes but not those in adult residential care. Whilst it was understood that the decision probably extended from the levels of risk in these

environments, evidence had shown that there was also acuity of risk in the adult care setting and should also be considered for registration. It was also agreed that consideration should also be left open around domiciliary care staff being added to the list, but this should be for a future date to reflect the need to allow the newly introduced requirements for domiciliary care managers to become embedded. It was also agreed that other groups including inspectors, commissioners, foster carers, adult placement carers, advocates, social care workers in domiciliary and adult residential settings, informal carers and personal assistants should not be included in new regulation for the near future.

### **Extension of workforce training**

4.37 We have engaged, over a period of a year, with the Care Council for Wales around this policy. This has been a process of discussion which has been positive and constructive, and reflects a broad agreement with the principles of extending the regulation of workforce training to other groups. During this process a number of meetings have been held, and Estyn have also been involved in developing the proposals.

### **Enhanced fitness to practise processes and appeals in response to registration decisions**

4.38 The Law Commission consulted on their draft Regulation of Social Care Professionals in England Bill from 1 March 2012 - 31 May 2012. This involved 44 events, around the country, covering a wide audience, including patients, health and social care professionals, academics, professional bodies, the regulatory bodies, lawyers, service providers and representatives from charities and campaigning organisations. 192 responses were received, and the consultation analysis was published on 20 February 2013.

4.39 Widening the criteria for review of fitness to practise decisions was a policy consulted on by the Law Commission through this process. The proposal to establish a registration appeals panel was also consulted on in this way. The Law Commission found the proposals had broad support.

## **Extending functions of the Care Council for Wales**

4.40 Whilst there was significant support for the proposal's aim of creating a more strategic and joined-up approach to improvement and regulation, some responses questioned the name and precise approach. In particular, some questioned whether this could not simply be done through increased powers for the Care Council for Wales rather than the creation of a new body; arguing that the Council had already made great strides in professionalising the workforce. Others questioned whether this momentum should be checked, as adding more functions without careful planning could leave the Council too thinly supported or without adequate funding. By contrast, a number of others expressed concerns that the proposal created a conflict of interest between the regulation, improvement of and speaking up for the profession. Some argued that it could easily become distracted from its core function – regulating the workforce – and could undermine the work of other bodies if functions previously provided by them were suddenly transferred to the “institute.” In order to avoid this, some respondents recommended that it would be better if the proposal were to require greater joint working, co-ordination and cohesion between the Care Council for Wales, the service regulator and other bodies (NISCHR, Improvement Unit in Public Health and NHS Staff Development, etc.), which would help eliminate duplication of functions and build better relationships.

4.41 Others argued that the proposals presented an ambitious and powerful opportunity to align improvement priorities and resources to ensure that there was a closer working relationship between the regulator, professional bodies and the sector to ensure that the challenges it faces are heard and solutions are developed that deliver the best outcomes for service users. This improved working relationship would have a number of benefits for the sector and the wider populace – e.g. it would help focus attention on areas of potential concern and drive forward continuous improvement and help it research and gather intelligence on the sector to help it produce up-to-date information for analysis by the public, media and government. Several responses mentioned that the “Institute” should play a more active role in the sector skills council to ensure that the perspectives of service providers are heard and help develop a greater consistency of practice across all of the UK's borders.

## Section 5: Power to make subordinate legislation

Regulations and Rules					
Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
2(1)(i)– specify any other service requiring registration	Welsh Ministers	Regs	This power permits Welsh Ministers to specify any other service comprising the provision of care and support as being a service requiring registration with the Welsh Ministers.	Affirmative	The impact of regulation upon businesses is significant and so it is considered that the decision to regulate further services should receive the full scrutiny of the Assembly.
2(3)– prescribe things which are NOT to be treated as regulated services	Welsh Ministers	Regs	This power allows Welsh Ministers to prescribe which things are NOT to be treated as regulated services. This is a new system of regulation and services may emerge which fall into the definition of a service that requires to be registered, but that the Welsh Ministers do not intend should be regulated.	Affirmative	The impact of regulation upon businesses is significant and so it is considered that the decision to modify an existing definition or qualify a new service which will require registration should receive the full scrutiny of the Assembly.
3(3)– prescribe things NOT to be treated as care and support	Welsh Ministers	Regs	This power will allow the Welsh Ministers to prescribe things which are not to be treated as care and support despite the definitions in section 3(1)(a) and (d).	Affirmative	The impact of regulation upon businesses is significant and so it is considered that the decision to modify an existing definition or exclude a new service from requiring registration should receive the full scrutiny of the Assembly.
6(1)(d)– further information	Welsh Ministers	Regs	This power will allow the Welsh Ministers to set out further information required in an application for registration to provide a care and support service.	Negative	This is an administrative detail which is relatively minor in the overall legislative scheme.
6(2)– prescribed form of application	Welsh Ministers	Regs	This power will allow the Welsh Ministers to prescribe the form of an application made under	Negative	This is an administrative detail which is relatively minor in the

			section 6.		overall legislative scheme.
8(7) – varying evidence that must be considered in a fit and proper person decision	Welsh Ministers	Regs	This power will allow Welsh Ministers to vary the evidence to which they must have regard when considering if a person is a fit and proper person.	Affirmative	The Welsh Ministers may cancel the registration of a service provider where they are no longer satisfied that the service provider is a fit and proper person. Therefore any variation in the evidence that must be taking into account when considering if a person is a fit and proper person should be subject to the full scrutiny of the Assembly.
9(2)(viii)– further information within annual return	Welsh Ministers	Regs	This power will allow the Welsh Ministers to prescribe further information required to be contained within, the annual return to be prepared by providers.	Affirmative the first time they are made and thereafter negative	. The regulations deal with the requirement for further information required to be contained in the annual return prepared by service provider. The substantive requirements are set out in section 9(2). Anything additional that is required should receive the full scrutiny of the Assembly the first time they are made given that such requirements may impose additional burdens on providers. .
9(3) – form of annual return	Welsh Ministers	Regs	This power will allow the Welsh Ministers to prescribe the form of the annual return	Negative	Section 8(1) places a duty upon providers of regulated services to submit an annual return. This is an administrative issue and will not be

					controversial or impose burdens on the provider.
9(4)– time limit for annual return	Welsh Ministers	Regs	This power will allow the Welsh Ministers to specify the time limit within which an annual return must be submitted by providers.	Negative	This power is likely to be exercised together with the power in section 9(3) and is minor. The return is to be completed on an annual basis; the regulations made pursuant to this provision will simply specify when it will be due.
10(2)– time limit for application to vary a provider’s registration	Welsh Ministers	Regs	This power will allow the Welsh Ministers to prescribe a time limit within which an application to vary a provider’s registration may be made in circumstances where there is no responsible individual at a place at, from or in relation to which the provider provides a regulated service	Affirmative	This power is likely to be dealt with in the same set of regulations that place duties on responsible individuals pursuant to section 27 which have been designated as affirmative. However as it would have a potentially significant impact on a service provider’s registration it should be the subject of the full scrutiny of the Assembly.
18(8)- variation of time limits applying to notices of decisions given by Welsh Ministers.	Welsh Ministers	Regs	This power will allow to 28 day time limit in subsection (4) and the 56 day time limit in subsection (5)(b) to be amended. These are the current time limits within which Welsh Ministers must issue a notice of decision in respect of a notice of proposal given to a service provider pursuant to section 17.	Negative	This is an administrative detail which is relatively minor in the overall legislative scheme.
20(5) – fitness to be a responsible individual	Welsh Ministers	Regs	This power will allow the Welsh Ministers to specify circumstances in which the Welsh Ministers may designate a responsible individual despite the individual not satisfying the requirements of subsections (2) to make provision for this Part to apply with prescribed modifications to such a	Affirmative	Whilst this is an administrative detail which is relatively minor in the overall legislative scheme, the detail of these Regulations has been identified as one which should be subject to the full



			responsible individual.		scrutiny of the Assembly.
26(1)– requirements on service providers	Welsh Ministers	Regs	This power will allow the Welsh Ministers to prescribe the requirements to be imposed on a service provider in relation to a regulated service.	Affirmative	Regulations made using this power will be the basis upon which the regulated services set out in the Bill are to be regulated. The detail of such regulations and the burdens being placed upon providers should be subject to the full scrutiny of the Assembly.
27(1)– requirements imposed on a responsible individual	Welsh Ministers	Regs	This power will allow the Welsh Ministers to prescribe the requirements imposed on a responsible individual.	Affirmative	The specific obligations that are to be placed on the responsible individual should be the subject of full scrutiny by the Assembly especially given that some of those duties will attract offences if they are not complied with – see section 44.
29(1)– service providers who are liquidated	Welsh Ministers	Regs	This power allows Welsh Ministers to make provision that service providers who are liquidated must notify the Welsh Minister.	Negative	This is a minor, administrative detail.
30 (1) - service providers who have died	Welsh Ministers	Regs	This power allows Welsh Ministers to make provision about service providers who have died.	Negative	This is a minor, administrative detail.
32(3)– service inspections	Welsh Ministers	Regs	This power will allow the Welsh Ministers to prescribe the qualifications and other conditions to be met by an individual who may be an inspector.	Negative	This is a minor, administrative detail for which there are currently no regulatory requirements.
32(4)– service inspections	Welsh Ministers	Code of practice	This power will allow the Welsh Ministers to publish a code of practice about the manner in which inspections are to be carried out (including the frequency of inspections).	N/A	In order to ensure compliance with the European Convention on Human Rights it is considered necessary for the Bill to contain provisions requiring the Welsh Ministers to prepare a code of practice which sets out, in relation

					to its powers of inspection, the manner in which those functions are to be exercised.
36(1)- inspection ratings	Welsh Ministers	Regs	This power will allow the Welsh Ministers to make provision about ratings which an inspector may give in relation to the quality of care and support provided by a service provider who has been inspected.	Affirmative	The introduction of a ratings system would have significant impact social care providers. Such provision should be subject to the full scrutiny of the Assembly.
37(2)(g)– provision of further information	Welsh Ministers	Regs	This power will allow the Welsh Ministers to prescribe information that may be placed in an entry on the register.	Negative	The main requirements of an entry in the register are set out in subsection (2). Regulations made using this power will be minor and administrative in qualifying the access of information that is available in the in the public register.
37 (5) - provision of information	Welsh Ministers	Regs	This power will allow the Welsh Ministers to prescribe information that may be omitted from the register of service providers under prescribed circumstances or to prescribe circumstances under which the regulator may refuse to comply with a request for a copy of, or extract from the register of service providers.	Negative	The main requirements of an entry in the register are set out in subsection (2). Regulations made using this power will be minor and administrative in qualifying the access of information that is available in the in the public register.
38(1)(g)– requirement to notify local authorities	Welsh Ministers	Regs	This power will allow the Welsh Ministers to provide for other events that may occur by virtue of Part 1, or regulations under it, which will trigger requirements to be placed on the Welsh Ministers to notify each local authority in England and Wales.	Negative	Section 37 already provides a list of matters which the Welsh Ministers will be required to notify local authorities about when they occur. This power allows for that list to be added to. It is minor and does not impact on service providers.
38(2)– information in notifications to local authorities	Welsh Ministers	Regs	This power will allow the Welsh Ministers to make provision about what information must be provided in notifications to local authorities under	Negative	This power links in with the power in Section 37(1)(g). The matters that must be notified are listed in

			section 37.		section 37. The regulations will expand upon this and provide the detail about those matters which must be disclosed by Welsh Ministers.
39(1) – fees for application to vary a registration	Welsh Ministers	Regs	This power will allow the Welsh Ministers to make provision requiring fees to be paid for : (a) making an application for registration as a service provider; (b) making an application to vary a registration; (c) allowing a person to continue to be registered as a service provider; (d) for a copy of an inspection report; (e) for a copy of the register or an extract of it.	Affirmative	The imposition of a requirement to pay a fee should be the subject of the full scrutiny of the Assembly in order to ensure that the levels set are appropriate, given the impact on service providers. Thereafter, the purpose of amending those regulations is likely to be to increase those fees or to impose fees for different services which should also receive the full scrutiny of the Assembly.
44 – offence for service provider to fail to comply with a specified provision	Welsh Ministers	Regs	This power will allow the Welsh Ministers to make provision that it is an offence for a service provider to fail to comply with a specified provision of regulations made under section 26.	Affirmative	This is linked to the regulation making power in section 26(1) and will establish offences which are not currently on the face of the Bill. The offences created on the face of the Bill are to receive the full scrutiny of the Assembly – so too should any offences created by way of subordinate legislation.
45 – offence for responsible individual to fail to comply with a specified provision	Welsh Ministers	Regs	This power will allow the Welsh Ministers to make provision that it is an offence for a responsible individual to fail to comply with a specified provision of regulations made under section 27.	Affirmative	This is linked to the regulation making power in section 27(1) and will establish offences which are not currently on the face of the Bill. The offences created on the face of the Bill are to receive the full scrutiny of the Assembly – so too should any offences created by way

					of subordinate legislation.
51(1) – penalty notices	Welsh Ministers	Regs	This power will allow the Welsh Ministers to give a penalty notice to a person if they are satisfied that the person has committed a prescribed offence.	Negative	Regulations made using this power will be minor and administrative.
51(6) – penalty notices	Welsh Ministers	Regs	This power will allow the Welsh Ministers to make provision in relation to penalty notices.	Negative	There is currently provision allowing fixed penalty notices to be issued in the Care Standards Act 2000. The offences that may be the subject of a fixed penalty notice as set out in sub-section 2. The regulations made under sub-section 6 provide the detail of the administration of fixed penalty notices.
55 Inserts section 144A(2)(b) into the Social Services and Well-being (Wales) Act 2014 - annual report by local authorities	Welsh Ministers	Regs	This power will enable the Welsh Ministers to make provision in relation to such other information to be included in the annual report prepared by local authorities in relation to the exercise of social services functions.	Negative – but power will be contained in 2014 Act	The main things that must be contained within that report are set out in subsection 2(a). This power allows Welsh Ministers to prescribe the detail of further information required.
55 inserts section 144A(4) into the Social Services and Well-being (Wales) Act 2014 – form of annual report	Welsh Ministers	Regs	This power will enable Welsh Ministers to prescribe the form of the annual report prepared by local authorities under section 144A	Negative – but power will be contained in 2014 Act	This is an administrative detail which is relatively minor in the overall legislative scheme.
55 Inserts section 144B(1) into the Social Services and Well-being (Wales) Act 2014 – Local market stability reports	Welsh Ministers	Regs	This power will enable Welsh Ministers to prescribe the time cycle for the preparation and publication of the local market stability report by local authorities	Negative – but power will be contained in 2014 Act	This is an administrative detail which is relatively minor in the overall legislative scheme.

55 inserts section 144B(2)(a)(i) into the Social Services and Well-being (Wales) Act 2014 – Local market stability reports	Welsh Ministers	Regs	This power enables Welsh Ministers to prescribe the period during which a local market stability assessment must address the sufficiency of provision of care and support.	Negative – but power will be contained in 2014 Act	This is an administrative detail which is relatively minor in the overall legislative scheme.
55 inserts section 144B(2)(a)(iii) into the Social Services and Well-being (Wales) Act 2014 – Local market stability reports	Welsh Ministers	Regs	This power enables Welsh Ministers to make provision requiring additional matters to those listed in subsection (2)(a)(i) and (ii) in the local market stability report	Negative – but power will be contained in 2014 Act	This is an administrative detail which is relatively minor in the overall legislative scheme.
55 inserts section 144B(2)(a)(iv) into the Social Services and Well-being (Wales) Act 2014 – Local market stability reports	Welsh Ministers	Regs	Section 144B(2)(iv) requires the local authority to include an assessment of the effect on its social services functions of the commissioning of services in connection with those functions. The regulation making power may prescribe the period about which such information must be provided.	Negative – but power will be contained in 2014 Act.	This is an administrative detail which is relatively minor in the overall legislative scheme.
55 inserts section 144B(3) into the Social Services and Well-being (Wales) Act 2014 – Local market stability reports	Welsh Ministers	Regs	This power enables Welsh Ministers to prescribe the form of the local market stability report	Negative – but power will be contained in 2014 Act	This is an administrative detail which is relatively minor in the overall legislative scheme.
56(1) Inserts section 149B into the Social Services and Well-being (Wales) Act 2014– criteria for	Welsh Ministers	Regs	This power in sub-section 4 will enable the Welsh Ministers to prescribe criteria by which a rating may be given in relation to the standard to which a local authority's social services functions of a kind specified is to be exercised.	Affirmative – but power will be contained in 2014 Act	This is not a new provision in that this replicates existing provision in the Health and Social Care (Community Health and Standards) Act 2003. However, the use of such

rating					a power would be new and in order to provide parity with the similar provision in respect of ratings for private providers in section 35 then it seems logical that this provision should attract the full scrutiny of the Assembly.
56(1)– Further inserts section 149C into the Social Services and Well-being (Wales) Act 2014 - fee for review	Welsh Ministers	Regs	This power requires local authorities to pay a fee in respect of a review conducted by Welsh Ministers under section 149B(1)	Affirmative – but power will be contained in 2014 Act	The imposition of the requirement for a local authority to pay fees should be the subject of the full scrutiny of the Assembly in order to ensure that the levels set are appropriate. Thereafter, the purpose of amending those regulations is likely to be to increase those fees which should also receive the full scrutiny of the Assembly.
56(2)– Replaces section 161 of the Social Services and Well-being (Wales) Act 2014	Welsh Ministers	Regs	Subsection (4) of section 161 provides a power to make provision about the qualifications and other conditions to be met by types of individuals who may be inspectors.	Negative – but power will be contained in 2014 Act	This is a minor, administrative detail. It is equivalent to section 32(3) and thus follows the same procedure.
56(2)– Inserts section 161A into the Social Services and Well-being Act 2014	Welsh Ministers	Code of practice	Section 161A will allow the Welsh Ministers to publish a code of practice about the manner in which inspections are to be carried out (including the frequency of inspections).	N/A	In order to ensure compliance with the European Convention on Human Rights it is considered necessary for the Bill to contain provisions requiring the Welsh Ministers to prepare a code of practice which sets out, in relation to its powers of inspection, the manner in which those functions are to be exercised.
57 - Inserts section	Welsh	Regs	Section 94A(1) is a regulation making power to	Negative – but	Pursuant to section 196 of the

94A and 94B into the Social Services and Well-being (Wales) Act 2014	Ministers		make provision about the exercise by local authorities of functions conferred on them by section 81(ways in which looked after children are to be accommodated and maintained) or regulations made under section 87 of a kind as is mentioned in sections 92(1), 93 or 94 of the Social Services and Well-being (Wales) Act 2014.	power will be contained in 2014 Act	Social Services and Well-being (Wales) Act 2014 the regulation making powers conferring the functions referred to in this provision are themselves negative, thus these powers regarding the exercise of those functions follow the same procedure.
57– Section 94B(1) into the Social Services and Well-being (Wales) Act 2014	Welsh Ministers	Regs	Section 94B(1) is a regulation making power to make provision that it is an offence for a person to contravene or fail to comply with a specified provision of regulations made under section 94A.	Affirmative – but power will be contained in 2014 Act	The offences created on the face of the Bill are to receive the full scrutiny of the Assembly – so too should any offences created by way of subordinate legislation.
58(1)– criteria for determining whether section 60 applies to a service provider	Welsh Ministers	Regs	This power will allow the Welsh Ministers to specify the criteria for determining whether (subject to regulations made under subsection (4)) section 62 applies to a service provider in respect of regulated services.	Affirmative.	The additional regulation that services identified pursuant to such provision will be subject to should receive the full scrutiny of the Assembly.
58(4)– extent of application of section 60	Welsh Ministers	Regs	This power will allow the Welsh Ministers to provide that section 60 does not apply, or applies only to the extent specified, to a specified service provider or to a service provider of a specified description.	Affirmative	The additional regulation that services identified pursuant to such provision will be subject to should receive the full scrutiny of the Assembly.
60(6)– information to assess financial sustainability	Welsh Ministers	Regs	This power will allow the Welsh Ministers to make provision for enabling the obtaining from such persons as they consider appropriate, information which they believe will assist them to assess the financial sustainability of a service provider to which this section applies.	Affirmative	The way in which this power has the potential to be exercised is wide in terms of the requirement to obtain information from any person the Welsh Ministers deem appropriate. Given the potentially wide nature of the power, regulations need to receive the full scrutiny of the Assembly.

60(7) - assessments	Welsh Ministers	Regs	This power will allow the Welsh Ministers to make provision about the making of assessments.	Affirmative	This power relates closely to those in section 58(4) and 60(6) and for that reason follows the same procedure.
62(1) national - market stability report	Welsh Ministers	Regs	This power will allow the Welsh Ministers to make provision for the timing and publication of a national market stability report.	Negative	This power is minor and administrative and provides the ability to prescribe the timing and publication of the national market stability report.
62(3)(a)(i)–national market stability report	Welsh Ministers	Regs	This power will allow the Welsh Ministers to make provision for the national market stability report to include an assessment of the sufficiency of care and support provided in Wales during a specific period.	Negative	Content of the national market stability report prepared by the Welsh Ministers is set out in subsection 3(a). This power is minor and administrative and provides the ability to expand on the detail of information to be provided in this report.
62(3)(a)(iii)- national market stability report	Welsh Ministers	Regs	This power will allow the Welsh Ministers to make provision for any other matter relating to the provision of care and support to be included in the national market stability report.	Negative	Content of the national market stability report prepared by the Welsh Ministers is set out in subsection 3(a). This power is minor and provides the ability to expand on the information to be provided in this report.
73(1) – rules for the payment of fees	Social Care Wales (SCW)	Rules	The rules deal with operational procedures about how SCW is to fulfil its functions. Operational matters should be left to SCW to determine in light of their expertise and experience. The Council is currently responsible for drafting such rules.	Procedure set out in section 72. Must also satisfy the consultation requirements in section 74 .	The Welsh Ministers will no longer be required to approve rules made by SCW. This increased regulatory autonomy heightens the importance of proper consultation as a means of involving key interests in the development of how SCW regulates social care workers.
78(2)	Welsh	Regs	The type and range of care being provided in the	Affirmative	Affects the rights of those persons



– prescribe or except persons as social care workers	Ministers		sector is changing. There is a need to have flexibility to be able to adjust the categories of persons as social care workers as the sector develops and grows in order that consideration can be given to whether they should be subject to regulation.		designated. They will be subject to regulation which could affect their right to practise their profession.
79(1)(b) – register of designated social care workers	Welsh Ministers	Regs	There is a need to retain flexibility in relation to those persons who are required to register with SCW. Registration is not the only form of regulation and for some groups in the sector this may not be appropriate. There are a number of potential groups for whom registration may be appropriate but there are a number of factors to consider and weigh-up. It may be that compulsory registration is found to be ineffective for some groups and the Welsh Ministers may need to change those persons who are required to register in light of experience.	Affirmative	Affects the rights of those persons who are required to register which will affect their rights to practise their profession.
82(1)(a) – rules about the form and manner in which applications for registration must be made	Social Care Wales (SCW)	Rules	The rules deal with operational procedures about how SCW is to fulfil its functions. Operational matters should be left to SCW to determine in light of their expertise and experience. The Council is currently responsible for drafting such rules.	Procedure set out in section 72. Must also satisfy the consultation requirements in section 74.	The Welsh Ministers will no longer be required to approve rules made by SCW. This increased regulatory autonomy heightens the importance of proper consultation as a means of involving key interests in the development of how SCW regulates social care workers.
82(3) – rules specifying the activities that are to be regarded as practising work and the criteria to be applied to	Social Care Wales (SCW)	Rules	The rules deal with operational procedures about how SCW is to fulfil its functions. Operational matters should be left to SCW to determine in light of their expertise and experience. The Council is currently responsible for drafting such rules.	Procedure set out in section 72. Must also satisfy the consultation requirements in section 74.	The Welsh Ministers will no longer be required to approve rules made by SCW. This increased regulatory autonomy heightens the importance of proper consultation as a means of involving key interests in the development of

determining whether a person intends to practise					how SCW regulates social care workers.
83(a)(iii) – rules setting out training requirements for social workers to satisfy SCW that they are appropriately qualified	Social Care Wales (SCW)	Rules	The rules deal with operational procedures about how SCW is to fulfil its functions. Operational matters should be left to SCW to determine in light of their expertise and experience. The Council is currently responsible for drafting such rules.	Procedure set out in section 72. Must also satisfy the consultation requirements in section 74.	The Welsh Ministers will no longer be required to approve rules made by SCW. This increased regulatory autonomy heightens the importance of proper consultation as a means of involving key interests in the development of how SCW regulates social care workers.
83(b)(ii) - rules setting out training requirements for care and support workers to satisfy SCW that they are appropriately qualified	Social Care Wales (SCW)	Rules	The rules deal with operational procedures about how SCW is to fulfil its functions. Operational matters should be left to SCW to determine in light of their expertise and experience. The Council is currently responsible for drafting such rules.	Procedure set out in section 72. Must also satisfy the consultation requirements in section 74.	The Welsh Ministers will no longer be required to approve rules made by SCW. This increased regulatory autonomy heightens the importance of proper consultation as a means of involving key interests in the development of how SCW regulates social care workers.
85(1) – rules dealing with the procedure for renewal of registration	Social Care Wales (SCW)	Rules	The rules deal with operational procedures about how SCW is to fulfil its functions. Operational matters should be left to SCW to determine in light of their expertise and experience. The Council is currently responsible for drafting such rules.	Procedure set out in section 72. Must also satisfy the consultation requirements in section 74.	The Welsh Ministers will no longer be required to approve rules made by SCW. This increased regulatory autonomy heightens the importance of proper consultation as a means of involving key interests in the development of how SCW regulates social care workers.
87(1) – rules about the manner and criteria the registrar must determine	Social Care Wales (SCW)	Rules	The rules deal with operational procedures about how SCW is to fulfil its functions. Operational matters should be left to SCW to determine in light of their expertise and experience. The Council is	Procedure set out in section 72. Must also satisfy the	The Welsh Ministers will no longer be required to approve rules made by SCW. This increased regulatory autonomy heightens the

whether a person's fitness to practise is impaired			currently responsible for drafting such rules.	consultation requirements in section 74.	importance of proper consultation as a means of involving key interests in the development of how SCW regulates social care workers.
87(3) – rules for the procedure to be followed by the registrar in dealing with applications for registration and renewals	Social Care Wales (SCW)	Rules	The rules deal with operational procedures about how SCW is to fulfil its functions. Operational matters should be left to SCW to determine in light of their expertise and experience. The Council is currently responsible for drafting such rules.	Procedure set out in section 72. Must also satisfy the consultation requirements in section 74.	The Welsh Ministers will no longer be required to approve rules made by SCW. This increased regulatory autonomy heightens the importance of proper consultation as a means of involving key interests in the development of how SCW regulates social care workers.
90(1)(c) – content of the register and professional qualifications	Welsh Ministers	Regs	The regulation making power will allow the Welsh Ministers to govern the SCW's power to annotate the register. This is to ensure that the purpose of any additional information is clear and transparent and the use of such annotations is restricted to relevant qualifications. The Welsh Ministers need to have flexibility to prescribe qualifications as they emerge following an assessment of whether such qualifications should appear on the register.	Negative	This detail is relatively minor in the overall legislative scheme and the regulations are likely to need updating on a regular basis as new qualifications emerge and as further categories of persons are registered.
90(1)(d) –content of the register and fitness to practise decisions	Welsh Ministers	Regs	This power fleshes out the practicalities of what information will appear on the register in relation to a registrant's fitness to practise. The information may be subject to change. Similar provision is currently contained in rules made by the Care Council.	Negative	This detail is relatively minor in the overall legislative scheme.
90(2) – rules for including entries in the register	Social Care Wales (SCW)	Rules	The rules deal with operational procedures about how SCW is to fulfil its functions. Operational matters should be left to SCW to determine in light of their expertise and experience. The Council is currently responsible for drafting such rules.	Procedure set out in section 72. Must also satisfy the consultation	The Welsh Ministers will no longer be required to approve rules made by SCW. This increased regulatory autonomy heightens the importance of proper consultation

				requirements in section 74.	as a means of involving key interests in the development of how SCW regulates social care workers.
91(1) – rules for the procedure for removal from the register by agreement	Social Care Wales (SCW)	Rules	The rules deal with operational procedures about how SCW is to fulfil its functions. Operational matters should be left to SCW to determine in light of their expertise and experience. The Council is currently responsible for drafting such rules.	Procedure set out in section 72. Must also satisfy the consultation requirements in section 74.	The Welsh Ministers will no longer be required to approve rules made by SCW. This increased regulatory autonomy heightens the importance of proper consultation as a means of involving key interests in the development of how SCW regulates social care workers.
92(1) – rules specifying the period within which the registrar must remove an entry following the death of a registered person	Social Care Wales (SCW)	Rules	The rules deal with operational procedures about how SCW is to fulfil its functions. Operational matters should be left to SCW to determine in light of their expertise and experience. The Council is currently responsible for drafting such rules.	Procedure set out in section 72. Must also satisfy the consultation requirements in section 74.	The Welsh Ministers will no longer be required to approve rules made by SCW. This increased regulatory autonomy heightens the importance of proper consultation as a means of involving key interests in the development of how SCW regulates social care workers.
99(1) – rules about applications for restoration	Social Care Wales (SCW)	Rules	The rules deal with operational procedures about how SCW is to fulfil its functions. Operational matters should be left to SCW to determine in light of their expertise and experience. The Council is currently responsible for drafting such rules.	Procedure set out in section 72. Must also satisfy the consultation requirements in section 74.	The Welsh Ministers will no longer be required to approve rules made by SCW. This increased regulatory autonomy heightens the importance of proper consultation as a means of involving key interests in the development of how SCW regulates social care workers.
105(1) – rules about informing the registrar of changes	Social Care Wales	Rules	The rules deal with operational procedures about how SCW is to fulfil its functions. Operational matters should be left to SCW to determine in light	Procedure set out in section 72. Must also	The Welsh Ministers will no longer be required to approve rules made by SCW. This increased regulatory

to information recorded in the register	(SCW)		of their expertise and experience. The Council is currently responsible for drafting such rules.	satisfy the consultation requirements in section 74.	autonomy heightens the importance of proper consultation as a means of involving key interests in the development of how SCW regulates social care workers.
106 – rules to make requests for information from registered persons about their fitness to practise	Social Care Wales (SCW)	Rules	The rules deal with operational procedures about how SCW is to fulfil its functions. Operational matters should be left to SCW to determine in light of their expertise and experience. The Council is currently responsible for drafting such rules.	Procedure set out in section 72. Must also satisfy the consultation requirements in section 74.	The Welsh Ministers will no longer be required to approve rules made by SCW. This increased regulatory autonomy heightens the importance of proper consultation as a means of involving key interests in the development of how SCW regulates social care workers.
109(6) form and content of the list of persons removed from the register	Welsh Ministers	Regs	These powers flesh out the form and content of the list SCW must keep. The way in which the list operates may be subject to change in light of SCW's experience of maintaining such a list.	Negative	This detail is relatively minor in the overall legislative scheme.
110(2) – use of title social care worker	Welsh Ministers	Regs	This power allows for the extension of protection of title to other social care workers. The Welsh Ministers need flexibility to determine which social care workers' titles need protecting depending on how the sector develops and evolves. It is not clear at this stage which groups will require protection.	Affirmative	The powers would extend offences to other persons and should receive the full scrutiny of the Assembly.
110(5) amend relevant register	Welsh Ministers	Regs	Flexibility is required in order to update the position if the regulators in other parts of the UK change or new regulators emerge for different parts of the social care workforce whose titles have been protected.	Negative	This detail is relatively minor in the overall legislative scheme.
112(1) – rules requiring registered persons to	Social Care Wales	Rules	The rules deal with operational procedures about how SCW is to fulfil its functions. Operational matters should be left to SCW to determine in light	Procedure set out in section 72. Must also	The Welsh Ministers will no longer be required to approve rules made by SCW. This increased regulatory

undertake CPD training	(SCW)		of their expertise and experience. The Council is currently responsible for drafting such rules.	satisfy the consultation requirements in section 74.	autonomy heightens the importance of proper consultation as a means of involving key interests in the development of how SCW regulates social care workers.
113(1) – rules for the approval of courses for care and support workers	Social Care Wales (SCW)	Rules	The rules deal with operational procedures about how SCW is to fulfil its functions. Operational matters should be left to SCW to determine in light of their expertise and experience. The Council is currently responsible for drafting such rules.	Procedure set out in section 72. Must also satisfy the consultation requirements in section 74.	The Welsh Ministers will no longer be required to approve rules made by SCW. This increased regulatory autonomy heightens the importance of proper consultation as a means of involving key interests in the development of how SCW regulates social care workers.
113(6) – rules setting out the required standard of proficiency in social care work	Social Care Wales (SCW)	Rules	The rules deal with operational procedures about how SCW is to fulfil its functions. Operational matters should be left to SCW to determine in light of their expertise and experience. The Council is currently responsible for drafting such rules.	Procedure set out in section 72. Must also satisfy the consultation requirements in section 74.	The Welsh Ministers will no longer be required to approve rules made by SCW. This increased regulatory autonomy heightens the importance of proper consultation as a means of involving key interests in the development of how SCW regulates social care workers.
114(1) – rules regarding the inspection of places which provide courses for care and support workers	Social Care Wales (SCW)	Rules	The rules deal with operational procedures about how SCW is to fulfil its functions. Operational matters should be left to SCW to determine in light of their expertise and experience. The Council is currently responsible for drafting such rules.	Procedure set out in section 72. Must also satisfy the consultation requirements in section 74.	The Welsh Ministers will no longer be required to approve rules made by SCW. This increased regulatory autonomy heightens the importance of proper consultation as a means of involving key interests in the development of how SCW regulates social care workers.

116(4)(f) – prescribe further relevant bodies for purpose of fitness to practise decisions by Social Care Wales.	Welsh Ministers	Regs	Section 116 provides that a person’s fitness to practise is to be regarded as impaired by reason only of one or more of the grounds specified in subsection (1). One of those grounds is a determination by a relevant body that a person’s fitness to practise is impaired. The powers allows further bodies to be added to the list in subsection (4).	Affirmative	Given the power will have the effect of amending the fitness to practise provision which is integral to the regulatory scheme in respect of social care workers, such a change should receive the full scrutiny of the Assembly.
116(6) – grounds of impairment	Welsh Ministers	Regs	The Welsh Ministers need the flexibility to be able to change the grounds of impairment in light of case law and to adapt to changes in the registration regime. The current grounds of impairment are set out in rules made by the Care Council.	Affirmative	If changes are made the powers will affect the rights of those persons subject to the fitness to practise regime and should receive the full scrutiny of the Assembly.
118(3)- rules about the procedure for preliminary consideration	Social Care Wales (SCW)	Rules	The rules deal with operational procedures about how SCW is to fulfil its functions. Operational matters should be left to SCW to determine in light of their expertise and experience. The Council is currently responsible for drafting such rules.	Procedure set out in section 72. Must also satisfy the consultation requirements in section 74.	The Welsh Ministers will no longer be required to approve rules made by SCW. This increased regulatory autonomy heightens the importance of proper consultation as a means of involving key interests in the development of how SCW regulates social care workers.
118(4)(d) – prescribe persons who cannot carry out preliminary consideration	Welsh Ministers	Regs	This power fleshes out those persons who cannot carry out preliminary considerations. The Welsh Ministers need to retain flexibility about who should not carry out preliminary considerations as these persons may need to be changed in light of SCW’s experience or as the system evolves. Similar provision is currently contained in rules made by the Care Council.	Negative	This detail is relatively minor in the overall legislative scheme.
120(b) – rules about cases that must be	Social Care	Rules	The rules deal with operational procedures about how SCW is to fulfil its functions. Operational	Procedure set out in section	The Welsh Ministers will no longer be required to approve rules made

referred directly to a fitness to practise panel	Wales (SCW)		matters should be left to SCW to determine in light of their expertise and experience. The Council is currently responsible for drafting such rules.	72. Must also satisfy the consultation requirements in section 74.	by SCW. This increased regulatory autonomy heightens the importance of proper consultation as a means of involving key interests in the development of how SCW regulates social care workers.
121(5) – rules about the content and form of notices that cases are not eligible for onward referral	Social Care Wales (SCW)	Rules	The rules deal with operational procedures about how SCW is to fulfil its functions. Operational matters should be left to SCW to determine in light of their expertise and experience. The Council is currently responsible for drafting such rules.	Procedure set out in section 72. Must also satisfy the consultation requirements in section 74.	The Welsh Ministers will no longer be required to approve rules made by SCW. This increased regulatory autonomy heightens the importance of proper consultation as a means of involving key interests in the development of how SCW regulates social care workers.
122(2)(e) – notice onward referral	Welsh Ministers	Regs	This power fleshes out the procedure for giving notice of onward referral. The Welsh Ministers need to retain flexibility about the persons who should be given notice as these may need to be changed in light of SCW's experience or as the system evolves particularly if new categories of workers are registered with SCW. Similar notice provisions are currently contained in rules made by the Care Council.	Negative	This detail is relatively minor in the overall legislative scheme.
122(3) – notice about case that are eligible for onward referral	Social Care Wales (SCW)	Rules	The rules deal with operational procedures about how SCW is to fulfil its functions. Operational matters should be left to SCW to determine in light of their expertise and experience. The Council is currently responsible for drafting such rules.	Procedure set out in section 72. Must also satisfy the consultation requirements in section 74.	The Welsh Ministers will no longer be required to approve rules made by SCW. This increased regulatory autonomy heightens the importance of proper consultation as a means of involving key interests in the development of how SCW regulates social care workers.



124(3) – rules about the arrangements for investigations	Social Care Wales (SCW)	Rules	The rules deal with operational procedures about how SCW is to fulfil its functions. Operational matters should be left to SCW to determine in light of their expertise and experience. The Council is currently responsible for drafting such rules.	Procedure set out in section 72. Must also satisfy the consultation requirements in section 74.	The Welsh Ministers will no longer be required to approve rules made by SCW. This increased regulatory autonomy heightens the importance of proper consultation as a means of involving key interests in the development of how SCW regulates social care workers.
124(5)(d) – prescribe persons who cannot carry out investigations	Welsh Ministers	Regs	This power fleshes out those persons who cannot carry out investigations. The Welsh Ministers need to retain flexibility about who should not carry out investigations as these persons may need to be changed in light of SCW's experience or as the system evolves. Similar provision is currently contained in rules made by the Care Council.	Negative	This detail is relatively minor in the overall legislative scheme.
127(2) – rules about the time period for requesting an oral hearing imposing a warning and the procedure for the hearing	Social Care Wales (SCW)	Rules	The rules deal with operational procedures about how SCW is to fulfil its functions. Operational matters should be left to SCW to determine in light of their expertise and experience. The Council is currently responsible for drafting such rules.	Procedure set out in section 72. Must also satisfy the consultation requirements in section 74.	The Welsh Ministers will no longer be required to approve rules made by SCW. This increased regulatory autonomy heightens the importance of proper consultation as a means of involving key interests in the development of how SCW regulates social care workers.
128(1) - rules about the agreement of undertakings	Social Care Wales (SCW)	Rules	The rules deal with operational procedures about how SCW is to fulfil its functions. Operational matters should be left to SCW to determine in light of their expertise and experience. The Council is currently responsible for drafting such rules.	Procedure set out in section 72. Must also satisfy the consultation requirements in section 74.	The Welsh Ministers will no longer be required to approve rules made by SCW. This increased regulatory autonomy heightens the importance of proper consultation as a means of involving key interests in the development of how SCW regulates social care workers.

129(1) – mediation	Welsh Ministers	Regs	This power enables Welsh Ministers to introduce mediation as an option when a matter has been referred for investigation. This is a developing area in relation to health and social care regulation and a number of regulators across the UK use this method. Mediation may become an appropriate tool for SCW and therefore the Welsh Ministers should have the ability to introduce this new power of disposal.	Affirmative	Mediation is analogous to the introduction of a new power of disposal. The use of mediation is appropriate only be used in certain circumstances. It is considered necessary, therefore, that regulations should receive the full scrutiny of the Assembly.
129(2) – rules about the arrangements for mediation	Social Care Wales (SCW)	Rules	The rules deal with operational procedures about how SCW is to fulfil its functions. Operational matters should be left to SCW to determine in light of their expertise and experience. The Council is currently responsible for drafting such rules.	Procedure set out in section 72. Must also satisfy the consultation requirements in section 74.	The Welsh Ministers will no longer be required to approve rules made by SCW. This increased regulatory autonomy heightens the importance of proper consultation as a means of involving key interests in the development of how SCW regulates social care workers.
130(8) – rules about the procedure for carrying out a review	Social Care Wales (SCW)	Rules	The rules deal with operational procedures about how SCW is to fulfil its functions. Operational matters should be left to SCW to determine in light of their expertise and experience. The Council is currently responsible for drafting such rules.	Procedure set out in section 72. Must also satisfy the consultation requirements in section 74.	The Welsh Ministers will no longer be required to approve rules made by SCW. This increased regulatory autonomy heightens the importance of proper consultation as a means of involving key interests in the development of how SCW regulates social care workers.
131(6) – rules about procedure for cancelling a referral to a fitness to practise panel	Social Care Wales (SCW)	Rules	The rules deal with operational procedures about how SCW is to fulfil its functions. Operational matters should be left to SCW to determine in light of their expertise and experience. The Council is currently responsible for drafting such rules.	Procedure set out in section 72. Must also satisfy the consultation requirements in section 74.	The Welsh Ministers will no longer be required to approve rules made by SCW. This increased regulatory autonomy heightens the importance of proper consultation as a means of involving key interests in the development of

					how SCW regulates social care workers.
135(2)(d) – persons SCW must disclose details of undertakings to	Welsh Ministers	Regs	This power enables Welsh Ministers to prescribe persons SCW is required to disclose details of undertaking agreed with a registered person. This is to provide flexibility in relation to which persons are provided with details in order that SCW can adapt in light of experience or as the system evolves particularly if new categories of workers are registered with SCW.	Affirmative	Whilst this detail is relatively minor in the overall legislative scheme the detail of these Regulations has been identified as one which should be subject to the full scrutiny of the Assembly..,
135(4) – rules about undertakings agreed with fitness to practise panels including the procedure to be followed	Social Care Wales (SCW)	Rules	The rules deal with operational procedures about how SCW is to fulfil its functions. Operational matters should be left to SCW to determine in light of their expertise and experience. The Council is currently responsible for drafting such rules.	Procedure set out in section 72. Must also satisfy the consultation requirements in section 74.	The Welsh Ministers will no longer be required to approve rules made by SCW. This increased regulatory autonomy heightens the importance of proper consultation as a means of involving key interests in the development of how SCW regulates social care workers.
136(6) – rules about the procedure for giving a warning following a finding of no impairment	Social Care Wales (SCW)	Rules	The rules deal with operational procedures about how SCW is to fulfil its functions. Operational matters should be left to SCW to determine in light of their expertise and experience. The Council is currently responsible for drafting such rules.	Procedure set out in section 72. Must also satisfy the consultation requirements in section 74.	The Welsh Ministers will no longer be required to approve rules made by SCW. This increased regulatory autonomy heightens the importance of proper consultation as a means of involving key interests in the development of how SCW regulates social care workers.
141(1) – regulations about disposals by fitness to practise panels	Welsh Ministers	Regs	The current system is in rules which can be changed in light of experience and the experience of other regulators. The Welsh Ministers need to retain this flexibility. Other regulators have been giving consideration to other ways of disposing of cases including financial reimbursements or	Affirmative	This is a broad power which enables the Welsh Ministers to change the whole way matters are disposed of by panels. This power will significantly affect the rights of registrants.

			requiring an apology.		
149(4)(d) – persons SCW must disclose details of undertakings to	Welsh Ministers	Regs	This power enables Welsh Ministers to prescribe persons SCW is required to disclose details of undertakings to. Undertakings are a form of disposal a fitness to practise panel can agree with a registered person. If such an undertaking is agreed employers and persons who engage social care workers must be advised of the details of what has been agreed by the social care worker. This provides flexibility in relation to which persons are provided with details in order that SCW can adapt in light of experience or as the system evolves particularly if new categories of workers are registered with the SCW.	Negative	This detail is relatively minor in the overall legislative scheme.
164(1) – designate regulated activities and make prohibition orders	Welsh Ministers	Regs	The Welsh Ministers need the ability to designate activities which are to be regulated under Part 8, which are likely to be subject to change depending on how the sector evolves and develops as new models of care emerge.	Affirmative	The main purpose of the powers is to enable the Welsh Ministers to confer further significant powers on themselves.
164(2) – prescribe descriptions of social care workers and activities which may be regarded as an activity for the purposes of regulated activities	Welsh Ministers	Regs	This power fleshes out the detail of those activities which can be designated as a regulated activity for the purposes of Part 8. The activities are likely to be subject to change depending on how the sector evolves and develops as new models of care emerge. The Welsh Ministers need to be able to respond to such changes and designate particular activities or practising as particular descriptions of social care workers as regulated activities.	Affirmative	The main purpose of the powers is to enable the Welsh Ministers to confer further significant powers on themselves.
165(2)(a)(b) – offences which give rise to making prohibition orders	Welsh Ministers	Regs	This power fleshes out the details of the conditions which give rise to making a prohibition order and enables Welsh Ministers to set out those offences or cautions which will trigger the making of an order. It is important to retain flexibility to update offences in order to reflect range of regulated	Affirmative	Whilst this detail is relatively minor in the overall legislative scheme, the detail of these Regulations has been identified as one which should be subject to the full scrutiny of the Assembly.

			activities.		
167 – when prohibition orders take affect and review	Welsh Ministers	Regs	This power fleshes out the detail of when orders take affect, the review procedure and information that must be published about orders.	Negative	This detail is relatively minor in the overall legislative scheme.
169(1) – appeals	Welsh Ministers	Regs	This power fleshes out the detail in relation to appeals.	Negative	This detail is relatively minor in the overall legislative scheme.
170(3) – offences	Welsh Ministers	Regs	The Welsh Ministers need flexibility to create offences dependent on how the scheme works in practice. These could if necessary extend the scope of offences to the employment or appointment of persons who are subject to prohibition orders.	Affirmative	The powers create unusual criminal provisions which should receive the full scrutiny of the Assembly.
171(2) – list of prohibited persons	Welsh Ministers	Regs	This power fleshes out the detail in relation to the form and content of the list of prohibited persons.	Negative	This detail is relatively minor in the overall legislative scheme.
172(1) – standards of conduct	Welsh Ministers	Regs	The Welsh Ministers will need to retain some flexibility about how the scheme works and whether standards should be prepared.	Negative	This detail is relatively minor in the overall legislative scheme.
172(4) – rules about the procedure to be followed in determining standards of conduct expected of a person carrying out a regulated activity	Social Care Wales (SCW)	Rules	The rules deal with operational procedures about how SCW is to fulfil its functions. Operational matters should be left to SCW to determine in light of their expertise and experience. The Council is currently responsible for drafting such rules.	Procedure set out in section 72. Must also satisfy the consultation requirements in section 74.	The Welsh Ministers will no longer be required to approve rules made by SCW. This increased regulatory autonomy heightens the importance of proper consultation as a means of involving key interests in the development of how SCW regulates social care workers.
173(1) – rules establishing panels	Social Care Wales (SCW)	Rules	The rules deal with operational procedures about how SCW is to fulfil its functions. Operational matters should be left to SCW to determine in light of their expertise and experience. The Council is currently responsible for drafting such rules.	Procedure set out in section 72. Must also satisfy the consultation requirements in section 74.	The Welsh Ministers will no longer be required to approve rules made by SCW. This increased regulatory autonomy heightens the importance of proper consultation as a means of involving key interests in the development of

					how SCW regulates social care workers.
173(5)(b) – persons who cannot be members of a panel	Welsh Ministers	Regs	This power fleshes out the composition of panels. The Welsh Ministers need flexibility to designate different persons who are prohibited from being members of the various panels as the persons will differ depending on the particular panel. Similar provision is currently contained in rules made by the Care Council.	Negative	This detail is relatively minor in the overall legislative scheme.
173(6)-(9) –rules about constitution and operation of panels	Social Care Wales (SCW)	Rules	The rules deal with operational procedures about how SCW is to fulfil its functions. Operational matters should be left to SCW to determine in light of their expertise and experience. The Council is currently responsible for drafting such rules.	Procedure set out in section 72. Must also satisfy the consultation requirements in section 74.	The Welsh Ministers will no longer be required to approve rules made by SCW. This increased regulatory autonomy heightens the importance of proper consultation as a means of involving key interests in the development of how SCW regulates social care workers.
174 (1) – regulations about proceedings before panels	Welsh Ministers	Regs	This provision fleshes out the detail of proceedings before panels. The current system is in rules and has been changed in light of the Care Council’s experience and the experience of other regulators. The Welsh Ministers need to retain this flexibility to adapt procedure in light of experience.	Negative	This detail is relatively minor in the overall legislative scheme.
176(1)(h) – bodies which may be prescribed as ‘relevant authorities’	Welsh Ministers	Regs	This power enables the Welsh Ministers to designate other persons as relevant authorities for the purposes of the co-operation and joint working provisions in Part 10. New bodies may come into existence or it may be apparent after time and as the regulatory bodies experience increases that it may be beneficial to work with other persons. This power enables to Welsh Ministers to add to the list of relevant authorities.	Affirmative	This power enables the Welsh Ministers to require bodies to co-operate with the regulatory bodies. It is therefore considered appropriate that such regulations should receive the full scrutiny of the Assembly.
185(1) – power to	Welsh	Regs	This enables the Welsh Ministers to make	Affirmative	Regulations which amend or repeal

make consequential, incidental, transitory or saving provision	Ministers		consequential, incidental, transitional, transitory or saving provision as they consider appropriate in connection with the Act. This is necessary to make changes to secondary legislation for example as a consequence of changes brought into force by the Act.	where primary legislation is amended or repealed, otherwise negative.	any enactment contain in primary legislation should be subject to the affirmative procedure. Other regulations made under this section are subject to the negative procedure as they deal with matters of detail.
<b>Codes of Practice and guidance</b>					
<b>Section</b>	<b>Power conferred on</b>	<b>Form</b>	<b>Appropriateness of delegated power</b>	<b>Procedure</b>	<b>Reason for procedure</b>
28 – guidance about regulations under sections 26 and 27	Welsh Ministers	Guidance	This provision enables the Welsh Ministers to issue guidance about how service providers and Responsible Individuals may comply with requirements issued under sections 30 and 31.	N/A	N/A
75 – guidance issued to Social Care Wales	Welsh Ministers	Guidance	This provision enables the Welsh Ministers to issue and publish guidance for SCW.	N/A	N/A
111(1) – codes of practice for social care workers and employers of social care workers	Social Care Wales (SCW)	Code of Practice	The provision enables SCW to issue codes of practice setting out standards of practice expected of social care workers and employers of such workers. Setting out the requirements in a code will enable the use of more accessible language and enable SCW to provide more detail, explanation and examples of the standards expected. It will also enable the standards to be updated regularly to incorporate developments in best practice. It is appropriate for SCW to prepare such codes as it will have the expertise and experience to know what constitutes good practice.	SCW must comply with the consultation requirements in section 76.	It is considered appropriate for SCW to consult with key stakeholders about what codes of practice should contain.
111(3) – codes of practice for approved mental	Social Care Wales (SCW)	Code of Practice	The provision enables SCW to issue codes of practice setting out standards of practice expected of approved mental health professionals. Setting out	SCW must comply with the	It is considered appropriate for SCW to consult with key stakeholders about what codes of

health practitioners			the requirements in a code will enable the use of more accessible language and enable SCW to provide more detail, explanation and examples of the standards expected. It will also enable the standards to be updated regularly to incorporate developments in best practice. It is appropriate for SCW to prepare such codes as it will have the expertise and experience to know what constitutes good practice.	consultation requirements in section 76.	practice should contain.
161(1) – guidance about fitness to practise	Social Care Wales (SCW)	Guidance	The provision enables SCW to issue guidance to fitness to practise panels and interim order panels about the factors to be taken into account when determining if a registered person's fitness to practise is impaired.	SCW must comply with the consultation requirements in section 76.	It is considered appropriate for SCW to consult with key stakeholders about what codes of practice should contain.



## **Section 6: Regulatory Impact Assessment**

6.1 A Regulatory Impact Assessment has been completed in accordance with Standing Order 26.6(vi) for the Bill and follows at section seven.

6.2A Competition Assessment and Specific Impacts are included at Section eight.

6.3 There are no specific provisions in the Bill which charge expenditure on the Welsh Consolidated Fund.

## **Part 2**

### **Section 7: Regulatory Impact Assessment**

#### **Options, costs and benefits**

- 7.1 This regulatory impact assessment is structured around each element of the Regulation and Inspection of Social Care (Wales) Bill. For ease of reference, it presents a series of options for each individual element, followed by costs, risks and benefits. The final section of the regulatory impact assessment presents an assessment of the cumulative impact of the Bill on service providers, the social care workforce and users of care services.
- 7.2 The assessment presents a best estimate of the costs of the Bill based on the information currently available. For a number of the elements, assumptions have had to be made in order to produce the estimates. Generally, where this is the case, the costs have been rounded to the nearest £100 to reduce the risk of spurious accuracy.
- 7.3 In most cases, it has not been possible to quantify the benefits associated with the various options and a qualitative description has been presented instead. 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.
- 7.4 There are two proposals set out in the purpose and intended effect section of the Explanatory Memorandum which have not been costed. These provisions are: protection of title, and prohibition orders. These provisions give Welsh Ministers powers to make secondary legislation. It has not been possible to provide costs for these provisions at this point, as the detail of the numerous approaches which could be used to implement each of the provisions, is not currently known.
- 7.5 It has been possible, however, to estimate the cost to the Welsh Government of developing secondary legislation in relation to protection of title and prohibition orders.

**Table 2: cost of developing subordinate legislation for prohibition orders**

Welsh Government employee grade	Gross annual salary	Time (days)	Cost (£)
Senior Lawyer (Grade 6) <sup>6</sup>	85,884	5	1,865
Lawyer (Grade 7) <sup>7</sup>	69,408	10	3,020
Grade 7	69,408	20	6,040
<b>Total estimated cost</b>			<b>10,925</b>

**Table 3: cost of developing subordinate legislation for protection of title**

Welsh Government employee grade	Gross annual salary	Time (days)	Cost (£)
Senior Lawyer (Grade 6)	85,884	1	373
Lawyer (Grade 7)	69,408	2	604
Grade 7	69,408	5	1,510
<b>Total estimated cost</b>			<b>2,487</b>

7.6 If used, these powers will be subject to statutory consultation, which will enable the implementation details to be identified and the associated costs to be determined. Following consultation, a cost benefit analysis will be undertaken.

7.7 A small number of the proposals costed in the following section are expected to have significant impacts in comparison to the others. For example, the switch to a service based model of regulation, whilst it is expected that there will be very little impact on the ongoing costs of operating a completely new regulatory system, there are anticipated to be significant transition costs in particular for the service regulator.

7.8 Other proposals in which we would expect to see more significant costs than in others would be in respect of the introduction of registration fees and extending mandatory registration of the social care workforce. These proposals are likely to result in significant additional costs for the sector in terms of service providers and the workforce with some ongoing costs for both the service and workforce regulators in operating these systems.

7.9 Proposals which we would expect to have very little financial impact on either the sector, other stakeholders or the regulators would be the creation of the new offences, this is due to the extremely limited circumstances in which they would be used.

<sup>6</sup> Based on a gross salary cost of 85,884 with six weeks annual leave, the daily gross cost is approximately £373.

<sup>7</sup> Based on a gross salary cost of £69,408 with six weeks annual leave, the daily gross cost is approximately £302.

7.10 A full costing of the main proposals included in the Regulation and Inspection of Social Care (Wales) Bill follows. Discussions about how these costs will be met continue across the Welsh Government.

## **Service Regulation**

### **An outcome based approach to regulation and inspection**

7.11 See section 26 of the Regulation and Inspection of Social Care (Wales) Bill, which contains provisions relating to regulations about regulated services.

#### **Options**

7.12 The options are:

- Option one: do nothing.
- Option two: develop a new regime, combining the fundamental elements of protection alongside an outcome based approach to regulation.

#### **Option one: do nothing**

7.13 Under this option, the regulation and inspection regime would maintain a broadly protective approach to regulation and inspection regime i.e. inspections undertaken with reference to both Regulations and National Minimum Standards. The service regulator is moving towards an approach that integrates an outcome based approach with the existing protective approach on a non-statutory basis.

7.14 This current approach takes into account Regulations and National Minimum Standards, and focuses on the experiences of individuals who use social care services around the quality themes of:

- Quality of life.
- Staffing.
- Leadership and management.
- Environment.

However, this approach has been developed independently of the outcomes framework established under the Social Services and Well-being (Wales) Act.

7.15 How service users experience the social care they receive predominately focuses on the quality of the process of delivering social care, rather than being focused on the outcomes for the individual. That is, the focus is on how the service user perceives the

delivery of the service, rather than what this enables the individual to achieve. The type of indicators used for assessing how a service user feels about the delivery of services is referred to as an output indicator. For example, the number of people who experience good communication and engagement with staff.

- 7.16 Whilst it is important that service users have a positive experience of how social care services are delivered, such as how they feel about the personal care they receive, it is also important to know whether the service is making a difference to the lives of service users.
- 7.17 The risk with the existing focus on the experience of service users is that a provider can be found to be providing a good service, in terms of how the service user feels about the social care they receive but the service fails to have a positive impact on the outcomes for the service user.
- 7.18 The Social Services and Well-being (Wales) Act has introduced an outcome based approach to the delivery of social care. The approach combines an outcome based approach with compliance to expected standards of care. The aim of the approach is to ensure that service providers focus on the extent to which they achieve outcomes for service users, whilst at the same time ensuring that standards within an organisation are maintained to a high quality.
- 7.19 This approach to regulation is already being developed in local authorities, in respect of their statutory functions, through the Social Services and Well-being (Wales) Act regime consists of 20-30 outcome performance measures and six standards. Under the new regime, local authorities must demonstrate their performance against the outcome performance measures and standards.
- 7.20 The existing regulatory regime for independent service providers, however, does not currently fit with the outcomes focused model of social care introduced through the Social Services and Well-being (Wales) Act.

## **Option two: develop a new regime, combining the fundamental elements of protection alongside an outcome based approach to regulation**

7.21 This option involves fully integrating a protective regulatory regime with a performance based regulatory regime which focuses on the outcome of the service user in terms of their well-being. It is expected this will be achieved by adopting a similar approach to that being introduced under the Social Services and Well-being (Wales) Act in relation to local authority statutory functions. That is, using standards to assess the outcomes for service users against the Well-being Statement for People who Need Care and Support and Carers who Need Support (Welsh Government, 2013b).

## **Costs**

### **Option one: do nothing**

#### **Service regulator**

7.22 Currently, the Welsh Government allocates an annual budget of £14.4m to the service regulator, CSSIW, to undertake the regulation and inspection of social care establishments and agencies. Of this, £8,064,000 (56%) is attributable to the registration, inspection, enforcement and administration functions in respect of those areas of children and adults' services that are within the scope of the Bill.

7.23 It has not been possible to isolate the precise costs associated with having a protective model of regulation. It is, however, possible to estimate the costs for the main activity associated with the existing model of regulation. It is this cost which will be affected by the introduction of any changes to the approach to regulation.

7.24 In 2012-2013 the service regulator undertook 3,990 inspections (CSSIW, 2014). The estimated cost of undertaking these inspections is £2,984,520<sup>8</sup>.

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<sup>8</sup> Based on the assumption that each inspection visit takes one day and that it takes a further one day to prepare for the inspection and to write the inspection report. The service regulator has provided a day rate of £374 for undertaking activities related to regulation.

## **Service providers**

7.25 Service providers are involved in a number of tasks related to the existing regulatory regime:

- Preparing paperwork for inspection.
- Data collection to inform inspection.
- Arranging for inspectors to consult service users.
- Accompanying the inspector during the inspection.
- Responding to requests for follow-up data, information and explanation.
- Verifying the draft inspection report.
- Potentially, making challenges to the inspection report.

7.26 It has not been possible to calculate the precise costs of the current regulatory regime to service providers, since the costs to service providers will vary depending on the size of service provider and the specific processes and practices adopted by the provider.

## **Preparing for inspection**

7.27 There are no direct costs related to preparing for inspections. Care Forum Wales, an organisation representing over 450 care homes, nursing homes and other independent health and social care providers across Wales, has confirmed that, since inspections are unannounced, other than ensuring the required paperwork is up-to-date, their members do not spend time preparing for an inspection.

7.28 Service providers collect data to inform the Self-assessment of Service Statement (SASS) and the Quality of Service Annual Report.

7.29 The self-assessment consists of five main questions, each with four sub-questions, which require multiple data sources. Service providers are able to select the type of data and the source of the data to demonstrate achievements against the self-assessment questions and sub-questions. The majority of the data is likely to consist of outputs with reference to processes and outcomes. This data can be collected from a variety of sources including reports, survey results, minutes and logbooks.



- 7.30 Assessing the precise cost to service providers of collecting and analysing data is problematic, since the size of the organisation and the organisational practices and processes will have an impact on costs.
- 7.31 United Kingdom Home Care Association (UKHCA) has estimated that it would take a small independent service provider<sup>9</sup> around 24 working hours to complete the self-assessment<sup>10</sup>, which would normally be undertaken by the manager of the establishment or agency. The estimated cost of producing a Self-assessment of Service Statement is £565.90<sup>11</sup>. Thus, the total cost to the 946 independent service providers to complete the 1,562 self-assessments is estimated to be approximately £883,900 per annum.
- 7.32 UKHCA has suggested that it would take a small service provider approximately four working days to collect and analyse the data required for the quality of service annual report. This would include, for example, collecting and analysing administrative and survey data<sup>12</sup>.
- 7.33 Data collection and analysis is normally delegated by the service manager to members of staff best placed to undertake the task<sup>13</sup>. Assuming the task is allocated to a member of staff who is on an administrative salary, the cost of collecting and analysing data for the self-assessment is estimated to be approximately £392<sup>14</sup> per setting. Thus, the total annual cost to the 946 independent social care service providers for collecting and analysing data for the 1,562 settings in Wales is approximately £612,300.

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<sup>9</sup> UKHCA members are predominately domiciliary care agencies.

<sup>10</sup> Source: correspondence with UKHCA.

<sup>11</sup> Based on an average annual salary for a domiciliary care manager of £30,766 (see Curtis, 2013) and on costs of £9,366, giving a total salary cost of £40,132 per annum. The weekly cost, assuming six weeks annual leave including bank holidays is £872.43. Assuming the working week is 37 hours (Curtis, 2013), the cost per hour is £23.60. The total cost for 24 hours is, therefore, £565.90.

<sup>12</sup> Service providers undertake a survey focused on the views of service users, families, carers, care managers and stakeholders to assess the quality of their service. The findings of the survey are included in the service provider Quality of Service Annual Report.

<sup>13</sup> Source: correspondence with UKHCA.

<sup>14</sup> In April 2013, administrative and secretarial occupations earned £399.60 per week (ONS, 2013) or £20,779.20 per annum. The total salary including on costs is £22,549 per annum. This is based on an assumption that the employer does not contribute to a pension scheme. Assuming six weeks leave including bank holidays, the cost per week is £490 per week or £ 98 day. Thus, the cost for four days is £392.

7.34 In total, it is estimated that the current cost to service providers associated with collecting, analysing and presenting data to inform the inspection process is approximately £1,496,200 per annum.

7.35 This would be the maximum estimated cost since UKHCA suggests that larger organisations will have the capacity to collect and analyse administrative data automatically. Thus, the cost to larger providers is likely to be less than it is for smaller organisations.

### **Arranging for inspectors to consult service users**

7.36 As part of the inspection, the inspector will talk to service users. It is the responsibility of service providers to arrange this. UKHCA have advised that service users can become concerned and need a visit from a senior member of staff to explain why an inspector wishes to see them. Such visits can take in excess of two hours.

### **Accompanying inspectors during the visit**

7.37 Care Forum Wales have advised that it is common practice for a member of staff in a senior position to accompany the inspector during the inspection and to take notes of aspects of the inspection for future reference.

7.38 Based on the assumption that the service manager accompanies the inspector for the day, the cost per provider would be approximately £87.24<sup>15</sup>. The total estimated cost, therefore, for independent service providers related to accompanying the inspector during visits to the 1,562 settings, is approximately £136,300 per annum.

### **Responding to requests for follow-up data, verifying the draft inspection report and responding to issues raised in the report**

7.39 UKHCA have advised that following the inspection, service providers can be asked for additional information. In addition, Care Forum Wales have advised that providers will spend time reading the inspection report and responding to any errors and/or issues raised in the report.

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<sup>15</sup> Based on an average annual salary for a domiciliary care manager of £30,766 and on costs of £9,366, giving a total of £40,132 per annum for a 37 hour working week (Curtis, 2013). Assuming six weeks annual leave, the weekly cost is £872.43 and the cost of a day is £87.24.

7.40 Based on the assumption that these tasks are undertaken by the service manager and that it takes an average of one day in total to complete this task, it is estimated that the cost to individual service providers would be £87.24<sup>16</sup>. The total estimated cost, therefore, for independent service providers related to reading the draft inspection report and responding to any errors and/or issues raised in the report is £136,300.

7.41 The total cost for service providers associated with the existing inspection process is, therefore, estimated to be approximately £1,768,800 per annum.

7.42 There would be no additional benefits or costs to retaining the existing system. Service users, their families and carers, local authorities and taxpayers will continue to experience both the benefits and costs associated with the existing regulatory system.

### **Costs to local authorities**

7.43 Local authorities are currently required to produce an Annual Report of the Director of Social Services and, for those services provided directly, to report on the quality of each service setting via a Self-assessment of Service Statement (SASS) and the Quality of Service Annual Report.

### **Annual Report of the Director of Social Services**

7.44 Each local authority in Wales is currently required, within the Annual Report of the Director of Social Services, to report on the effectiveness of the authority in meeting both needs and statutory obligations in social services. The reports are prepared in line with the Annual Council Reporting Framework (Social Services Improvement Agency, 2009)<sup>17</sup> and involves collecting and analysing data around three themes:

- Organisational capacity
- Universal service (safeguarding children, safeguarding adults, and carers)
- Services for specific groups (including, for example, children in need and people with physical disabilities).

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<sup>16</sup> Based on an average annual salary for a domiciliary care manager of £30,766 and on costs of £9,366, giving a total of £40,132 per annum for a 37 hour working week (Curtis, 2013). Assuming six weeks annual leave, the weekly cost is £872.43 and the cost of a day is £87.24.

<sup>17</sup> Work to develop this framework for annual reporting came from a commitment shared by the WLGA and ADSS Cymru to report openly and promptly on the effectiveness and also to link that report urgently to planned and continuous improvement.

7.45 Effectiveness includes performance as measured by performance indicators but also covers a much broader range of issues such as, how are outcomes improved for individuals? When making this assessment, local authorities ask four fundamental questions. In terms of outcome based regulation, local authorities must consider:

- Are the results of the actions of the service being monitored appropriately and are lessons being learned and acted on? That is, are there good mechanisms for assessing the outcome/impact of what is being done?
- Does the organisation understand what its users think about the service they are receiving and is this information being used to improve services? That is, is there good feedback on the actual experience of users? (Social Services Improvement agency, 2009:13).

### **Self-assessment of Service Statement (SASS) and the Quality of Service Annual Report**

7.46 It has not been possible to calculate the costs local authorities currently incur when preparing the Self-assessment of Service Statement (SASS) and the Quality of Service Annual Report<sup>18</sup>.

7.47 Under option one, the current system will be maintained. Thus, local authorities will not incur any additional costs.

**Table 4: summary of costs associated with maintaining the existing approach to regulation and inspection (option one)**

	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>
Service regulator <sup>1</sup>	2,984,520	2,984,520	2,984,520	2,984,520	2,984,520
Service providers <sup>2</sup>	1,768,800	1,768,800	1,768,800	1,768,800	1,768,800
<b>Total cost</b>	<b>4,753,320</b>	<b>4,753,320</b>	<b>4,753,320</b>	<b>4,753,320</b>	<b>4,753,320</b>

<sup>1</sup>This figure is the total estimated cost the service regulator incurs in relation to inspecting service establishments and agencies.

<sup>2</sup>This figure is the total estimated cost to independent service providers in relation to inspection. As stated above, it has not been possible to calculate the current costs to local authorities of the existing approach to regulation and inspection.

<sup>18</sup> The Association of Directors of Social Services have not been able to calculate the costs of preparing the annual reports. This is because practice across authorities varies considerably. Whilst some have distinct officers with responsibility for preparing reports, others have officers who do this as part of a wider role, whilst others delegate it to a range of staff who prepare specific aspects of the report which is then collated elsewhere. In addition to this, there is an element of senior management and elected member time that goes into the process.

## **Option two: integrate a performance-based model of regulation with the existing approach to regulation**

### **Ongoing costs to the service regulator**

7.48 The outcomes for people using services and their experience of that service are currently assessed as part of the inspection process. The extent to which outcomes are assessed in the course of inspection, depends on the type of inspection being undertaken. Baseline inspections, for example, are systematic and consider both the experiences and outcomes for people using the service (CSSIW, 2013a). Routine focused inspections are focused on one of the four quality themes. It requires inspectors to talk to people using the service and use observation, listening skills and intuition.

7.49 CSSIW have confirmed that there will be no additional costs to integrating an outcome based approach with the existing approach to regulation and inspection, since the adoption of the short observational framework for inspection (SoFI) in 2012 implemented a move towards this approach to regulation and inspection. Any costs associated with this option have been considered to be part of introducing a quality judgement framework. The cost to the service regulator is, therefore, expected to remain at £2,984,520 per annum.

### **Transition costs to the service regulator**

7.50 CSSIW have confirmed that there will be no transition costs to implementing an outcome based approach to regulation and inspection since this approach is currently being implemented. Any costs associated with this option have been considered to be part of introducing a quality judgement framework.

### **Ongoing costs to service providers**

7.51 The introduction of performance based regulation and inspection will create no additional ongoing costs for service providers.

7.52 Existing regulations require service providers to establish and maintain a system for monitoring, reviewing and improving the quality of care given to people, and to review and report to relevant authorities on that quality of care. Service providers report to the

service regulator through the Self-assessment of Service Statement and the Annual Quality Report.

7.53 Service providers have been moving gradually towards a reporting approach that demonstrates the extent to which outcomes are being achieved for the individuals who use their services.

7.54 As the Self-assessment of Service Statement form notes,  
'whilst minimum standards are taken into consideration, inspections are increasingly emphasizing experience and outcomes for people using services' (CSSIW, nd:1).

7.55 In addition, service providers currently use surveys to collect data to present in their annual report of care quality. The survey collects the views of residents, their representatives, professionals and staff. Service providers are, therefore, already using the key data collection method used to collect data about the outcomes of the service for the service user. The ongoing cost to the independent service providers is, therefore, expected to remain at £1,768,800 per annum.

### **Transition costs to service providers**

7.56 It is expected that there will be some changes to the data collection tools service providers currently use, in terms of the questions asked<sup>19</sup>.

7.57 Assuming that the service manager and an administrator will each need to spend a half day amending existing data collection tools, the estimated opportunity cost per service provider will be approximately £136<sup>20</sup>. The total opportunity cost, therefore, for the 1,780 settings in Wales, is expected to be approximately £242,100.

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<sup>19</sup> Both UKHCA and Care Forum Wales have suggested that it is not possible to estimate with any accuracy the transition costs associated with implementation in terms of changing documentation, changing systems and practices associated with data collection and data analysis. This is because the detail of the reporting requirements are not, at this stage, known.

<sup>20</sup> Based on an average annual salary for a domiciliary care manager of £30,766 and on costs of £9,366, giving a total of £40,132 per annum for a 37 hour working week (Curtis, 2013). Assuming six weeks annual leave, the weekly cost is £872.43 and the cost of a half day is £87.24. In April 2013, administrative and secretarial occupations half earned £399.60 per week (ONS, 2013) or £20,779.20 per annum. The total salary including on costs is £22,549 per annum. This is based on an assumption that the employer does not contribute to a pension scheme. Assuming six weeks leave including bank holidays the cost per week is £490.16, giving an estimated cost per half day of £49.

7.58 In addition, it is expected that service providers will have to spend some time becoming familiar with the new system.

7.59 Assuming that the service manager and an administrator will each need to spend one day becoming familiar with the data collection and reporting requirements associated with this option, the estimated opportunity cost per service provider will be £272<sup>21</sup>. The total opportunity cost, therefore, for the 1,780 settings in Wales is expected to be approximately £484,200.

7.60 The total transition cost for service providers is, therefore, estimated to be approximately £726,300. These transition costs are expected to be incurred in 2016-17.

### **Transition costs to local authorities in respect of their statutory functions**

7.61 There will be no transition costs to local authorities in relation to their statutory functions under option two. The Social Services and Well-being (Wales) Act introduced an integrated approach to assessing the performance of local authority social care statutory functions.

7.62 Standards and outcome performance indicators will be used to assess the outcomes for service users against the Well-being Statement for People who Need Care and Support and Carers who Need Support (Welsh Government, 2013b).

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<sup>21</sup> Based on an average annual salary for a domiciliary care manager of £30,766 and on costs of £9,366, giving a total of £40,132 per annum for a 37 hour working week (Curtis, 2013). Assuming six weeks annual leave, the weekly cost is £872.43 and the cost of a half day is £87.24.

In April 2013, administrative and secretarial occupations earned £399.60 per week (ONS, 2013) or £20,779.20 per annum. Using the University of Bath on costs calculator (University of Bath, 2014) the total salary including on costs is £22,549 per annum. This is based on an assumption that the employer does not contribute to a pension scheme. Assuming six weeks leave including bank holidays the cost per week is £490.16, giving an estimated cost per half day of £49.

**Table 5: summary of costs associated with integrating a performance based model of regulation with the existing approach to regulation (option two)**

	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>
Service regulator <sup>1</sup>	2,984,520	2,984,520	2,984,520	2,984,520	2,984,520
Service providers					
Transition	726,300				
Ongoing	1,768,800	1,768,800	1,768,800	1,768,800	1,768,800
<b>Total cost</b>	<b>5,479,620</b>	<b>4,753,320</b>	<b>4,753,320</b>	<b>4,753,320</b>	<b>4,753,320</b>

<sup>1</sup>Any costs associated with implementing a performance based approach to regulation have been included in the costs associated with introducing the Quality Judgement Framework.

## Benefits

### Option one: do nothing

7.63 There would be no additional benefits to retaining the existing system. Service users, their families and carers, local authorities and taxpayers will continue to experience both the benefits and costs associated with the existing regulatory system.

### Option two: introduce an outcome based model of regulation

7.64 The benefits associated with option two are discussed in relation to:

- The benefits of introducing an outcome based approach to inform improvement and to inform judgements about quality.
- The benefits of integrating an outcome based approach to regulation with the existing approach.

### Introducing an outcome based approach to inform service improvement

7.65 For the purpose of service improvement, outcome data would not be used as a definitive measure of performance but would be used by service providers, commissioners and the service regulator to indicate where further investigation and action is needed.

### Service providers

7.66 Service providers would be able to regularly evaluate the extent to which the activities undertaken are making a difference to service users' lives. This would provide the opportunity to put in place strategies to focus service delivery on achieving



outcomes, and would provide an opportunity to demonstrate the extent to which the service is having a positive outcome for their clients.

### **Service commissioners**

7.67 Service commissioners are also likely to benefit since they will have an easily accessible indication of the ability of service providers to deliver outcomes for specific groups of individuals. It is not expected that this will result in any reductions in costs for commissioners. Rather, it is expected to be used as an additional piece of information during the assessment of contractor tender documents.

### **The service regulator**

7.68 The service regulator would be able to use the outcome performance data as part of the inspection process. This data could enable the service regulator to assess the extent to which outcomes were being achieved for service users and to identify where further work is required in terms of focusing service delivery on achieving outcomes for clients, and to enquire about what actions service providers will put in place to facilitate any required changes in aligning resources to achieve outcomes.

### **Service users and their carers and families**

7.69 Service users and their carers and families will be able to use the performance data, published in annual reports, to inform discussions and decisions about choice of service provider. Where service users do not have a choice of service provider, such as where domiciliary care is publicly funded, the performance of the provider could be compared to other providers and/or service users could use the information to support demands for service improvement.

7.70 The potential cost savings for service users, their carers and families include savings associated with travelling to fewer care providers to assess the quality of care. Such costs are referred to as search costs.

### **Service providers**

7.71 Service providers who provide high quality services, are also likely to benefit since they will be easily recognised by commissioners and service users, their carers and families.

## **Integrating an outcome based approach to regulation with the existing model of regulation**

- 7.72 Introducing an outcome based model of regulation would shift the focus of regulation and inspection from the experience of individuals using social care support and from compliance to minimum standards and regulations, to the outcomes for individuals in receipt of social care.
- 7.73 Whilst assessing against outcomes can provide the 'missing piece of the information jigsaw' in relation to evaluating and improving social care services and increasing accountability to the public and regulatory bodies, it is not enough in itself.
- 7.74 First, replacing a protective regulation regime with a performance based regime would shift the focus of regulation and inspection to the outcomes for service users but would run the risk of exposing service users to the potential of neglect which could arise from not complying to minimum standards of care and professional codes of conduct.
- 7.75 Second, performance-based regulatory regimes have a number of challenges in practice. The inspection process can be less certain and more complex; transparency for accountability can become more difficult; and such regimes can have uncertain equity and distributive impacts on service providers.
- 7.76 Third, assessing outcomes is more problematic than assessing compliance to standards. Outcome based regimes involve a shift from inspection based on objective measures, which are easy to observe and record, to assessment of performance based on subjective data, which is neither easy to observe or record.
- 7.77 Combining protective regulation and performance based regulation offers potential to benefit from the strengths of both an outcome based approach to regulation and a protective approach (compliance with standards) balance the limitations which might arise from having only an outcome based regulatory regime.

7.78 Specifically, combining approaches will allow both the detection of procedural neglect and caring neglect<sup>22</sup> and provides a greater opportunity to identify cases of abuse. That is, combining approaches will facilitate the detection of poor quality care or neglect along two dimensions of care: procedural neglect and caring neglect. Combining both approaches should facilitate a move away from the highly prescriptive nature of protective regimes and encourage innovation.

## **Summary and preferred option**

7.79 The move across public services towards an approach based on the impact on people's lives is clear and consistent. The Social Services and Well-being (Wales) Act confirmed this direction for social care in Wales. The current legal position relies too heavily on a set of process standards that do not necessarily relate to the quality of life for the individuals receiving social care. The regulator has clearly recognised the limitations of the current system and has made significant strides to modernise its approach. Option two therefore supports and consolidates this approach whilst retaining the protective element of the existing regime. Option two also brings the regulatory service regime into line with that set out in the Social Services and Well-being (Wales) Act.

7.80 For the reasons above, the preferred approach is option two.

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<sup>22</sup> Procedural neglect refers to failings in care that fall short of objective and observable institutional and professional standards (such as codes of practice and minimum standards). Examples of procedure neglect could include failing to feed/hydrate a service user or to maintain accurate service user notes. Procedural neglect is 'system-indicated' since it is defined by a violation of an institutional or professional standard and is focused on measures which can be easily observed and quantified.

Caring neglect refers to failings in care that are below the threshold of being proceduralised and are unlikely to cause immediate harm, yet lead service users and their families to believe that staff are unconcerned about the emotional and physical well-being of service users. Caring neglect might include not being treated with respect or compassion, or having concerns dismissed.

## **Annual reports**

7.81 See sections 34 and 55 of the Regulation and Inspection of Social Care (Wales) Bill for provisions relating to the content of annual reports and publication requirements.

## **Options**

7.82 The options are:

- Option one: do nothing.
- Option two: introduce publicly available standardised service provider annual reporting and standardised reporting of local authority statutory functions.

### **Option one: do nothing**

7.83 Under this option, both local authority providers and independent providers will continue to report to the service regulator on an annual basis through their Self-assessment of Service Statement and Annual Report of Care Quality.

7.84 The reports produced by service providers would not be routinely published, but would continue to be used by the service regulator to inform the inspection of social care services and the preparation of the annual inspection report.

7.85 In addition, the content and format of the annual report (Annual Report of the Director of Social Services) prepared by local authorities in respect of their delivery of statutory social care functions, would continue to be subject to the individual choice of each local authority.

### **Option two: introduce publicly available annual reporting**

7.86 Option two will require all service providers to produce annual reports and will require the service regulator to publish those annual reports.

7.87 The annual reports, which will be submitted to the service regulator, will be part of the requirement for independent service providers remaining on the register. The reports will be available to the citizen, alongside the inspection reports from the service regulator. It is proposed the annual reports could include:

- Evidence about expectations and outcomes for users and carers.
- Staff employed and their development.
- Records of complaints and actions taken – from staff and citizens.
- Appropriate financial information.
- Corporate governance arrangements.
- Contingency planning arrangements.

7.88 The format of these reports will be laid out in regulations and it is anticipated they will be standardised across services.

7.89 Option two will also make the current Annual Report of the Director of Social Services a legislative requirement. The content of the report will be set in regulation to provide consistency of content across local authorities, with the aim of facilitating comparison of the quality of provision across local authorities.

## **Costs**

### **Option one: do nothing**

#### **Independent service providers**

7.90 UKHCA has estimated that it would take a small service provider<sup>23</sup> around 24 working hours to complete the self-assessment, which would normally be undertaken by the manager of the establishment or agency. The estimated cost of producing a Self-assessment of Service Statement is £565.90<sup>24</sup>. Thus, the total cost to the 946 social care providers to complete the 1,562 self-assessments is estimated to be £883,900 per annum.

7.91 UKHCA has suggested that it would take a small service provider approximately four working days to collect and analyse the data required for the quality of service

<sup>23</sup> UKHCA members are predominately domiciliary care agencies.

<sup>24</sup> Based on an average annual salary for a domiciliary care manager of £30,766 (Curtis, 2013) and on costs of £9,366, giving a total salary cost of £40,132 per annum. The weekly cost, assuming six weeks annual leave including bank holidays is £872.43. Assuming the working week is 37 hours (Curtis, 2013), the cost per hour is £23.60. The total cost for 24 hours is, therefore, £565.90.

annual report. This would include, for example, collecting and analysing administrative and survey data<sup>25</sup>.

7.92 Data collection and analysis is normally delegated by the service manager to members of staff best placed to undertake the task<sup>26</sup>. Assuming the task is allocated to a member of staff who is on an administrative salary, the cost of collecting and analysing data for the self-assessment is estimated to be approximately £392<sup>27</sup> per setting. Thus, the total cost to the 946 social care providers for collecting and analysing data for the 1,562 settings in Wales, is £612,300 per annum.

7.93 In total, it is estimated that the current cost to service providers associated with collecting, analysing and presenting data to inform the inspection process, is approximately £1,496,200 per annum.

### **Local authorities**

7.94 It has not been possible to calculate the costs local authorities incur in preparing the Self-assessment of Service Statement (SASS), the Quality of Service Annual Report nor the Annual Report of the Director of Social Services<sup>28</sup>.

### **Cost to the service regulator**

7.95 The service regulator uses the Annual Report of the Director of Social Services, as well as other information provided by local authorities such as performance data, when producing the Annual Review and Evaluation of Performance for each local authority in Wales. To ensure a consistent, transparent and proportionate approach to

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<sup>25</sup> Service providers undertake a survey focused on the views of service users, families, carers, care managers and stakeholders to assess the quality of their service. The findings of the survey are included in the service provider quality of service annual report.

<sup>26</sup> Source: correspondence with UKHCA.

<sup>27</sup> In April 2013, administrative and secretarial occupations earned £399.60 per week (ONS, 2013) or £20,779.20 per annum, with a total salary including on costs of £22,549 per annum. This is based on an assumption that the employer does not contribute to a pension scheme. Assuming six weeks leave including bank holidays, the cost per week is £490 per week or £98 day. Thus, the cost for four days is £392.

<sup>28</sup> The Association of Directors of Social Services have not been able to calculate the costs of preparing the annual reports. This is because practices across authorities vary considerably. Whilst some have distinct officers with responsibility for preparing reports, others have officers who do this as part of a wider role, whilst others delegate it to a range of staff who prepare specific aspects of the report which is then collated elsewhere. In addition to this, there is an element of senior management and elected member time that goes into the process.

the review and evaluation of local authority performance, the service regulator uses an independent moderator to moderate the performance of each local authority<sup>29</sup>.

7.96 The service regulator has estimated that approximately 10% of their total annual cost (£1,440,000) is spent on monitoring the performance of local authority statutory social service functions. This includes thematic inspections, review and joint inspections undertaken with other inspection bodies. The cost of producing the Annual Review and Evaluation of Performance for each local authority in Wales is undertaken as part of the work the service regulator undertakes when monitoring the performance of social service statutory functions.

7.97 The service regulator has estimated it costs a total of £350,000 per annum to produce the Annual Review and Evaluation of Performance for all local authorities in Wales.

7.98 Whilst Directors of Social Services are required to report on a prescribed range of subjects, there is no prescribed reporting template. This makes it difficult for service users and the public generally to make comparisons of service quality across local authorities. The difficulty of comparing the data collected in the Annual Report of the Director of Social Services was noted in a recent review of social care provision in local authority areas across Wales (Garthwaite et. al, 2011). Garthwaite et. al note that using the Annual Report of the Director of Social Services as the data source for their analysis created significant challenges in research terms as it involved the analysis of over 700 pages of free text. A standard approach to reporting would make comparability of services, across local authorities, easier for both the service regulator and for citizens.

### **Users of social care services**

7.99 The existing system does not provide service users, or the public generally, with comprehensive and robust information on the quality of social care services. The lack of robust information does not enable service users or the public generally to assess, or challenge, the performance of service providers and places responsibility for this

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<sup>29</sup> The cost of independent moderation is £2,000.

completely with the service regulator (Care and Social Services Inspectorate Wales et al, 2011).

7.100 The potential costs for service users and their carers and families include costs associated with poor care and, in extreme cases, the costs associated with having to move from one service provider to another.

**Table 6: costs associated with annual reports: do nothing (option one)**

	2016-17	2017-18	2018-19	2019-20	2020-21
Service regulator					
Service provision <sup>1</sup>					
LA statutory functions	350,000	350,000	350,000	350,000	350,000
Independent service providers <sup>2</sup>					
Local authority					
Service provision					
Statutory functions					
<b>Total cost</b>	<b>350,000</b>	<b>350,000</b>	<b>350,000</b>	<b>350,000</b>	<b>350,000</b>

<sup>1</sup> This cost is included the cost of inspecting service establishments and agencies set out under approach to regulation and inspection.

<sup>2</sup> The cost of approximately £1,496,200 per annum set out in paragraph 7.89 above is included in the cost to independent service providers for data collection and reporting in relation to inspections as set out under approach to regulation and inspection.

## **Option two: introduce publicly available annual reporting**

### **Ongoing costs: independent and local authority service providers**

7.101 Service providers are not expected to incur any additional ongoing costs. As noted above, independent service providers are already required to report to the service regulator on an annual basis. The proposed requirement for publicly available standardised annual reporting will replace the current requirement.

7.102 Whilst there may be additional information requirements, it is anticipated this information will be readily available to service providers. This would include, for example, evidence of how outcomes have been achieved for service users and evidence of how providers have achieved the standards for service users set out in regulations.



7.103 Providers will no longer have to produce two reports. Rather, the information currently provided in the Self-assessment of Service Statement will be amalgamated into a single annual report. This could result in a small cost saving.

7.104 It is expected that service providers will need to have to pay additional attention when producing reports to ensure they are of a publishable quality. Since this can be done whilst drafting the report, it is not expected to result in additional costs since any cost is likely to be balanced by the savings resulting from producing one rather than two reports.

7.105 The service regulator will be required to publish the annual reports, rather than the individual service providers. Whilst individual service providers may choose to publish their annual reports, it will not be a legislative requirement.

#### **Transition costs: independent and local authority service providers**

7.106 Assuming that the service manager and an administrator will each need to spend half a day familiarising themselves with the new annual reporting requirements, the estimated opportunity cost per service provider will be £136<sup>30</sup>. The total opportunity cost for the 1,780 settings in Wales is, therefore, expected to be £240,100. This cost is expected to be incurred in 2016-17.

#### **Ongoing costs: local authorities**

7.107 It is anticipated that annual reporting will not attract any additional ongoing costs. As noted above, each local authority currently produces and publishes an Annual Report of the Director of Social Services, which includes reporting against service users' outcomes and experiences. The proposed requirement for standardised local authority annual reporting is not, therefore, expected to have any additional ongoing costs for local authorities.

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<sup>30</sup> Based on an average annual salary for a domiciliary care manager of £30,766 and on costs of £9,366, giving a total of £40,132 per annum for a 37 hour working week (Curtis, 2013). Assuming six weeks annual leave, the weekly cost is £872.43 and the cost of a day is £87.24. In April 2013, administrative and secretarial occupations earned £399.60 per week (ONS, 2013) or £20,779.20 per annum. The total salary including on costs is estimated to be £22,549 per annum. This is based on an assumption that the employer does not contribute to a pension scheme. Assuming six weeks leave including bank holidays, the cost per week is £490.16, giving an estimated cost per half day of £49.

### Transition costs: local authorities

7.108 It is anticipated that annual reporting will not attract any transition costs for the same reasons as described in the previous paragraph.

### Ongoing and transition costs: service regulator

7.109 It is expected there will be an additional ongoing cost for the service regulator due to the requirement to publish the 1,780 service provider annual reports.

7.110 The service regulator has estimated the cost of publishing annual reports to be £40,000 per annum.

**Table 7: summary of costs associated with introducing standardised, publicly available annual reporting (option two)**

	2016-17	2017-18	2018-19	2019-20	2020-21
Service regulator					
Service provision <sup>2</sup>		40,000	40,000	40,000	40,000
LA statutory functions	350,000	350,000	350,000	350,000	350,000
Service providers					
Transition	240,100				
Ongoing <sup>3</sup>					
<b>Total cost</b>	<b>590,100</b>	<b>390,000</b>	<b>390,000</b>	<b>390,000</b>	<b>390,000</b>

<sup>1</sup> The total estimated transition cost incurred by the service regulator in relation to ICT and for developing and disseminating guidance and advice.

<sup>2</sup> The cost in 2016-17 is included in the cost of inspecting service establishments and agencies set out under 'Approach to Regulation and Inspection'.

<sup>3</sup> The cost in 2016-17 for independent service providers is included in the cost to Independent Service providers for data collection.

### Risks: service users

7.111 There is a risk that service users may not find the information provided useful. If the report is to be of benefit to service users and their families, it needs to contain information that they are interested in.

7.112 If the service user and their family are making a choice about, for example, which care home to live in, then comparative information will be necessary.

7.113 If, however, the service user and their family want to negotiate service improvements, standardized reporting requirements may not be the best approach. Rather, it may be better for providers to work with their service users to develop information they would like to see (Department for Communities and Local Government, 2010).

7.114 Whilst there is a risk of having information which may not satisfy the requirements of individuals who use social care, this risk does not represent an additional cost.

7.115 In addition, service providers could choose to add additional questions to their surveys in response to service users' information requirements. This information would not, however, be included in the annual report.

## **Benefits**

### **Option one: do nothing**

7.116 There are no additional benefits associated with option one.

### **Option two: introduce publicly available standardised annual reporting**

#### **Users of social care services**

7.117 Annual reporting has two key potential benefits for service users and their families:

7.118 Where service users have a choice of service provider, annual reports could be a useful source of information, enabling service users to compare providers in terms of the quality of services provided and the outcome of those services.

7.119 There may be some small cost savings for service users, their families and carers in instances where an individual is looking for services where they have a choice of setting, such as with local authority funded residential care. The cost savings, relate to search costs and arise from potential service users having to spend less time assessing the quality of services and drawing up a shortlist, and savings gained from visiting fewer care homes prior to making a decision. There could also be savings in avoiding the costly mistake of selecting the wrong service for a specific individual. These cost savings have not been calculated separately.

7.120 Where service users do not have a choice of provider, such as with domiciliary care, annual reports could provide information which service users and their families could use to press for improvements in standards and outcomes. These cost savings have not been calculated separately.

### **Citizens**

7.121 Having standardised reporting will build on existing local authority annual reporting by increasing transparency and accountability. Standardised reporting has the potential to enable citizens to compare easily what their local authority has achieved – in terms of effectiveness of social care services and value for money – compared to other local authorities.

### **Service providers**

7.122 Service providers could also benefit from producing annual reports since they can be used as a public relations and marketing tool by evidencing their performance to potential service users, and by providing assurance to existing and potential service users, their carers and families.

### **Local authorities**

7.123 Standardised provider annual reporting has potential to facilitate local authority service commissioning by providing an indication of the extent to which service providers are achieving outcomes for service users.

### **Service regulator**

7.124 The service regulator should also benefit from the introduction of standardised reporting. Standardised reporting should enable the service regulator to more easily assess the performance of independent service providers and to identify areas for improvement.

7.125 The service regulator may benefit from potential cost savings when compiling the Annual Review and Evaluation of Performance for each local authority in Wales, since information should be more easily accessible and less time should be spent on moderation.

## **Summary and preferred option**

7.126 It is an important aim of the transformation agenda for social care in Wales that citizens and users should have greater voice and control in service delivery. It is considered that these can only be delivered where the individual has access to high quality, reliable information about those services. The current arrangement means that information is often not accessible and, where it is available, it can be difficult to compare across services or authorities. Standardised and published annual reports will provide citizens with the information they need to be able to exercise voice and control in the social care sector. In addition, the publication of such reports will incentivise providers and authorities to deliver to the highest possible levels of quality.

7.127 For the reasons above, it is considered that option two is the preferred way forward.

## **Offence of provision of false or misleading information**

7.128 See sections 45 and 51 of the Regulation and Inspection of Social Care (Wales) Bill for provisions relating false statements and penalty notices.

### **Options**

7.129 Three options are discussed below in relation to extending an existing offence to include the accuracy of information provided within service provider annual reports and information given to an inspector in response to a requirement to provide information to the regulator:

- Option one: do nothing.
- Option two: extend an existing offence to include the provision of false or misleading information in annual reports etc. using prosecutions
- Option three: extend an existing offence to include the provision of false or misleading information in annual reports etc. using fixed penalties and prosecutions.

#### **Option one: do nothing**

7.130 Under this option, the current situation would continue. That is, individuals providing social care services who provide false or misleading information to the service regulator in their annual reports could not be investigated, charged and/or prosecuted.

#### **Option two: extend the offence of false or misleading information using prosecutions**

7.131 Under this option, the offence of providing false or misleading information would be extended to cover the information in independent service provider and local authority annual reports. This would give the service regulator the power to investigate, charge and/or prosecute a service provider who submits false or misleading information in their annual reports.

#### **Option three: extend the offence of false or misleading information with the option to issue fixed penalty notices**

7.132 Under option three, the offence of providing false or misleading information would be extended to cover the information in independent service provider and local

authority annual reports. This would give the service regulator the power to investigate, charge and/or prosecute a service provider who submits false or misleading information in their annual reports. The service regulator would have the option of issuing fixed penalty notices as well as prosecuting the most serious breaches via the courts.

## Costs

### Option one: do nothing

#### Service regulator/service providers

7.133 There are no additional costs to maintaining the current situation. The service regulator currently spends approximately £4,400,000 each year on enforcement activity.

#### Service users

7.134 There is a risk to service users around potentially choosing a social care provider based on inaccurate or misleading information.

**Table 8: summary of costs associated with maintain the existing situation (option one)**

	2016-17	2017-18	2018-19	2019-20	2020-21
Service regulator <sup>1</sup>	4,400,000	4,400,000	4,400,000	4,400,000	4,400,000
Service providers					
Police					
Crown Prosecution Service					
Courts					
<b>Total cost</b>	<b>4,400,000</b>	<b>4,400,000</b>	<b>4,400,000</b>	<b>4,400,000</b>	<b>4,400,000</b>

<sup>1</sup> This is the total cost incurred by the service regulator in respect of enforcement activity.

### Option two: extend the offence of false or misleading information

7.135 There are 968 service providers in Wales, all of whom would fall within the scope of this provision.

7.136 It is expected that the vast majority of registered providers undertake due diligence when providing information to the service regulator and do not purposefully or recklessly provide inaccurate information.

7.137 Experience of instances of false or misleading information provided to the service regulator in Wales, in respect of service applications and service manager applications, suggests that the number of investigations and prosecutions will be low.

7.138 Since 2002, the service regulator has received only two applications for the registration of establishments and agencies which were refused on the basis of providing false or misleading information. One was progressed to the Care Standards Tribunal but was withdrawn before the hearing.

7.139 The number of applications for registered managers refused and the number of manager registrations cancelled by the service regulator on the basis of false or misleading information is slightly higher. In the case of applications to register managers, three applications were refused on the basis of false or misleading information. Of these, only one was subject to representation but no subsequent appeal was made to the Care Standards Tribunal.

7.140 In the case of the registration of existing managers being cancelled, only three cases have been progressed. In one of these cases, cancellation was proposed by the service regulator on the basis of false or misleading information but the registration was withdrawn by agreement; one registration was cancelled without representation; and the third registrant appealed to tribunal which subsequently upheld the decision made by the service regulator.

7.141 That is, the service regulator has experienced eight instances of false or misleading information since 2002, which represents a small percentage of the sector. In the case of establishments and agencies, two applications were considered false or misleading. This represents 0.1% of the 1,780 establishments and agencies in Wales.

7.142 In the case of managers, six applications were rejected or cancelled. This represents 0.4% of the 1,542 managers currently registered with the service regulator.

7.143 Whilst the cases of false and misleading information, in respect of applications, indicate a potential for between 0.1% and 0.4% service providers being investigated and potentially prosecuted, it is likely that the percentage will be higher. Annual



reports will contain more information than registration applications and will require data analysis, as such there is more potential for false or misleading information to be presented in the annual reports than in registration applications. A more realistic estimation is that between 0% and 2% of service providers will be investigated and potentially prosecuted for providing false or misleading information in the annual reports they submit to the service regulator, with a best estimate of 1%.

7.144 That is, there would be around 10 investigations and potential prosecutions each year, with a potential range of between 0 and 20 investigations per year (2% of service providers potentially in scope).

### **Investigating and prosecuting bodies**

7.145 The mechanism for identifying if a service provider has provided false or misleading information is likely to be through individual actions from members of the public, highlighting an issue or issues being picked up by the service regulator as part of the existing inspection process. Identification of potential for non-compliance is not expected to require additional resources.

7.146 Any potential non-compliance will, however, require investigation. The Welsh Ministers will be the prosecuting authority for this offence and, as such, internal resources will be used for both the investigation (the service regulator) and the consideration of the evidence (Welsh Government Legal Services).

7.147 Following investigation, some providers may be prosecuted. The Welsh Government proposes that the offence of false or misleading information will be a summary offence. As such, any prosecution will be pursued through the Magistrates' Courts.

7.148 It is anticipated that the small number of cases that do proceed to prosecution will be dealt with by external legal counsel and will incur costs equivalent to those that would have been incurred had the Crown been the prosecuting authority. The average

cost per defendant to the CPS where a case is heard through the Magistrates' Court is £110<sup>31</sup>.

7.149 Based on the assumption of an estimated 10 investigations per year with a range of between 0 and 20, the costs to the Welsh Government are estimated to be between £0 and £2,200 with a best estimate of £1,100 per annum.

### **Justice system**

7.150 As noted above, cases would be tried through the Magistrates' Court or the Crown Court. The costs to HM Courts and Tribunal Services are, however, based on the figures available for the more costly Crown Court. As such, the assessment is more likely to over-estimate, rather than under-estimate, the costs.

7.151 Ministry of Justice data suggests the costs to HM Courts and Tribunal Services per case of a fraud and forgery type of offence in the Crown Courts is around £3,000 (2011-12 prices) (Department of Health, 2013). Based on the assumption of 10 cases per year with a range of between 0-20, the costs to the justice system would be between £0 and £60,000 with a best estimate of £30,000 per annum.

7.152 Following prosecution, it would be possible for service providers to appeal. Since it is expected that only those cases where there is unlikely to be a due diligence defence would be tried, it is expected that there would not be a significant number of defence cases.

### **Service providers**

7.153 Where there is sufficient evidence, and it is in the public interest, some providers will be charged and taken to court. As a result those service providers will incur legal costs. It is assumed the defence will be at least as costly as the prosecution. That is, an average of £110 per case. Based on the assumption of 10 cases per year with a range of between 0 and 20, the costs to the service provider (or the justice system where legal aid is paid) would be between £0 and £2,200 with a best estimate of £1,100 per annum.

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<sup>31</sup> As at June 2014. Source: direct communication with the Crown Prosecution Service.

7.154 In principle, legal aid would be available to support service providers charged with providing false and misleading information. The service provider would have to satisfy the interest of justice test and a means test to qualify for legal aid. Applicants who have a disposable income of over £37,500 will not qualify for legal aid for a County Court trial (Legal Aid Agency, 2014).

7.155 Whether this legal cost falls to the service provider or the Ministry of Justice depends upon the individual service provider's eligibility for legal aid.

7.156 It is also expected that social care providers will incur costs associated with developing a defence and travelling to solicitors and to court<sup>32</sup>.

7.157 Assuming the director spends three hours becoming familiar with background information, three hours in discussion with a solicitor, four hours travelling to the solicitor and court and one day attending court, the total estimated time a director will spend preparing for and attending court is approximately £500<sup>33</sup>. It is estimated, therefore, that the total costs to service providers of developing a defence and attending court will be between £0-10,000 with the best estimate being approximately £5,000.

7.158 In addition, it is expected that a manager will spend one day gathering background information and data and one day attending court. The estimated cost per manager is approximately £350<sup>34</sup>, with a total cost to service providers being between £0-7,000 with a best estimate of £3,500.

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<sup>32</sup> UKHCA were asked to provide estimated costs to their members of being investigated for providing false or misleading information in their annual reports. The UKHCA could not see a situation where a provider would deliberately provide false or misleading information, other than in error, and did not, therefore, provide any details of costs.

<sup>33</sup> Based on an average salary of managers, directors and senior officials at April 2013 of £765.10 per week or £39785.20 per annum (ONS, 2013). Assuming the director is in a company pension scheme, the salary including on costs is estimated to be £49,546 per annum. Assuming six weeks annual leave, the weekly cost is £1,077, the daily rate is £215 and the hourly rate is £29.11.

<sup>34</sup> Based on an average annual salary for a domiciliary care manager of £30,766 and on costs of £9,366 giving a total of £40,132 per annum for a 37 hour working week (Curtis, 2013). Assuming six weeks annual leave, the weekly cost is £872.43 and the cost of a day is £174.50.

7.159 Thus, the total estimated cost for service providers is £8,500 per annum. With legal costs of approximately £1,100 per annum incurred by either the service provider or Ministry of Justice depending upon the eligibility for legal aid.

#### **Transition costs: service providers**

7.160 There are not expected to be any transition costs for service providers.

#### **Ongoing costs: service regulator**

7.161 As stated above, it has not been possible to estimate the cost to the service regulator of investigating cases of false or misleading information.

#### **Transition costs: service regulator**

7.162 The service regulator has estimated a cost of £200,000 for ICT, developing guidance and tools and for disseminating information to the public, inspectors and service providers. It is expected that a proportion of this cost will be used for transition costs associated with extending the offence of false or misleading information. This could include for example, training inspectors, raising awareness across social care providers and making changes to existing practices and processes.

## **Risks**

#### **Unintended consequences**

7.163 Since service providers risk criminal sanctions for instances of inaccurate information or not exercising due diligence, they may take more time to provide information to the service regulator. Service providers may also attach numerous caveats to information and data, making it difficult for the service users, commissioners and the service regulator to understand and interpret.

7.164 These unintended consequences could be mitigated by making it a legal requirement to submit annual reports to the service regulator by a specific date (see proposed offence of failing to submit an annual report); and by providing guidance on the interpretation of false or misleading information and on due diligence.

## **Lack of impact**

7.165 There is potential that service providers will not take the provision as seriously as intended due to the potential that false or misleading information may not be detected.

7.166 The information within the annual reports will not be systematically quality assured by the service regulator. Rather, it is expected that potential instances of false or misleading information will be reported to the service regulator by members of the public (such as professionals, service users, their families and carers); or will be detected by the service regulation through, for example, discrepancies between performance observed as part of the inspection process and performance reported by the service provider.

7.167 In 2013-14, the service regulator undertook 233 unplanned inspections in response to complaints and concerns raised by members of the public and families. It is anticipated, where appropriate, that service regulator scrutiny of the annual reports will be undertaken as part of the inspection of providers where concerns or complaints have been made.

7.168 Assuming the service regulator scrutinises between 25% and 75% of provider annual reports as a result of an unplanned inspection, between 58 and 175 reports would be scrutinised. This represents between 4% and 12% of annual reports which would be scrutinised by the service regulator. If the service regulator communicates this likelihood, this should act as an incentive for service providers to take the offence seriously.

**Table 9: summary of estimated costs likely to be incurred through the introduction of the offence of providing false and misleading information (option two)**

	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>
Service regulator					
Ongoing costs	4,400,000	4,400,000	4,400,000	4,400,000	4,400,000
Transition costs <sup>1</sup>	200,000				
Welsh Government prosecution costs		1,000	1,000	1,000	1,000
Courts		30,000	30,000	30,000	30,000
Legal aid/service provider		1,100	1,100	1,100	1,100
Service provider		8,500	8,500	8,500	8,500
<b>Total cost</b>	<b>4,600,000</b>	<b>4,440,600</b>	<b>4,440, 600</b>	<b>4,440, 600</b>	<b>4,440, 600</b>

<sup>1</sup> Total estimated transition cost incurred by the service regulator associated with ICT and developing and disseminating guidance and advice in relation to all provisions in the bill.

## **Benefits**

### **Service regulator**

7.169 The information contained within service provider annual reports is used to inform the inspection process. Thus, the service regulator will benefit from increased assurance that the information which informs the inspection process will be robust and an accurate reflection of the services being provided.

### **Service providers**

7.170 Service providers will benefit from operating within an environment of fair competition, where all service providers are publishing information about their service which is a true reflection of the services they provide.

### **Service users**

7.171 Service users will have the added assurance that the information they receive from providers in their annual report is accurate. For individuals looking for a service provider, having an assurance that the information on which they are basing their choices is accurate, could make the process of choosing a service provider less time intensive.

## **Option three: extend the offence of false or misleading information with the option to issue fixed penalty notices**

### **Ongoing costs**

#### **Service regulator**

7.172 The service regulator has indicated that their preferred approach to the offence of false or misleading information would be to issue fixed penalty notices in the first instance, rather than pursuing a case through the courts.

7.173 There are 968 service providers in Wales, all of whom would fall within the scope of this provision. It is estimated that 5% of service providers would be issued with fixed penalties for submitting false or misleading information with their annual reports. That is, 48 service providers will fall within scope. This figure is higher than the figure for prosecution through the courts, since it is assumed that the criteria for issuing fixed penalties would be lower than pursuing prosecution via the courts.

7.174 The service regulator has estimated the administration cost per fixed penalty would be approximately £411<sup>35</sup>. Thus, the cost of issuing 48 fixed penalty notices would be approximately £19,700 per annum. This includes the costs of 20% of fixed penalties being challenged.

7.175 There is an expectation that a small number of these cases would progress to court. It is assumed that 0.5-1% of the 48 annual cases would be progressed to court. That is, it would be expected that between 2 and 5 service providers would potentially be affected every ten years, with a best estimate of an average of 3.5 cases being progressed to court every ten years.

#### **Investigating and prosecuting bodies**

7.176 Following investigation, some providers may be prosecuted. The Welsh Government proposes that the offence of false or misleading information will be an

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<sup>35</sup> The service regulator has estimated that fixed penalty notices, if paid promptly, could be issued and administered within 0.5 day at £374 per day. An estimated 20% will be challenged or go to appeal. An allowance of 3.5 days has been allowed for such cases.

either way offence. As such, any prosecution will be pursued through the Magistrates' Courts.

7.177 The Welsh Ministers will be the prosecuting authority for this offence and as such internal resources will be used for both the investigation (the service regulator) and the consideration of the evidence (Welsh Government Legal Services). It is anticipated that the small number of cases that do proceed to prosecution will be dealt with by external Legal Counsel and will incur costs equivalent to CPS costs.

7.178 The average cost to the Crown Prosecution Service per defendant in Magistrates' Court is approximately £110<sup>36</sup>. Based on the assumption of an estimated 2-5 cases being progressed in a ten-year period, the cost to the CPS is estimated to be between £220 and £550, with a best estimate of approximately £400 over a ten-year period. That is, an annual average estimated cost of between approximately £22 and £55, with a best estimate of approximately £40 per annum.

### **Justice system**

7.179 As noted above, cases would be tried through the Magistrates' Court or the Crown Court. The costs to HM Courts and Tribunal Services are, however, based on the figures available for the more costly Crown Court. As such, the assessment is more likely to over-estimate, rather than under-estimate, the costs.

7.180 Ministry of Justice data suggests the costs to HM Courts and Tribunal Services per case of a fraud and forgery type offence in the Crown Courts is around £3,000 (2011-12 prices) (Department of Health, 2013). Based on the assumption of 2-5 cases every ten years, the costs to HM Courts and Tribunal Services would be between £6,000 and £15,000 per year, with a best estimate of £10,500. That is, the estimated average cost to HM Courts and Tribunal Service each year is between £600 and £1,500 with a best estimate of £1,050 per annum.

7.181 Following prosecution, it would be possible for service providers to appeal. Since it is expected that only those cases where there is unlikely to be a due diligence

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<sup>36</sup> As at June, 2014. Source: correspondence with the Crown Prosecution Service.



defence would be tried, it is expected that there would not be a significant number of defence cases.

### **Service providers**

7.182 The level of the fixed penalty has not been established. Rather, it will be set in regulation, which will be subject to full consultation and impact assessment. In addition, since a fine is a transfer payment, it is not considered an economic cost (DoH, 2013).

7.183 Where there is sufficient evidence, and it is in the public interest, some providers will be charged and taken to court. As a result, they will need to mount a legal defence. It is assumed the defence will be at least as costly as the prosecution. That is, approximately £110 per defendant. Based on the assumption of 2-5 cases every ten years, the costs to service providers (or the justice system where legal aid is paid) would be between £220 and £550 with a best estimate of £400 every ten years. That is, the estimated annual average cost to service users would be between £22 and £55, with a best estimate of £40.

7.184 In principle, legal aid would be available to support service providers charged with providing false and misleading information. The service provider would have to satisfy the interest of justice test and a means test to qualify for legal aid. Applicants who have a disposable income of over £37,500 will not qualify for legal aid in County Court trials (Legal Aid Agency, 2014).

7.185 Whether this legal cost falls to the service provider or the Ministry of Justice, depends upon the individual service provider's eligibility for legal aid.

7.186 It is expected that social care providers will incur costs associated with developing a defence and travelling to solicitors and to court<sup>37</sup>.

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<sup>37</sup> UKHCA were asked to provide estimated costs to their members of being investigated for providing false or misleading information in their annual reports. The UKHCA could not see a situation where a provider would deliberately provide false or misleading information, other than in error, and did not, therefore, provide any details of costs.

7.187 Assuming that the director spends three hours being familiar with background information, three hours in discussion with a solicitor, four hours travelling to the solicitor and court and one day attending court, the total estimated time a director will spend preparing for and attending court is approximately £500<sup>38</sup>. It is estimated, therefore, that the total costs to service providers every ten years would be between £1,000 and £2,500 with the best estimate being approximately £1,800. That is, the estimated annual average cost to service providers would be between approximately £100 and £250 with a best estimate of approximately £180 per annum.

7.188 In addition, it is expected that a manager will spend one day gathering background information and data and one day attending court. The estimated cost per manager is £350<sup>39</sup>, with a cost to service providers being between £700 and £1,800 every ten years with a best estimate of approximately £1,200. That is, the estimated average annual cost to service providers is between approximately £70 and £180, with a best estimate of approximately £120.

7.189 The total estimated cost that service providers will incur in developing a defence and travelling to solicitors and to court is £300 per annum. With legal costs of approximately £40 incurred by either the service provider or Ministry of Justice depending upon the eligibility for legal aid.

**Table 10: summary of estimated costs likely to be incurred through the introduction of the offence of providing false and misleading information with the option to issue fixed penalty notices (option three)**

	2016-17	2017-18	2018-19	2019-20	2020-21
Service regulator	4,400,000	4,419,700	4,419,700	4,419,700	4,419,700
Welsh Government prosecution costs		40	40	40	40
Courts		1,050	1,050	1,050	1,050
Legal aid/service provider		40	40	40	40
Service provider		300	300	300	300
<b>Total cost</b>	<b>4,400,000</b>	<b>4,421,130</b>	<b>4,421,130</b>	<b>4,421,130</b>	<b>4,421,130</b>

<sup>38</sup> Based on an average salary of managers, directors and senior officials at April 2013 of £765.10 per week or £39,785.20 per annum (ONS, 2013). Assuming the director is in a company pension scheme, the salary including on costs is estimated to be £49,546 per annum. Assuming six weeks annual leave, the weekly cost is £1,077, the daily rate is £215 and the hourly rate is £29.11.

<sup>39</sup> Based on an average annual salary for a domiciliary care manager of £30,766 and on costs of £9,366, giving a total of £40,132 per annum for a 37 hour working week (Curtis, 2013). Assuming six weeks annual leave, the weekly cost is £872.43 and the cost of a day is approximately £175.

**Benefits**

7.190 Given the majority of offences of submitting false or misleading information are likely to be minor in nature, by allowing the service regulator to deal with these by way of fixed penalty notices as opposed to prosecution, will minimise the time having to be spent preparing for prosecutions.

**Summary and preferred option**

7.191 It is considered important that citizens and regulators have confidence in the information that they have access to. Although not without risk of misuse, it is considered likely that the extension of the offence of false and misleading information to annual reports etc. will lead to a more reliable, accurate and carefully prepared set of information being available. In addition, the use of fixed penalty notices will limit the potential costs and provide a proportionate approach for minor breaches.

7.192 For the reasons above, it is considered option 3 is preferred.

## **Offence of failing to provide the service regulator with an annual report**

7.193 See sections 46 and 51 of the Regulation and Inspection of Social Care (Wales) Bill for provisions relating to annual reports and penalty notices.

### **Options**

7.194 Three options are discussed below in relation to providing the service regulator with an annual report:

- Option one: do nothing.
- Option two: introduce an offence of failing to provide an annual report using prosecutions.
- Option three: introduce an offence of failing to provide an annual report using fixed penalties and prosecutions.

#### **Option one: do nothing**

7.195 Under this option, the current situation would continue. That is, individuals providing social care services who fail to provide the service regulator with an annual report could not be investigated, charged and/or prosecuted.

#### **Option two: introduce an offence of failing to provide an annual report using prosecutions**

7.196 Under this option, an offence of failing to submit an annual report to the service regulator would be introduced. This would give the service regulator the power to investigate, charge and/or prosecute a service provider who fails to submit an annual report.

#### **Option three: introduce an offence of failing to provide an annual report using fixed penalties and prosecutions**

7.197 Under option three, an offence of failing to submit an annual report to the service regulator would be introduced. This would give the service regulator the power to investigate charge and/or prosecute a service provider who fails to submit an annual

report. The service regulator would have the option of issuing fixed penalty notices as well as prosecuting the most serious breaches via the Magistrates' Court.

## **Costs**

### **Option one: do nothing**

#### **Service regulator/service providers**

7.198 There are no additional costs to maintaining the current situation.

#### **Service users**

7.199 There are potential risks to service users, in terms of choosing or evaluating a social care provider without access to relevant information contained in an annual report.

### **Option two: introduce an offence of failing to provide an annual report using prosecutions**

7.200 As stated previously, it is expected that between 0% and 2% of service providers will be investigated and potentially prosecuted for providing false or misleading information in the annual reports they submit to the service regulator, with a best estimate of 1%. The figure for failing to provide the service regulator with an annual report is likely to be higher.

7.201 Whilst the number of service providers who deliberately fail to submit an annual report is expected to be small, it is likely that service providers may experience a number of practical issues which could mitigate against the provider from submitting the report. This could include for example, technical issues and staff absences. For the purposes of this impact assessment, it has been assumed that between 2% and 5% of service providers will fail to submit their annual report. That is, between 19 and 48 service providers could potentially fall within the scope of this provision.

#### **Investigating and prosecuting bodies**

7.202 The offence of failure to provide the service regulator with an annual report is not expected to require significant investigation.

7.203 The Welsh Ministers will be the prosecuting authority for this offence and as such, internal resources will be used for both the investigation (the service regulator) and the consideration of the evidence (Welsh Government Legal Services). It is anticipated that the small number of cases that do proceed to prosecution will be dealt with by external legal counsel and will incur costs equivalent to CPS costs.

7.204 The cost to the Crown Prosecution Service (CPS) per summary case (a case which may only be tried in Magistrates' Court), is dependent on whether or not the defendant pleads guilty prior to the date of the trial. Where a defendant pleads guilty prior to the trial date the unit cost is £60. Where the case proceeds to trial the cost per case is £372 (Criminal Bar Association of England and Wales, 2013). This is the average cost of cases per day in terms of court time and cost and legal aid. It is expected that the majority of cases will take less than a day. The following calculation is based on each case taking a day and is, therefore, likely to over-estimate the costs. Assuming an average cost of £216 per case, the estimated total cost to the CPS would be between £4,100 and £10,400 per annum, with a best estimate of £7,200 per annum.

### **Justice system**

7.205 Following investigation, some providers may be prosecuted. Failing to provide the service regulator with an annual report would fall within the category of summary motoring and non-motoring 'regulatory' offences. Such cases are heard in Magistrate Court and the cost per case is approximately £29 (Ministry of Justice, 2014). The estimated cost per year to the Magistrates' Court of the offence of failing to provide an annual report is, therefore, estimated to be between £600 and £1,400 per annum. With a best estimate of £1,000 per annum.

### **Service providers<sup>40</sup>**

7.206 Service providers that are taken to court will incur legal costs associated with mounting a defence. It is assumed the defence will be at least as costly as the prosecution. That is, an estimated average of £216. Based on the assumption of

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<sup>40</sup> UKHCA were asked to provide estimated costs to their members of being investigated for providing false or misleading information in their annual reports. The UKHCA could not see a situation where a provider would deliberately provide false or misleading information, other than in error, and did not, therefore, provide any details of costs.

between 19 to 48 cases per year, the costs to the service providers (or the justice system where legal aid is paid) would be between £4,100 and £10,400, per annum, with a best estimate of £7,200 per annum. Where legal aid is granted, this is included in the cost to the CPS set out above.

7.207 It is also expected that social care providers will incur costs associated with developing a defence and travelling to solicitors and to court.

7.208 Assuming the director spends one hour becoming familiar with background information, one hour in discussion with a solicitor, four hours travelling to the solicitor and court and two hours attending court, the total estimated cost for the time a director will spend preparing for and attending court is approximately £233<sup>41</sup>. It is estimated, therefore, that the total costs to service providers of developing a defence and attending court will be between approximately £4,400 and £11,200, with a best estimate of approximately £7,800 per annum.

7.209 In addition, it is expected that a manager will spend two hours gathering background information, two hours attending court and three hours travelling to court. The estimated cost per manager is approximately £165<sup>42</sup>, with a total cost to service providers being between £3,100 and £7,900 with a best estimate of £5,500.

7.210 Assuming a round trip of 50 miles to attend court and a round trip of 20 miles to meet with a solicitor, the estimated travelling costs for the director and manager is £33.75<sup>43</sup>. The total travelling costs for service providers is, therefore, estimated to be between approximately £600 and £1,600 with a best estimate of approximately £1,100 per annum.

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<sup>41</sup> Based on an average salary of managers, directors and senior officials at April 2013 of £765.10 per week or £39,785.20 per annum (ONS, 2013). Assuming the director is in a company pension scheme, the salary including on costs is estimated to be £49,546 per annum. Assuming six weeks annual leave, the weekly cost is £1,077, the daily rate is £215 and the hourly rate is £29.11

<sup>42</sup> Based on an average annual salary for a domiciliary care manager of £30,766 and on costs of £9,366, giving a total of £40,132 per annum for a 37 hour working week (Curtis, 2013). Assuming six weeks annual leave, the weekly cost is £872.43 and the cost per hour is £23.58.

<sup>43</sup> 50 miles at 45 pence per mile based on HMRC rates for tax relief for business mileage when using own vehicle <http://www.hmrc.gov.uk/incometax/relief-mileage.htm#2>

7.211 The total estimated costs for service providers is, therefore, estimated to be between £12,320 and £31,100 with a best estimate of £21,600 per annum. This includes the estimated costs for mounting a defence, which may be subject to legal aid. Where legal aid is granted, the estimated cost to service providers is £14,400.

#### **Transition costs: service providers**

7.212 There are not expected to be any transition costs for service providers.

#### **Transition costs: service regulator**

7.213 The service regulator has estimated a cost of £200,000 for ICT, developing guidance and tools and for disseminating information to the public, inspectors and service providers. It is expected that a proportion of this cost will be used for transition costs associated with introducing the offence of failing to provide an annual report. This could include for example, training inspectors, raising awareness across social care providers and making changes to existing practices and processes.

**Table 11: summary of estimated costs likely to be incurred through the introduction of the offence of failure to provide an annual report (option two)**

	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>
Service regulator <sup>1</sup>					
Welsh Government prosecution costs		7,200	7,200	7,200	7,200
Courts		1,000	1,000	1,000	1,000
Legal aid/service provider		7,200	7,200	7,200	7,200
Service provider		14,400	14,400	14,400	14,400
<b>Total cost</b>	<b>-</b>	<b>29,800</b>	<b>29,800</b>	<b>29,800</b>	<b>29,800</b>

<sup>1</sup> The cost of £200,000 associated with ICT and developing and disseminating guidance relates to all provisions in the Bill. To avoid double counting the cost has been used only once (see table 9).

## **Benefits**

#### **Service regulator**

7.214 One of the benefits of introducing an offence of failing to provide an annual report, is to address one of risks associated with the introduction of the offence of providing false or misleading information in annual reports. As outlined above, service providers risk criminal sanctions for instances of false or misleading information or for not exercising due diligence. As a result, they may become overcautious and spend a disproportionate amount of time preparing the report, thus delaying submission to the



regulator. Making it a requirement for service providers to submit an annual report by a specific date will lessen this risk.

7.215 In addition, the requirement to produce an annual report will ensure that all service providers provide the service regulator with the required information and, thus, avoid the potential situation whereby service providers would be able to withhold information they did not want to be published.

7.216 The information contained within service provider annual reports is used to inform the inspection process. Thus, the service regulator will benefit from having the assurance that the information required to inform the inspection process will be provided in a timely manner.

### **Service providers**

7.217 Service providers will benefit from operating within an environment of fair competition, where all service providers have information published about their service which is an accurate and up-to-date reflection of the services they provide.

### **Service users**

7.218 Service users will have the added assurance that the information they require from service providers will be available and up-to-date.

### **Option three: introduce an offence of failing to provide an annual report using fixed penalty notices and prosecutions**

### **Ongoing costs**

### **Service regulator**

7.219 The service regulator has indicated that their preferred approach to the offence of not providing an annual report would be to issue fixed penalty notices in the first instance, rather than pursuing a case through the courts.

7.220 There are 968 service providers in Wales, all of whom would fall within the scope of this provision. It is estimated that 5% of service providers would be issued with fixed

penalties for failing to provide the service regulator with an annual report. That is, 48 service providers will fall within scope. This figure is the upper end of the expected range of service providers who would be prosecuted through the courts since it is assumed that the criteria for issuing fixed penalties would be lower than pursuing prosecution via court.

7.221 The service regulator has estimated the cost per fixed penalty would be approximately £411<sup>44</sup>. Thus, the cost of issuing 48 fixed penalty notices would be approximately £19,700. This includes the costs of 20% of fixed penalties being challenged.

7.222 There is an expectation that a small number of these cases would progress to court. Based on the assumption that 0.5-1% of the 48 service providers would be progressed to court, between two and five service providers would potentially be affected every ten years, with a best estimate of an average of 3.5 cases being progressed to court every ten years.

### **Investigating and prosecuting bodies**

7.223 The offence of failure to provide the service regulator with an annual report is not expected to require significant investigation.

7.224 The Welsh Ministers will be the prosecuting authority for this offence and as such internal resources will be used for both the investigation (the service regulator) and the consideration of the evidence (Welsh Government Legal Services). It is anticipated that the small number of cases that do proceed to prosecution will be dealt with by external Legal Counsel and will incur costs equivalent to CPS costs.

7.225 The cost to the Crown Prosecution Service (CPS) per summary case is dependent upon whether or not the defendant pleads guilty prior to the date of the trial. Where a defendant pleads guilty prior to the trial date the unit cost is £60. Where the case proceeds to trial the cost per case is £372 (Criminal Bar Association of England and Wales, 2013). This is the average cost of cases per day in terms of court time and

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<sup>44</sup> The service regulator has estimated that fixed penalty notices, if paid promptly, could be issued and administered within 0.5 day at £374 per day. An estimated 20% will be challenged or go to appeal. An allowance of 3.5 days has been allowed for such cases.

cost and legal aid. It is expected that the majority of cases will take less than a day. The following calculation is based on each case taking a day and is, therefore, likely to over-estimate the costs. Assuming an average cost of £216 per case, the estimated total cost to the CPS would be between £400 and £1,100 every ten years with a best estimate of £750. That is, the estimated average annual cost to the Crown Prosecution Service would be between approximately £40 and £100 with a best estimate of approximately £75 per annum.

## **Justice system**

7.226 Following investigation, some providers may be prosecuted. Failing to provide the service regulator with an annual report would fall within the category of summary motoring and non-motoring 'regulatory' offences. Such cases are heard in Magistrates' Court and the cost per case is approximately £29 (Ministry of Justice, 2014). The estimated cost to the Magistrates' Court of introducing an offence of failing to provide an annual report is estimated to be no more than £150 over a ten-year period, with a best estimate of approximately £10 per annum.

## **Service providers<sup>45</sup>**

7.227 The level of the fixed penalty has not been established. Rather, it will be set in regulation, which will be subject to full consultation and impact assessment. In addition, since a fine is a transfer payment it is not considered an economic cost (DoH, 2013).

7.228 Service providers who are taken to court will incur legal costs associated with mounting a defence. It is assumed the defence will be at least as costly as the prosecution. That is, an estimated average of £216. Based on the assumption of between two and five cases every ten years, the costs to service providers (or the justice system where legal aid is paid) would be between £400 and £1,100 with a best estimate of approximately £750. That is, the estimated average annual cost to service providers would be between approximately £40 and £110 with a best estimate of approximately £75 per annum.

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<sup>45</sup> UKHCA were asked to provide estimated costs to their members of being investigated for providing false or misleading information in their annual reports. The UKHCA could not see a situation where a provider would deliberately provide false or misleading information, other than in error, and did not, therefore, provide any details of costs.

7.229 It is also expected that social care providers will incur costs associated with developing a defence and travelling to solicitors and to court.

7.230 Assuming the director spends one hour becoming familiar with background information, one hour in discussion with a solicitor, four hours travelling to the solicitor and court and two hours attending court, the total estimated cost for the time a director will spend preparing for and attending court is approximately £233<sup>46</sup>. It is estimated, therefore, that the total costs to service providers of developing a defence and attending court will be between approximately £450 and £1,200 every ten years, with a best estimate of approximately £800. The estimated average annual cost to service providers would be between approximately £45 and £120 with a best estimate of approximately £80.

7.231 In addition, it is expected that a manager will spend two hours gathering background information, two hours attending court and three hours travelling to court. The estimated cost per manager is approximately £165<sup>47</sup>. The total cost to service providers every ten years is, therefore, estimated to be between £300 and £825 with a best estimate of the average annual cost being approximately £60.

7.232 Assuming a round trip of 50 miles to attend court and a round trip of 20 miles to meet with a solicitor, the estimated travelling costs for the director and manager is approximately per case £33.75<sup>48</sup>. Given the anticipated number of cases, the estimated average annual travelling cost is approximately £10.

7.233 Thus, the best estimate for the annual cost to service providers is approximately £150.

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<sup>46</sup> Based on an average salary of managers, directors and senior officials at April 2013 of £765.10 per week or £39,785.20 per annum (ONS, 2013). Assuming the director is in a company pension scheme, the salary including on costs is estimated to be £49,546 per annum. Assuming six weeks annual leave, the weekly cost is £1,077, the daily rate is £215 and the hourly rate is £29.11.

<sup>47</sup> Based on an average annual salary for a domiciliary care manager of £30,766 and on costs of £9,366, giving a total of £40,132 per annum for a 37 hour working week (Curtis, 2013). Assuming six weeks annual leave, the weekly cost is £872.43 and the cost per hour is £23.58.

<sup>48</sup> 50 miles at 45 pence per mile (based on HMRC rates for tax relief for business mileage when using own vehicle <http://www.hmrc.gov.uk/incometax/relief-mileage.htm#2>)

**Table 12: summary of estimated costs likely to be incurred through the introduction of the failing to provide an annual report with the option to issue fixed penalty notices (option three)**

	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>
Service regulator		19,700	19,700	19,700	19,700
Welsh Government prosecution costs		75	75	75	75
Courts		10	10	10	10
Service provider (where legal aid is not granted)		75	75	75	75
Service provider		150	150	150	150
<b>Total cost</b>	<b>-</b>	<b>20,010</b>	<b>20,010</b>	<b>20,010</b>	<b>20,010</b>

### **Benefits**

7.234 Given that the majority of offences of failing to provide an annual report are likely to be minor in nature, by allowing the service regulator to deal with these by way of fixed penalty notices as opposed to prosecution, will minimise the time having to be spent preparing for prosecutions.

### **Summary and preferred option**

7.235 In order for citizens to have meaningful voice and control in the social care sector they must have access to accurate and up-to-date information. The current system cannot assure citizens or the regulator that such information will be made available and therefore requires change. Options two and three both provide a clear mechanism to ensure information is made available, but the latter has a significant benefit of reduced costs.

7.236 For the reasons above, option three is the preferred way forward.

## Quality judgement framework

7.237 See section 35 of the Regulation and Inspection of Social Care (Wales) Bill for provisions relating to inspection ratings.

7.238 As well as assessing outcomes for individuals, an outcome based approach to regulation can be used to make judgements about a service. This could include, for example, the extent to which service providers achieve a level of quality beyond a minimum level. In such cases, an outcome based approach is used to provide an unambiguous measure of performance where there is no doubt about attribution, and which may be linked to explicit incentives for good performance and sanctions for poor performance (Raleigh and Foot, 2010).

7.239 Currently, inspectors do not provide a rating in terms of the quality of the service being delivered. Rather, the inspection reports provide a narrative of the quality of specific services. Consequently, it is not easy for those who have an interest in the quality of individual service settings, such as service users and commissioners of services, to come to a conclusion about the overall impact on citizens of the services provided. It is also not easy to undertake a comparative assessment between, for example, two service settings.

## Options

7.240 Two options are discussed in relation to assessing the quality of a specific service setting:

- Option one: do nothing.
- Option two: introduce a power to undertake quality judgements.

### Option one: do nothing

7.241 Under this option, the existing practice will continue. The service regulator will continue to report on the quality of services without providing a relative rating on the level of performance.

## **Option two: introduce a power to undertake quality judgements**

7.242 Under this option, a power would be introduced to enable the service regulator to provide an assessment of the relative rating of the quality provided by the service provider.

## **Costs**

### **Option one**

#### **Ongoing costs: service regulator**

7.243 In 2012-2013 the service regulator undertook 3,990 inspections (CSSIW, 2014). The estimated cost of undertaking these inspections is £2,984,520<sup>49</sup>. There are no additional costs to maintaining the existing system.

#### **Ongoing costs: service providers**

7.244 Based on costs provided by UKHCA, it is estimated the current cost to service providers associated with collecting, analysing and presenting data to inform the inspection process is approximately £1,496,200.

#### **Ongoing costs: service users**

7.245 There is a risk that it will be difficult for service users and commissioners to make a distinction between those services which are delivered to a high standard and those services which are delivered to a lesser, but compliant, standard. It is likely that service users currently spend considerable time trying to determine those services which are of a good quality, time which would be significantly reduced if a quality judgement was available.

## **Option two: introduce a quality judgement framework**

#### **Ongoing costs: service regulator**

7.246 The service regulator has estimated the additional ongoing costs to be approximately £1,443,500 per annum. This includes an additional £563,500 which

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<sup>49</sup> This is based on the assumption that each inspection visit takes one day and that it takes a further one day to prepare for the inspection and to write the inspection report. The service regulator has provided a day rate of £374 for undertaking activities related to regulation.

results from the need for inspectors to spend more time on observation and evidence gathering to inform the judgement.

7.247 In addition, the service regulator has estimated that the introduction of the proposals within the Bill would result in a 20% increase in enforcement activity at an estimated cost of £880,000. This could include, for example, the potential for service providers to challenge the judgement or raise concerns in response to the judgement.

7.248 It is, however, possible that the improved quality of self-assessment, through the introduction of annual reports, and the associated extension of the offence of false and misleading information, will provide inspectors with a more robust basis for their work. Similarly, as the current extensive range of minimum standards is removed, then less time may be required to assess input processes, allowing more time for inspectors elsewhere.

#### **Transition costs: service regulator**

7.249 It is possible that some transition costs will be incurred by the service regulator. This is expected to consist of: developing the framework, providing information to service providers and service users about the framework, and training inspectors to use the framework.

7.250 The service regulator is currently in the process of developing a quality judgement framework for day care providers. This framework was piloted in early 2014. The adult services quality judgement framework will be based on the lessons learned from the children and young people services quality judgement framework. It is expected that the framework will be developed and piloted prior to the Bill being introduced. This cost is, therefore, considered to be a sunk cost.

7.251 The service regulator has calculated a total transition cost associated with implementing the Regulation and Inspection of Social Care (Wales) Bill of £200,000. It is expected, therefore, that a proportion of this cost will be used to disseminate information to the public about the quality judgement framework and to train inspectors to use the framework.



## Ongoing costs: service providers

7.252 Service providers may experience some additional costs associated with staff having to spend more time in discussion with the inspector. Assuming that the inspector spends an additional 30 minutes with the service manager<sup>50</sup> and with four care workers<sup>51</sup> in individual discussions, the additional cost is estimated to be £32 per setting. The total cost to the 968 providers for the 1,780 settings is estimated to be approximately £57,000 per annum. Of which, approximately £49,900 will be incurred by the independent sector and £7,000 by local authorities per annum.

7.253 There will also be additional costs for those service providers who raise a concern or challenge the judgement made.

## Transition costs: service providers

7.254 Service providers are not expected to incur any transition costs associated with the introduction of the quality judgement framework.

**Table 13: summary of estimated costs likely to be incurred through the introduction of a quality judgement framework (option two)**

	2016-17	2017-18	2018-19	2019-20	2020-21
Service regulator <sup>1</sup>	-	1,443,468	1,443,468	1,443,468	1,443,468
Independent service providers					
Transition costs					
Ongoing costs <sup>2</sup>		49,900	49,900	49,900	49,900
Local authority service providers					
Transition costs					
Ongoing costs		7,000	7,000	7,000	7,000
<b>Total cost</b>		<b>1,500,368</b>	<b>1,500,368</b>	<b>1,500,368</b>	<b>1,500,368</b>

<sup>1</sup> The estimated cost of £2,984,500 for 2016-17 has been included in the cost of inspecting service establishments and agencies set out under approach to regulation and inspection (see tables two and three). The cost of £200,000 associated with ICT and developing and disseminating guidance relates to all provisions in the Bill. To avoid double counting the cost has been used only once (see table 9).

<sup>2</sup> This cost is included in the cost to independent service providers for data collection and reporting in relation to inspections as set out under approach to regulation and inspection.

<sup>50</sup> Based on an average annual salary for a domiciliary care manager of £30,766 and on costs of £9,366, giving a total of £40,132 per annum for a 37 hour working week (Curtis, 2013). Assuming six weeks annual leave, the weekly cost is £872.43 and the cost per half hour is £11.79.

<sup>51</sup> Based on a salary of £13,632 per annum with on costs of £3,574, giving a total of £17,206. The hourly cost, assuming six weeks annual leave including bank holidays and a 37 hour working week is £10.11.

## **Risks**

### **Market stability**

7.255 There is a risk that the introduction of a quality judgement could adversely impact on the social care market. It is possible, for example, that service users will move from services which are judged to be of low quality to those which are judged to be of high quality. This has the potential to leave some settings under-utilised and, thus, under-resourced, further compounding any quality issues.

7.256 It is, however, expected that the introduction of a quality judgement will encourage all service providers to improve the quality of their services. This is because the quality judgement framework will not be based on relative quality between providers (a league table) but on absolute quality. In this model, all providers could achieve the same rating. Thus, the risk that the quality judgement will create market instability is considered to be small. Rather, it is expected that service users will benefit from improvements in the quality of services.

### **Access to quality services**

7.257 There is also potential that the introduction will have an adverse impact on those who are most vulnerable, since such service users are likely to have fewer resources and be less able to secure the better quality settings. This risk is, however, considered to be small. As stated above, all service users are expected to benefit from increases in service quality. In addition, those supporting vulnerable adults such as social workers and family members, will be able to take action on behalf of vulnerable service users in response to quality judgements.

### **Public assurance**

7.258 There is a risk that the introduction of quality judgement ratings will undermine public confidence in the ability of the regulator to perform the function of providing independent assurance about the quality of social care provision in Wales. This risk could arise where the quality judgement framework is implemented inconsistently across services or across geographical areas in Wales. Lack of consistency could result in both service providers and service users questioning the value of the rating and the value of the inspection process itself.

7.259 The service regulator can mitigate this risk by providing inspectors with training and through introducing moderation practices.

## **Benefits**

### **Local authorities**

7.260 A quality judgement would provide an additional indication which could be used by local authority officials when assessing tender documents as part of the procurement process.

### **Service users**

7.261 The main benefit of introducing a quality judgement framework is that it will provide a straightforward means of comparing the quality of service delivery by service providers. This is most likely to benefit individuals looking for a service provider. Having the assurance of accurate information on which to base choices could make the process of choosing a service provider less time intensive.

7.262 The introduction of a quality judgement is expected to encourage service providers to improve the quality of their services. Thus, service users are likely to benefit from the expected improvements to the quality of service they receive.

### **Service providers**

7.263 Service providers will benefit from being able to demonstrate the quality of the service they are delivering, compared to other service providers.

## **Summary and preferred option**

7.264 The use of quality judgement frameworks is already embedded throughout many parts of the public sector and, in other parts of the UK, in social care. The current system offers no readily accessible information to citizens of the quality of a provision beyond the minimum compliance required. Used appropriately, a quality judgment framework can incentivise improvements in provision and allow good providers to demonstrate their success. There are risks, particularly in a sector that has not previously used such frameworks, and it is likely that any change will be incremental

and phased. The Bill provides the regulator with the power, rather than the duty, to develop and use such frameworks and therefore allows for flexibility and adaptability going forward.

7.265 The preference is for option two, recognising that the implementation of any framework may need to be phased and incremental. A further analysis of costs and benefits will be undertaken when the powers to introduce a quality judgement framework are utilised.

## **Increasing citizen involvement**

7.266 See section 39 of the Regulation and Inspection of Social Care (Wales) Bill for provisions relating to public engagement.

### **Options**

7.267 Two options are discussed in relation to involving citizens in shaping and assessing regulatory activity:

- Option one: do nothing.
- Option two: introduce a requirement for the service regulator to extend arrangements to involve citizens at both a strategic and operational level.

#### **Option one: do nothing**

7.268 Under this option, the service regulator will continue to engage citizens as it feels appropriate but will not be required to do so. The current arrangements of the regulator include the National Advisory Board; as of September 2014 the National Advisory Board had met three times.

#### **Option two: introduce a requirement for the service regulator to extend arrangements to involve citizens at both a strategic and operational level**

7.269 Under this option, the service regulator will be given a duty to engage citizens in its work and through the Annual Report provide citizens with an explanation of how this has been achieved.

### **Costs**

#### **Option one: do nothing**

7.270 Citizen engagement, through the National Advisory Panel, currently costs £57,000 per annum. This includes, for example, expenses for travel and overnight accommodation, secretariat support and ongoing training.

7.271 The service regulator would incur no additional costs if the current system is maintained.

7.272 Whilst the service regulator is currently involving citizens in the work it undertakes, there is no legal requirement for this to take place. There is also little engagement of citizens in the inspection process itself. There is a risk that if there is not a legal requirement for the service regulator to involve citizens in the work it undertakes, the current momentum towards engaging citizens in the work of the regulator could be lost and/or the extent to which the citizen is involved in the future, will not meet expectations.

**Table 14: summary of estimated costs with maintaining the existing approach to citizen engagement (option one)**

	2016-17	2017-18	2018-19	2019-20	2020-21
Service regulator	57,000	57,000	57,000	57,000	57,000
<b>Total cost</b>	<b>57,000</b>	<b>57,000</b>	<b>57,000</b>	<b>57,000</b>	<b>57,000</b>

#### **Option two: introduce a requirement for the service regulator to extend arrangements to involve citizens at both a strategic and operational level**

##### **Service regulator**

7.273 The service regulator has estimated a total budget of £100,000 per annum would be required to develop integrated and sustainable methods of citizen involvement across local authority thematic inspections and service provider inspections. The additional cost, therefore, of extending citizen involvement in the work of the regulator, is estimated to be £43,000 per annum.

**Table 15: summary of estimated costs with increasing citizen engagement (option two)**

	2016-17	2017-18	2018-19	2019-20	2020-21
Service regulator	57,000	100,000	100,000	100,000	100,000
<b>Total cost</b>	<b>57,000</b>	<b>100,000</b>	<b>100,000</b>	<b>100,000</b>	<b>100,000</b>

## **Benefits**

#### **Option one: do nothing**

7.274 There are no additional benefits with this option.

**Option two: introduce a requirement for the service regulator to extend arrangements to involve citizens at both a strategic and operational level**

7.275 The potential benefits associated with introducing a requirement for the service regulator to involve citizens in its work and to report publicly on an annual basis on the progress achieved in relation to the objective include:

- Having a legal requirement should ensure that the existing momentum to involve citizens is maintained.
- Setting out the requirement for the service regulator to involve citizens in its work within law and to report on such engagement will provide greater public assurance that the regulator is listening, and responding, to citizen's concerns and ideas, that its work is transparent and challengeable and that it is focused on the impact of its work on citizens.
- The work of the regulator can be significantly enhanced by involving citizens who can provide challenge and alternative perspectives.

**Summary and preferred option**

7.276 There is a broad consensus that involving citizens in the design and delivery of public services can provide a range of benefits. This is also true of regulation, where a key purpose is to provide citizens with public assurance about such services. However, the form of that engagement can change over time for a variety of reasons and therefore it is considered appropriate that a general rather than specific requirement is placed in law.

7.277 For the reasons above it is considered that option two is the preferred way forward.

## **Service based model of regulation**

7.278 See part one of the Regulation and Inspection of Social Care (Wales) Bill for provisions relating to the regulation of services and service providers.

7.279 Currently, Wales has a settings based model of regulation, which involves service providers making individual applications for each of their establishments or agencies.

## **Options**

7.280 There are two options relating to the model of regulating services:

- Option one: do nothing.
- Option two: change to a service based model of registration, including an enhanced role for the Responsible Individual.

### **Option one: do nothing**

7.281 Under this option, the existing establishments and agencies model will continue. Service providers will continue to make applications to register each individual establishment or agency.

### **Option two: change to a service based model of regulation**

7.282 Under this option, social care services will be registered rather than establishments or agencies, and service providers will be required to nominate a fit and suitable Responsible Individual, who will have clear defined regulatory duties and responsibilities. Suitability and fitness will be examined by the service regulator.

## **Costs**

### **Option one: do nothing**

#### **Ongoing costs: service regulator**

7.283 There are no additional ongoing costs to the service regulator associated with maintaining the existing system. The cost of regulation under the existing establishments and agencies model is included within the £8,064,000. Of this, it is



estimated that £4,400,000 is allocated to enforcement activity and approximately £2,984,520<sup>52</sup> is allocated to inspection.

7.284 The remaining estimated £679,480 is allocated to registration and related administration, which includes registering service managers as well as new applications to register establishments and agencies.

7.285 The ongoing cost associated with maintaining the existing model of regulation, relates only to the registration of establishments and agencies and not to the registration of managers. Since it has not been possible to identify, with any accuracy, the separate cost for the two specific functions, it has been necessary to use the figure of £679,480.

7.286 To ensure double counting does not occur, the ongoing costs related to registering managers will not be included in the discussion on dual registration.

### **Ongoing costs: service providers**

7.287 The ongoing costs for service providers relate to the number of new applications for registration. In 2012-13 there were 104 new applications for registration (CSSIW, 2014).

7.288 Assuming it takes a service manager 30 minutes to register a setting, the estimated cost of registering each individual setting is £11.80<sup>53</sup>. The estimated cost, therefore, for registering the 104 applications was approximately £1,200.

### **Ongoing costs: service users**

7.289 There is a potential ongoing cost for service users associated with maintaining the existing system.

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<sup>52</sup> This is based on the assumption that each inspection visit takes one day and that it takes a further one day to prepare for the inspection and to write the inspection report. The service regulator has provided a day rate of £374 for undertaking activities related to regulation.

<sup>53</sup> Based on an average annual salary for a domiciliary care manager of £30,766 (Curtis, 2013) and on costs of £9,366 giving a total salary cost of £40,132 per annum. The weekly cost, assuming six weeks annual leave including bank holidays is £872.43. Assuming the working week is 37 hours, the cost per hour is £23.60.

7.290 Under the existing system, there is potential for unregistered and unregulated domiciliary care agencies, which are based in England, to deliver services in Wales. Thus, there is potential for service users to experience poor quality services or to be at risk of harm.

7.291 Whilst in theory it is possible that there are domiciliary care agencies operating in Wales who not are registered with or inspected by CSSIW, in practice the risk is small.

7.292 As part of the commissioning process, it is expected that local authorities would check that domiciliary agencies were registered with CSSIW. Thus, it is only possible for agencies not registered with CSSIW to operate in Wales under a specific set of circumstances – the agency is based only in England and does not provide any services to local authorities in Wales.

7.293 The current system also restricts the ability of the regulator to take appropriate enforcement action. Under the current approach, a failing setting can be brought into compliance by a provider moving resources from one setting to another. Even where action is taken against a specific failing setting, it has no impact on the other settings owned by the provider.

**Table 16: summary of costs associated with maintaining the existing establishments and agencies model of regulation (option one)**

	2016-17	2017-18	2018-19	2019-20	2020-21
Service regulator <sup>1</sup>	679,480	679,480	679,480	679,480	679,480
Service providers	1,200	1,200	1,200	1,200	1,200
<b>Total cost</b>	<b>680,680</b>	<b>680,680</b>	<b>680,680</b>	<b>680,680</b>	<b>680,680</b>

<sup>1</sup> This is the total estimated cost the service regulator incurs in relation to registering establishments and agencies

## **Option two: change to a service based model of regulation, including an enhanced role for the Responsible Individual**

### **Ongoing cost: service regulator**

7.294 The service regulator has confirmed there would be no additional ongoing costs to operating a service based model of regulation.

### **Transition costs: service regulator**

7.295 The introduction of option two is expected to result in substantial transition costs for the service regulator.

7.296 It is unlikely that the service regulator will be able to restructure existing data held about service providers along the lines of service based regulation, since the change to a service based model of regulation is likely to involve a redefinition of services.

7.297 The service regulator has estimated that the transition cost for option two is approximately £1,493,500. Of this, approximately £1,471,000 relates to re-registration activities (which includes undertaking a site visit in 25% of residential care settings and interviewing all responsible individuals)<sup>54</sup> (see table 17 below) and £22,500 relates to the preparation and dissemination of guidance, including holding regional workshops<sup>55</sup>. The service regulator has calculated a total transition cost associated with implementing the Regulation and Inspection of Social Care (Wales) Bill of £200,000 for ICT, developing guidance and tools and for disseminating information to the public, inspectors and service providers. This figure has, therefore, been subtracted from the transition costs associated with introducing a service based model of regulation.

7.298 The estimated transition costs of introducing a service based model of regulation, excluding dissemination, is therefore approximately £1,471,000. This cost will be incurred in 2016-17.

### **Ongoing costs: service providers**

7.299 It is expected that service providers would not incur any additional ongoing costs if a service based model of regulation is introduced.

### **Transition costs: service providers**

7.300 Service providers are expected to incur small transition costs in relation to option two.

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<sup>54</sup> Adult residential care homes, nursing homes, and residential care for children and young people.

<sup>55</sup> Based on 60 days at £374 per day.

7.301 Option two requires service providers to re-register with the service regulator under a service based model. Option two also requires service providers to nominate a suitable and fit Responsible Individual who will be subject to a fitness and suitability assessment by the service regulator.

**Table 17: transition cost to the service regulator of introducing a service based model of regulation**

<b>Service</b>	<b>Number of settings</b>	<b>No of Days</b>	<b>Total number of days</b>	<b>Rate (£)</b>	<b>Total (£)</b>
Adult Nursing Care	257	1.5 plus 25% site visits at 1 day per visit	449.75	374	168,206
Adult Home	875	1.5 plus 25% site visits at 1 day per visit	1531.25	374	572,687
Children's Home	129	1.5 plus 25% site visits at 1 day per visit	225.75	374	84,430
Domiciliary Care	422	1.5`	633.00	374	236,742
Fostering	28	1.5	42.00	374	15,708
Adoption	1	1.5	1.500	374	561
Adult Placements	12	1.5	18.00	374	6,732
<b>Total</b>	<b>1,720<sup>56</sup></b>		<b>2901.25</b>	<b>374</b>	<b>1,085,066</b>
Complications @ 2 days Estimate 10% of services	172	2	344.00	374	128,656
Major challenges @ 4 days Estimate 10% of services	172	4	688.00	374	257,312
<b>Overall total</b>	<b>2,068</b>		<b>3933.25</b>		<b>1,471,036</b>

<sup>56</sup> The register of agencies and settings is constantly being updated. Thus, the number of registered agencies and settings is not fixed, other than when the figures are published annually. The 1,720 settings is the actual number of settings at the time the calculations were undertaken and not the published number of settings. Thus, there is a difference in the number of settings stated in the table above and the number of settings used throughout the document.

7.302 Assuming it takes each service provider 30 minutes to re-register their service, the estimated cost is £11.80<sup>57</sup>. The total estimated additional cost, therefore, for the 946 independent service providers to re-register their 1,562 settings, would be approximately £11,200.

7.303 The cost to each of the 22 local authorities, assuming a salary equivalent to a Welsh Government Higher Executive Officer<sup>58</sup> would be approximately £11.94. Thus, the estimated cost to local authorities would be approximately £300.

7.304 It is expected the service regulator will interview all Responsible Individuals. There are likely to be an estimated 995 Responsible Individuals. Assuming that a Responsible Individual could have responsibility for up to six social care settings, there will be an estimated 973 independent Responsible Individuals<sup>59</sup> and 22 local authority Responsible Individuals.

7.305 Assuming the average interview lasts for 75 minutes, the cost of 995 Responsible Individuals attending interviews is estimated to be approximately £36,100<sup>60</sup>. In addition, it is estimated that Responsible Individuals will spend an average of 80 minutes travelling to and from the interview. The estimated cost per Responsible Individual for travelling time is £38.81, giving an estimated total of approximately £38,600.

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<sup>57</sup> Based on an average annual salary for a domiciliary care manager of £30,766 (Curtis, 2013).and on costs of £9,366 giving a total salary cost of £40,132 per annum. The weekly cost, assuming six weeks annual leave including bank holidays is £872.43. Assuming the working week is 37 hours, the cost per hour is £23.60.

<sup>58</sup> Gross Salary of £40,632. Assuming six weeks annual leave, the weekly cost is £883.30, with an hourly rate of £23.87 for a 37 hour working week.

<sup>59</sup> 926 providers have up to 6 settings, requiring a minimum of one responsible individual per setting (926); 15 organisations have between 7-12 settings, requiring a minimum of 2 responsible individuals (30); 3 organisations have between 13 and 18 settings, requiring a minimum of 3 responsible individuals (9); and 2 organisations have between 19 and 24 settings, requiring a minimum of 4 responsible individuals (8).

<sup>60</sup> Based on an average salary of managers, directors and senior officials at April 2013 of £765.10 per week or £39785.2 per annum (ONS, 2013). Assuming the director is in a company pension scheme, the salary including on costs is estimated to be £49,546 per annum. Assuming six weeks annual leave, the weekly cost is £1,077, the daily rate is £215 and the hourly rate is £29.11. Thus, the rate for 75 minutes is approximately £36.30 and the rate for 80 minutes is approximately £38.81.

7.306 In addition, Responsible Individuals would incur travelling expenses. Assuming an average round trip of 50 miles per interview, the estimated costs would be £22.50<sup>61</sup> per Responsible Individual, giving an estimated total of approximately £22,400. .

7.307 The total estimated re-registration costs, therefore, associated with changing to a service based model of regulation, including nominating Responsible Individuals is estimated to be approximately £108,600. .

**Table 18: summary of estimated costs likely to be incurred through changing to a service based model of registration (option two)**

	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>
Service regulator					
Transition	1,471,000				
Ongoing	679,480	679,480	679,480	679,480	679,480
Service providers					
Transition	108,600				
Ongoing	1,200	1,200	1,200	1,200	1,200
<b>Total cost</b>	<b>2,260,280</b>	<b>680,680</b>	<b>680,680</b>	<b>680,680</b>	<b>680,680</b>

## Benefits

### Option two: change to a service-based model of regulation

#### Service providers

7.308 Under this option, service providers will register the services they provide rather than the individual agencies and establishments they provide the service from.

7.309 Service providers will be required to complete a single registration form which will capture all services provided, together with all of the locations from which the specified services will be delivered.

<sup>61</sup> 50 miles at 45 pence per mile (based on HMRC rates for tax relief for business mileage when using own vehicle).  
<http://www.hmrc.gov.uk/incometax/relief-mileage.htm#2>

7.310 The introduction of option two is expected to result in small cost savings for some independent service providers and larger cost savings for local authorities.

7.311 In practice the savings associated with this option are likely to be small due to the low number of providers with multiple settings. Based on the current market profile it is likely that the majority of new applications would be for a single setting<sup>62</sup>.

7.312 In addition, service providers wishing to open additional locations will not be required to make a fresh application. Rather, they will only have to apply for a variation to their existing registration.

### **Service regulator**

7.313 Under this option, the service regulator would have a more significant range of enforcement options available. As each provider registers once for all their services, it will be possible for the regulator to target their action at the most appropriate level – be that the setting, service or provider.

7.314 The regulator will also be able, with the development of regulations, to ensure new models of service delivery can be brought quickly into the regulatory regime.

### **Service users**

7.315 Service users, their families and carers should benefit from the proposed introduction of a service based model of regulation.

7.316 Changing to a service based model of regulation will ensure all domiciliary care agencies are registered and inspected by CSSIW, regardless of whether they are based in Wales or in England. Thus, service users, their families and carers can be assured that the service they receive is managed by a person who the regulator considers to be fit and proper to do so, and is delivered by staff who have the skills and qualifications necessary to provide good quality care.

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<sup>62</sup> Of the 946 independent service providers, 737 (78%) have only one setting, . Thus, 737 service providers would see no change at all and 209 providers would benefit from the change to varying degrees, depending on the number of settings they have. Providers with more than one setting have between two and 22 settings.

7.317 The service model will also allow for the system to incorporate new models of care and service delivery more easily than the current system. Therefore, as innovative approaches are developed, citizens and service users will benefit from the ability of the service model to respond quickly to bring such services into the regulatory regime.

### **Summary and preferred option**

7.318 The service-based model of service regulation is widely used within social care in the UK. It provides the regulator with a range of enforcement actions which will mean that accountability for provision will be held appropriately by those who are responsible for it, rather than being solely focused on a single setting or agency. It is also a system that has an inherent flexibility to bring new models of care into the regulatory regime as they develop. The service based regime ensures that services delivered in Wales are regulated in Wales. In addition, the service based regime means that the regulator can take a more holistic view of provision, ensuring that systemic failings are addressed and accountability is held at an appropriate level within the organisation.

7.319 The preferred way forward is option two for the reasons above.



## **Statutory improvement notices**

7.320 See section 14 of the Regulation and Inspection of Social Care (Wales) Bill for provisions relating to improvement notices.

## **Options**

7.321 The options discussed in relation to the notification of non-compliance are:

- Option one: do nothing
- Option two: introduce statutory improvement notices.

### **Option one: do nothing**

7.322 Under option one, the existing system will be maintained. Currently, where a service provider is non-compliant with standards and regulations, the service regulator can issue non-statutory, non-compliance notices. Non-compliance notices are issued as part of the inspection process, when an inspector identifies areas of service which are non-compliant with standards and regulations. Non-compliance notices are not issued where the inspector considers that there is a significant risk of harm for service users. In such circumstances, the regulator would seek urgent cancellation.

### **Option two: introduce statutory improvement notices**

7.323 Under option two, a statutory requirement would be introduced which would require that an improvement notice is issued by the service regulator prior to any non-urgent cancellation action be undertaken.

## **Costs**

### **Option one: do nothing**

#### **Ongoing costs: service regulator**

7.324 The cost of issuing non-statutory, non-compliance notices is included within the estimated cost of enforcement activity of £4,400,000 provided by the service regulator. The information required to prepare non-statutory, non-compliance notices is collected

as part of the inspection process. The current total estimated cost of undertaking inspections is approximately £2,984,520<sup>63</sup>.

### **Ongoing costs: service providers**

7.325 Service providers incur costs in responding to non-compliance notices. The range of costs incurred by service providers is problematic to estimate, given the range of compliance that can be deemed to have been breached. In addition, notices can be issued for single or multiple breaches of compliance with regulation. For these reasons, no cost estimate has been provided in relation to the costs service providers incur when responding to non-compliance notices.

7.326 There is potential that non-compliance notices are currently having an adverse affect on insurance premiums. Care Forum Wales have informed the Welsh Government that following recent high profile cases, such as Winterbourne View, insurance companies now consider the sector to be more risky. Insurance companies consider non-compliance notices as evidence of additional risk. Issuing non-compliance notices can, therefore, have an adverse impact on insurance premiums.

7.327 There are no additional ongoing costs associated with maintaining the existing system.

### **Risks**

7.328 There are, however, two risks associated with retaining the existing system.

7.329 The intention is to move the existing model of regulation from one based on adherence to rules and regulations to one based on improving the performance of services, in terms of outcomes for service users. If compliance notices are retained, there will be a lack of fit with the proposed change to the regulatory model.

7.330 There is also a risk that the existing practice of issuing non-compliance notices may not continue, since the practice is not statutory. Rather, the practice is set out in

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<sup>63</sup> This is based on the assumption that each inspection visit takes one day and that it takes a further one day to prepare for the inspection and to write the inspection report. The service regulator has provided a day rate of £374 for undertaking activities related to regulation.

guidance, which could be changed by the service regulator at any time with no formal consultation requirement with service providers.

## **Option two: introduce statutory improvement notices**

### **Ongoing costs**

7.331 There are no costs associated with issuing statutory improvement notices since notices are already given as part of the inspection and enforcement process. The option would formalise existing practice within law.

### **Transition costs: service regulator**

7.332 The service regulator is expected to incur small transition costs associated with implementing option two. These transition costs will be incurred as a result of training and developing its workforce to support implementation. It has not been possible to estimate the transition costs incurred by the service regulator in relation to workforce training and development for each aspect of the Bill. Rather, the service regulator has estimated a total cost for training and development.

7.333 The service regulator has estimated that it will incur costs of £455,200 to train its workforce in the new law, when passed, and to develop practice guides and tools to support their work in implementing provisions in the Regulation and Inspection of Social Care (Wales) Bill<sup>64</sup>.

7.334 The estimated cost of £455,200 includes £52,500 for training inspectors and key staff, £1,000 for training fee paid inspectors and £5,000 for training in administrative processes. In addition, the service regulator has allocated £392,700 opportunity costs to backfill inspectors and key staff when they are undertaking training and £4,000 for backfilling fee paid inspectors.

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<sup>64</sup> The transition cost of £455,200 for training and support has been included in the tables which summarise the total costs of the preferred options. See tables 42 and 43.

### **Transition costs: service providers**

7.335 It is not expected that service providers will incur any transition costs<sup>65</sup>.

### **Benefits**

7.336 Option two would ensure that notices are consistent with the proposed move to an outcome based regulatory model.

7.337 The option also ensures that service providers have the opportunity to take corrective action prior to more serious enforcement action being taken by the service regulator.

7.338 Facilitating service providers to improve their service rather than having their registration cancelled is expected to improve the stability of the social care market in Wales.

### **Summary and preferred option**

7.339 Option two offers a closer fit with the new regulatory regime, and consolidates existing practice in statute.

7.340 Option two is considered the preferred approach going forward.

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<sup>65</sup> UKHCA did not provide costs associated with becoming familiar with the change. It is, however, likely that the majority of service providers will only become familiar with requirements relating to improvement and enforcement when they are subject to it.

## **Time limited registration**

7.341 See section 14(3)(c) of the Regulation and Inspection of Social Care (Wales) Bill for the provision relating to time limited registration.

## **Options**

7.342 There are two options discussed in relation to adding to the existing conditions that may be applied by the service regulator to a service provider's registration:

- Option one: do nothing.
- Option two: introduce time limited registration.

### **Option one: do nothing**

7.343 Under this option, the current situation will continue. That is, where a service regulator is taking enforcement action to cancel a service provider's registration, there will be no change to the range of conditions that the service regulator may impose on a service provider's registration should the decision maker feel that it is appropriate as opposed to pursuing cancellation. Such conditions include, for example, a restriction on the number of beds.

### **Option two: introduce time limited registration**

7.344 Where the service provider makes written representation in response to a notice to cancel registration, the service regulator has the option to impose a condition to time limit the service provider's registration, as opposed to cancelling if appropriate. Under option two, a new condition of time limited registration will be introduced. This will give service providers the opportunity to make the required improvements to their service, prior to the regulator taking any action to cancel the service provider's registration.

## **Costs**

### **Option one: do nothing**

#### **Ongoing costs: service regulator**

7.345 The cost associated with the existing system of imposing conditions, is included in the current estimated cost of enforcement activity of £4,400,000 provided by the service regulator.

7.346 There are no financial cost implications for maintaining the existing system.

## **Option two: introduce time limited registration**

### **Ongoing costs: service regulator**

7.347 Since conditions are already in use as part of the enforcement process and timescales are given for completing actions in response to non-compliance notices, no additional ongoing costs are expected in relation to introducing time limited registration.

### **Transition costs: service regulator**

7.348 The service regulator is expected to incur some small costs associated with implementing option two. This will consist of having to add the condition to the system, training and the production of guidance for decision-makers. This cost is included in the estimated cost of £455,200<sup>66</sup> allocated by the service regulator to training and amending systems.

### **Ongoing costs: service providers**

7.349 Since conditions are already in use as part of the enforcement process and timescales are given for completing actions in response to non-compliance notices, no additional ongoing costs are expected in relation to introducing time limited registration.

### **Ongoing costs: service users**

7.350 Time limited registration has the potential to have two impacts on service users.

7.351 On the one hand, time limited registration could provide reassurance to service users that the service provider will make the necessary improvements, since time limited registration demonstrates that the service provider has already made an initial commitment to improve the service. The purpose of time limited registration is to give the service provider the opportunity to demonstrate the sustainability of the improvements already made and ongoing compliance.

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<sup>66</sup> The transition cost of £455,200 for training and support has been included in the tables which summarise the total costs of the preferred options. See tables 42 and 43.

7.352 On the other hand, where the service user does not have the confidence that the provider will be able to sustain the improvements, the time limited condition could be interpreted as being the date the service is likely to cease trading. In this case, the service user may decide to move services prior to the time limited date. This would have cost implications for service users and also has the potential to create instability in the care market.

7.353 The risk is, however, very small since the number of time limited conditions imposed on registration is expected to be very few in number. In addition, service users are generally unaware of existing non-compliance notices. Consequently, the cost for service users has not been included.

7.354 In the rare cases where service providers are not able to sustain the improvements, service users will have to find alternative services. This is unlikely to have little, if any, costs in the case of domiciliary care. Rather, the costs of finding alternative providers will, in the majority of cases, be incurred by the local authority.

7.355 In the case of residential care homes for older people, this is likely to have costs for both service users and for the local authority.

7.356 In the case of residential services for children and young people, the costs will be incurred by the local authority.

7.357 Since the number of cases where service providers are not able to sustain the improvements is expected to be, on average, less than one a year, the costs and benefits have not been quantified.

## **Risks**

### **Service providers**

7.358 There is a small risk, where service users are aware of the time limited condition and have no confidence that the provider will be able to sustain improvements, that service users will seek alternative service providers. This has potential to place financial pressure on service providers which, in turn, is likely to have a negative impact on their ability to sustain improvements.

## **Benefits**

### **Service users**

7.359 Time limited registration provides an additional option to the service regulator in cases where an improvement notice is issued.

7.360 The purpose of the condition is to overcome the situation where a provider can become compliant prior to a notice of decision to cancel registration but does not maintain this for any length of time.

7.361 In particular, the condition will be able to address situations where the service provider is constantly in and out of compliance with regulation. Where the service regulator has evidence that the service provider has a record of previous non-compliance, the regulator will be able to issue a time limited condition on the registration of that service.

7.362 Those likely to benefit most from the introduction of time limited registration are service users, their carers and families. The cost benefits for service users include costs associated with poor care and, in extreme cases, the costs associated with having to move service provider.

### **Summary and preferred option**

7.363 Time-limited registration is a potentially useful additional part of the toolkit for the service regulator and is unlikely to require significant costs. This additional power has been requested by the regulator to further enhance the range of options it has available to it.

7.364 For the reasons above it is considered that option two should be the preferred way forward.



## **Provider registration fees**

7.365 See section 38 of the Regulation and Inspection of Social Care (Wales) Bill for provisions relating to charging provider registration fees.

## **Options**

7.366 There are three options associated with provider registration fees:

- Option one: do nothing, replicate existing powers within the Care Standards Act 2000 with no immediate intention to enact regulations to charge provider registration fees.
- Option two: repeal the existing provision to enact regulations to charge provider registration fees.
- Option three: replicate the existing powers within the Care Standards Act 2000 to enact regulations to charge provider registration fees with the intention of introducing regulations, and thus service provider registration fees.

### **Option one: do nothing**

7.367 Under this option, the existing provision within the Care Standards Act 2000 to introduce regulation to charge provider registration fees would be retained. As with the current situation, regulations would not, however, be enacted. Service providers would not, therefore, be charged a fee for registration and regulation.

### **Option two: repeal the existing provision to enact regulations to charge provider registration fees**

7.368 Under this option, the existing provision to enact regulations to introduce provider registration fees would be repealed. In effect, this would maintain the existing situation, since service providers are not currently charged a regulation fee. Repealing the existing provision would, however, remove the existing flexibility to introduce provider registration fees in the future, unless fresh legislation was enacted.

**Option three: replicate the powers to enact regulations to charge provider registration fees with the intention of introducing regulations, and thus service provider registration fees**

7.369 Under this option, the existing power to enact regulation would remain. In contrast to the current situation, where regulations have not been enacted, it is expected that regulations would be enacted and that provider registration fees would be introduced as part of the implementation of the Regulation and Inspection of Social Care (Wales) Bill.

7.370 Two fee structures are discussed in relation to provider registration fees. These are:

- Adopt full cost recovery.
- Charge fees which are a proportion of full costs.

## **Costs**

### **Option one: do nothing**

#### **Ongoing costs: service providers**

7.371 Service providers would incur no additional costs if current practice is maintained.

#### **Ongoing costs: service regulator**

7.372 Service providers would incur no additional costs if current practice is maintained.

The service regulator currently spends an estimated £8,064,000 on registration, inspection, enforcement and administration functions in respect of those children and adults services which are within the scope of the Bill.

#### **Ongoing costs: citizens and service users**

7.373 The cost of regulation is currently publicly funded. The Welsh Government provides funding to the service regulator via a grant in aid. This contrasts with the practice in other sectors in Wales and with the practice in England in relation to social care.

7.374 Providers of independent healthcare in Wales, such as dentists and independent hospitals, currently pay both a registration fee and an annual fee<sup>67</sup>.

7.375 England has implemented a fee charging structure which has been designed to enable the recovery of all costs associated with the regulation of social care services. An incremental approach to implementing full cost recovery has been adopted.

7.376 As table 19 shows, during 2013-14, the Care Quality Commission (2013) in England recovered 85% of the cost of regulating care services<sup>68</sup> and 87% of the cost of regulating community care services<sup>69</sup>. Ofsted recovered 91% of the cost of regulating residential care for children and young people.

**Table 19: regulation costs recovered by CQC and Ofsted 2013-14**

Provider category	Cost of regulation	Income	Number of settings	Average cost per setting	Cost recovery
	£	£		£	
Community care services	6,000,000	5,200,000			87%
Care services	64,500,000	54,900,000	26,263	2,456	85%
Residential care for children and young people	4,133,703	3,775,288	1,718 <sup>70</sup>	2,406	91%
<b>Total</b>	<b>74,633,703</b>	<b>63,875,288</b>			<b>86%</b>

Sources: CQC (2013); CQC(2014); DfE (date, 2014a); DfE (2014b).

7.377 The cost of service regulation and inspection is likely to rise in future years, in response to the increased demand for social care services. There is potential that, without contribution from service providers, the cost will be unaffordable or that it will be unreasonable to expect the public to subsidise the increased costs.

<sup>67</sup> The Independent Health Care (Fees) (Wales) Regulations 2011 and Private Dentistry (Wales) Regulations 2008.

<sup>68</sup> Care homes without nursing, care homes with nursing, specialist colleges, hospices and residential substance misuse services.

<sup>69</sup> Domiciliary care agencies, supported living services and nurses agencies.

<sup>70</sup> The Ofsted register data gives the total number of children's homes as around 2,050. This data has been 'cleaned' so as to exclude secure children's homes, children's homes that provide respite care or short breaks only, and Residential Special Schools registered as children's homes. This has resulted in a total number of 1,718 homes (DfE, 2014b).

7.378 Alternatively, there is a risk that if funding does not keep pace with the projected growth of the sector, there will be a drop in the standard of service regulation and inspection, placing service users at risk of neglect or abuse.

7.379 In addition, since the regulator will continue not to be accountable to service providers for the quality and value for money of the service provided, this option does not encourage the service regulator to make efficiency gains.

**Option two: repeal the existing provision to enact regulations to charge service providers a registration fee**

7.380 The costs associated with repealing the existing provision to enact regulations to charge service providers a registration fee, are the same as those associated with retaining the existing provision and not charging provider registration fees (that is, option one).

**Option three: charge service providers a registration fee**

**Ongoing costs: service regulator**

7.381 If full cost recovery is adopted, any additional ongoing costs such as those associated with collecting fees would be included in the provider registration fees.

7.382 If a proportion of the cost of regulation is adopted, the service regulator would incur ongoing costs resulting from the collection of registration fees. Thus, it is important that the fee collected is sufficient to both contribute towards the cost of regulation and cover the cost of collecting the fee.

7.383 The introduction of registration fees comes with the potential risk that the independence of the service regulator could be eroded. This could occur, for example, where the relationship between the service regulator and service provider moves from one of accountability to the service provider and one which responds to the service provider in terms of demonstrating value for money, to one where the service regulator is captured by service providers. Should the latter arise, the independence of the service regulator could be eroded and there is potential that public assurance would diminish.

7.384 This risk is, however, small. A number of regulatory bodies currently charge fees. This includes the Health Inspectorate Wales, the Care Council for Wales and, in England, the Care Quality Commission. There is no evidence to suggest that the independence of regulators has been diminished as a result of fees being introduced.

### **Transition costs: service regulator**

7.385 The service regulator will incur transition costs setting up the system for collecting registration fees and providing information to service providers on the fee structure.

### **Ongoing costs to service providers**

7.386 The cost to service providers is dependent on the fee charging structure. Two options are discussed below:

- Full cost recovery.
- Partial cost recovery.

#### **a. Full cost recovery**

7.387 The introduction of full cost recovery would result in the existing estimated cost of £8,064,000 being passed from the Welsh Government, or citizens, to service providers. This cost excludes any costs associated with collected provider registration fees.

7.388 Tables 17-19 provide examples of the fee structure that could be adopted in Wales to recover both full costs and a proportion of costs. In relation to domiciliary care, service providers would be charged a fee of between £1,500 and £33,500. Providers of adult residential care services would be charged fees of between £1,300 and £23,500, with providers of residential care for children and young people being charged between £2,800 and £11,500<sup>71</sup>. These fees do not take into account costs associated with collecting fees.

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<sup>71</sup> The estimated fees set out in tables 17-19 slightly over-estimate the fees required to recover full costs. This is because there are 73 fostering services, which have not been included in the calculations. It was not possible to include fostering services because they are not included in the figures reported on by CQC and ESTYN. Since fostering services represent only 4% of settings in Wales, including the fees for this service would have a minimal affect on the level of fee required to recover costs.

**b. Partial cost recovery**

7.389 An alternative approach to adopting full cost recovery would be to introduce fees at a level to achieve partial cost recovery. This would balance the desirability of service providers contributing to the cost of regulation against the need to ensure that the introduction of registration fees does not have a negative impact on service providers, service users and on market stability.

7.390 Tables 18-20 set out a range of potential fees which could be used to achieve partial cost recovery.

**Table 20: example fees for domiciliary care providers using CQC fee structure**

Number of agencies	Number of providers	CQC fees (£) - 87% cost recovery	Fees at 87% cost recovery	CQC full cost recovery	Fees - full cost recovery	Cost to providers - full cost recovery	Fees at 20% full cost recovery	Cost to providers - 20% full cost recovery	Fees at 40% full cost recovery	Cost to providers - 40% full cost recovery	Fees at 60% full cost recovery	Cost to providers - 60% full cost recovery	Fees at 80% full cost recovery	Cost to providers - 80% full cost recovery
1	293	720	1,294	828	1487	435,687	297	87,137	595	174,275	892	261,412	1190	348,549
2	27	2,000	3,594	2,299	4131	111,524	826	22,305	1,652	44,610	2,478	66,914	3304	89,219
3	4	2,000	3,594	2,299	4131	16,522	826	3,304	1,652	6,609	2,478	9,913	3304	13,218
4	8	4000	7,187	4,598	8261	66,088	1,652	13,218	3,304	26,435	4,957	39,653	6609	52,871
5	1	4,000	7,187	4,598	8261	8,261	1,652	1,652	3,304	3,304	4,957	4,957	6609	6,609
8	1	8,000	14,374	9,195	16,522	16,522	3,304	3,304	6,609	6,609	9,913	9,913	13,218	13,218
13	1	16,000	28,748	18,391	33,044	33,044	6,609	6,609	13,218	13,218	19,826	19,826	26,435	26,435
<b>36</b>	<b>335</b>					<b>687,648</b>		<b>137,530</b>		<b>275,059</b>		<b>412,589</b>		<b>550,118</b>

**Table 21: example fees for adult residential care providers using CQC fee structure**

Maximum beds registered	Number of providers	CQC fees - 85% cost recovery	Fees at 85% cost recovery	CQC full cost recovery	Fees - full cost recovery	Cost to providers - full cost recovery	Fees at 20% full cost recovery	Cost to providers - 20% full cost recovery	Fees at 40% full cost recovery	Cost to providers - 40% full cost recovery	Fees at 60% full cost recovery	Cost to providers - 60% full cost recovery	Fees at 80% full cost recovery	Cost to providers - 80% full cost recovery
up to 10	417	650	1,168	765	1,374	572,959	275	114,592	550	229,184	824	343,776	1099	458,367
11 to 20	149	1600	2,875	1,882	3,382	503,942	676	100,788	1,353	201,577	2,029	302,365	2706	403,154
21 to 30	227	3,000	5,390	3,529	6,342	1,439,533	1,268	287,907	2,537	575,813	3,805	863,720	5073	1,151,626
31 to 40	178	4300	7,726	5,059	9,090	1,617,942	1,818	323,588	3,636	647,177	5,454	970,765	7272	1,294,353
41 to 60	99	5,600	10,062	6,588	11,838	1,171,919	2,368	234,384	4,735	468,768	7,103	703,151	9470	937,535
> 60	62	11,100	19,944	13,059	23,464	1,454,752	4,693	290,950	9,385	581,901	14,078	872,851	18771	1,163,802
	<b>1132</b>					<b>6,761,047</b>		<b>1,352,209</b>		<b>2,704,419</b>		<b>4,056,628</b>		<b>5,408,838</b>

**Table 22: example fees for adult residential care providers using ESTYN fee structure**

Number of beds	Estimated number of providers	ESTYN fees (2014-15) Full cost recovery(£)	Fees - full cost recovery	Cost to providers - full cost recovery	Fees at 20% full cost recovery	Cost to providers - 20% full cost recovery	Fees at 40% full cost recovery	Cost to providers - 40% full cost recovery	Fees at 60% full cost recovery	Cost to providers - 60% full cost	Fees at 80% full cost recovery	Cost to providers - 80% full cost
up to 3	58	1,601	2,877	166,845	575	33,369	1,151	66,738	1,726	100,107	2,301	133,476
5	58	1,919	3,448	199,984	690	39,997	1,379	79,994	2,069	119,991	2,758	159,988
7	3	2,237	4,019	12,058	804	2,412	1,608	4,823	2,412	7,235	3,216	9,647
9	2	2,555	4,591	9,182	918	1,836	1,836	3,673	2,754	5,509	3,673	7,345
10	2	2,714	4,876	9,753	975	1,951	1,951	3,901	2,926	5,852	3,901	7,802
12	1	3,032	5,448	5,448	1,090	1,090	2,179	2,179	3,269	3,269	4,358	4,358
13	1	3,191	5,734	5,734	1,147	1,147	2,293	2,293	3,440	3,440	4,587	4,587
14	1	3,350	6,019	6,019	1,204	1,204	2,408	2,408	3,612	3,612	4,815	4,815
16	2	3,668	6,591	13,181	1,318	2,636	2,636	5,272	3,954	7,909	5,272	10,545
17	1	3,827	6,876	6,876	1,375	1,375	2,751	2,751	4,126	4,126	5,501	5,501
18	2	3,986	7,162	14,324	1,432	2,865	2,865	5,730	4,297	8,594	5,730	11,459
20	1	4,304	7,733	7,733	1,547	1,547	3,093	3,093	4,640	4,640	6,187	6,187
22	1	4,622	8,305	8,305	1,661	1,661	3,322	3,322	4,983	4,983	6,644	6,644
23	1	4,781	8,590	8,590	1,718	1,718	3,436	3,436	5,154	5,154	6,872	6,872
24	1	4,940	8,876	8,876	1,775	1,775	3,550	3,550	5,326	5,326	7,101	7,101
25	2	5,099	9,162	18,323	1,832	3,665	3,665	7,329	5,497	10,994	7,329	14,659
30	1	5,894	10,590	10,590	2,118	2,118	4,236	4,236	6,354	6,354	8,472	8,472
>35	9	6,399	11,498	103,483	2,300	20,697	4,599	41,393	6,899	62,090	9,198	82,786
	<b>147</b>		<b>122,395</b>	<b>615,305</b>		<b>123,061</b>		<b>246,122</b>		<b>369,183</b>		<b>492,244</b>



## Risks

A number of risks have been identified around the introduction of registration fees for providers.

### Full cost recovery

7.391 There is a risk that setting registration fees at full cost recovery will be passed onto those who pay for social care services. That is, local authorities and individuals who pay privately for social care.

7.392 The risk that the cost of registration fees will be passed on to individuals who fund their own care is higher than for local authorities, since self-funders do not have the collective buying powers of local authorities.

7.393 If, as in England, the number of service users who fund their own residential care is fewer than the number who are funded by the local authority<sup>72</sup>, passing the cost of registration fees onto those who fund their own care would have a significant impact on the cost of their care. The introduction of fees based on full cost recovery could, therefore, have an inequitable impact on individuals who fund their own social care.

7.394 This risk is considered to be small due to the need for service providers to be competitive. Should some service providers pass on the cost to self-funding service users, they are likely to be considered to be poor value in comparison to those service providers which do not pass on the costs.

7.395 The key risk associated with implementing full cost recovery is the potential impact this will have on service providers. Provider registration fees would be an additional financial burden, which could potentially be implemented with insufficient lead in time for service providers to absorb the costs. The short-term impact of this could be a drop in resources which could have a negative impact on standards of care and outcomes for service users.

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<sup>72</sup> The Institute of Public Care found that 44.9% of places in residential care homes in England are self-funded. The proportion of self-funded places in residential care homes is 39.6% and 47.6% in nursing homes (SCIE et. al, 2011).

7.396 In extreme cases, the additional financial burden may force service providers to exit the market.

7.397 There is also a risk that service providers may consider the charge to be relatively high. As tables 17-19 show, the fees required to cover the current cost of regulation in Wales, excluding any costs associated with collecting fees, is approximately 1.8 times higher than those charged in England. That is, it costs 80% more in Wales to regulate social care than it does in England.

**Table 23: summary of estimated costs likely to be incurred through the introduction of service provider registration fees at full cost recovery (option three)**

	2016-17	2017-18	2018-19	2019-20	2020-21
Service regulator <sup>1</sup>					
Service providers		8,064,000	8,064,000	8,064,000	8,064,000
<b>Total cost</b>	<b>-</b>	<b>8,064,000</b>	<b>8,064,000</b>	<b>8,064,000</b>	<b>8,064,000</b>
Public finance		8,064,000	8,064,000	8,064,000	8,064,000
<b>Total Benefit</b>		<b>8,064,000</b>	<b>8,064,000</b>	<b>8,064,000</b>	<b>8,064,000</b>

<sup>1</sup> The cost in 2016-17 is included in i) the cost of registering establishments and agencies set out under the model of regulation'; ii) the cost of inspecting service establishments and agencies set out under approach to regulation and inspection and iii) enforcement activity set out under offence of false or misleading information.

### **Partial cost recovery**

7.398 Where registration fees are set at a level which can be absorbed by service providers, the risks associated with full cost recovery would be reduced. Introducing partial fees does, however, have an associated risk. The fees collected would have to be set at a rate high enough to ensure that they covered the administration costs associated with collecting fees. If fees were set too low to achieve this, it would result in an increase to the cost of regulation.

**Table 24: summary of estimated costs likely to be incurred through the introduction of service provider registration fees at 20% cost recovery (option three)**

	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>
Service regulator <sup>1</sup>		6,451,200	6,451,200	6,451,200	6,451,200
Service providers		1,612,800	1,612,800	1,612,800	1,612,800
<b>Total cost</b>	-	<b>8,064,000</b>	<b>8,064,000</b>	<b>8,064,000</b>	<b>8,064,000</b>
Public finance		1,612,800	1,612,800	1,612,800	1,612,800
<b>Total Benefit</b>		<b>1,612,800</b>	<b>1,612,800</b>	<b>1,612,800</b>	<b>1,612,800</b>

<sup>1</sup> The cost in 2016-17 is included in i) the cost of registering establishments and agencies set out under the model of regulation'; ii) the cost of inspecting service establishments and agencies set out under approach to regulation and inspection and iii) enforcement activity set out under offence of false or misleading information.

## Benefits

### Citizens and service users

7.399 As noted above, the registration fee represents a transfer payment from the service provider to the regulator to cover the costs associated with regulation. These costs are estimated to be £8,064,000 per year. This money could be used to fund an increase in social care provision or could be used to fund initiatives which aim to improve the quality of social care. It is not clear, however, that the benefits associated with having additional funds would outweigh the benefits associated with publicly funded regulation.

7.400 There are a number of significant risks associated with recovering the cost of regulation from service providers, which could impact on the quality and supply of social care. In addition, the current financial context suggests that it would not be prudent to introduce provider registration fees in the near future. Provider representative organisations, such as UKHCA, argue that local authority fee rates are not sufficient to cover the cost of care. Within the context of the recent reduction in Welsh Government local authority block grant funding, local authorities are unlikely to have the financial capacity to increase fee rates. Thus, the introduction of fees would be likely to have a negative impact on service providers and, in turn, on the quality and supply of social care.

7.401 Fees could be used as a policy instrument to promote quality. For example, a fee waiver could be introduced for any provider achieving quality standards above a given threshold/quality judgement.

7.402 In addition, the introduction of full cost recovery would require the service regulator to demonstrate value for money to service providers which, in turn, has potential to increase efficiency and drive up standards, benefiting service users and their families in terms of providing assurance about the quality of social care services received.

### **Service regulator**

7.403 Under the current system of registration service providers are, in theory, registered forever and there is no incentive for service providers to inform the service regulator when they exit the market or reduce provision. Thus, the register does not provide a reliable source of data about service provision in Wales.

7.404 Introducing fees would provide an incentive for service providers to inform the regulator about changes in service provision. The introduction of fees would, therefore, facilitate the service regulator in maintaining a register which is up-to-date and which provides an accurate picture of the social care market in Wales.

### **Service providers**

7.405 Currently, there is no incentive for the service regulator to demonstrate to service providers the quality of the service or the value for money of the service provided.

7.406 Introducing service provider registration fees, on a cost recovery basis, will change the relationship between the service provider and the regulator in a way which has potential to increase the accountability of the service regulator to service providers, in terms of the quality and for the value for money of its service. This has potential to encourage the service regulator to make efficiency savings and improvements in the quality of their service.

7.407 Whilst acknowledging that the service regulator in Wales does not have equivalent economies of scale opportunities as the regulators in England, the analysis of costs

suggests it cost approximately 80% more in Wales to regulate social care services compared to England.

### **Partial cost recovery**

7.408 The introduction of partial cost recovery would have similar benefits to introducing full cost recovery (discussed above). The extent of any benefits would be dependent on the level of fees charged.

### **Summary and preferred option**

7.409 It is acknowledged that, for providers, regulation ensures that they can operate with a level of confidence in the sector. They can use their regulatory status to attract and operate services, and to offer assurance to commissioners and citizens of their quality. Regulation offers clear frameworks to improve the skills of their staff, alongside training programmes and qualifications. Service regulation also offers providers clear, impartial information that can be used to improve their services. By identifying good provision, it offers intelligence and information for the sector on best practice and new models of care. Finally, by removing bad practice and eliminating poor provision, regulation maintains a quality within the sector and limits the potential for the sector's reputation to be defined by poor provision. For this reason, it is considered that it may be correct in future years to seek to share the burden of costs of regulation with providers, thus reducing the cost to the people of Wales. Whilst it is felt that it may not be appropriate at this time, to introduce charging for registration, it is acknowledged that fees will ensure an up-to-date register that is robust and more accurate. Fees will also change, for the better, the relationship between the regulator and providers. Finally, charging fees will bring the regime in Wales into line with the systems which providers operate under in other parts of the UK. As such we wish to retain the powers to introduce fees.

7.410 The preferred approach, for the reasons above, is option three.

## **Local authority annual statements of the social care market**

7.411 See section 55 of the Regulation and Inspection of Social Care (Wales) Bill for provisions relating to local market stability reports.

### **Options**

7.412 Two options discussed in relation to local authority annual statements of the social care market:

- Option one: do nothing.
- Option two: introduce local authority annual statements of the social care market.

#### **Option one: do nothing**

7.413 Under this option, local authorities will continue to move towards developing an accurate picture of social care needs and markets through developing local authority reports on the current and future market for social care (commonly known as market position statements on a non-statutory basis. This work, in response to Sustainable Social Services: a framework for action (Welsh Assembly Government, 2011), was first set out in the Local Government Implementation Plan (WLGA/ADSS, 2012).

7.414 The Social Services Improvement Agency has issued guidance to local authorities to support the development of market position statements.

#### **Option two: introduce local authority annual statements of the social care market**

7.415 Under this option, local authorities will have a statutory requirement to produce an annual statement of the social care market in their jurisdiction and to provide a forecast of what the social care market may look like at various points in the future. This could include, for example, projecting the future supply and demand for social care in five years, 10 years and 15 years into the future.

## **Costs**

### **Option one: do nothing**

7.416 It has not been possible to calculate the current costs associated with the production of local authority market position statements, due to the diversity of scope and content included in the statements<sup>73</sup>.

### **The social care market**

7.417 If there is no legal requirement for local authorities to develop annual statements of the social care market in their jurisdictions, there is a risk that momentum in producing the existing local authority market position statements will be lost, with the consequence that local, regional and national opportunities to develop effective responses to changing social care demands, will be missed.

7.418 If this arises, this will have a negative impact on effective commissioning and on the effectiveness of supply of services, since local authorities and service providers will not be able to effectively design and supply services in relation to current and projected demand.

7.419 The social care environment is changing rapidly and the models in place today will not be sufficient in the future.

## **Risks**

### **Service providers**

7.420 If local authorities do not produce local authority market position statements there is a risk that service providers may spend time and resource developing services and increasing capacity in particular services which are not required.

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<sup>73</sup> The cost of undertaking position statements was requested from the Association of Directors of Social Services, the Social Services Improvement Agency and the Institute of Public Care.

## **Service users**

7.421 If local authorities do not produce local authority market position statements, it has the potential to impact on the efficiency of the social care market in Wales. Where supply does not meet demand, this will have an impact on service users in terms of access to services. In addition, a lack of supply could result in increases in the cost of social care services.

7.422 The lack of local statements may also impact on the efficacy and accuracy of any national approach to understanding the future shape of the social care market, resulting in the risk that national policies are poorly informed and miss important opportunities.

## **Local authorities**

7.423 Any impacts on the efficiency of the social care market has potential implications for local authorities in relation to being able to fulfil legal obligations to provide social care services. Where there is a lack of supply of specific social care services or where the supply of social care services generally does not meet demand, this has the potential of impacting on the extent to which local authorities are able to meet their statutory obligations.

7.424 If local authorities do not produce local authority market position statements, they will miss the opportunity to shape the social care market in terms of encouraging providers to supply the quantity and types of services required in the future.

## **Option two: introduce local authority annual statements of the social care market**

7.425 It is expected that the costs of introducing annual statements of the social care market will be similar to the costs of producing local authority market position statements. Thus, for those local authorities who are producing local authority market position statements there are expected to be no additional costs.

7.426 Local authorities not currently producing annual statements of the social care market in their jurisdiction, will incur additional costs associated with producing the local authority annual statement of the social care market.



7.427 It has not been possible to estimate the costs to local authorities for producing the existing local authority market position statements nor the costs associated with producing the proposed local authority annual statement of the social care market.

## **Benefits**

### **Option one: do nothing**

7.428 Under this option, local authorities will have no statutory obligation to produce statements of the social care market in their jurisdiction and will, therefore, retain the flexibility to produce them according to their own judgement of costs versus benefits.

### **Option two: introduce local authority annual statements of the social care market**

#### **An efficient social care market**

7.429 The introduction of a mandatory requirement for local authorities to develop annual statements of the social care markets in their jurisdictions, should facilitate the effective working of the social care market in terms of the supply of social care services in relation to the demand for them.

7.430 Social care providers will be aware of local authority future commissioning strategies and, therefore, be able to design and plan the quantity and type of services being delivered in response to current and future demand. This should facilitate a more efficient allocation of resources in the social care market.

#### **Service providers**

7.431 Annual statements of the social care market should reduce the risk of service providers designing and providing services which are not required by service commissioners or service users.

7.432 The annual statements should provide an indication of the quantity and types of social care that local authorities are likely to commission from service providers. This will provide intelligence for service providers. This will reduce the risk of service providers investing time and other resources expanding supply or developing services which are not required.

7.433 The statements could provide additional evidence for providers who wish to secure investment from third parties for service development.

### **Service users**

7.434 Service users are most likely to benefit from the introduction of annual statements of the social care market. Where annual statements of the social care market are effective in encouraging service providers to supply services in response to demand for services, service users should benefit from having access to the services they require. In addition, for those individuals who fund their own social care, efficient markets should result in stability of the cost of social care services.

### **Local authorities**

7.435 The introduction of annual statements of social care should have the benefit of assisting local authorities in fulfilling their statutory obligations of providing social care services, through facilitating a supply of services which meets demand within the context of stable costs.

7.436 In addition, the annual statements provide local authorities with the opportunity to shape the social care market both in terms of the type of services delivered and the quantity of those services.

### **Welsh Government**

7.437 Local reports, if carried out across all parts of Wales, could be amalgamated with other evidence to support Welsh Ministers and others to make more informed policy decisions about social care.

### **Summary and preferred option**

7.438 Annual statements of the social care market by local authorities will be part of the Bill's move towards a much improved forward view of the way provision is and must change. Such reports will make it more likely that local authorities and providers can work together to develop suitable resources going forward. Finally, the development of these reports will allow policy makers and others at a national level to have a much clearer understanding of the future direction of travel in terms of social care.

7.439 For the reasons above, option two is preferred.

## **National annual statement of the social care market**

7.440 See section 62 of the Regulation and Inspection of Social Care (Wales) Bill for provisions relating to national market stability reports.

### **Options**

7.441 There are two options discussed in relation to the introduction of a national annual statement of the social care market in Wales:

- Option one: do nothing
- Option two: require the service regulator to produce a national annual statement of the social care market in Wales.

#### **Option one: do nothing**

7.442 Under this option, no change would be introduced. That is, there would be no synthesis of the information currently collected by local authorities within, for example, their market position statements or other information held elsewhere.

#### **Option two: require the service regulator to produce a national annual statement of the social care market in Wales.**

7.443 Under this option, the service regulator would be required to produce a national statement of the social care market in Wales based on the information set out in the planned local authority annual statements of social care markets as well as information elsewhere.

### **Costs**

#### **Option one: do nothing**

7.444 The risks associated with not introducing a national statement of social care are equivalent to not introducing local statements of social care.

7.445 The specific risk at the national level relates to the costs associated with not being able to plan at a national level. This impacts on the ability of the Welsh Government to plan strategically and to develop informed policy in relation to social care. The costs associated with this risk have not been estimated.

7.446 There would be a negative impact on those providers which operate across local authority boundaries. Rather than having one national document to refer to when planning service delivery across boundaries, service providers would have to refer to up to 22 documents.

7.447 In addition, opportunities might be missed to facilitate and encourage collaboration across local authority boundaries.

**Option two: require the service regulator to produce a national annual statement of the social care market in Wales**

7.448 The service regulator will have much of the data required to produce the annual report of the social care market in Wales. This includes data about service providers in terms of the type of service, their location and current capacity. In addition, the local authority annual statements of the social care market will provide analysis of current demand and supply, together with projections about future demand and supply, for each local authority jurisdiction in Wales.

7.449 There will, however, be information that the service regulator will not have. This includes data relating to current and projected future trends about, for example, provider capacity/flexibility, provider profitability and the economy in Wales.

7.450 In addition, it is expected that undertaking the required analysis of the social care market in Wales will require specialist research skills, particularly skills associated with modelling. Thus, it is possible the regulators will contract out this piece of work to a research organisation.

7.451 The service regulator has confirmed that the ongoing costs for this option is estimated to be £200,000 per annum to undertake due diligence (discussed later) and to prepare and publish the national annual statement of the social care market.

**Table 25: summary of estimated costs likely to be incurred through the introduction of a national annual statement of the social care market in Wales (option two)**

	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>
Service regulator <sup>1</sup>		200,000	200,000	200,000	200,000
<b>Total cost</b>	<b>-</b>	<b>200,000</b>	<b>200,000</b>	<b>200,000</b>	<b>200,000</b>

<sup>1</sup> This figure covers the cost to the service regulator for the national annual statement of the care and support market in Wales and undertaking due diligence.

## **Benefits**

7.452 The benefits of the national report on the social care market will have equivalent benefits to the local authority reports on the social care market at the local level.

7.453 The report will provide policy makers and service providers with the information necessary to undertake national strategic planning to meet future social care needs across Wales.

7.454 The report will also provide information that the service regulator will need to undertake due diligence of key providers.

## **Summary and preferred option**

7.455 The social care sector is changing dramatically, as demographics, public expectations and models of service change. However, there is no clear locus for intelligence and analysis of these changes to inform both operational and strategic decisions. A national sector report would provide all those in the sector with clear evidence of the direction going forward. It is also considered that given that most of the information is already available, but in disparate forms, the added value of bringing it together will outweigh the limited investment required.

7.456 Option two is the preferred way forward, for the reasons above.

## **Due diligence of key providers**

7.457 See chapter seven of the Regulation and Inspection of Social Care (Wales) Bill for provisions relating to due diligence of key providers.

### **Options**

7.458 There are two options associated with due diligence of key providers:

- Option one: do nothing
- Option two: introduce a requirement for the service regulator to undertake due diligence of key providers.

#### **Option one: do nothing**

7.459 Under this option, the current system of identifying those service providers who have the potential to exit the market will continue. Indicators of providers who have the potential to exit the market, or who are likely to close specific settings, are identified during the inspection process or through other non-formal means.

#### **Option two: introduce a requirement for the service regulator to undertake due diligence of key providers**

7.460 Under this option, the service regulator would be required to undertake due diligence of those providers who, should they exit the market, would have a significant and negative impact on the supply of social care services. It is expected these providers will be those which provide services to a significant number of users across local authorities or are providers of specialised services which would be difficult to replace at a national level. Local authorities would retain their statutory responsibilities with regard to provider failure.

## **Costs**

#### **Option one: do nothing**

##### **Service regulator**

7.461 There would be no additional costs to the service regulator under this option.

## **Service users and service commissioners**

- 7.462 There is potential for significant and unexpected costs, should a major provider suddenly exit the market.
- 7.463 There is a risk that providers who are likely to exit the market, or who are likely to close specific settings, will not be identified until failings have arisen and closure is relatively imminent. In such circumstances, the closure can be poorly managed. This has financial implications for both service users and local authorities. This was the risk which transpired with Southern Cross in 2011 and required significant emergency action to be taken.
- 7.464 Evidence suggests the disorderly closure of a social care provider can cause a great deal of anxiety to individuals, carers and their families (Scourfield, 2004; Woolham, 2001). If poorly managed, there is a significant risk that there may be an adverse effect on the health, well-being and dignity of users.
- 7.465 The potential cost to the well-being of service users in Wales has been estimated on the basis of one of the largest ten residential care home providers in Wales exiting the market in an unmanaged way.
- 7.466 The largest ten residential service providers in Wales have, on average, a maximum of 105 beds. In the event that one of these service providers suddenly exits the market, the estimated cost to the individual service users is £8,790. The total estimated cost is, therefore, approximately £923,000<sup>74</sup>.
- 7.467 It is not known what proportion of residents would be fully aware of any financial pressures and, hence, would experience anxiety. If providers actually reach the point of failure, it is expected the proportion would be high. The analysis assumes that all residents in affected homes see some effect. Whilst this may be an over-estimate, the experience of Southern Cross suggested that it is more likely to be an under-estimate. The Experience of Southern Cross demonstrates that the failure of a major provider

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<sup>74</sup> The Department for Health (2013) have estimated that the well-being effect of an orderly resolution to a care provider failure is 0.1465 quality-adjusted life years (QALYs) per affected care services user. With a QALY valuation of £60,000, this would give an expected monetised benefit of £8,790 per care user ( $=0.1465 \times £60,000$ ).



can have anxiety impacts on residents of other organisations, and on carers and relatives in wider society. The wider societal impacts have not been monetised.

### **Local authorities**

7.468 The potential cost to local authorities and other service providers (such as the Welsh Ambulance Service), where key providers exit the market, are associated with having to find alternative accommodation, potentially within the context of scarce supply, and within the legislative provision introduced under the Social Services and Well-being (Wales) Act. These costs have not been monetised.

### **Option two: introduce a requirement for the service regulator to undertake due diligence of key providers.**

#### **Service regulator**

7.469 The costs associated with introducing a requirement for the service regulator to undertake due diligence, have been estimated using the assumptions used by the Department of Health when estimating the costs of introducing due diligence of key providers in England.

7.470 The Department of Health estimated that undertaking due diligence on 60 organisations would cost the regulator approximately £1.3 million in year one and £1.2 million per annum thereafter. The exact cost would, however, be dependent on the regime adopted.

7.471 The cost of undertaking due diligence on an individual organisation is, therefore, £21,700 for the first year and £20,000 per annum thereafter.

7.472 There are 12 organisations in Wales with 10 settings or more. Two of these organisations are housing associations, which have been excluded from the estimated cost since housing associations are already subject to due diligence.

7.473 Using the same cost assumptions as adopted by the Department of Health, the cost of undertaking due diligence in Wales would be approximately £217,000 in the first year and £200,000 thereafter, depending on the exact regime adopted. However,

these are considered to be upper estimates as many of the providers will be subject to similar due diligence regimes elsewhere, such as England. An effective cross-border approach to these issues may significantly reduce the cost burden on the service regulator.

7.474 The service regulator has estimated that the ongoing costs for this option is estimated to be £200,000 per annum to undertake due diligence and to prepare and publish the national annual statement of the social care market.

### **Service providers**

7.475 The information required for a due diligence assessment will be readily available to service providers and is likely to consist of information that is already provided to an accountant to prepare tax returns and/or returns to Companies House.

7.476 There is a clear risk that concerns raised through the due diligence process, may reduce the confidence which commissioners and purchasers of social care services have in that provider. This effect might lead to the consequences that this policy is intended to prevent. That is, the untimely exit of a major provider from the market.

## **Benefits**

### **Option one: do nothing**

7.477 There are no additional benefits to maintaining the existing system.

### **Option two: introduce a requirement for the service regulator to undertake due diligence of key providers**

### **Local authorities**

7.478 Firstly, local authorities should benefit from the introduction of due diligence in two ways. First, the regulator will support local authorities to manage the failure effectively. This will include collecting and distributing timely information to local authorities on the individuals receiving services from the failing provider.

7.479 Second, we know from Winterbourne View that the spot price of care can rise dramatically when local authorities have to purchase that care for a large number of individuals at short notice, and that people can be placed in very expensive temporary care while the situation is resolved (Department of Health, 2013). The orderly closure of social care providers should go some way to preventing this. These benefits have not been monetised.

## **Service users**

7.480 As stated above, the potential well-being cost for service users who experience the disorderly closure of a residential care home has been estimated to be approximately £923,000. The introduction of due diligence, therefore, has the potential to result in cost savings of £923,000 if it prevents the disorderly closure of a large residential care home.

7.481 This does not, however, have to be the case. Where a closure is well managed, clients can receive a benefit from their new and potentially more appropriate care. They need not experience anxiety during a well managed transition. This is illustrated by a study in Birmingham in which 70 residents were interviewed, during and after service closures (including care home closures)<sup>75</sup>. This suggests that when a provider exit is managed well by a local authority, there should be no negative effect on individuals' health and well-being. Indeed, a move could be beneficial if it leads to higher quality care.

7.482 The risk that one of the largest ten residential service providers in Wales would suddenly exit the market is, however, considered to be low. Based on an assumption of this occurring once every ten years, service users would avoid a well-being cost estimated to be on average £92,300 per annum.

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<sup>75</sup> Evidence from the Health Services Management Centre at the University of Birmingham has found adopting good practice limits potential negative impacts on individuals' health and well-being and, for some people, may give slight improvement in outcomes. See: *Achieving closure: Good practice in supporting older people during residential care closures*, July 2011. This is a joint publication by Health Services Management Centre at the University of Birmingham and ADASS, in association with SCIE.

## **Summary and preferred option**

7.483 The case of Southern Cross, although ultimately managed successfully, illustrated the huge risks of major providers exiting the market suddenly. The Welsh Government already recognises such threats in other areas of its jurisdiction, such as housing. Under the new service-model regime, the service regulator will develop a closer relationship with providers than currently, and the move towards a situation where it can undertake due diligence on the larger providers aligns to that change. This change parallels similar changes elsewhere in the UK.

7.484 There will be a need to develop appropriate and robust rules about the process, but overall it is considered that there are significant advantages to option two, and that is therefore the preferred way forward.

## **Workforce Regulation**

### **Removal of voluntary registration**

7.485 See part four of the Regulation and Inspection of Social Care (Wales) Bill for provisions relating to the registration of social care workers.

### **Options**

7.486 Two options are discussed in relation to voluntary registration:

- Option one: do nothing.
- Option two: remove the ability for domiciliary care workers and adult care home workers to register voluntarily.

#### **Option one: do nothing**

7.487 Under this option, domiciliary care workers and adult residential care workers will continue to be able to register voluntarily with the workforce regulator. Of the estimated 47,163 domiciliary care workers and adult residential care workers, only 1,226 (2.6%) were registered in 2013 (Care Council for Wales, 2013).

#### **Option two: remove the ability for domiciliary care workers and adult residential care workers to register voluntarily**

7.488 Under this option, domiciliary care workers and adult residential care workers would no longer be able to register voluntarily with the workforce regulator.

## **Costs**

### **Option one: do nothing**

#### **Ongoing costs: workforce regulator**

7.489 Voluntary registration is estimated to cost the Care Council for Wales approximately £15,000 per annum<sup>76</sup>.

#### **Ongoing cost: social care workers**

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<sup>76</sup> Information supplied by Care Council for Wales.

7.490 Social care workers who register voluntarily currently incur a fee of £10 per annum. There are currently 1,226 care workers who have chosen to register voluntarily. The cost to care workers of voluntary registration is, therefore, £12,260 per annum gross<sup>77</sup>.

7.491 In addition, there is an opportunity cost to care workers associated with the registration process<sup>78</sup>. It is estimated to take a worker approximately 30 minutes to complete the application process. Based on an average hourly gross salary of £6.80<sup>79</sup>, this represents an estimated cost of approximately £4,200. Registration lasts for three years and so the opportunity cost per annum for those registrants who have voluntarily registered, is estimated to be £1,400.

7.492 The total cost for care workers is, therefore, estimated to be £13,660 per annum.

## **Risks**

7.493 Under the current arrangements, there is a risk that costs could increase significantly if all social care workers who are not required to register decide to register voluntarily.

## **Option two: remove the ability for domiciliary care workers and adult care home workers to register voluntarily**

### **Workforce regulator: ongoing costs**

7.494 There would be no ongoing costs to the workforce regulator if the voluntary register was removed.

### **Workforce regulator: transition costs**

7.495 The Care Council for Wales estimates that it would cost approximately £2,000 to cease operating the voluntary registration system. The cost is equivalent to the salary of an administrative assistant for one month and would enable the service regulator to deal with enquiries, close accounts, cancel direct debits and issue refunds.

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<sup>77</sup> Registration fees are tax deductible for UK tax payers.

<sup>78</sup> It is also possible that service providers have chosen to voluntarily register their workforce. As such, any costs associated with voluntary registration would be incurred by service providers rather than workers.

<sup>79</sup> The median annual salary for a public and independent sector care worker in August 2013 was £13,632, with a gross hourly salary of £6.80. See Curtis (2013).

## Benefits

### Option one: do nothing

7.496 The register can provide parts of the workforce who are not required to register with some level of professional framework. However, the low level of registration demonstrates that this is not a major incentive for the current workforce.

7.497 The register also provides some data to the regulator regarding those individuals within the workforce who have chosen to register voluntarily. However, the low level of registration limits significantly this benefit.

### Option two: remove the ability for domiciliary care workers and adult care home workers to voluntarily register

#### Workforce regulator

**The removal of the option for voluntary registration would result in the Care Council for Wales saving approximately £15,000 per annum. Social care workers**

7.498 Social care workers would benefit from not incurring the existing costs of £13,360 per annum associated with registration.

#### Service users and citizens

7.499 The cessation of the register will provide greater clarity to the public about what a registered person is, and the level of assurance that this implies.

**Table 26: summary of estimated costs and benefits associated with removing voluntary registration (option two)**

	2016-17	2017-18	2018-19	2019-20	2020-21
Workforce regulator					
Transition		2,000	-	-	-
Ongoing <sup>1</sup>	15,000	-	-	-	-
Social care workers	13,360	-	-	-	-
<b>Total cost</b>	<b>28,360</b>	<b>2,000</b>	<b>-</b>	<b>-</b>	<b>-</b>

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## Summary and preferred option

7.500 The cessation of voluntary registration in social care has been a key commitment of the Welsh Government since the publication of Sustainable Social Services: a framework for action (Welsh Assembly Government, 2011). The option for voluntary registration offers little assurance to the public and can, potentially, offer false reassurance. It also consumes resources of the regulator without significant reward.

7.501 Option two is the preferred way forward.



## **Removal of dual registration for managers**

7.502 See part four of the Regulation and Inspection of Social Care (Wales) Bill for provisions relating to the registration of social care workers.

### **Options**

7.503 There are two options associated with the registration of managers:

- Option one: do nothing.
- Option two: remove dual registration.

#### **Option one: do nothing**

7.504 Under this option, managers will continue to have to register with both the workforce regulator and the service regulator.

#### **Option two: remove dual registration**

7.505 Under this option managers will be required to register only with the workforce regulator.

### **Costs**

#### **Option one: do nothing**

##### **Ongoing costs to the service regulator**

7.506 As stated above, the cost of registering managers has been included in the do nothing option associated with a service based model of regulation. This is because it was not possible to accurately separate out the cost of registering service managers from the estimated cost of £679,480 allocated to registering service managers and new establishments and agencies, and related administration.

##### **Ongoing costs: workforce regulator**

7.507 The workforce regulator has estimated the cost of registering managers to be £143,000 per annum<sup>80</sup>.

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<sup>80</sup> This figure does not include costs for premises, overheads and support allocation. Nor does it include any costs in relation to conduct or fitness to practise.

## Ongoing costs: managers<sup>81</sup>

### Registration with the service regulator: outstanding applications

7.508 The service regulator has currently registered 1,542 managers out of the 1,685 managers registered with the workforce register. There are, therefore, 143 managers registered with the workforce regulator who are not registered with the service regulator. Not all of those managers registered with the workforce register will be practising<sup>82</sup>. If existing practice continues, there will be between 0-143 managers with a best estimate of 72, who will need to register with CSSIW<sup>83</sup>.

7.509 Assuming a manager spends an average of 2.5 hours completing the application form, an average of 2.5 hours attending an interview and an average of 1 hour 20 minutes travelling to and from the interview, it is estimated that a manager would, on average, spend 6 hours 20 minutes on registration related activities. It is estimated that the cost per manager of this would be approximately £149<sup>84</sup>, giving an estimated total of between approximately £0 and £21,300, with a best estimate of approximately £10,650. This is a one-off cost since registration with the service regulator is not for a fixed period of time.

7.510 In addition, service managers would incur travelling expenses. Assuming managers travel an average of 25 miles to attend the interview, the estimated costs is £22.50<sup>85</sup> per manager, giving an estimated total of between approximately £0 and £3,200, with a best estimate of £1,600.

7.511 The total estimated cost to managers for outstanding applications is, therefore, between £0 and £24,500 with a best estimate of £12,250. This is a one-off cost since registration with the service regulator is not for a fixed period of time.

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<sup>81</sup> This has not been included in the cost to service providers since it relates to the requirement for managers to practise.

<sup>82</sup> It is possible for managers to take a career break or to exit the care and support workforce and remain on the register.

<sup>83</sup> This figure represents the backlog of managers waiting to be registered. It does not include fresh applications which may be made during the year.

<sup>84</sup> Based on an average annual salary for a domiciliary care manager of £30,766 (Curtis, 2013) and on costs of £9,366, giving a total salary cost of £40,132 per annum. The weekly cost, assuming six weeks annual leave including bank holidays is £872.43. Assuming the working week is 37 hours, the cost per hour is £23.60.

<sup>85</sup> 50 miles at 45 pence per mile. Based on HMRC rates for tax relief for business mileage when using own vehicle <http://www.hmrc.gov.uk/incometax/relief-mileage.htm#2>

7.512 For the purposes of allocating costs per year in the summary table below, it has been assumed that the backlog will be cleared within one year.

### **Registration with the service regulator**

7.513 It is estimated that 372 managers apply for registration each year<sup>86</sup>.

7.514 Assuming a manager spends an average of 2.5 hours completing the application form, an average of 2.5 hours attending an interview and an average of 1 hour 20 minutes travelling to and from the interview, it is estimated that a manager would, on average, spend 6 hours 20 minutes on registration related activities. It is estimated that the cost per manager of this would be approximately £149<sup>87</sup>, giving an estimated total of approximately £55,400 for the 372 managers expected to apply for registration per year. This is a one-off cost since registration with the service regulator is not for a fixed period of time.

7.515 In addition, service managers would incur travelling expenses. Assuming managers travel an average of 25 miles to attend the interview, the estimated is £22.50<sup>88</sup> per manager, giving an estimated total for 372 managers of approximately £8,400.

7.516 The estimated total cost to managers for fresh applications per annum is, therefore, £63,800. Since registration with the service regulator is not for a fixed period of time, each manager would only incur the costs associated with registering with the service regulator once.

### **Registration with the workforce regulator: ongoing registration for existing managers**

7.517 In addition, managers will continue to be required to register with the workforce regulator as well as the service regulator. This involves completing a registration form

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<sup>86</sup> Based on the number of applications to CSSIW during 2013/14.

<sup>87</sup> Based on an average annual salary for a domiciliary care manager of £30,766 (Curtis, 2013) and on costs of £9,366, giving a total salary cost of £40,132 per annum. The weekly cost, assuming six weeks annual leave including bank holidays is £872.43. Assuming the working week is 37 hours, the cost per hour is £23.60.

<sup>88</sup> 50 miles at 45 pence per mile. Based on HMRC rates for tax relief for business mileage when using own vehicle <http://www.hmrc.gov.uk/incometax/relief-mileage.htm#2>

every three years and an annual registration fee of £30. Assuming that a manager spends 2.5 hours completing the form, the estimated cost per manager every three years is approximately £59 with a total estimated cost of approximately £99,400 for the 1,685 managers. Given that managers will only need to register every three years, the average annual cost is estimated to be approximately £33,100. The cost of annual registration fees for the 1,685 registered managers is estimated to be £50,550.

7.518 The total cost, therefore, to managers is £83,650 per annum.

### **Registration with the workforce regulator: fresh registration**

7.519 Under this option, those 372 new managers that are expected to register with the service regulator each year, will also be required to register with the workforce regulator. As for existing managers, this involves completing a registration form every three years and paying an annual registration fee of £30. Assuming that a manager spends 2.5 hours completing the registration form, the estimated cost per manager is approximately £59. Assuming 372 additional managers register each year, the total estimated cost is approximately £21,900 per annum.

7.520 The total annual registration fees for the 372 newly registered managers are estimated to be approximately £11,200.

7.521 The total cost to managers, therefore, for applications to register with the workforce regulator is estimated to be £33,100.

7.522 The total ongoing cost of dual registration for managers, therefore, consists of two types of costs: one-off costs for registration with the service regulator and ongoing costs with the workforce regulator. These are detailed in the summary table below.

7.523 To avoid over-estimating the annual costs to service providers, the cost of £11,200 for registration fees for the fresh applications has been included in the cost to service managers incurred when making fresh applications to the workforce regulator but has been deducted from the ongoing costs to managers of £83,650 for remaining registered with the workforce regulator. The ongoing cost for managers is, therefore, estimated to be £72,500.

7.524 If the costs were not deducted, it would result in an over-estimate of the annual costs, since it would assume the total number of managers grows by 372 each year. In reality, newly registered managers are likely to replace some of the existing registered managers.

**Table 27: summary of costs associated with maintaining dual registration (option one)**

	2016-17	2017-18	2018-19	2019-20	2020-21
Service regulator <sup>1</sup>					
Workforce regulator	143,000	143,000	143,000	143,000	143,000
Managers with outstanding service regulator applications	12,500		0	0	0
Managers making fresh applications to the service regulator	63,800	63,800	63,800	63,800	63,800
Managers making fresh applications to the workforce regulator	33,100	33,100	33,100	33,100	33,100
Ongoing costs for managers to remain registered with the workforce regulator	72,500	72,500	72,500	72,500	72,500
<b>Total cost</b>	<b>324,900</b>	<b>312,400</b>	<b>312,400</b>	<b>312,400</b>	<b>312,400</b>

<sup>1</sup>This cost is included in the cost of registering establishments and agencies set out under the 'Model of Regulation'.

## **Option two: remove dual registration**

### **Ongoing costs: workforce regulator**

7.525 The workforce regulator has estimated additional ongoing costs of £22,500. This cost is expected to be incurred as a result of increased application processing time and increased follow-up for information to support applications<sup>89</sup>. The workforce regulator will have to enhance their existing practice as a result of the service regulator no longer undertaking interviews as part of the fitness to practise test. The total annual cost to the workforce regulator for registering managers is, therefore, estimated to be approximately £165,500.

### **Transition costs: workforce regulator**

<sup>89</sup> This cost does not include overheads, administration and support costs.

7.526 The workforce regulator has estimated that the transition costs will be approximately £1,800. This cost is expected to be incurred as a result of needing to amend the current workforce database.

#### **Transition costs: service regulator**

7.527 There are no transition costs for the service regulator.

#### **Transition costs: managers**

7.528 There are no transition costs for managers.

#### **Ongoing costs: managers**

7.529 The costs incurred by managers in completing the workforce regulator's registration form will be the same as option one. Similarly, the annual fee paid by the manager to the workforce regulator will be the same as under option one. The estimated total average annual cost to managers to remain on the register is, therefore, £72,500.

7.530 The cost to managers making fresh applications to the register with the workforce will be the same as option one. That is, £33,100. The total cost to managers under option two would, therefore, be £105,600.

7.531 Under this option, new managers will no longer incur the costs associated with registering with the service regulator.

### **Benefits**

#### **Option one: do nothing**

7.532 The benefit of retaining the existing system of dual registration is the assurance provided through having both an interview and a fitness to practise assessment.

#### **Option two: remove dual registration**

##### **Service regulator**

7.533 There is a cost saving for those who have not registered with the service regulator. There are 1,685 registered with the workforce regulator and only 1,542 registered with the service regulator.

7.534 The estimated cost saving to the service regulator where the current 143 service managers would not register is approximately £20,900. This is based on the assumption that an Executive Officer will spend an average of 1 hour processing the application and a Head of Branch will spend on average 2.5 hours conducting an interview and an average of 30 minutes preparing for an interview. That is, there is a cost of £23.87 associated with processing an application<sup>90</sup> and an estimated cost of £122.34<sup>91</sup> associated with each of the interviews and associated preparation.

## Managers

7.535 The one-off cost saving for the 143 service managers who have not yet registered with the service regulator would be £12,500.

7.536 The annual cost saving for managers not having to register with the service regulator would be £63,800.

**Table 28: summary of estimated costs associated with removing dual registration (option two)**

	2016-17	2017-18	2018-19	2019-20	2020-21
Service regulator					
Workforce regulator					
Transition	1,800				
Ongoing	143,000	165,500	165,500	165,500	165,500
Managers	181,900	105,600	105,600	105,600	105,600
<b>Total cost</b>	<b>326,700</b>	<b>271,100</b>	<b>271,100</b>	<b>271,100</b>	<b>271,100</b>

## Summary and preferred option

7.537 Throughout consultation, the existing dual registration of managers was cited as a problem with the current regime. It was described as expensive and time-consuming. The role should essentially be a professional one but under the current system this is confused by the requirement to meet fitness requirements set out by the service regulator. With the move to require specific statutory duties on Responsible Individuals in providers, it is clear that the focus of regulation on managers should

<sup>90</sup> Based on a gross salary of £40,632 with six weeks annual leave, the weekly cost is £883.30, with an hourly rate of £23.87 for a 37 hour working week.

<sup>91</sup> Based on a gross salary of £69,408 with six weeks annual leave and a 37 hour working week, the hourly rate is £40.78.

move to their professional status. This will allow the managerial workforce to be more flexible and create a pool of professionals within the sector.

7.538 Option two, the removal of dual registration, is the preferred option.



## Extending mandatory registration of the social care workforce

7.539 See part four of the Regulation and Inspection of Social Care (Wales) Bill for provisions relating to the registration of social care workers and section 79(1)(b) which provides that Social Care Wales must maintain a register of social care workers as specified by the Welsh Ministers.

### Options

7.540 Three options<sup>92</sup> are discussed in relation to mandatory regulation of the workforce:

- Option one: do nothing.
- Option two: extend the existing model of mandatory registration across the social care workforce using the existing registration fee structure.
- Option three: extend the existing model of mandatory registration across the social care workforce with increased registration fees<sup>93</sup>.

#### Option one: do nothing

7.541 Under this proposal social care workers subject to mandatory registration with the workforce regulator would continue to be limited to specific groups of the workforce – social workers, social work students, domiciliary care managers, adult residential care home managers, managers of residential care for children and young people and residential care workers for children and young people care workers.

7.542 The Welsh Government estimates that there are 67,069 people in the social care workforce. Of these, only an estimated 11,526 (17%) are required to register with the workforce regulator. The remaining 55,543 (83%) are not registered with, or regulated by, the workforce regulator. This includes personal assistants, day care workers, day care managers, adult placement carers, advocates, inspectors, domiciliary care workers and adult residential care workers.

7.543 Under this option, service providers would remain responsible for ensuring these unregistered care workers are suitable for the tasks they undertake. This includes

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<sup>92</sup> The options discussed in this section assume that the existing model of regulation will continue. It would, however, be possible for other models of regulation to be implemented for new groups subject to mandatory registration. This could include models of regulation which are less onerous and, therefore, less costly than the existing model.

<sup>93</sup> Registration fees have been static for the past 12 years.

ensuring social care workers are fit and proper for the task (through, for example, a Disclosure and Barring Service check) and that they have the skills and qualifications necessary to provide good quality care.

**Option two: provide Welsh Ministers with the power to extend the existing model of mandatory registration across the social care workforce using the existing fee structure**

7.544 Option two would provide Welsh Ministers with the power to extend mandatory registration to all members of the social care workforce. If these powers were invoked, the existing model of regulation, whereby employers are responsible for ensuring the majority of the social care workforce (83%) are suitable for the tasks they undertake, would be replaced with regulation via the workforce regulator. This would standardise the approach to workforce registration and regulation across all groups of the social care workforce.

7.545 Under this option, the existing annual fee structure would continue. Currently, student social workers' fees are £10, social worker fees are £30, social care manager fees are £30 and social care worker fees are £10.

**Option three: provide Welsh Ministers with the power to extend the existing model of mandatory registration across the social care workforce with increased registration fees**

7.546 Option three would provide Welsh Ministers with the power to extend mandatory registration to all members of the social care workforce but with an increase to the current registration fees.

7.547 The proposed fee structure is £25 per annum for social work students and social care workers; and £75 per annum for social workers and social care managers.

## **Costs**

### **Option one: do nothing**

#### **Risk to individuals who use social care services**

- 7.548 The vulnerability of the service user, together with the lack of a standardised approach to regulating the workforce, has resulted in concerns that some groups of service users are not as protected as others.
- 7.549 It has not been possible to assess the precise risk to individuals whose social care services are delivered by care workers who are not registered, since data about referrals and convictions is not routinely collected on non-registered care workers.
- 7.550 It is, however, possible to estimate the potential risk using the data collected by the Care Council for Wales in respect of notifications received from Welsh police forces via the Notifiable Occupation Scheme.
- 7.551 The Notifiable Occupation Scheme relates to professions or occupations which carry special trust or responsibility, in which the public interest in the disclosure of conviction and other information by the police generally outweighs the normal duty of confidentiality owed to the individual. Notifications are generally made about convictions, reprimands and final warnings relating to recordable offences.
- 7.552 During the period June 2008 to March 2013, 1,982 notifications were made. That is, an average of approximately 417 notifications per year. Assuming only one notification is received per individual, notifications of convictions, reprimands and final warnings were received about an average of approximately 0.75% of the estimated 55,543 unregistered social care workforce per annum.
- 7.553 Between 2010-11 and 2013-14 the Care Council for Wales received 101 referrals regarding convictions and cautions. That is, an average of 25 referrals per annum. Assuming that only one referral is received per registered social care worker, referrals were received about 0.2% of the 11,526 registered social care workforce per annum (CCW, 2013a).

7.554 Whilst it is not possible to compare directly the rates of notifications per unregistered social care worker to those of the rates of referrals per registered social care worker, this data does provide some evidence to suggest that the prevalence of convictions and cautions may be higher across the non-registered social care workforce compared to the registered workforce.

### **Workforce regulator**

7.555 The Care Council for Wales provided information on the cost of regulating the social care workforce. For the financial year 2012-13, the cost of regulating the workforce, based on a register of 11,599 registrants was £3,170,175. Regulation refers to regulation, monitoring and enforcement. The cost of regulation per registrant is therefore estimated to be £273.31 per annum.

7.556 Those social care workers who are currently required to register, are charged an annual fee of either £10 or £30, depending on the work they undertake. Registration typically lasts for three years but an annual fee is charged to cover the cost of the ongoing regulative activities.

7.557 Given the annual fee, the regulation of the social care workforce is being publicly subsidised at a rate of either £263.31 or £243.31 per registrant.

7.558 The projected revenue from fees for 2012-13 was £264,350 resulting in a requirement of a public subsidy of £2,905,825, which is funded by the Welsh Government through a grant in aid.

### **Workforce**

7.559 There is an opportunity cost associated with the time it takes each worker to complete the registration process. It is estimated that the process takes each worker approximately 30 minutes. The greater majority of registered workers are social workers and managers<sup>94</sup>. Assuming an average salary of £23.90 an hour, it is

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<sup>94</sup> Based on an average annual salary for a domiciliary care manager of £30,766 (Curtis, 2013) and on costs of £9,366, giving a total salary cost of £40,132 per annum. The weekly cost, assuming six weeks annual leave including bank holidays is £872.43. Assuming the working week is 37 hours, the cost per hour is £23.60. Based on the mean gross salary of £31,824 with salary on costs of £9,388 per year, giving a total gross cost of £41,212. Assuming six weeks annual leave and a working week of 37 hours, the gross hourly cost is approximately £24.20.

estimated that the average cost of the registration process is approximately £11.95 per worker.

7.560 Registration typically lasts for three years and so it is assumed that one third of the relevant workforce (3,866) are required to register in each year. The total cost associated with the time taken to register is therefore estimated to be approximately £46,200 per annum.

7.561 As stated above, those workers who are subject to mandatory registration currently pay a fee of £10 or £30 per annum. The annual fee is a contribution towards the initial registration costs and ongoing regulation costs incurred by the workforce regulator. Based on 2012-13 data, the total annual fees paid by the workforce was estimated to be £264,350.

7.562 The total annual cost to the workforce is therefore estimated to be £310,550.

**Table 29: summary of estimated costs associated with maintaining the existing approach to workforce registration (option one)**

	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>
Public finance	2,905,825	2,905,825	2,905,825	2,905,825	2,905,825
Registered workers	310,550	310,550	310,550	310,550	310,550
<b>Total cost</b>	<b>3,216,375</b>	<b>3,216,375</b>	<b>3,216,375</b>	<b>3,216,375</b>	<b>3,216,375</b>

**Option two: provide Welsh Ministers with the power to extend the existing model of mandatory registration across the social care workforce using the existing fee structure**

7.563 The cost associated with this option depends upon whether or not Welsh Ministers invoke the powers and extend mandatory registration across the whole of the social care workforce. At this stage, there are no immediate plans to extend mandatory registration. If the powers are not invoked and the current registration regime continues, then the costs would be as set out under option one (do nothing).

7.564 The following sections provide a best estimate of the likely costs if Welsh Ministers were to extend mandatory registration. For the purposes of this regulatory impact

assessment, it is assumed that the workforce are informed of the change in registration requirements in 2016-17 and that registration is phased in over a three-year period (2017-18 to 2019-20) such that approximately equal number of workers are expected to register in each of the three years.

## **Ongoing costs**

### **Workforce regulator**

7.565 The Care Council for Wales estimates the total cost of extending mandatory registration across the social care workforce based on an estimated workforce of 55,199, would be £4,705,100 per annum (see table 47, annex B). This equates to an average annual cost per registrant of £85.24. The current average cost per registration is approximately £273.31. Thus, the workforce regulator estimates that extending registration across the workforce would result in a reduction in cost of approximately £188 per registrant. The reduction in cost per registrant is based on the low marginal costs<sup>95</sup> associated with each additional registrant. As a consequence, significant economies of scale could be achieved by extending registration across the social care workforce.

7.566 The estimated income, based on current fee levels, from 55,199 registrants would be approximately £682,500<sup>96</sup>. Thus, the grant in aid required to extend mandatory registration would be approximately £4,022,600 per annum.

7.567 The existing grant in aid paid to the Care Council for Wales is £2,905,825. The additional cost, therefore, of extending mandatory registration across an estimated workforce of 55,199 is estimated to be approximately £1,116,800.

### **Sensitivity analysis on workforce regulator costs**

7.568 As noted above, analysis undertaken by Welsh Government as part of this regulatory impact analysis, suggests that the total social care workforce consists of an

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<sup>95</sup> Marginal cost refers to the cost of the next unit or one additional unit of volume of output. In this case, there are 11,199 registrants on the register. The marginal cost is, therefore, the cost associated with registering the 11,200<sup>th</sup> registrant. Since it would be possible to register the 11,200<sup>th</sup> registrant without significantly increasing variable or fixed costs, the cost of registering the 11,200<sup>th</sup> registrant would be significantly lower than the current average. As a result, the average cost per registrant would reduce.

<sup>96</sup> Estimated income based on an average fee of £12.36 per registrant.

estimated 67,069. Under-estimating the social care workforce could have significant implications for the additional cost of extending mandatory registration.

7.569 The cost of registering 67,069 registrants at £85.24 would be approximately £5,717,000. Based on current fees, the estimated income from 67,069 registrants would be approximately £829,000<sup>97</sup>, requiring a grant in aid of £4,887,700. The additional grant required, based on a workforce of 67,069 at a cost of £85.24 per registrant would be approximately £1,981,900.

7.570 There is also the risk that the expected efficiency savings will not be realised. A marginal cost analysis has not been undertaken. There is, therefore, a lack of certainty about the extent to which the register can be extended before there is an increase in fixed costs. Thus, it is possible the reduction in cost per registrant resulting from economies of scale have been over-estimated. It is likely that extending mandatory registration across the social care workforce will result in a cost per registrant which lies somewhere between the estimated £85.24 and the current cost of £273.31. Assuming the cost per registrant lies at the midway point, the cost per registrant could be approximately £180. If this is the case, the cost of registering 67,069 registrants could be approximately £12,072,400, rather than the estimated £5,717,000. The income at current fee levels would be approximately £829,000<sup>98</sup>. Thus, the grant in aid required would be approximately £11,243,400, resulting in an additional grant of approximately £8,337,600.

## **Workforce**

7.571 At present, 17% of the social care workforce are required to register with the workforce regulator. Those workers will not be affected by this option. However, there would be an additional cost incurred by the remaining 83% of the workforce.

7.572 As with option one, there is an opportunity cost associated with the time it takes a social care worker to complete the registration process. It is estimated to take each

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<sup>97</sup> Estimated income based on an average fee of £12.36 per registrant.

<sup>98</sup> Estimated income based on an average fee of £12.36 per registrant.

worker approximately 30 minutes to complete the application process. Based on an average hourly salary of £6.80<sup>99</sup>, this equates to a cost of £3.40 per worker. Phasing in the registration requirement using the projections provided by the Care Council for Wales, means that approximately 14,530 additional workers are expected to register each year between 2017-18 and 2019-20. This equates to an additional cost of approximately £49,400 per annum.

7.573 The estimated additional fee paid by the workforce if mandatory registration is phased in would be approximately £139,400 in 2017-18, £278,800 in 2018-19 and £418,200 in 2019-20.

## Transition costs

### Workforce regulator

7.574 The workforce regulator would incur transition costs associated with amending the existing system and communicating the change to workforce. The estimated cost of amending the existing system is £1,800. Costs related to communicating the change to the workforce are expected to be minimal. It is expected the workforce regulator will communicate the change to social care providers who, in turn, will inform social care workers about the proposed change. For existing members of staff, this could be done via a newsletter or email. For new staff it is likely this would form part of the induction process.

**Table 30: summary of estimated costs associated with extending mandatory registration using the existing fee structure (option two)**

	2016-17	2017-18	2018-19	2019-20	2020-21
Public finance					
Transition					
Ongoing	2,905,825	4,022,600	4,022,600	4,022,600	4,022,600
Registered workers (fees only)	264,350	682,500	682,500	682,500	682,500
<b><i>Total cost exclusive of opportunity costs</i></b>	<b><i>3,170,175</i></b>	<b><i>4,705,100</i></b>	<b><i>4,705,100</i></b>	<b><i>4,705,100</i></b>	<b><i>4,705,100</i></b>

<sup>99</sup> The median annual salary for a public and independent sector care worker in August 2013 was £13,632, with a gross hourly salary of £6.80 (Curtis, 2013).



Registered workers (opportunity costs)	46,200	95,600	95,600	95,600	95,600
<b>Total costs inclusive of opportunity costs</b>	<b>3,216,375</b>	<b>4,800,700</b>	<b>4,800,700</b>	<b>4,800,700</b>	<b>4,800,700</b>

### **Option three: extend the existing model of mandatory registration across the social care workforce with increased registration fees**

7.575 The Care Council for Wales has proposed raising the existing fee structure from £10 and £30 to £25 and £75 to fund the cost of extending mandatory registration across an estimated workforce of 55,199 social care workers.

7.576 Under this option, the Care Council for Wales estimates the income from the increased fees would be approximately £1,830,900. Deducting the fee income from the estimated cost registering the workforce of £4,705,100 (at £85.24 per registrant), would result in a grant in aid requirement of £2,874,200, resulting in an overall reduction in grant of £31,600.

7.577 As with option two, there is a risk that both the size of the workforce and the cost of registration have been under-estimated. Assuming the estimated cost per registrant is £85.24, it would cost £5,717,000 to regulate a workforce of 67,069. The increased fee structure would result in an estimated income of £2,072,100, giving a grant in aid requirement of £3,644,900. The increased cost would be approximately £739,000.

7.578 If the cost per registrant is £180, rather than being the estimated £85.24, it would cost approximately £12,072,400 to register a workforce of 67,069. With an increased fee income of approximately £2,072,100, the grant in aid requirement would be approximately £10,000,300. The additional cost, therefore, would be approximately £7,094,500.

7.579 The above calculations do not take into account staff turnover which is relatively high across the social care workforce, in particular across care workers<sup>100</sup>.

<sup>100</sup> The Social Care and Support sector average turnover rate in 2012 was 24% (Ekosgen and Skills for Care, 2013).

7.580 Assuming that the estimate of an overall saving of £31,600, as suggested by the Care Council for Wales, is achieved, this option may not be financially viable in the long term. The social care workforce is predicted to increase by between 12.5% and 62.5% by 2025 (Skills for Care, 2010). Should the workforce in Wales grow in line with this projection, it would increase from an estimated 67,069 to between 75,453 and 108,987 by 2025. This would have a substantial impact on the cost to the public of registering the social care workforce in Wales.

## **Workforce**

7.581 As with option two, there is an opportunity cost associated with the time it takes each worker to complete the registration process. It is estimated to take each worker approximately 30 minutes to complete the application process. Based on an average hourly salary of £6.80<sup>101</sup>, this equates to a cost of £3.40 per worker. Phasing in the registration requirement using the projections provided by the Care Council for Wales means that approximately 14,530 additional workers are expected to register each year between 2017-18 and 2019-20. This equates to an additional cost of approximately £49,400 per annum.

7.582 The estimated additional fee paid by the workforce, if mandatory registration is phased in, would be approximately £522,200<sup>102</sup> in 2017-18, £1,044,400 in 2018-19 and £1,566,500 in 2019-20.

## **Service providers and social care workers**

7.583 Social care service providers have expressed reservations about extending the registration of the workforce due to the potential impact on staff recruitment and retention within the context of low pay and high staff turnover<sup>103</sup> (McGregor, 2009). Consequently, providers have expressed concern that care workers would find it unaffordable and, since local authorities would be unlikely to help providers meet the cost, the cost of registration would have to be borne by service providers.

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<sup>101</sup> The median annual salary for a public and independent sector care worker in August 2013 was £13,632, with a gross hourly salary of £6.80 (Curtis, 2013).

<sup>102</sup>  $(1,830,875 - 264,350) / 3$

<sup>103</sup> The Social Care and Support sector average turnover rate in 2012 was 24% (Ekosgen and Skills for Care, 2013) Why are Some Employers more Successful than Others in Retaining their Workforce?

- 7.584 As well as the direct costs of registration, mandatory regulation of the social care workforce has the potential to have indirect costs for social care workers, social care employers, local authorities and service users and their families.
- 7.585 Existing regulatory requirements of the social care workforce is considered to have caused some recruitment and retention problems. Delays and costs, associated with registration and other regulatory requirements, imposed upon care workers deter prospective applicants (coupled with low rates of pay within the sector) and many would-be social care workers opt for the simpler application procedures and greater financial rewards offered in the service and retail sectors (Lathlean et al, 2006).
- 7.586 Problems with recruitment and retention restrict attempts to improve skills and status (Eborall, 2005) which, in turn, can have an impact on quality of social care provided.
- 7.587 The Department for Health (2009) concluded that, given the potential risks associated with registering the social care workforce, there needs to be robust evidence that extended regulation would improve public safety and add benefits which are not achievable by non-statutory means (Department of Health, 2009).

**Table 31: summary of estimated costs associated with extending mandatory registration using an increased fee structure (option three)**

	2016-17	2017-18	2018-19	2019-20	2020-21
Public finance					
Transition					
Ongoing	2,905,825	2,874,200	2,874,200	2,874,200	2,874,200
Registered workers (fees only)	264,350	1,830,900	1,830,900	1,830,900	1,830,900
<b>Total cost exclusive of opportunity costs</b>	<b>3,170,175</b>	<b>4,705,100</b>	<b>4,705,100</b>	<b>4,705,100</b>	<b>4,705,100</b>
Registered workers (opportunity costs)	46,200	95,600	95,600	95,600	95,600
<b>Total costs inclusive of opportunity costs</b>	<b>3,216,375</b>	<b>4,800,700</b>	<b>4,800,700</b>	<b>4,800,700</b>	<b>4,800,700</b>
Public finance		31,600	31,600	31,600	31,600
<b>Total benefit</b>	<b>-</b>	<b>31,600</b>	<b>31,600</b>	<b>31,600</b>	<b>31,600</b>

## Benefits

### Option one: do nothing

7.588 The current system of regulation via social care employers of the majority of social care workers, places responsibility on employers to ensure that the social care workers it employs are suitable for the tasks they undertake. The benefit of the model is that it encourages the service provider to improve the skills of the workforce and, in turn, the quality of the care provided.

7.589 The current practices are consistent with the policy intent set out in Sustainable Social Services (Welsh Assembly Government, 2011), which clarifies that the responsibility for quality, safeguarding and protection lies with service providers, professionals and commissioners of services and not primarily with regulators and inspectors.

7.590 Within this, there is an expectation that organisations providing social care should take responsibility for the direction, training and support of the social care workers they employ.

7.591 Sustainable Social Services: a framework for action (Welsh Assembly Government, 2011) sets out the Welsh Government intention to shift the balance of regulation and inspection from the point of service delivery to the organisation which provides the service and to specific professional roles in the workforce. The purpose of making this shift is to reduce the burden and the quantity of regulation.

**Option two: extend the existing model of mandatory registration across the social care workforce using the existing fee structure**

**Service users**

7.592 There is evidence that existing regulation of the social care workforce is perceived as having had a positive impact. Lathlean et al (2006), for example, found that all stakeholders felt that registration of the social care workforce, through regulation and training, had helped to improve the protection of service users, improve the standard of care practice, and to improve the perception of, and confidence in, professionals and care workers.

7.593 Whilst there is support for workforce registration and regulation, there is little empirical evidence that workforce regulation improves practice and the protection of the public. In a paper considering potential models of regulation for the healthcare support workforce, Griffiths and Robinson (2010) found, for example, it was not possible to demonstrate unequivocally that an unregulated healthcare support workforce presents a risk to public safety and that this risk would be prevented by regulation.

7.594 Unlike registered social care workers, it is not possible to hold unregistered social care workers to account against a code of practice. If registration was introduced, it would be possible for the workforce regulator to use standards, set out in a code of practice, when considering issues of misconduct and when determining appropriate sanctions such as whether a registered worker should remain on the register.

7.595 Introducing a code of practice as part of mandatory national registration could have benefits for service users, their families and for social care workers. Service users and their families would know that social care workers are fit to practise, both in terms of

the Barring and Disclosure checks currently undertaken and through the addition of adherence to the principles within their code of practice.

### **Social care providers and commissioners**

7.596 Social care workers could also benefit from any improvements in the perception of, and confidence in, social care workers. If registration resulted in improvements in the perception of social care workers, this may benefit employers as it may become easier to recruit and retain social care workers. Recruiting and retaining social care workers is becoming a key issue in the sustainability of social care provision (see above for discussion).

7.597 A further benefit is that regulation can provide a means of requiring minimum qualification levels of staff, supporting the professionalization of the workforce.

7.598 Registration of social care workers would provide a valuable national data set for employers, local authorities, regulators and the Welsh Government to aid understanding of the workforce and to inform workforce planning. In England, it is estimated that the adult social care workforce will grow from the current 1.6 million to between 1.8 million and 2.6 million (between 12.5% and 62.5%) by 2025 (Skills for Care, 2010). In Wales, assuming the same modelling, the workforce would grow from an estimated 67,069 to between 75,453 and 108,987 by 2025.

7.599 To ensure social care needs are met in the future, effective workforce commissioning is required. Workforce commissioning is concerned with predicting the future demand for different types of workers and matching this with supply (Skills for Social Care, 2010). Local authorities, as commissioners of social care services, are commissioners of the workforce that provides the service. Thus, effective commissioning is underpinned by a system which is not only concerned with commissioning the provision of social care services but is also concerned with predicting the future demand for specific groups of social care workers to match the predicted demand for social care services (see Skills for Social Care, 2010). A national dataset, would therefore, be useful for local authorities when projecting whether the future demand for social care workers is likely to be met.

## **Workforce regulator**

7.600 Mandatory registration of care workers would have benefits for regulators as it would be possible to analyse the dataset and to publish more comprehensive information about the workforce characteristics and about recruitment and retention trends. This information would enable the workforce and service regulators to understand the qualifications, experience and stability of the social care workforce.

7.601 It would be possible, however, to collect data about the social care workforce via service provider regulation without making registration mandatory. In 2005, England introduced the Skills for Care National Minimum Data Set for Social Care (NMDS-SC), which is considered to be the most authoritative and reliable data source on the social care workforce in England (Hussein and Manthorpe, 2014). The dataset was introduced to improve information on the sizeable, yet diverse, care sector in England. It is maintained by Skills for Care. The data are based on information provided each month by several thousands of care employers who submit aggregate information on all their staff in addition to detailed anonymised accounts of some or all of these workers. Completion of NMDS-SC was initially voluntary but it has been mandatory since 2012.

7.602 If a comparable approach was implemented in Wales, it would provide data about the social care workforce without requiring registration. This would not, therefore, have any negative impact on the social care workforce (see risks below). The costs of providing the data would be borne by the service provider rather than the employee or the public. There are a number of risks associated with collecting data from service providers rather than collecting information from individual social care workers. Collecting data about the employee numbers, experience and qualifications, and length of service with the company may provide a perverse incentive for service providers to return false, misleading or incomplete information, since such data about employees is used for inspection purposes. There is also a risk that the data would quickly become out of date since staff turnover within the sector is relatively high.

**Option three: extend the existing model of mandatory registration across the social care workforce with increased registration fees**

7.603 Option three would have the same benefits as option two, with the added advantage that the increased fees would increase the financial viability and sustainability of extending mandatory registration.

### **Summary and preferred option**

7.604 The extension of mandatory registration is a finely balanced debate. Discussions with the sector during the course of the development of the Bill exposed a variety of views, but ultimately the predominant view was that the existing model of registration should be retained without significant extension. This approach would allow the relatively new registration of managers to bed in before further groups should be brought in. Ultimately, the benefits of extending registration are mixed, with concerns relating to the transfer of accountability for staff performance and quality from employers to regulators.

7.605 These arguments, balanced against the significant costs for employers, regulators and the workforce, mean that the preferred option is to retain the status quo, and to pursue option one. However, it is recognised that as the current system becomes embedded, the cost/benefit balance may well change and therefore it is considered important that the Welsh Government retains powers to revisit this decision in future. A further analysis of costs and benefits will be undertaken if and when the powers to extend mandatory registration of the workforce are utilised.



## **Regulating specific workforce training for the workforce groups on the register**

7.606 See section 113 of the Regulation and Inspection of Social Care (Wales) Bill for provisions relating to approval of courses.

### **Options**

7.607 There are two options associated with regulating workforce training:

- Option one: do nothing (that is, maintain the existing arrangements for the regulation of social work).
- Option two: maintain the existing arrangements for the regulation of social work training and extend the same methodology to regulate social care training and education to the other workforce groups on the register.

### **Option One**

7.608 The Care Standards Act 2000 sets out the arrangements for the approval of courses for the qualifying and post-qualifying training of social workers. This process involves setting out requirements for the content and quality of the training and inspecting programmes to ensure they meet the required standards. This involves setting requirements for the:

- Content of courses and methods of completing courses.
- Provision to the council of information about courses.
- People who may participate in courses or in parts of courses specified in the rules.
- Number of people who may participate in courses.
- Award by the Council of certificates of the successful completion of courses.
- Lapse and renewal of approvals.
- Withdrawal of approvals.

7.609 There are also provisions for the visiting of places where courses or examinations relating to relevant courses take place.

7.610 This process has worked effectively since its inception following the Care Standards Act 2000 and the requirements have been regularly reviewed to ensure

they reflect the current policy and practice landscape. There are no plans to change this process.

7.611 The social care workforce regulator requires all of the groups of staff on its register to hold specified qualifications. Whilst it regulates the quality of social work training (as set out above), it does not regulate the training and qualifications of other groups of staff. Experience of the training and qualifications of other groups of staff has indicated variability in quality and the need for further intervention to ensure that this education is of the necessary quality to underpin the practice of these staff.

### **Option two**

7.612 Option two involves extending the existing arrangements for the regulation of social work training to regulate social care training and education for the other workforce groups. This includes registered managers and social care workers who work within residential care homes for children and young people. This could involve setting out requirements for the content and quality of the training and inspecting programmes to ensure they meet the required standards, as described above in relation to social work training.

## **Costs**

### **Option one**

#### **Ongoing costs**

##### **Workforce regulator**

7.613 The cost of the regulating social work training during 2013-14 was £90,000<sup>104</sup>.

##### **Training and education providers**

7.614 The existing costs of regulating social work training impacts upon eight programme providers in the following ways:

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<sup>104</sup> Source: Care Council Wales. This does not include overheads, administration and support costs.

- Where a university wants to provide a qualifying or post qualifying course for social workers they must have the course validated by the university and approved by the workforce regulator.
- In gaining approval from the workforce regulator, the provider must demonstrate it has met the published rules and requirements. The rules and requirements set out matters relating to partnership and management arrangements, resource provision, selection procedures, necessary policies and procedures, learning criteria, assessment criteria and quality assurance arrangements.
- Programmes are visited as part of the approval process and are then subject to ongoing quality assurance.
- After approval, the three forms of quality assurance are:
  - Annual monitoring, which involves the programme providing a range of statistical and qualitative information which the regulator scrutinises. The regulator makes further enquiries through an annual visit and provides a written response setting out any recommendations for improvement.
  - Periodic reviews occur every five years, which are in-depth reviews ensuring that the programme continues to meet all aspects of the approval criteria.
  - Thematic reviews in which the regulator looks at an aspect of education. For example, how the needs of carers are addressed through social work degree programmes.
- If the regulator has concerns at any point that a programme may not be meeting the requirements for approval, it can undertake a focused investigation or inspection. The potential outcome of such is removal of approval.

7.615 Determining the cost to higher education institutions of gaining the approval of the workforce regulator for social work degree courses is problematic, since it is not possible to separate the cost of gaining approval for a course from the workforce regulator from the cost of the university degree validation process.

7.616 It has not been possible, therefore, to estimate the existing cost of approval to social work degree providers.

7.617 The cost of regulation has, however, been designed to keep costs to a minimum. Much of the information used by the workforce regulator, for example, is the same as

the information which is prepared by universities for validation or quality assurance purposes.

## **Workforce**

7.618 There are no direct cost implications for the workforce.

## **Service users/citizens**

7.619 There are no direct cost implications for service users/citizens.

**Table 32: summary of estimated costs associated with maintaining existing regulation of training (option one)**

	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>
Workforce regulator	90,000	90,000	90,000	90,000	90,000
<b>Total cost</b>	<b>90,000</b>	<b>90,000</b>	<b>90,000</b>	<b>90,000</b>	<b>90,000</b>

## **Option two**

## **Ongoing costs**

### **Workforce regulator**

7.620 In relation to regulating social care training and education for the other workforce groups on the register, there are approximately 80 learning providers and a wide range of courses (eight level 5 Diplomas, the Level 3 Diploma for Residential Child Care Workers and the Induction Framework, which allows initial registration for residential child care workers).

7.621 The workforce regulator has estimated that the cost of extending the regulation of social care training across other workforce groups on the register is £90,000 per annum. This would fund a manager and an administrator<sup>105</sup>.

7.622 The cost of regulating training for social workers is relatively more expensive than the expected cost of regulating training for the other registered workforce groups due to the extent of the involvement of the workforce regulator.

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<sup>105</sup> Source: Care Council for Wales. This does not include overheads, administration and support costs.

7.623 Social work training and education is currently jointly developed. Universities accredit the courses and the workforce regulator approves them as being suitable for the tasks social workers undertake.

7.624 In contrast, the approval of training for other registered workforce groups will be less onerous. As part of the process of registering courses with the workforce regulator, training providers will be required to demonstrate the suitability of their course for specific groups of the workforce. The workforce regulator will make an assessment based on the information provided.

### **Training and education Providers**

7.625 Extending the existing arrangements for the regulation of social work training to this broader body of training and education, would introduce additional costs for approximately 80 learning providers (who are mainly further education colleges and independent training providers) and the workforce regulator. The workforce regulator has advised that any initial costs of approval of training and any ongoing costs to education providers and the Care Council would be dependent on the model of training regulation adopted. Since the specific model of regulation has not been determined it has not been possible to estimate any additional costs providers may incur. The cost to providers is, however, expected to be minimal since training providers will be familiar with applying to further education awarding agencies for accreditation of their courses. The cost to the workforce regulator will increase in proportion to the number of approved training providers. As with the approval of social work degree courses, the workforce regulator would aim to keep costs to a minimum by avoiding the need to duplicate information through using material developed by providers for awarding body accreditation or internal quality assurance. Thus, the information required by the workforce regulator will be readily available to training providers.

### **Workforce**

7.626 There are no direct cost implications for the workforce. It is assumed that social care employers do not currently offer their employees a choice of courses or providers when arranging training for the vocational qualifications employees are required to have in order to demonstrate they are equipped to undertake their job.

## **Social care employers**

7.627 It is possible that the cost of courses would increase to reflect the increasing costs met by the providers due to the additional regulatory requirements.

## **Service users/citizens**

7.628 There are no direct cost implications for service users/citizens.

**Table 33: summary of estimated costs likely to be incurred through extending regulation of workforce training (option two)**

	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>
Workforce regulator	90,000	180,000	180,000	180,000	180,000
<b>Total cost</b>	<b>90,000</b>	<b>180,000</b>	<b>180,000</b>	<b>180,000</b>	<b>180,000</b>

## **Benefits**

### **Option one**

#### **Workforce regulator**

7.629 The workforce regulator is able to continue to operate a well established and regarded process for the regulation of social work training. The positive legacy of regulating social work training would continue to ensure the quality of this training in the future. The workforce regulator would continue to refine its approach, ensuring the compatibility of social work training with current legislative and practice requirements.

7.630 The workforce regulator is able to bring its expertise to bear on a wider body of social care training, through more effective use of existing regulatory mechanisms.

#### **Workforce**

7.631 Social workers will continue to receive high quality training compatible with current legislative and practice requirements.

7.632 Other registered social care workers will benefit from higher quality training compatible with practice requirements because of the greater influence of the

workforce regulator on this training through the existing quality assurance mechanisms.

### **Service users/citizens**

7.633 Service users will benefit from social workers trained to consistently good standards.

7.634 Service users will benefit from other registered social care workers being better prepared to meet practice requirements.

### **Option two**

#### **Workforce regulator**

7.635 The workforce regulator is able to continue to operate a well established and regarded process for the regulation of social work training.

7.636 The workforce regulator is able to extend the same methodology to bring its expertise to bear on a wider body of social care training.

#### **Workforce**

7.637 Social workers will continue to receive high quality training compatible with current legislative and practice requirements.

7.638 Other registered social care workers will benefit from higher quality training compatible with practice requirements because of the direct regulatory requirements of the workforce regulator placed on training providers.

### **Service users/citizens**

7.639 Service users will benefit from social workers trained to consistently good standards.

7.640 Service users will benefit from other registered social care workers being better prepared to meet practice requirements.

## **Summary and preferred option**

7.641 There are two options for regulating the training of social workers and other registered social care workers in the future.

7.642 Both options aim to achieve:

- Underpinning the further development and professionalization of the workforce by improving standards of training and qualification.
- Ensuring everyone working in the field is appropriately trained and skilled.
- Driving up standards and improving public confidence.
- Rationalising the number of courses.
- Reducing duplication of courses.
- Giving equitable access to career development.

7.643 The first option is to continue with the well proven method of regulating the training of social workers.

7.644 The second option is to continue with the existing method of regulating the training of social workers and to apply this same method to regulating the quality of the training of other registered social care workers.

7.645 The first option is preferred as this is viable within the current resource envelope and serves to optimise rather than duplicate existing regulatory mechanisms. Encouraging progress is already taking place and it is desirable to allow opportunity to explore if existing mechanisms are sufficient to achieve the policy objective. It will be valuable to have the powers to extend the model of regulation for social work training to the training of other registered social care workers, if it transpires that the use of the existing regulatory mechanisms is inadequate to achieve the policy objective. A further analysis of costs and benefits will be undertaken should the powers be utilised in future.



## **Appeals in response to registration decisions**

7.646 See part four of the Regulation and Inspection of Social Care (Wales) Bill for provisions relating to appeals to a registration appeals panel and appeals to the tribunal.

### **Options**

7.647 There are three options:

- Option one: maintain the existing arrangement.
- Option two: create a registration appeals panel that will consider registration decisions and retain the right of appeal to the Care Standards Tribunal.
- Option three: create a registration appeals panel and change the right of appeal from the Care Standards Tribunal to the High Court.

### **Option One**

7.648 The Care Standards Act 2000 gives the workforce regulator the responsibility of determining whether or not applications for registration should be granted and if they are granted whether they should be granted subject to conditions. If a registrant is unhappy with the decision of the regulator, they can appeal to the First-tier Tribunal (Care Standards). There is no appeals mechanism internal to the regulator.

### **Option Two**

7.649 This option will provide registrants with an additional mechanism of an internal appeals mechanism, so that decisions about whether to grant applications for registration or decisions to restore registration can be reconsidered by an independent panel. Beyond this, registrants would still have recourse to the Care Standards Tribunal.

### **Option Three**

7.650 This option would provide the additional mechanism of an internal appeals mechanism but would also change the further right of appeal from the Care Standards Tribunal to the High Court.

7.651 Registrants with the health regulators and the Health Care Professions Council can appeal to the High Court in England and Wales. The Law Commission (2014) reinforces the right of appeal to the High Court and this option would bring this process in line with the other regulators.

## Costs

### Option One

#### Workforce Regulator

7.652 The workforce regulator currently incurs an average cost per appeal case of approximately £7,800<sup>106</sup>. This cost does not include internal resources to support the appeal process. Rather, it refers to the external costs which are primarily legal costs.

7.653 There has been an average of approximately one appeal every two years to the Care Standards Tribunal. The current annual costs, therefore, incurred by the workforce regulator is approximately £3,900. It is assumed the workforce will face similar costs to those incurred by the Care Standards Tribunal when making an appeal. That is, the annual cost to the workforce is estimated to be approximately £3,900.

#### Service users/citizens

7.654 There are no direct cost implications for service users/citizens.

**Table 34: summary of estimated costs associated with maintaining the existing appeals process (option one)**

	2016-17	2017-18	2018-19	2019-20	2020-21
Workforce regulator	3,900	3,900	3,900	3,900	3,900
Workforce	3,900	3,900	3,900	3,900	3,900
<b>Total cost</b>	<b>7,800</b>	<b>7,800</b>	<b>7,800</b>	<b>7,800</b>	<b>7,800</b>

<sup>106</sup> This cost only includes external costs which are primarily legal and not internal resource to support the appeal process.

The cost per case has ranged from £5,400 to £26,000. The latter cost is an exception and was, therefore, removed when the average cost was calculated.

## **Option Two**

### **Workforce regulator**

7.655 This option would involve the additional cost of a new internal appeals mechanism.

7.656 As stated above, there has been an average of approximately one appeal every two years to the Care Standards Tribunal. The Care Council for Wales has advised that it is likely an internal appeals mechanism would attract a similar level of activity. As the panel process for an appeals mechanism will be similar to the process for fitness to practise hearings, the Care Council for Wales has advised the cost of operating this mechanism can be estimated using the cost of appeal to the Care Standards Tribunal.

7.657 The expected additional cost to the workforce regulator of introducing the internal appeals mechanism is, therefore, estimated to be approximately £3,900 per annum.

7.658 If this appeals mechanism was put in place across a number of workforce regulators, there could be a degree of independence and economies of scale that might reduce the running costs.

7.659 It is assumed the workforce will face similar costs to those incurred by the workforce regulator when making an appeal. That is, the annual cost to the workforce is estimated to be approximately £3,900.

### **Transition costs**

7.660 There are not expected to be any transition costs associated with this option. The same processes would be adopted for fitness to practise hearings. Registrants would be notified of the new system in the standard letter which is currently sent to registrants who are subject to fitness to practise hearings.

### **Service users/citizens**

7.661 There are no direct cost implications for service users/citizens.

**Table 35: summary of estimated costs likely to be incurred through the introduction of an internal appeals mechanism (option two)**

	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>
Workforce regulator	3,900	7,800	7,800	7,800	7,800
Workforce	3,900	7,800	7,800	7,800	7,800
<b>Total cost</b>	<b>7,800</b>	<b>15,600</b>	<b>15,600</b>	<b>15,600</b>	<b>15,600</b>

## **Option Three**

### **Workforce regulator**

7.662 This option would involve the additional cost of a new internal appeals mechanism, as set out above, with an additional estimated cost to the workforce regulator of approximately £3,900 per annum.

7.663 In addition, it would involve the cost of defending cases at the High Court. The workforce regulator currently pays for solicitors to participate in the Care Standards Tribunal hearings. The cost of defending appeals at the High Court would be greater, as it would involve the engagement of a barrister to act on their behalf.

7.664 The workforce regulator has estimated that the costs of a barrister per hearing per day are approximately £1,500, with costs of preparation approximately £1,000 per hearing. In addition, the cost of the pre-hearing meeting would be approximately £500.

7.665 Assuming an appeal case lasts one day, the total cost of a barrister would be £3,000 per case. Assuming, as with the experience of appeals to tribunal, there are an average of 0.5 cases per annum, the additional cost associated with hearing cases in the High Court would be £1,500 per annum.

7.666 The total estimated cost for the workforce regulator would, therefore, be £5,400 per annum.

### **Workforce**

7.667 It is assumed the workforce will face similar costs to those incurred by the workforce regulator when making an appeal. That is, the annual cost to the workforce

will consist of approximately £3,900 for the services of a solicitor and approximately £1,500 for the services of a barrister.

In addition, registrants who appeal to the High Court would need to pay an application fee to the High Court (currently £480).

### **Service users/citizens**

7.668 There are no direct cost implications for service users/citizens.

**Table 36: summary of estimated costs likely to be incurred through the introduction of an internal appeals mechanism and a right of appeal to High Court (option three)**

	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>
Workforce regulator	3,900	5,400	5,400	5,400	5,400
Workforce	3,900	5,880	5,880	5,880	5,880
Courts					
<b>Total cost</b>	<b>7,800</b>	<b>11,280</b>	<b>11,280</b>	<b>11,280</b>	<b>11,280</b>

## **Benefits**

### **Option One**

#### **Workforce regulator**

7.669 This option would not require any change to, or development of, the existing arrangement.

#### **Workforce**

7.670 The workforce would continue to be familiar and operate with the existing arrangement.

### **Service users/citizens**

7.671 The service user/citizen would continue to benefit from robust workforce regulation that includes a mechanism for dealing with dissatisfaction about fitness to practise decisions.

## **Option Two**

### **Workforce regulator**

7.672 This option would bring the workforce regulator in line with best practice in workforce regulation.

### **Workforce**

7.673 This option would provide a readily accessible means of appealing a fitness to practise decision made by the regulator, if a registrant felt dissatisfied with the decision.

### **Service users/citizens**

7.674 This option would strengthen the robustness of workforce regulation and would therefore strengthen public protection and the quality of service provision.

## **Option Three**

### **Workforce regulator**

7.675 In addition to the benefits of option one, this option would bring the appeals process to the High Court in line with the process applying to other professional regulatory bodies.

### **Workforce**

7.676 It would provide an external and independent means of appeal that is widely available to other professionals.

### **Service users/citizens**

7.677 There are no direct benefits for service users/citizens.

## **Summary and preferred option**

7.678 There is a status quo option and two options available to strengthen the opportunities for registrants to appeal against decisions of the registrar. The second option adds an internal appeals mechanism that may be opted for by registrants before appealing to an external body. The third option builds on the second option by changing the external appeals mechanism from the Care Standards Tribunal to the

High Court. The second option is preferred as this offers a level of continuity but also minimises the costs to regulators and registrants compared to option three. This approach would ensure access to justice was not decreased.

## **Enhanced fitness to practise processes**

7.679 See part six of the Regulation and Inspection of Social Care (Wales) Bill for provisions relating to social care workers fitness to practise.

### **Options**

7.680 There are two options :

- Option one: do nothing.
- Option two: extend the range of decisions which the workforce regulator may review.

#### **Option one**

7.681 The existing criteria for review where a decision appears to be materially flawed, whether procedurally, legally or factually will continue to apply and the range of decisions which may be reviewed will remain unchanged.

#### **Option two**

7.682 The range of decisions which may be reviewed will be extended to include the following:

- Not to refer an allegation for an investigation following initial consideration.
- Not to refer a case to a fitness to practise panel and to take no further action.
- To dispose of a case following investigation by giving advice, issuing a warning, agreeing undertakings, granting voluntary erasure or referral to mediation where applicable.

## **Costs**

### **Option one: do nothing**

#### **Workforce regulator**

7.683 In 2013-14 the workforce regulator had an overall budget of £10,259,000. Of this, £3,593,000 was spent on regulation which includes £771,000 specifically spent on the fitness to practise process. This includes costs involved in reviewing decisions in relation to fitness to practise.



**Table 37: summary of estimated costs associated with maintaining the existing criteria under which the workforce regulator may review decisions (option one)**

	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>
Workforce regulator	771,000	771,000	771,000	771,000	771,000
<b>Total cost</b>	<b>771,000</b>	<b>771,000</b>	<b>771,000</b>	<b>771,000</b>	<b>771,000</b>

## **Option Two**

### **Ongoing cost: workforce regulator**

7.684 With regards to extending the range of decisions that may be reviewed, the workforce regulator estimates this would occur between two and three times per annum. It is anticipated that in terms of direct staffing costs, this would incur an additional £1,000 per annum<sup>107</sup>.

### **Transition cost: workforce regulator**

7.685 As this is merely an extension of existing practice, it is not anticipated that there will be any transition costs.

**Table 38: summary of estimated costs likely to be incurred by extending the range of decisions which the workforce regulator may review (option two)**

	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>
Workforce regulator	771,000	772,000	772,000	772,000	772,000
<b>Total cost</b>	<b>771,000</b>	<b>772,000</b>	<b>772,000</b>	<b>772,000</b>	<b>772,000</b>

## **Benefits**

### **Option One**

#### **Workforce regulator**

7.686 This option provides for a responsive regulatory approach so that decisions can be changed by a committee of the regulator where new evidence has come to light or where a criminal conviction has been quashed.

<sup>107</sup> These are direct costs and do not include overhead and support costs.

## **Workforce**

7.687 This option allows a registrant to have a decision changed that impacts upon their professional registration, where new evidence has come to light or where a criminal conviction has been quashed.

## **Service users/citizens**

7.688 This option provides for an accurate regulatory approach that can take account of new evidence coming to light or criminal convictions being quashed.

## **Option Two**

### **Workforce regulator**

7.689 This option provides for a more flexible regulatory approach so that a wider range of decisions can be reconsidered, to ensure they are properly made and to respond to legitimate concerns. It is considered likely that some cases will be able to be dealt with more effectively and efficiently, negating the need for further, more costly proceedings.

## **Workforce**

7.690 This option allows a registrant to have a wider range of decisions that impact upon their professional registration reconsidered, to ensure they are properly made and to respond to legitimate concerns. It will mean that registrants whose fitness to practise is not impaired, are more likely to be able to return to practise.

## **Service users/citizens**

7.691 This option provides for a more flexible and accurate regulatory approach that can take account of legitimate concerns across a wider range of regulatory decisions.

## **Summary and preferred option**

7.692 Option one retains the existing provision for reviewing fitness to practise decisions where new evidence has come to light or where a criminal conviction has been quashed. Option two enlarges this flexibility by providing for a wider range of decisions to be reconsidered to ensure they are properly made and to respond to legitimate concerns. This greater range of flexibility is valued and is in line with the

view of the Law Commission. It ensures the regulatory system is able to provide greater fairness to registrants and to allow suitably qualified workers to return to practise. As such, option two is the preferred option.

## **Power to subpoena information**

7.693 See section 31 of the Regulation and Inspection of Social Care (Wales) Bill for provisions relating to the power to require information.

### **Options**

7.694 There are two options:

- Option one: do nothing.
- Option two: provide the workforce regulator with a power to require information

#### **Option one: do nothing**

7.695 Critical to effective fitness to practise processes is the ability of the workforce regulator to access all the relevant available evidence to assess individual cases. Currently, this relies on existing requirements in relation to service provider responsibilities regarding public safety and good practice. Under option one, this arrangement would continue.

#### **Option two: power to require information**

7.696 There have been cases where certain parties have been reluctant to release critical evidence, which has risked undermining the ability of the regulator to provide the highest level of public assurance. In line with other regulatory bodies, this option provides the regulator with the power to subpoena information. This would be enforced by the Care Standards Tribunal, which is a first-tier tribunal, administered by HM Courts & Tribunals, one of four tribunals within the Health, Education and Social Care Chamber. This would be used as the means of enforcement in Wales. The workforce regulator would need to pay a fee to the tribunal for each case it refers. This is consistent with the following Law Commission recommendation:

“The regulators should be given a power to require the disclosure of relevant information by any person (including the registrant) in fitness to practise proceedings. However, a person cannot be required to supply any information or documents which are prohibited by or under any enactment. The regulators should have powers to seek an order for disclosure from the High Court in England and Wales” (Law Commission, 2014:134).

## **Costs**

### **Option one: do nothing**

#### **Workforce regulator**

7.697 The costs of option one includes the administrative costs of following up requests for information and of rearranging regulatory processes and panels when information is not forthcoming.

7.698 This equates to approximately one day of administrative time per case at a rate of £128 per day. We estimate that there are around 25 cases a year where there are difficulties in obtaining information. The approximate cost is therefore £3,200 per annum.

### **Option two: provide a power to require information**

#### **Workforce regulator**

7.699 Approximately 25 cases per year, as above, are hampered by difficulties in obtaining information. It is anticipated that the existence of this power will have a significant effect in encouraging parties to cooperate in the timely provision of information. Therefore, it is unlikely that the power will need to be used in relation to every instance of difficulty in obtaining information experienced at present by the regulator. It is estimated that referral to the tribunal would only be needed up to six times a year. An application to the tribunal costs the regulator £50 and the associated legal costs for the regulator would be approximately £1,500 per case. Thus, it is estimated that the total cost to the workforce regulator for six cases would be approximately £9,300 per annum.

7.700 However, this potential extra cost is likely to be partially offset by the administrative costs saved in following up requests for information and of rearranging regulatory processes and panels when information is not forthcoming, as described above. This would result in a net increased cost of £6,100.

## **Tribunal**

7.701 As above, we estimate that that there could be 25 instances each year when there is some difficulty in obtaining information. However, due to the anticipated deterrent effect of this power, we estimate that referral to the tribunal would only be needed up to six times a year. The average daily cost of staff and judicial members to the tribunal is £327 and £891 respectively<sup>108</sup>, totalling £1,218. We estimate that the maximum cost to the tribunal would therefore be approximately £7,300 per annum.

## **Benefits**

### **Option one: do nothing**

7.702 There are no benefits to retaining the existing system

### **Option two: provide a power to require information**

#### **Workforce regulator**

7.703 This option will improve the efficiency and effectiveness of the regulatory process by enabling regulatory decisions to be made in a timely way based on relevant evidence. Where there are delays in the provision of necessary information from any person relevant to regulatory proceedings, the regulator will be able to make a referral to the tribunal to enforce the provision of the information.

#### **Workforce**

7.704 This option will help to ensure that complaints against registrants can be considered efficiently and effectively with less likelihood of delay due to difficulty in the regulator obtaining the necessary documents.

#### **Service user / citizens**

7.705 This option will help to ensure that complaints against registrants can be considered efficiently and effectively with less likelihood of delay due to difficulty in the regulator obtaining the necessary documents. Service users and citizens will benefit

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<sup>108</sup> HM Courts & Tribunals Service Annual Report and Accounts 2013-14.

from greater public assurance with such complaints being investigated and concluded in a more timely fashion.

## **Summary and preferred option**

7.706 There are two options. One is to retain the existing system whereby the workforce regulator requests the information necessary for the progress of regulatory proceedings through reliance on service provider responsibilities. However, this has proved to be inadequate in a number of cases, resulting in delays and inefficiencies to critical stages of the regulatory process. Option two provides the regulator with a power to require the provision of information through referral to the tribunal. We envisage that the existence of this power would itself encourage cooperation with the regulator. But recourse to the tribunal would be valuable if such cooperation was not forthcoming. Option two is, therefore, the preferred option.

## **Social Care Wales - extending functions of the Care Council for Wales**

7.707 See part three of the Regulation and Inspection of Social Care (Wales) Bill for provisions relating to Social Care Wales.

7.708 There are two options associated with delivering the Welsh Government agenda for improving social care in Wales.

### **Options**

#### **Option one: do nothing and continue with the existing arrangements**

7.709 Responsibility for existing workforce regulation and improvement, research and service improvement is placed with the following organisations:

- **National Institute for Social Care and Health Research.**
- **Social Services Improvement Agency:** to support local authority social services to improve.
- **Association of Directors of Social Services Cymru:** to provide professional leadership to directors.
- **Social Care Institute for Excellence:** to provide the evidence base for what works in practice.
- **Care Council for Wales:** to encourage improvement in the social care workforce, including funding streams for social work bursaries.
- **Care and Social Services Inspectorate Wales:** to encourage improvement in social care and social services.

7.710 Option one involves preserving the above existing arrangements subject to ongoing ministerial decisions.

#### **Option two: establish Social Care Wales by extending the existing functions of the Care Council for Wales**

7.711 The proposed Social Care Wales will bring many of the improvement functions, currently being undertaken by disparate organisations, into one organisation. Social Care Wales will be responsible for:

- Providing leadership for the improvement agenda across the sector.



- Designing and implementing social services improvement schemes to deliver national improvement priorities, as identified by Welsh Government through its strategic improvement framework for well-being.
- Overseeing workforce registration, planning, standards, development and learning schemes including the regulation of training.
- Supporting the development of research capacity and applied research, and assisting local and national policy makers to develop evidence-based practice.
- Acting as an information hub for evidence-based practice and promoting this practice across the sector.
- Providing information to the public on standards and authoritative frameworks.
- Providing information on social care and social work to the public, media and government.
- Learning from, and involving, citizens who use services.
- Enabling collaborative partnership working across the social care sector, wider local government and health.

7.712 Rather than setting up a new organisation, the existing functions of the Care Council for Wales will be extended to incorporate the functions listed above. Where these functions are delivered by other organisations, Welsh Government funding, as appropriate, will be transferred to the Care Council for Wales at the same time that the functions are transferred. The functions will either be directly delivered or commissioned by the extended Care Council. The intention is to adopt a strategic approach to improving service delivery in Wales and one that avoids the current fragmentation, duplication and inefficiencies.

## **Costs**

### **Ongoing costs**

#### **Option one**

7.713 There will be no additional costs. For 2014-15, the overall Welsh Government funding allocation is over £19,400,000. Disaggregated funding streams can be found in table 41.

## **Workforce regulator**

7.714 There will no additional costs.

## **Workforce**

7.715 There will be no additional direct costs to the workforce.

## **Service users/citizens**

7.716 There will be no direct additional cost implications for service users/citizens.

**Table 39: summary of estimated costs associated with maintaining the existing system (option one)**

	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>
Public finance	19,458,575	19,458,575	19,458,575	19,458,575	19,458,575
<b>Total cost</b>	19,458,575	19,458,575	19,458,575	19,458,575	19,458,575

## **Costs**

### **Option two**

7.717 Social Care Wales will be funded using the £19,458,575 which is currently granted to support service improvement and workforce development. This includes £10,029,000 granted to the Care Council for Wales, £895,075 granted to the Social Services Improvement Agency and £123,500 granted to the Social Care Institute for Excellence. Responsibility for managing and administering the £8,411,000 Social Care Workforce Development Programme funding will be transferred from the Welsh Government to Social Care Wales (see table 41 for details). This will not impact financially on the organisations who currently receive funding from the Welsh Government since they will continue to receive the same level of funding. The change grant recipient organisations experience, will be related to how the grants are managed.

## **Workforce regulator**

7.718 Costs as detailed in table 40.

## Workforce

7.719 There will be no additional direct costs to the workforce.

## Service users/citizens

7.720 There will be no direct additional cost implications for service users/citizens.

**Table 40: summary of estimated costs likely to be incurred through the introduction of the Social Care Wales (option two)**

	2016-17	2017-18	2018-19	2019-20	2020-21
Public finance					
Transition	100,000				
Ongoing	19,458,575	19,458,575	19,458,575	19,458,575	19,458,575
<b>Total cost</b>	<b>19,458,575</b>	<b>19,458,575</b>	<b>19,458,575</b>	<b>19,458,575</b>	<b>19,458,575</b>

**Table 41: Welsh Government funding to organisations involved in service improvement and workforce development**

<b>Social Services Improvement Agency</b>	
£895,075 (2014-15)	The Welsh Government provides grant funding to the Welsh Local Government Association to fund the Social Services Improvement Agency to support local authorities in their improvement agenda.
<b>Social Care Workforce Development Programme</b>	
£8,411,000 (2014-15)	The Welsh Government provides grant funding via the Social Care Workforce Development Programme grant. The objective of the grant is to increase the proportion of social care staff with the qualifications, skills and knowledge they need for the work they undertake. The grant is a match-funded programme, in which the Welsh Government element provides 70% of the cost of the programme.
<b>Social Care Institute for Excellence</b>	
£123,500 (2014-15)	The Social Care Institute for Excellence undertakes research to inform the development of resources and services with the aim of improving the knowledge and skills of those working in care services. The funding enables the Welsh Government to access their research and services.
<b>Care Council for Wales</b>	
£10,029,000 (2014-15)	The Welsh Government provides a grant to the Care Council for Wales, which regulates the social care profession, the aim of which is ensuring the social care workforce in Wales is safe to practise; has the right skills and qualifications to work to a high professional standard and is attracting the right amount of people into its ranks to deliver quality care now and in the future.

## **Option two**

### **Transition costs**

7.721 It is not possible to provide detailed estimates of the costs associated with the transition at this stage. However, early comparisons can be drawn from the Regulatory Impact Assessment undertaken for Education (Wales) Act 2014 which included transition cost estimations for moving from the General Teaching Council for Wales to the Education Workforce Council to be under £100,000<sup>109</sup>. Any such costs are likely to be associated with administrative processes, functions and governance, along with communications and marketing activity.

## **Benefits**

### **Option one**

7.722 Maintaining the current position will continue the existing landscape of functions and will avoid transition costs. It would also avoid uncertainty and instability within the sector.

### **Option two**

7.723 The aim of Social Care Wales is to increase the efficiency and effectiveness of the current approach to service improvement and workforce development. The purpose of centralising the existing structure is to reduce duplication, improve co-ordination and facilitate the development of a national approach to service improvement and workforce development, which is consistently interpreted and implemented across all aspects of service delivery.

7.724 This should have benefits for all stakeholders. In particular, clients, their carers and families should benefit from improvements in service delivery. Service providers should benefit from having a workforce which has the right qualifications, skills and experience, and from having a clear understanding of what improvements are expected of them as providers of services.

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<sup>109</sup> <http://www.senedd.assemblywales.org/mgIssueHistoryHome.aspx?IIId=7186>

## **Summary and preferred option**

7.725 Extending the functions of the existing Care Council for Wales set out under option two is the preferred option. Whilst maintaining the current position (do nothing under option one) has the advantage of ensuring sector stability, it will not provide the necessary national and transformational leadership to drive forward the Welsh Government agenda for improving social care in Wales. A fragmented approach would also be likely to continue. Option two will support the adoption of a more co-ordinated and strategic approach which aims to reduce duplication and improve consistency of service delivery.

## **Summary of cost and benefits of introducing the preferred options over a five year period**

7.726 Tables 42 and 43 below, provide a summary of the estimated costs of the preferred options over a five year period, by option and by group affected. The total estimated cost of the preferred options for the five year period 2016/17-2020/21 is approximately £181,162,200 which is made up of £3,318,400 transition costs and £177,843,800 ongoing costs.

7.727 The current estimated costs over the five year period 2016/17-2020/21 is £171,167,600. Thus, the preferred options are estimated to attract an additional cost of approximately £ 9,994,600 during the period 2016/17-2020/21.

7.728 The cost per year, from 2017/18 of introducing the preferred options is £35,902,600. The current cost per year is £ 34,233,500. Introducing the preferred options is, therefore, expected to result in an additional £1,669,100 per annum.

7.729 The preferred option with the most significant additional ongoing cost impact is the introduction of a quality judgement framework, which has been estimated to cost £6,001,500 over the five year period 2016/17-2020/21. In terms of transition costs, the most significant cost is associated with introducing a service based model of registration. This has been estimated to be approximately £1,579,600.

7.730 The group most affected by the preferred options is the service regulator. It is estimated the service regulator will incur an estimated additional cost of approximately £9,189,700 over the five year period 2016/17-2020/21, which is made up of an estimated £2,126,200 transition costs and estimated ongoing costs of approximately £7,063,500.

7.731 The service regulator currently incurs costs of approximately £8,471,000 per annum. Following the introduction of the preferred options, it is estimated the service regulator will incur costs of approximately £10,236,900 per annum. That is, it is estimated the service regulator will incur additional costs of approximately £1,765,900 per annum. Of this, £1,443,500 per annum will be incurred as a result of introducing a

quality judgement framework. A further analysis of the costs/benefits will be undertaken if it is decided to utilise these powers.

7.732 Service providers will incur additional costs as a result of implementing the preferred options. The total estimated cost for service providers over the five year period 2016/17-2020/21 is £10,154,400 which is made up of £1,075,000 transition costs and £9,079,400 ongoing costs. The existing estimated ongoing costs over the five year period for service providers is £8,850,000. Thus, the additional costs to service providers over the five year period is £229,400.

7.733 The current ongoing cost to service providers is estimated to be approximately £1,770,000 per annum. Following the introduction of the preferred options, the ongoing cost to service providers will rise to an estimated £1,827,400. Thus, the additional cost to service providers is estimated to be approximately £57,400 per annum. This represents an additional estimated cost of approximately £60 per annum to each of the 968 service providers.

7.734 Service users, social care workers and the workforce regulator will benefit from the introduction of the preferred options. Whilst service users should be the primary beneficiaries of the introduction of the preferred options, it has not been possible to cost the benefits, other than where the disorderly closure of a care home is avoided.

Registered social care workers are also expected to benefit from the introduction of the preferred options. Following introduction, it is estimated that registered social care workers will see a reduction in costs of approximately £85,700 per annum. This represents a reduction in cost of approximately £7 per annum for each of the 11,526 registered social care workers.

**Table 42: summary of costs and benefit by preferred option**

	Tables	2016-17		2017-18	2018-19	2019-20	2020-21			
		Do nothing		Introduce preferred option						
Model of regulation		Ongoing	Total 5 yrs - do nothing	Transition	Ongoing	Ongoing	Ongoing	Ongoing	Total 5 years - preferred option	Cost difference
Service regulator	16, 17 and 18	679,480	3,397,400	1,471,000	679,480	679,480	679,480	679,480	4,868,400	1,471,000
Service provider		1,200	6,000	108,600	1,200	1,200	1,200	1,200	114,600	108,600
Provider registration fees										
Service regulator		0	0	0	0	0	0	0	0	0
Service providers		0	0	0	0	0	0	0	0	0
Voluntary register	26									
Workforce regulator		15,000	75,000	2,000	0	0	0	0	17,000	-58,000
Care and support workers		13,360	66,800	0	0	0	0	0	13,360	-53,440
Dual registration	27 and 28									
Service regulator		-	-	0	0	0	0	0	0	-
Workforce regulator		143,000	715,000	1,800	165,500	165,500	165,500	165,500	806,800	91,800
Care and support workers		181,900	909,500	0	105,600	105,600	105,600	105,600	604,300	-305,200
Registration total		1,033,940	5,169,700	1,583,400	951,780	951,780	951,780	951,780	6,424,460	1,254,760
Approach to regulation and inspection	4 and 5									
Service regulator		2,984,520	14,922,600		2,984,520	2,984,520	2,984,520	2,984,520	14,922,600	0
Service providers		1,768,800	8,844,000	726,300	1,768,800	1,768,800	1,768,800	1,768,800	9,570,300	726,300
Annual reports	6 and 7									
Service regulator		350,000	1,750,000	0	390,000	390,000	390,000	390,000	1,910,000	160,000
Service providers		0	0	240,100	0	0	0	0	240,100	240,100
Quality judgement framework	13									
Service regulator		0	0	0	1,443,468	1,443,468	1,443,468	1,443,468	5,773,872	5,773,872



Independent service providers		0	0	0	49,900	49,900	49,900	49,900	199,600	199,600
Local authority service providers		0	0	0	7,000	7,000	7,000	7,000	28,000	28,000
Citizen involvement	14 and 15									
Service regulator		57,000	285,000	0	100,000	100,000	100,000	100,000	457,000	172,000
Inspection total		5,160,320	25,801,600	966,400	6,743,688	6,743,688	6,743,688	6,743,688	33,101,472	7,299,872
Offence of false or misleading information	8 and 9									
Service regulator		4,400,000	22,000,000	200,000	4,419,700	4,419,700	4,419,700	4,419,700	22,278,800	278,800
Welsh Government		0	0	0	40	40	40	40	160	160
Courts		0	0	0	1,050	1,050	1,050	1,050	4,200	4,200
Legal aid/service provider		0	0	0	40	40	40	40	160	160
Service providers		0	0	0	300	300	300	300	1,200	1,200
Failure to provide an annual report	11 and 12									
Service regulator		0	0	0	19,700	19,700	19,700	19,700	78,800	78,800
Welsh Government		0	0	0	75	75	75	75	300	300
Courts		0	0	0	10	10	10	10	40	40
Legal aid/service provider		0	0	0	75	75	75	75	300	300
Service providers		0	0	0	150	150	150	150	600	600
Enforcement notices										
Service regulator		0	0	0	0	0	0	0	0	0
Service providers		0	0	0	0	0	0	0	0	0
Condition of registration										
Service regulator				455,200					455,200	455,200
Enforcement total		4,400,000	22,000,000	655,200	4,441,140	4,441,140	4,441,140	4,441,140	22,819,760	819,760
National statements on care and support market										
Service regulator		0	0	0	200,000	200,000	200,000	200,000	800,000	800,000

Due diligence of key service providers										
Service regulator		0	0	0	0	0	0	0	0	0
Service users		92,300	461,500	0	0	0	0	0	92,300	-369,200
Market total		92,300	461,500	0	200,000	200,000	200,000	200,000	892,300	430,800
Workforce registration	29, 30 and 31									
Welsh Government		2,905,825	14,529,125	0	2,905,825	2,905,825	2,905,825	2,905,825	14,529,125	0
Registered workers		310,550	1,552,750	0	310,550	310,550	310,550	310,550	1,552,750	0
Protection of title										
Welsh Government		0	0	2,487	0	0	0	0	2,487	0
Prohibition orders										
Welsh Government		0	0	10,925	0	0	0	0	10,925	0
Workforce training	32 and 33									
Workforce regulator		90,000	450,000	0	90,000	90,000	90,000	90,000	450,000	0
Appeals in response to fitness to practise decisions	34, 35 and 36									
Workforce regulator		3,900	19,500	0	7,800	7,800	7,800	7,800	35,100	15,600
Registered workers		3,900	19,500	0	7,800	7,800	7,800	7,800	35,100	15,600
Enhanced fitness to practise processes	37 and 38									
Workforce regulator		771,000	3,855,000	0	772,000	772,000	772,000	772,000	3,859,000	4,000
Power to subpoena information										
Workforce regulator		3,200	16,000	0	6,100	6,100	6,100	6,100	27,600	11,600
Courts		0	0	0	7,300	7,300	7,300	7,300	29,200	29,200
National Institute	39, 40 and 41									
Public finance		19,458,575	97,292,875	100,000	19,458,575	19,458,575	19,458,575	19,458,575	97,392,875	100,000
Workforce total		23,546,950	117,734,750	113,412	23,565,950	23,565,950	23,565,950	23,565,950	117,924,162	189,412
Total		34,233,510	171,167,550	3,318,412	35,902,558	35,902,558	35,902,558	35,902,558	181,162,154	9,994,604



Table 43: summary of costs and benefit by group affected

	2016-17		2017-18	2018-19	2019-20	2020-21			
			Introduce preferred option						
	Do nothing								
	Ongoing	Total 5 yrs - do nothing	Transition	Ongoing	Ongoing	Ongoing	Ongoing	Total - preferred option (inc transition costs)	Cost difference
Service regulator									
Registration	679,480	3,397,400	1,471,000	679,480	679,480	679,480	679,480	4,868,400	1,471,000
Inspection	3,391,520	16,957,600	0	4,917,988	4,917,988	4,917,988	4,917,988	23,063,472	6,105,872
Enforcement	4,400,000	22,000,000	655,200	4,439,400	4,439,400	4,439,400	4,439,400	22,812,800	812,800
Market	0	0	0	200,000	200,000	200,000	200,000	800,000	800,000
Workforce	0	0	0	0	0	0	0	0	0
Total	8,471,000	42,355,000	2,126,200	10,236,868	10,236,868	10,236,868	10,236,868	51,544,672	9,189,672
Service providers									
Registration	1,200	6,000	108,600	1,200	1,200	1,200	1,200	114,600	108,600
Inspection	1,768,800	8,844,000	966,400	1,825,700	1,825,700	1,825,700	1,825,700	10,038,000	1,194,000
Enforcement	0	0	0	450	450	450	450	1,800	1,800
Market	0	0	0	0	0	0	0	0	0
Workforce	0	0	0	0	0	0	0	0	0
Total	1,770,000	8,850,000	1,075,000	1,827,350	1,827,350	1,827,350	1,827,350	10,154,400	1,304,400

<b>Workforce regulator</b>									
<b>Registration</b>	158,000	790,000	3,800	165,500	165,500	165,500	165,500	823,800	33,800
<b>Inspection</b>	0	0	0	0	0	0	0	0	0
<b>Enforcement</b>	0	0	0	0	0	0	0	0	0
<b>Market</b>	0	0	0	0	0	0	0	0	0
<b>Workforce</b>	868,100	4,340,500	0	875,900	875,900	875,900	875,900	4,371,700	31,200
<b>Total</b>	1,026,100	5,130,500	3,800	1,041,400	1,041,400	1,041,400	1,041,400	5,195,500	65,000
<b>Care and support workers</b>									
<b>Registration</b>	195,260	976,300	0	105,600	105,600	105,600	105,600	617,660	-358,640
<b>Inspection</b>	0	0	0	0	0	0	0	0	0
<b>Enforcement</b>	0	0	0	0	0	0	0	0	0
<b>Market</b>	0	0	0	0	0	0	0	0	0
<b>Workforce</b>	314,450	1,572,250	0	318,350	318,350	318,350	318,350	1,587,850	15,600
<b>Total</b>	509,710	2,548,550	0	423,950	423,950	423,950	423,950	2,205,510	-343,040
<b>Service users</b>									
<b>Registration</b>	0	0	0	0	0	0	0	0	0
<b>Inspection</b>	0	0	0	0	0	0	0	0	0
<b>Enforcement</b>	0	0	0	0	0	0	0	0	0
<b>Market</b>	92,300	461,500	0	0	0	0	0	92,300	-369,200
<b>Workforce</b>	0	0	0	0	0	0	0	0	0
<b>Total</b>	92,300	461,500	0	0	0	0	0	92,300	-369,200

<b>Welsh Government</b>									
<b>Registration</b>	0	0	0	0	0	0	0	0	0
<b>Inspection</b>	0	0	0	0	0	0	0	0	0
<b>Enforcement</b>	0	0	-	115	115	115	115	460	460
<b>Market</b>	0	0	0	0	0	0	0	0	0
<b>Workforce</b>	22,364,400	111,822,000	113,412	22,364,400	22,364,400	22,364,400	22,364,400	111,935,412	113,412
<b>Total</b>	22,364,400	111,822,000	113,412	22,364,515	22,364,515	22,364,515	22,364,515	111,935,872	113,872
<b>Criminal justice system</b>	0	0	0	0	0	0	0	0	0
<b>Registration</b>	0	0	0	0	0	0	0	0	0
<b>Inspection</b>	0	0	0	0	0	0	0	0	0
<b>Enforcement</b>	0	0	0	1,175	1,175	1,175	1,175	4,700	4,700
<b>Market</b>	0	0	0	0	0	0	0	0	0
<b>Workforce</b>	0	0	0	7,300	7,300	7,300	7,300	29,200	29,200
<b>Total</b>	0	0	0	8,475	8,475	8,475	8,475	33,900	33,900
<b>Total - preferred options</b>	34,233,510	171,167,550	3,318,412	35,902,558	35,902,558	35,902,558	35,902,558	181,162,154	9,994,604

## Section 8: Competition Assessment and Specific Impacts

### Competition Assessment

The competition filter test	
Question	Answer yes or no
<b>Q1:</b> In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
<b>Q2:</b> In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
<b>Q3:</b> In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
<b>Q4:</b> Would the costs of the regulation affect some firms substantially more than others?	No
<b>Q5:</b> Is the regulation likely to affect the market structure, changing the number or size of firms?	No
<b>Q6:</b> Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q7:</b> Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q8:</b> Is the sector characterised by rapid technological change?	No
<b>Q9:</b> Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

8.1 Although there is evidence which indicates a trend towards fewer providers controlling an increasing share of the social care market in England (Public Accounts Committee, 2011), it is not clear to what extent this is taking place in Wales. Data is not currently collected which enables an analysis of the percentage of total care delivered by individual suppliers<sup>110</sup>. This is particularly the case for domiciliary care providers, which are currently categorised as either providing under 200 hours of care or as providing 200 hours or more of care per week.

8.2 More is, however, known about market share in terms of the provision of residential care for adults. The information available indicates that, nationally, the market share of

<sup>110</sup> As part of the process of determining which organisations will be subject to due diligence, the service regulator will be required to collect data to enable an analysis of market share to be undertaken.

any individual provider is small. Of the 645 residential care providers, 504 (78%) have a single establishment. There are only 6 providers who have more than 10 establishments. In addition, residential care homes for adults are generally small<sup>111</sup>. Of the 1,132 residential care homes, 417 (37%) are small, 256 (23%) are medium, 458 (40%) are large and five (0.4%) are extra large. That is, 60% of residential care homes in Wales have 25 or fewer places.

8.3 Assuming domiciliary care is similar to residential care, it is not expected that any one provider has more than 10% share of the national social care market in Wales.

8.4 Regulation can have a disproportionate impact on small providers. Given the structure of the social care market in Wales, increasing the regulatory burden could have a disproportionate impact on a large number of providers. In terms of the cost of regulation for service providers, inspection has the biggest cost impact. The current cost of inspection related activities for service providers is £1,768,800 per annum. The activities involve collecting data, accompanying inspectors during their visit, discussions with inspectors and responding to the draft inspection report.

8.5 The proposals aim to add no additional burden to service providers. The most significant change for service providers will be the change in the regulatory regime from one which focuses on process and outputs to one which combines an outcome based regulatory approach with processes and outputs. As table 42 shows, service providers will incur transition costs of £726,300 when implementing the change.

8.6 The transition costs associated with implementing the change to the regulatory regime largely reflect the time service managers and administrators will spend familiarising themselves with the new regulatory requirements and data collection needs. Whilst the impact of the transition cost is assumed to be fixed, and would have a disproportionate impact on smaller providers (since the numbers of days required would be the same for every provider, regardless of provider size), the cost per provider is relatively small at approximately £750 per provider.

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<sup>111</sup> Small care homes are defined as having 10 or fewer beds, medium care homes as having 11-25, large care homes having 26-100 and extra large care homes having more than 100 beds.



8.7 The ongoing costs associated with the regulatory regime are expected to remain the same because there will be no additional burdens imposed on service providers. The existing requirement to collect data will remain but the type of data will change to be predominately outcome data.

8.8 Overall, it is expected that service providers will experience a small increase in the ongoing cost if all preferred options are introduced. As table 43 above shows, it is expected that the additional costs for service providers will be approximately £1,257,500 over the five year period, of which £1,074,000 is transition costs. The ongoing costs over the five year period is, therefore, estimated to be approximately £183, 520. The cost per service user, should all the preferred options be introduced is approximately £40 per annum.

8.9 The changes to regulation are not expected to have a significant impact on the ability of new providers to enter the market. The requirements for providers entering the market are the same as existing suppliers. Thus, providers entering the market would be subject to the same costs as existing service providers.

8.10 One of the purposes of regulating social care is to ensure that the quality of care does not fall below specific standards. Thus, regulation restricts the ability of providers to choose the quality of care provided. Existing standards are set out in National Minimum Standards which will be replaced with Quality Standards set out in secondary legislation. The preferred options add no additional restrictions to the ability of the provider to choose the quality of care provided, although the provisions aim to encourage service providers to focus service delivery on the quality of their care, in terms of outcomes. As a balance to any restrictions the focus on outcomes may have on provider choice, in terms of the quality of outcomes, existing restrictions on provider choice in relation to inputs will be lessened. In this way, service providers will have increased choice in how they allocate resources to achieve the required quality standards. In this way, service providers will have increased choice in how they allocate resources to achieve the required quality standards.

8.11 The preferred options will not restrict the ability of providers to choose the price, range or location of their service. The preferred options do, however, aim to

encourage service providers to produce services which are aligned to service users needs.

## **Specific Impacts**

### **Equality Impact Assessment**

8.12 As part of the policy screening process for the Bill, careful consideration has been given to the Welsh Government's legal responsibilities to engage with people within the protected characteristics under the Equality Act 2010.

8.13 As part of our consultation exercise on the White Paper, we engaged with a wide range of stakeholders and groups some of which represent several of the protected characteristics both through the formal process and at three workshop sessions undertaken across Wales. All of the comments received from these groups were analysed and helped inform our thinking as we developed the proposals further. A continued exercise of engagement with all key stakeholders and interested parties was undertaken throughout the development of the Bill.

8.14 The proposals within the Bill will have a number of positive and negative impacts for all citizens, including those within the protected characteristics that will require careful consideration as they are implemented. For example, the emphasis on focusing on the individual will have a positive benefit for all citizens, including the protected characteristics, as it will provide them with greater voice and control as part of the process that plans the social care services they receive and are delivered to them by making them more focused on meeting their individual well-being needs. The proposal for the requirement for annual reports could potentially impact young people, older people and those with learning difficulties if they are too complex or are not published in a way that is easily accessible to all; thus undermining the objective of increasing the citizen's voice and control of the services they receive. The annual reports can also potentially benefit the protected characteristics by flagging up where there may be gaps in service provision that might not have been previously identified (e.g. advocacy, Welsh language) or may have lapsed over time if the services were not used.

## Rights of the Child

8.15 The Bill contains a number of areas that will have impacts upon children and young people and an impact assessment of the proposals contained within this Bill has been completed.

8.16 The Bill will ensure that the regulation and inspection regime will give greater voice and control to the citizen, including children and young people. It is considered that the proposals within the Bill will affect a number of articles of the Convention, namely:

- **Article 3:** All organisations concerned with children should work towards what is best for each child.
- **Article 12:** Children have the right to say what they think should happen, when adults are making decisions that affect them, and have their opinions taken into account.
- **Article 13:** Children have the right to get and share information as long as the information is not damaging to them and others.
- **Article 23:** Children who have any kind of disability should have special care and support so that they can lead full and independent lives.
- **Article 25:** Children who are looked after by their local authority, rather than their parents, should have their situation reviewed regularly.

8.17 Examples of some proposals which address these impacts include:

- an outcomes-based reporting system will also help refocus the regulator's inspection processes to requiring evidence from service providers to show how their services meet the needs of those that receive them, instead of ensuring that the services are meeting set standards;
- evidence gathered as part of the new regime will provide an overview of the level of services provided to children and young people that can then be interrogated to determine whether there are any areas that require attention or are delivering good practice that can be shared with others. This in turn will help focus the drive to

delivering further improvements or provide an example for others to aim to emulate; and

- a duty will be placed upon service providers and commissioners (local authorities) to produce a consolidated and standardised annual report on the quality of the services they deliver, not just the quantity and the number of locations in which they are delivered.

### **The United Nations Convention of the Rights of Older Persons and the Welsh Government's Declaration on the Rights of Older People**

8.18 Whilst it is considered that the Bill contains a number of areas that will have impacts upon older people, we feel that many of these issues will be covered by the well-being outcomes framework proposed by the Social Services Well-being (Wales) Act. The Bill will also provide the same benefits to older people that we have identified for children and young people, as it will ensure that the regulation and inspection regime will give greater voice and control to the citizen.

8.19 Whilst the Welsh Government's Declaration of Rights for Older People in Wales is in itself not legally binding, it is more a tool to clearly spell out the rights of older people in Wales as already underpinned by existing law – i.e. the Human Rights Act 1998 and the Equality Act 2010. However, the Declaration does place a moral obligation on public services and organisations providing services to older people to have regard to, and consider, implementing procedures that enhance the rights of older people in all that they do. It also provides older people and the bodies that serve them in Wales with a clear steer as to what to do where there is a risk that a breach of this legislation may occur. The statements within the Declaration have been designed to be deliberately broad in their nature, as they are not designed to cover every 'right' in every circumstance but are instead designed to aid the understanding of the nature of those rights. However, the statements are further strengthened by their connections to the areas outlined within the Welsh Government's Well-being Statement (announced in April 2013) and the development of the subsequent National Outcomes Framework as outlined within the Social Services and Well-being (Wales) Act. This Bill will also develop an outcomes framework for the independent and voluntary social care sectors that will be aligned with the National Framework.

## **Impact on the Welsh Language**

8.20 The Welsh Government Welsh Language Scheme requires an assessment of the impacts of all Bills upon the Welsh language. An impact assessment of the Regulation and Inspection of Social Care (Wales) Bill upon the Welsh language has been carried out and found that, like the other impact assessments previously discussed, there may be positive and negative effects.

8.21 Examples of some proposals which address these impacts include:

- The proposals for placing a duty upon providers to produce annual reports that will include evidence on how they have met the agreed outcomes of their service users is part of the increasing greater voice and control for those service users. This will help empower Welsh speakers to converse with service providers in their chosen language; whilst also placing greater emphasis on professionals and service providers to work with users and their families and carers to ensure that the user's needs are considered as an integral part of the service planning process.
- Greater partnership working between all parties – e.g. the Welsh Government, local authorities, service providers and the regulators; and with the Care Council for Wales on identifying educational needs for their workforce.
- The proposals to place a duty on the service regulator (the Care and Social Services Inspectorate for Wales) to involve citizens and their families/carers in their processes and practices will also allow for greater voice and control for individuals, as they will be able to directly feed in their comments on the services they receive.
- The proposals to reconstitute the Care Council for Wales into Social Care Wales will consolidate a number of work and funding strands into a more cohesive structure, which will allow it to realign its efforts to tackle specific areas as necessary and help drive forward continuous improvement within the social care workforce. This will complement the ideal contained within the Social Services and Well-being (Wales) Act, which gives greater voice and control to the citizen and will form an important aspect to the new regulatory and inspection regime.

8.22 All of these work streams will have positive impacts for Welsh speakers, but may result in greater resource implications for the regulators (e.g. the Inspectorate estimate that the costs of printing all of its reports bilingually could increase by over five times

its current level) and service providers who will need to consider whether additional resources are necessary to deliver Welsh language services.

### **Sustainable development**

8.23 Having considered the guidance on completing an Environmental Impact Assessment, it was determined that there were no environmental issues that would be affected by this proposed Bill.

### **Rural proofing**

8.24 The Welsh Government has made a commitment to ensuring that all of its policies and programmes take into consideration the needs of rural communities during their formulation and delivery. In order to understand whether the proposals will have any impacts upon rural areas of Wales, we have undertaken a rural proofing impact assessment of the Regulation and Inspection of Social Care (Wales) Bill.

8.25 The Bill aims to create a regulatory regime for social care that focuses on the well-being outcomes for the service user and the services being provided to meet these outcomes. Whilst it will not actively change the current methodology of delivery of services, it will amend the regulation and inspection regime and place the citizen at the heart of the process and we have determined that there is potential for the proposals to potentially have both negative and positive effects for rural communities. Anecdotal evidence and research shows that many rural communities already find it difficult to readily access some services, and people have to travel greater distances or move away to receive them at either personal or public expense. Whilst it may not always be possible to provide such services locally, the proposals will help ensure that service providers and commissioners (local authorities) plan and deliver services that are more focused on the individual's needs, including giving thought to whether these can be provided within or around their community. The evidence shows that local authorities are already examining ways of reducing costs and delivering services through greater collaborative working with other local government, healthcare and third sector partners.

## **Health and well-being**

8.26 Following on from the Social Services and Well-being (Wales) Act, which will transform the way social care services are delivered, promoting people's independence to give them stronger voice and control; this Bill will ensure that the regulation regime in Wales accurately reflects these changes, including the shifts in modern practice that are happening within the sector, to ensure that they are captured within the regulatory framework and provide the public with the assurance that services are monitored and delivered to a high quality.

8.27 Failure to implement the changes outlined within this Bill will have a detrimental impact for all service users and their families and carers, not only as it will prevent the regulators from ensuring that it can monitor and ensure that the social care sector are delivering high quality services and meeting the agreed outcomes for vulnerable individuals; but also have serious implications on the users' improved voice and control over the services they receive.

## **Impact on privacy**

8.28 The Bill is designed to support the regulators to carry out their duties, and to deliver the Welsh Government's expectations which are to secure the well-being of citizens and to improve the quality of social care, within an ever changing environment where new models of service are developing that are not easily definable within the classifications of the current regulatory and inspection regime. Without this action our regulatory arrangements will soon become outdated and restricted. Where the Social Services and Well-being (Wales) Act set out a new landscape for social care in Wales that holds an outcomes based approach to service delivery focused on the citizen at its heart; so too must our regulation and inspection of that social care be built around the impact that these services have on all of our citizens that require them, not on a set of minimum standards.

8.29 As part of the new regulatory regime, the Bill will include powers that will allow the regulators (the Care and Social Services Inspectorate Wales and the Care Council for Wales), to include emerging service models to the regulatory framework – including the registration of the workforce. These powers already exist under the Care Standards Act 2000 and are subject to the regulations set out in the Data Protection

Act 1998; and any additions to the register would be subject to the same protections afforded by this legislation.

### **Impact on the voluntary sector**

8.30 There are a number of voluntary sector organisations who deliver social care services directly to the people of Wales and on behalf of local authority commissioners. In the case of the provision of services for the latter, they receive public funding to do so. They will, like their public and independent sector service provider colleagues, be subject to the new duties that the Bill will propose and will be required to evidence to the regulators how their services meet the agreed well-being outcomes of their users. An outcomes-based reporting system, rather than the current one based on minimum standards, will help both the regulators and service providers see how the services meet the needs of those that receive them. This in turn will help focus the drive forward to deliver further improvements or provide an example for others to aim to emulate.



## **Section 9: Post-implementation review**

9.1 The Welsh Government has two clear policy aims in relation to the regulation and inspection of social care in Wales. The overarching aims of this Bill are to:

- To secure the well-being of citizen.
- To improve the quality of social care.

9.2 The Bill makes provision for a number of key reporting mechanisms which will offer a set of clear evidence to inform the post implementation review and establish how successful the Bill has been in achieving both of these aims. The reporting mechanisms include:

- Annual reports from service providers.
- Annual reports from local authorities and the review of those reports as undertaken in the Annual Review of Performance and Evaluation of Performance by the service regulator.
- The annual report from the Welsh Ministers in their role as the service regulator.
- The annual report of the workforce regulator.

9.3 In addition, a performance measurement framework is currently in development that local authorities will be required to report against under the Social Services and Well-being (Wales) Act 2014. It is anticipated that the information gathered from this additional reporting mechanism will contribute to the post implementation review of this Bill.

9.4 The Bill also makes provision for the service regulator to issue quality judgements as part of their inspection processes for service providers. Whilst it is not the intention of these quality judgements to be used to create an overall ranking system, it is anticipated that these quality judgements will provide useful information in assessing how the Bill is achieving its aims.

## **Annex A: Explanatory Notes**

# **REGULATION AND INSPECTION OF SOCIAL CARE (WALES) BILL**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes are for the Regulation and Inspection of Social Care (Wales) Bill which was introduced into the National Assembly for Wales on 23 February 2015. They have been prepared by the Department for Health and Social Services of the Welsh Government to assist the reader of the Bill. The Explanatory Notes should be read in conjunction with the Bill but are not part of it.

### **POLICY BACKGROUND**

2. *Sustainable Social Services for Wales: A Framework for Action*, published in February 2011, set out the Welsh Government's policy direction towards a whole system change in respect of social care in Wales. The main aims of this document were to –
  - Deliver better social services by providing users and carers with a much stronger voice and greater control over the services they receive.
  - Ensure people receive the help they need to live fulfilled lives.
3. The Social Services and Well-being (Wales) Act 2014 ("the 2014 Act") was the first legislative instrument taken forward to achieve these aims. This Act fundamentally changed the sector as a whole, placing well-being at the heart of care and support and raising the bar in terms of the expectations placed on social services in Wales.
4. The changes introduced as part of the 2014 Act necessitated a complete overhaul of the regulatory system in Wales in respect of social care and the introduction of this Bill. As such the aims of this Bill are on a number of levels intrinsically linked to changes introduced by the 2014 Act. The aims of this Bill are –
  - To place the citizen at the heart of the system.
  - To create a system that understands the impact of services on the lives of people.
  - To ensure providers of services are appropriately accountable.
  - To improve information sharing and co-operation.
  - To better understand the future and avoid unexpected failures.
  - To make a step change in the improvement agenda.
  - To support the development of the best workforce possible.
  - To deliver a robust and transparent system of regulation for service providers and for the workforce.

- To reduce complexity of the law and provide future flexibility.
5. In addition it is important to learn the lessons from serious incidents such as Southern Cross, Mid Staffs and Winterbourne View all of which were examples of the criminal abuse and neglect of vulnerable adults in England. We are not immune from serious incidents in Wales and must also learn the lessons from Operation Jasmine which is currently the subject of an independent review commissioned by the Welsh Government into abuse and neglect at residential care homes in South Wales.
  6. Whilst we acknowledge that we should not build our regulatory systems on the back of failure –we cannot ignore the many clear lessons that these cases tell us. From Southern Cross we have to understand our social care is not immune to the impact of the market, and we need to understand the risks that provider failure carries. From Mid Staffs we must ensure that disparate information is not overlooked and that we listen to those most directly involved in our care services. From Winterbourne we recognised that the culpability for abuse could not be solely held by those on the front line. It is these lessons along with extensive stakeholder engagement and consultation that have led us to develop the regulatory systems established by this Bill.
  7. The Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry chaired by Roberts Francis Q.C. (the Francis inquiry report) made a number of recommendations in relation to directors and the ability of the regulator to take action against directors. The U.K. Government’s response to those recommendations has been to make amendments to Regulations made pursuant to powers in the Health and Social Care Act 2008 to make it a requirement for directors to satisfy a requirement of fitness. Those regulations currently only apply to health service bodies but will be extended to all Care Quality Commission (CQC) registered independent healthcare and adult social care providers from April 2015. A health service body that fails to comply with this requirement could have a condition imposed on its registration with CQC.

## GENERAL OVERVIEW OF THE BILL

8. The Bill is split into 11 Parts and 3 Schedules –
  - Part 1 – Regulation of social care services
  - Part 2 – Overview and Interpretation of Parts 3 to 8
  - Part 3 – Social Care Wales
  - Part 4 – Social Care Workers
  - Part 5 – Social Care Workers: Standards of conduct, education etc.
  - Part 6 – Social Care Workers: Fitness to practise
  - Part 7 – Orders prohibiting work in social care: Un registered persons
  - Part 8 – Social Care Wales: Duty to establish panels etc.
  - Part 9 – Co-operation and joint working by the regulatory bodies etc.
  - Part 10 – Miscellaneous and general
  - Part 11 –Final provisions

9. The Bill introduces a new system of regulation of care and support services, replacing that currently in operation established under the Care Standards Act 2000 (“the 2000 Act”). Part 1 of the Bill sets out the regulatory processes applying to a person wishing to deliver a regulated service in Wales. It also provides detail in respect of the regulation of local authority social services functions and establishes the new processes for both local authorities and the Welsh Ministers to undertake assessment of the care and support market.
10. Part 3 of the Bill renames the Care Council for Wales as Social Care Wales. Social Care Wales will not only undertake the functions of workforce regulator but will play an important role in improvement, both workforce and service.
11. Parts 4 - 8 restate many of the relevant provisions from the 2000 Act dealing with the registration of social care workers, fitness to practise etc. These Parts have also been informed by the recent Law Commission report on the regulation of health and social care workers, the regulatory regime has been updated to reflect many of the recommendations made in this report.
12. Part 9 establishes enhanced processes for information sharing and joint working between regulatory bodies.
13. Part 10 details the Welsh Ministers powers to initiate an inquiry into any matter concerned with the provision of care and support.
14. Part 11 provides detail in respect of minor and consequential amendments and the regulations to be made. It also provides detail in respect of commencement of this Bill and an index and definitions of expressions used in this Bill.

## **COMMENTARY ON SECTIONS**

### **Part 1 – Regulation of social care services**

#### **Chapter 1 - Introduction**

##### **Section 2 - Meaning of “regulated service”**

15. Part 1 (Chapters 1-5 and 7) of the Bill replace the current establishment and agency model of registration in the 2000 Act for the purpose of social care regulation in Wales. Instead, Section 2(1) lists the “regulated services” that will be the subject of regulation by the Welsh Ministers pursuant to Part 1. The meaning of each entry in the list is expanded in Schedule 1. The services listed in Schedule 1 broadly correspond with the establishments and agencies that are currently regulated pursuant to provision in the Act 2000 and cover the kinds of services that provide care and support to persons within the field of social care. There is one exception to that and that is that the Bill makes provision for the regulation of an “advocacy service”. In the future it may be desirable to regulate other services where

care and support is provided, for example, extra care services. Subsection 1(h) provides the power to add to that list.

16. There may be some things that would not be considered to one of those regulated services where there are good reasons not to regulate through this Bill. Subsection (3) therefore allows the Welsh Ministers to make regulations whereby services that would otherwise fall within the list in subsection (1) are not to be treated as regulated services. Section 185(2)(a) specifies that regulations made under this section must be made using the affirmative procedure.

### **Section 3 - Other key terms**

17. This section defines a number of important terms used in this Part of the Bill including the terms “care” and “support”. This is different to the approach in the 2014 Act where those terms are not defined so that the obligations to assess and provide for the needs of a person take into account the broadest possible range of care and support that a person may need. In contrast, this Bill imposes a regulatory regime on persons who provide a service which constitutes the provision of care and support. It is therefore important for there to be some certainty about what care and support means so that a service provider is aware that they are providing a service which may be regulated. It also means that any future services that may be prescribed pursuant to the power in section 2(1)(h) are limited to those that provide care and support as it is described in this section. The definition of “care” is not intended to define how care is delivered or assessed. Section 26(1) requires that regulations made under subsection (1) must include requirements as to the standard of care and support that must be provided by a service provider. It is with reference to these regulatory requirements that the quality of care will be assessed with reference to well-being outcomes.
18. There may be services that fall within the definitions of care and support that need to be excepted so that they do not fall under the regulatory regime in the Bill and so persons who are involved in those things have certainty that this is the case. Section 3(3) therefore provides the power to the Welsh Ministers through regulations to set out things that are not to be considered as regulated services perhaps because they are already subject to another regulatory regime, for example housing or health.

### **Schedule 1**

19. The definition of a care home service in paragraph 1 covers both children’s homes and homes for adults. Hospitals and schools are not included as they are regulated through the health and education systems respectively. The other exceptions in sub-paragraph (2) are all treated as separate types of regulated services. This means different requirements can be imposed on the different types of services (for example, by regulations under section 26).
20. In paragraph 5, fostering services provided by local authorities are not included because local authority services are to be regulated under section 94A of the 2014 Act which is inserted by section 57 of this Bill.

21. Paragraph 7(2) sets out exceptions to what is considered to be a domiciliary care service. If the care and support is provided by a person (possibly a relative, friend or neighbour) who only provides it to one particular person and does it on a personal basis (i.e. not part of a formal business or service) then that provision of care and support is not regulated under the Bill. Paragraph 7(3) provides a further exception so that those who merely introduce a person to an individual requiring domiciliary support will not fall to be regulated under the Bill. The key aspect of the exception here is the absence of any on going role in the direction or control of the provision of care and support.

## **Sections 5-30 - Chapter 2 – Registration etc. of service providers**

### **Requirement to register (Section 5)**

22. This is the fundamental rule underpinning the regulation of care and support services. Any person providing one of the regulated services listed in section 2(1) must register with the Welsh Ministers. Providing one of those services when not registered is a criminal offence which is punishable by an unlimited fine or imprisonment for up to 2 years (or both) (see Section 50(1)).

### **Application for registration as a service provider (Section 6)**

23. Section 6 sets out the process by which a person may apply to the Welsh Ministers to become a service provider.
24. Subsection (1)(b) requires the applicant to specify “the places at, from or in relation to which the service is to be provided”. The approach taken in the Bill with regard to applications for registration is new and is aimed at:
- providing flexibility to providers with regard to the services that they seek to provide and the places at which they wish to provide them;
  - avoiding duplication in relation to the information and documentation that must be provided to the regulator when seeking to provide a service; and
  - providing the regulator with flexibility in the way that it carries out enforcement procedures.
25. The expression “at, from or in relation to which” is intended to cover the whole gamut of ways in which a service may be delivered. “At” a place is intended to cover things like a care home service where the service is provided within particular premises. “From” is intended to cover offices where those providing the services may be based but where they travel out from there to provide a service (for example a fostering service or a domiciliary support service). A place like that may also be where people receiving the service travel to from time to time in order to receive it. “In relation to” is intended to cover the geographical areas where a service is delivered, for example, the area covered by a provider of a fostering service or domiciliary support service. For example, a person may apply to be a provider of a domiciliary support service from an office in Bridgend with the intention of providing that service in relation to the County Boroughs of Bridgend and Neath and Port Talbot.
26. The requirement for the service provider to designate an individual to be registered as the responsible individual in subsection (1)(c) is also new. The Bill departs from the system of

registration in the 2000 Act that requires a person who seeks to manage an establishment or agency to register with the Welsh Ministers. Section 19 limits the kinds of individuals who can be specified and once they are specified, responsible individuals will be subject to particular requirements under regulations made pursuant to section 27.

### **Grant or refusal of registration as a service provider (Section 7)**

27. Section 7 sets out the actions that the Welsh Ministers must take in respect of an application received in accordance with section 6. The application must be granted if the applicant fulfils the criteria in subsection (1). An application relating to a domiciliary care service must contain an undertaking that the service must not be provided by way of a visit that is less than half an hour unless the person is known to the service user and the visit is part of a wider package of support and allows sufficient time to carry out the task that is the purpose of that visit.
28. Subsection (1)(b) requires the applicant to be a fit and proper person and subsection (1)(c)(ii) requires each individual designated as a responsible individual to be a fit and proper person. The matters that the Welsh Ministers must have regard to when determining whether a person is fit are set out in section 8.
29. In granting the application, subsection (3)(a)(i) specifies that the granting of the application must be subject to a condition specifying the places “at, from or in relation to which” the service is to be provided. This is to reflect the new approach to the application process whereby a person applying to be a service provider may specify an intention to provide more than one service at more than one place. The imposition of this condition makes it clear that a service can only be provided at those places specified by the Welsh Ministers.
30. In other words, in determining that application, the Welsh Ministers may grant a certain aspect of the application while refusing others. For example, a provider may make an application to provide both a care home service and a domiciliary support service. In determining the application the Welsh Ministers may be of the view that the provider is not able to meet the regulatory requirements in accordance with section 26 in respect of the domiciliary support service so will only grant the application to provide a care home service and refuse the application in respect of the provision of a domiciliary care service.
31. If a provider does satisfy the requirements in respect of both types of services the Welsh Ministers must set those out as a condition of registration because the provider is not being registered to provide any regulated service at any place. Any additional service or place that the provider may seek to provide a service in the future has to be added to that person’s registration and the mechanism by which a provider does this is by making an application to vary their registration (see section 10).
32. As with the condition about places, the Welsh Ministers might be satisfied about the individual designated as the responsible individual in relation to some of the places but not others. The registration of the service provider is intended to permit an individual to be the responsible individual only in relation to places specified on that person’s registration certificate. Subsection 3(a)(ii) specifies that the granting of an application by the Welsh Ministers must be subject to a condition that specifies the responsible individual for each place at, from or in relation to which a service is provided. Adding a new responsible individual or making an existing responsible individual responsible for an additional location must be done by applying for the registration to be varied under section 10.

33. In addition to the mandatory conditions about places and responsible individuals, the Welsh Ministers can impose other conditions on a registration. This reflects the existing power of the Welsh Ministers to impose conditions under section 13(3) of the 2000 Act. The types of conditions that might be imposed under subsection (3)(b) include placing a restriction on the number or the age of residents at a care home service, a requirement for appropriate restrictions on staffing such as a requirement for a certain number of nursing staff, or in the case of a domiciliary support service, a restriction on accepting any new packages of care.

### **Fit and proper person: relevant considerations (Section 8)**

34. In making a decision as to whether a person applying to be a service provider or who currently is a service provider is a fit and proper person subsection (2) makes it clear that the Welsh Ministers may have regard to all matters that they think appropriate. The same requirement applies when Welsh Ministers are making a decision as to whether a person designated as a responsible individual or who is currently a responsible individual is a fit and proper person. However, subsections (4) to (6) set out evidence that the Welsh Ministers must have regard to when making their decision. This evidence includes the commission of certain offences and the giving of a caution. Evidence of association or former association with a person who has done any of the things set out in subsection (4) is also considered relevant.
35. The reliance that Welsh Ministers place on any matter they consider relevant in making a decision will be a matter of fact and degree.
36. Subsection (7) is a regulation making power for Welsh Ministers to vary the evidence to which they must have regard under this section.

### **Application for variation of registration as a service provider (Section 10)**

37. If a service provider wants to change any of the parameters of their registration (e.g. by adding a new regulated service or a new location or changing the responsible individuals that are registered) they must apply for a variation of their registration under this section.
38. Subsection (2) is a regulation making power that allows the Welsh Ministers to set a time limit within which the service provider must apply to vary their registration to designate a new person as a responsible individual in respect of that service or a location at which that service is carried out. If a responsible individual dies or becomes incapable of performing the role or if the designation of the individual is cancelled by the Welsh Ministers in accordance with section 21 because they no longer satisfy the requirements set out in section 20 the service provider has to have another individual in place or else they would be committing an offence under section 42. It is therefore reasonable to provide for a certain period of time where there might be a gap in registering a new responsible individual. This regulation making power is intended to provide for this and may specify different time periods in different circumstances (for example, it might be reasonable to require a service provider to act quickly to find a replacement responsible individual when it has been clear for some time that the existing individual's registration was going to be cancelled. In contrast, a longer gap may be permissible when a responsible individual dies unexpectedly).



### **Grant or refusal for application for variation (Section 11)**

39. In the event that a service provider has made an application to vary or remove a condition imposed by the Welsh Ministers in under section 10(1)(b), subsection(2) makes it clear that the Welsh Ministers might decide to vary the condition in a manner that is different to that specified in the application or indeed they might impose another condition altogether (either in addition to or as a replacement for the condition set out in the application). Given the wide range of conditions that might be subject to a variation application it is appropriate for the Welsh Ministers to have the power to take whatever action they consider is most appropriate in the circumstances. Otherwise the Welsh Ministers would be limited to simply granting or refusing the application on its terms and then would have to go through a separate procedure under section 12 to make any additional variation.
40. Subsection (4) ensures that the Welsh Ministers must give prior notice to a provider of whatever they propose to do in relation to an application under this section and must also give notice of the eventual decision for it to take effect (see sections 17 to 19).

### **Variation without application (Section 12)**

41. Even if no application to vary a registration has been made, the Welsh Ministers may consider it necessary to make a variation (for example, an inspection under section 33 might have alerted the Welsh Ministers to the need for the registration to be varied)
42. This section specifies the circumstances under which Welsh Ministers are able to vary the registration of a service provider without having received an application from the service provider.
43. As a result of the new approach to the registration of services, the ability to vary a registration allows Welsh Ministers to cancel a particular service whilst a provider is still able to provide other services or to cancel a place at which or in relation to which a service is provided while maintaining the registration of other places.
44. For example, a provider may be registered to provide a care home service at two places, one in Cardiff and one in Swansea. The Welsh Ministers may consider that the care home service provided in Cardiff is not complying with the relevant regulatory requirements and should be cancelled. Currently, because each establishment and agency requires a separate application and a separate registration certificate the action required by the Welsh Ministers to bring that registration to an end would involve cancelling the provider's registration in respect of the Cardiff care home. Under this new regulatory regime, it will involve the provider's registration being varied to remove one place at which the care home service is provided (Cardiff) from the registration certificate whilst retaining the other place (Swansea). This is because a provider will have only one registration certificate in respect of all the services at all the places that each of those services is provided.
45. As with variations under section 11, the Welsh Ministers must first issue a notice of proposal prior to making any final decision to vary a service provider's registration.

### **Applications for cancellation of registration as a service provider (Section 13)**

46. This section allows for applications to be made to cancel a registration but not if the Welsh Ministers have already commenced action to cancel a provider's registration under section 14 or 22. That restriction prevents a provider from circumventing the cancellation procedures under those sections which include the Welsh Ministers setting out the grounds

for cancellation. Where the Welsh Ministers have taken action to cancel a registration there may be important public interest reasons for setting out grounds for taking that action.

#### **Cancellation without application (Section 14)**

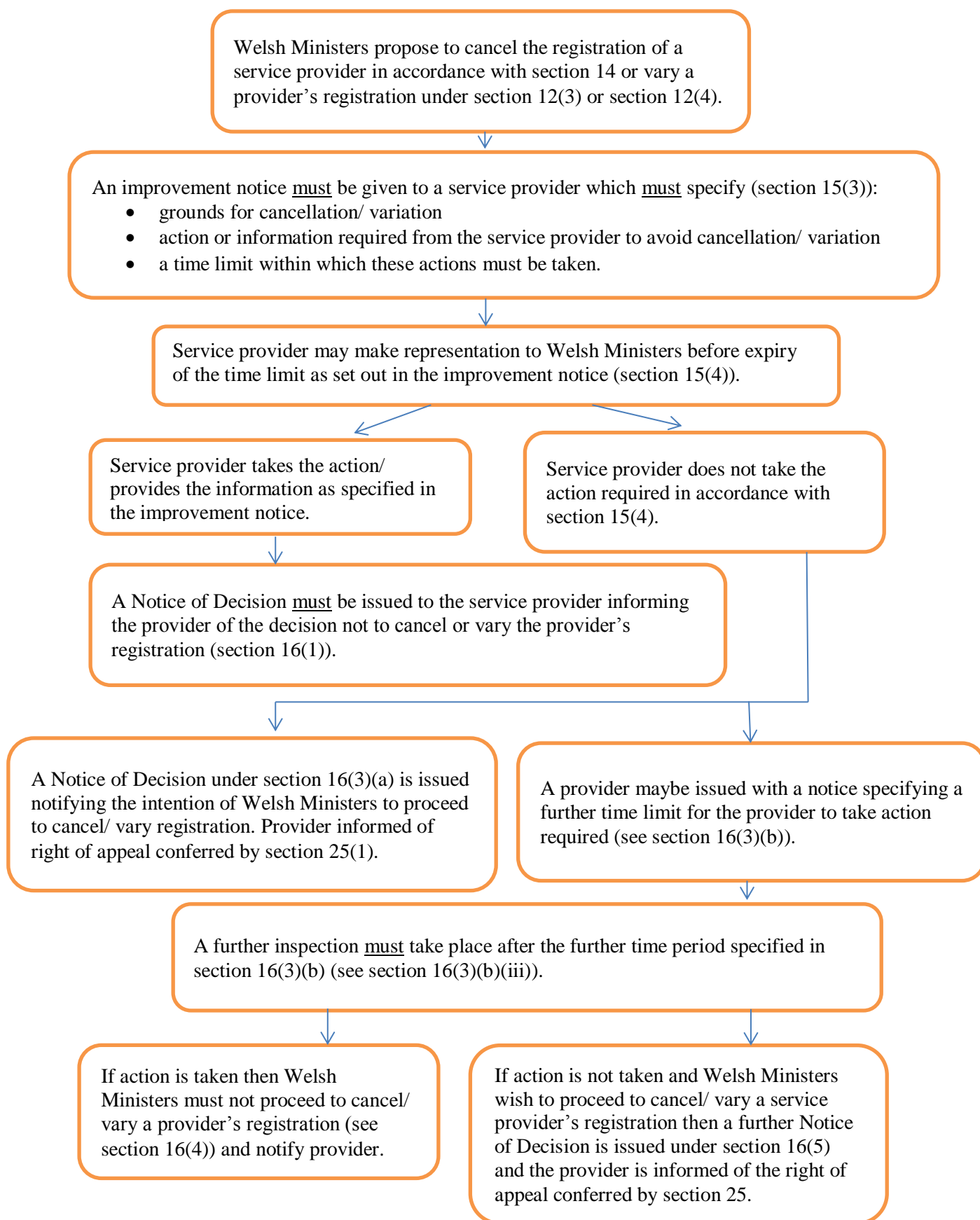
47. Section 14 sets out the powers of the Welsh Ministers to cancel a services provider's registration in its entirety. This could potentially mean the cancellation of several services provided at several places and is the most serious course of action that the Welsh Ministers will take in respect of a person's registration as a service provider. As this is a power, it will be for the Welsh Ministers to decide in each case whether cancellation is appropriate on whichever of the grounds listed in subsection (1) applies.
48. Subsection 4 prohibits the Welsh Ministers from being able to cancel a provider's registration unless the improvement notice procedure in sections 15 and 16 have been complied with although that procedure will not apply to any application to urgently cancel or vary a registration made in accordance with section 22 or to a decision of the Welsh Ministers to impose urgent condition pursuant to section 23.

#### **Improvement notices (Section 15), notice of decision following improvement notice (Section 16)**

49. Currently, the Welsh Ministers operate a similar non statutory procedure prior to exercising the power to issue a notice of proposal to cancel a registration pursuant to section 17 of the 2000 Act. The Bill ensures that the Welsh Ministers are required by law to give prior notice of proposals and decisions and in certain cases to give notice of intention to cancel a registration and allow the provider to rectify whatever has gone wrong.
50. Section 15 provides for a notice of intention to vary or cancel and gives the provider an opportunity to rectify things. In accordance with section 15(3)(c) an improvement notice will specify a time limit within which the actions identified as being necessary by the Welsh Ministers must be undertaken in order to avoid cancellation.
51. If the Welsh Ministers are not satisfied that the action has been taken at the end of that time limit, the Welsh Ministers are able to do one of three things. They may immediately proceed to making a decision to cancel or vary the registration. If the Welsh Ministers do this then they must issue a decision notice and explain to the provider their right of appeal conferred by section 25. In circumstances where the Welsh Ministers decide that there has been satisfactory compliance they cannot proceed to cancel and must provide a notice to the provider informing them of this.
52. Alternatively, there may be cases where, after the time limit has expired the Welsh Ministers are of the view that certain actions have been taken but not all or that the actions have been taken but they are not confident that compliance with the regulatory requirements has been achieved by the provider. Section 16(3)(b) provides the Welsh Ministers with a power to specify a date, perhaps 3 or 6 months ahead, following which they propose to cancel or vary if they are still not satisfied that action specified in the improvement notice has been taken. At the end of that further period, if the Welsh Ministers are of the view that there is continued non compliance and wish to proceed to cancel they must carry out an inspection under subsection (5). If the Welsh Ministers wish to proceed to cancel following that inspection then they must issue a decision notice to cancel or vary.

53. A provider will have a right of appeal against a decision by the Welsh Ministers to cancel or vary and that right is conferred by section 25.
54. The following diagram illustrates the improvement notice procedure:

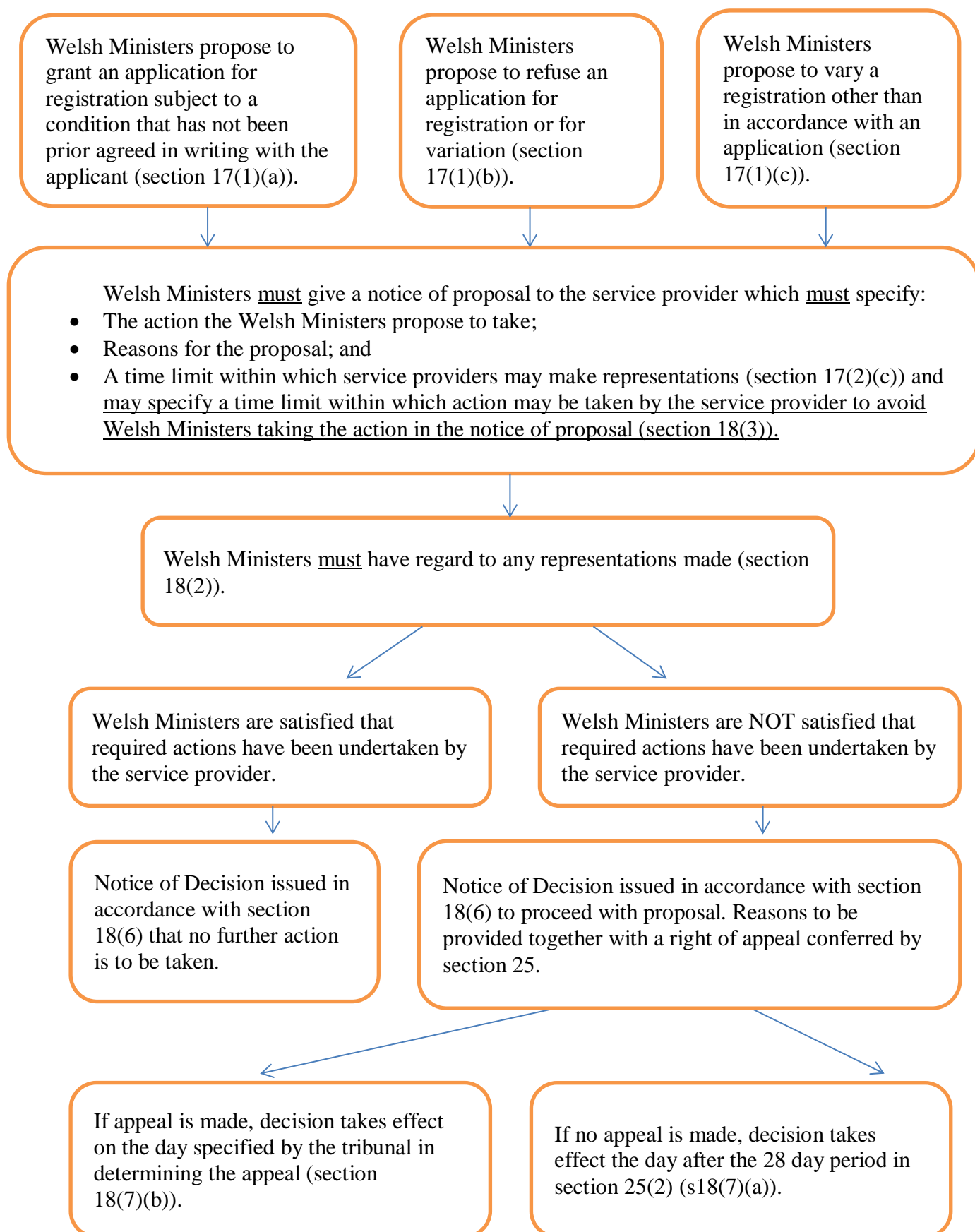
## Improvement notice procedure



**Notice of proposal (Section 17), notice of decision following notice of proposal (Section 18)**

55. These provisions replicate the current procedure that the Welsh Ministers operate pursuant to sections 17 to 19 of the 2000 Act. Before making certain decisions, the Welsh Ministers are obliged to issue a notice informing the service provider of the decision they propose to take and giving the service provider the opportunity to make written representations within a certain time period, which must be at least 28 days. The procedure differs slightly to the current procedure in that such a notice can also give the provider to opportunity to rectify the situation by providing a time limit within which certain things must be done to avoid the action being taken (see section 17(3)).
56. The Welsh Ministers are obliged to consider any representations made and following this to make a decision in accordance with section 18(6).
57. The following diagram illustrates the notice of proposal procedures:

## Notice of proposal procedure



## **Responsible individuals (Section 20), cancellation of designation of a responsible individual (Section 21)**

58. The concept of the responsible individual is not new. Each of the numerous setting specific regulations that currently apply to the establishments and agencies that are required to register under the 2000 Act are required to have a responsible individual. See for example, regulation 6 of the Children's Homes (Wales) Regulations 2002 and regulation 8 of the Domiciliary Care Agencies (Wales) Regulations 2004. However, under the current regime, while the Welsh Ministers have a role in assessing the responsible individual as at the time of registration, the Welsh Ministers as regulator have limited powers available if they consider that the responsible individual becomes unsuitable to perform that role; if the responsible individual appointed at the time of registration resigns from the organisation leaving an establishment or agency with no responsible individual in post; or an alternative responsible individual is nominated by a provider who the regulator does not think is suitable to perform that role.
59. Sections 20 and 21 of the Bill is the approach taken in implementing a number of the recommendations of the Francis Inquiry Report in Wales in relation to the role of directors.
60. Sections 7 and 20 taken together require that there must be a person appointed as a responsible individual who is designated by the provider as part of the provider's registration. Section 20 specifies that the responsible individual must satisfy certain requirements. Subsection (2) requires the responsible individual to be someone of suitable seniority within the company or organisation that is running the service.
61. The responsible individual will also have to meet a "fitness" test. The requirements that must be considered by Welsh Ministers in making a decision as to whether a person designated by the service provider as responsible individual is fit to be a responsible individual or whether an existing responsible individual continues to be fit are set out in section 8.
62. It is intended that the responsible individual will have specific responsibilities for the service in respect of which that person is registered. Those duties will be set out in regulations made pursuant to section 27. At the time the service provider applies to be registered, the Welsh Ministers will need to be satisfied that the person designated as responsible individual is capable of performing those duties (see section 7(1)(c)). A responsible individual will need to be able to meet the requirements imposed by regulations under section 27 in relation to the type of service that the individual is to be registered as responsible individual for.
63. Section 20(4) allows the same person to be a responsible individual in respect of more than one place at, from or in relation to which a service is provided. However, this will be possible only if the Welsh Ministers can be satisfied that the person is capable of performing their duties as responsible individual in respect of each place.
64. If an individual does not meet the requirements to be a responsible individual, section 21 gives the Welsh Ministers power to cancel the designation of a responsible individual. )The individual is first given an opportunity to rectify things so as to show that he or she is fit to be a responsible individual (see section 21(4)(b)).

65. By way of example, a provider may designate the same person to be the responsible individual in respect of a care home service in Cardiff and a care home service in Bangor. One of the main duties that will be placed on the responsible individual in the regulations made pursuant to section 27 is the requirement to supervise the management of the service. This is of particular importance as it is recognised that managers can be the key to the success or failure of a service. The Welsh Ministers may consider that the same person would not be capable of supervising the management at both of those places. If, in the opinion of the Welsh Ministers they are not so capable, then the provider will be required to designate a different person to each of the places.
66. Using the same example, the Welsh Ministers may decide at the time of first registration that the same person could demonstrate that they were able to fulfil the requirements in section 20(1) and register that person as responsible individual in respect of the care home service provided in both Cardiff and Bangor. However, post registration, evidence may come to light that, in fact, they were not able to do so. For example, the supervision of the management of the care home service in Cardiff may be satisfactory but not in respect of the service provided in Bangor. The Welsh Ministers could, in accordance with section 21, cancel the registration of the responsible individual in respect of the Bangor care home service, whilst maintaining that person's registration as the responsible individual in respect of the Cardiff care home service but they would have to give an improvement notice to the individual to give him or her the chance to rectify things before the Welsh Ministers proceed to cancellation.

### **Urgent cancellation or variation of services or places (Section 22)**

67. There will be circumstances that are so severe that they require Welsh Ministers to take urgent action. While those circumstances are likely to be rare, section 22 provides the Welsh Ministers with the power to take such action by making an application to the magistrates court to urgently cancel an entire registration or, alternatively a place at, from or in relation to which a service is provided (but only if there is a serious risk to a person's life or physical or mental health or a risk of a person suffering from abuse or neglect).
68. Currently, a person seeking to carry on or manage an establishment or agency under the 2000 Act must submit a separate application in respect of each. In the event that the Welsh Ministers intended to cancel all of the service provision of one provider they would be required to make several applications to cancel each establishment or agency carried on by the same provider with separate supporting evidence having to be provided in respect of each application. The independent review undertaken into Operation Jasmine identified this as a compounding issue.
69. The new system of registration will enable one application to be made to cancel the entirety of a provider's registration in circumstances where the grounds for cancellation are systemic and are relevant to each service and each place at, from or in relation to which a provider is registered.
70. One of the aims of the new system of registration, and a consequence of it, is that an application to cancel the entirety of a provider's registration would not completely fail in circumstances where the criteria in section 22(2) was not met in respect of each place at, from, or in relation to which each service was being provided. For example, the Welsh Ministers might apply to cancel the registration of a provider who provides a care home service at three places. The Court may be satisfied that the criteria in section 22(2) are met



in respect of two of those places but not the remaining place. Section 22 provides the Court with the power to vary the registration of the provider by removing two of the places at which the care home service was being provided whilst maintaining the registration of the care home service in respect of the remaining place as opposed to refusing the entirety of the Welsh Ministers application.

The improvement notice procedure in sections 15 and 16 do not apply to urgent applications (see section 14(4)).

### **Urgent variation of registration: other conditions (Section 24)**

71. In a case where a persons' life or physical or mental health may be at risk or where there is a risk of abuse or neglect occurring the most effective and proportionate course of action may be to sustain the provision of a service while at the same time ensuring that a provider complies with the regulatory requirements by imposing an urgent condition on a provider's registration. There will still be a right of appeal but the important distinction here between this and other enforcement action taken by the Welsh Ministers is that such a decision will take effect immediately. There is existing similar provision in section 20B of the 2000 Act.
72. Given the urgency in which the Welsh Ministers may have to make a decision under this section, then new facts might emerge which change the Welsh Ministers views about the risk that may exist such that they may wish to vary or withdraw any condition imposed under this section. Subsection (5) allows Welsh Ministers to do this. The withdrawal of a condition imposed under this section may also follow any representations received by them to which they are under a duty to consider.
73. A service provider will have the right to appeal a decision to impose an urgent condition as soon as it is imposed. Upon appealing to the First Tier Tribunal, the Tribunal will have the power to make any interim order it deems appropriate. This may include suspending the effect of the decision made by the Welsh Ministers. This may be appropriate, for example, in a case where the Tribunal does not have capacity to list the matter for an immediate hearing. A decision could be suspended pending the Tribunal having the capacity to have a hearing on the issue.

### **Appeals (Section 25)**

74. Section 25 provides service providers with rights of appeal in relation to decisions made by the Welsh Ministers to cancel or vary a registration whether or not that decision is made in urgent circumstances. The powers of the First Tier Tribunal are wide. The Tribunal is provided with the power to confirm a decision of the Welsh Ministers, direct that the decision will not have effect or will cease to have effect if it has already. The Tribunal may also make interim orders or substitute its own decision. In substituting its own decision the Tribunal only has the power to do something that the Welsh Ministers could do.

### **Regulations about regulated services (Section 26), regulations about responsible individuals (Section 27), guidance about regulations under sections 26 and 27 (Section 28)**

75. Regulations made pursuant to section 26 will form the basis of regulation by the Welsh Ministers. The corresponding provision in the 2000 Act is section 23 which sets out a non exhaustive list of the matters that regulations made under that provision may deal with. There are currently numerous sets of regulations that apply to each establishment and

agency that requires registration under the 2000 Act. Each set of regulations then essentially repeats the same requirements with some modifications depending upon the type of establishment or agency that they are concerned with.

76. Section 26 could be used to make regulations along the same lines. But it will also be possible to take a different approach. The current intention is that there will be only two sets of regulations that will be made pursuant to section 26. Firstly, subsection (2) requires that regulations made under subsection (1) must include requirements as to the standard of care and support that must be provided by a service provider. Subsection (3) requires that those standards will be linked to the well being outcomes statement issued by the Welsh Ministers pursuant to section 8 of the 2014 Act. The purpose of this set of regulations is to require providers of care and support to focus on the individual well being outcomes of each service user and to enable the Welsh Ministers to assess the standard of care with reference to how well the provider is delivering care and/or support in accordance with those outcomes. Secondly, there will be another set of regulations that will establish similar duties to those currently listed in section 22(2) of the 2000 Act. Some examples are: the requirement to have a manager who is “fit” together with the criteria for fitness of both manager and staff; the requirement to prepare a statement of purpose; the requirement to keep records and accounts and notification of incidents.
77. Regulations made pursuant to section 27 will set out the duties that are to be specifically placed on the responsible individual. It is intended that those duties will include the requirement to appoint a suitable and fit manager and to report that appointment to whatever part of the service provider’s organisation has overall control of the body (i.e. the board of directors or similar in the case of a company; to the partners in the case of a partnership or to the Director of Social Services in the case of a local authority). In addition, the responsible individual will be responsible for supervising the management of the service at the place at, from or in relation to which they are registered as a responsible individual. They will be required to check the accuracy of record keeping, to undertake regular inspections, to complete the relevant section of the service providers annual report prepared in accordance with section 9 and to sign a declaration of truth in respect of the their section of that report and to report, in a timely manner any concerns they may have about the regulated service to the board of directors, partnership or the Director of Social Services. It is further intended that the power in section 45 will be used to make provision that a failure to comply with some of those duties will be an offence. For example, a failure to undertake inspections of the service or a failure to ensure that records kept at the service are accurate.
78. Currently, pursuant to section 23 of the 2000 Act, the Welsh Ministers may prepare and publish a statement of national minimum standards that are required to be taken into account in the making of decisions by the Welsh Ministers, the Court or tribunal. However, what section 23 does not do is place a duty on providers to have regard to those minimum standards when carrying on an establishment or agency. Section 28 of the Bill takes a different approach. It will place a duty on providers to have regard to guidance published by the Welsh Ministers under section 28 . The guidance is intended to inform providers about how, in relation to each different type of regulated service, they are able to satisfy the regulatory requirements in sections 26 and 27. Subsection (2) places a duty on providers to have regard to that guidance.

### **Sections 31-36 - Chapter 3 – Information and inspections**

**Power to require information (Section 31), service inspections (Section 32), service inspections: powers of the inspector (Section 33), powers of inspector to interview and examine persons (Section 34), inspection reports (Section 35), inspection ratings (Section 36)**

79. The current powers of the Welsh Ministers to require information from service providers and to inspect premises can be found in sections 31 and 32 of the 2000 Act. Sections 31 to 36 of the Bill derive from those provisions but have been updated in order to ensure that the powers that are provided to an inspector are appropriate for a service based regulatory regime as opposed to a premises based regime. Section 32(1) defines the term “inspection” for the purposes of Part 1. An inspection will involve two things: an assessment of the quality of care as well as an assessment of the organisation and co-ordination of the service.
80. Section 33 sets out an inspector’s powers of entry and inspection. The inspector may inspect any premises which the inspector has reasonable grounds to believe is (or has been) used as a place at or from which a service is (or has been) provided, such as a place where a care home service is provided. But an inspector may also inspect premises which the inspector has reasonable grounds to believe is (or has been) used in connection with the provision of a regulated services. This could be offices or a storage facility on an industrial estate where documents connected with the service are kept. It may also include a car used in connection with the provision of a domiciliary support service. Where an inspector wants to inspect a person’s home, the occupier must consent to an inspector entering the home for the purpose of an inspection.
81. Section 34 sets out the inspectors powers to interview and medically examine persons. Subsection (1) provides a power to the inspector to require anyone to be interviewed in private. This could be the service provider, manager or employee of a service but it could also include a parent, relative or carer of the service user if they consent to be interviewed. Subsection (5) makes provision for third parties to be present during such interviews and examinations if the person being interviewed or examined wants a third party to be present and the inspector does not object or if the inspector wants a third party to be present and the person being interviewed or examined does not object.
82. Section 36 provides a regulation making power to the Welsh Ministers to establish a ratings system in respect of the quality of care provided by regulated services. In the event that such a system was introduced then section 35(2) requires the inspector to put that rating in the inspection report which must be published. Section 186(2) provides that regulations made under this section must be made using the affirmative procedure.

### **Sections 37-41 - Chapter 4 – General functions**

**Register of service providers (Section 37), notifying local authorities of certain action taken under this Part (Section 38), charging fees (Section 39), engagement with the public (Section 40), annual report on regulatory functions (Section 41)**

83. Section 37 places a duty on Welsh Ministers to maintain a register of service providers. Subsection (2) sets out what information each entry must show and subsection (3) requires that the register is published and made available for public inspection free of charge. However, subsection 5 is a regulation making power to Welsh Ministers to omit certain information from the register in certain circumstances and to refuse request made for copies or extracts of the register in certain circumstances. This power replicates an existing power in section 36(3) of the 2000 Act. It is envisaged that such a power would be utilised

to, for example, restrict publication of medical information about providers or details about establishments relating to children.

84. Local authorities have statutory duties to assess and provide (whether directly or otherwise) care and support to those in need of such services who are eligible. They are also commissioners of regulated services. The aim of section 38 is to ensure that local authorities are aware when providers of regulated services have certain actions taken against them by the regulator given that this may, and in the case of a cancellation will, have a bearing on the sustainability of that service. Local authorities need to assess and undertake planning in cases where such actions by the regulator will have an impact on the availability of service provision in the local area.

### **Sections 42-54 - Chapter 5 - Offences and penalties**

**Failure to comply with a condition (Section 42), false descriptions (Section 43), failure by service provider to comply with requirements in regulations (Section 44), failure by responsible individual to comply with requirements in regulations (Section 45), false statements (Section 46), failure to submit annual return (Section 47), failure to provide information (Section 48), offences related to inspections (Section 49), penalties upon conviction (Section 50), penalty notices (Section 51), offences by body corporate (Section 52), offences by unincorporated bodies (Section 53), proceedings for offences (Section 54)**

85. The offences in the Bill that are classified as summary only offences are:

- making a false statement in a document (section 46)
- a failure to submit an annual return (section 47)
- a failure to provide information. (section 48)

86. The offence in section 46(d) of making a false statement in response to a request for information by Welsh Ministers under section 32(1) is intended to cover verbal information as is the offence of failing to provide information in section 48.

87. The offences in the Bill that are classified as either way offences are:

- providing a regulated service without being registered (section 5)
- a failure to comply with a condition (section 42)
- false description with intent to deceive (section 43)
- obstructing an inspector or failing to comply with a requirement imposed by an inspector. (section 49)

88. There is a distinction between the offence in section 5 in providing a regulated service without being registered and the offence in section 43 of pretending to be a service provider or pretending that a place is one at from or in relation to which a regulated service is provided. Section 5 would be engaged if a person was carrying on a regulated service without being registered with the Welsh Ministers. However, an offence under section 43(1)(a) might be committed if a person was pretending to be registered in order to, for example, secure a local authority contract. In relation to 43(1)(b) the offence applies in the case of a person holding a place out as being one where that person is registered to

provide a service when they are not so registered. For example, a person may own two care homes, one in Cardiff and one in Bridgend. That person may be registered to provide a care home service at a place in Cardiff but not at a place in Bridgend. That person would not be committing an offence under section 5 because they would be registered to provide a care home service at a place in Cardiff but they would be committing an offence under section 43(1)(b) because that person would be pretending to be registered to provide a care home service in Bridgend when they were not so registered.

89. The either way offences may attract a prison sentence of up to 2 years if the offence is serious enough to be tried on indictment. An unlimited fine is available to the sentencing Court in all cases.
90. Sections 44 and 45 provide powers to the Welsh Ministers to establish further offences in relation to any of the regulatory requirements established in the regulations made in respect of provider and responsible individuals in sections 26 and 27. This is similar to the current power in section 25 of the 2000 Act.
91. Section 51 provides a power to the Welsh Ministers to give a penalty notice instead of bringing proceedings for an offence but only in relation to those offences that are prescribed in regulations. Subsection (2) limits the exercise of that regulation making power to certain offences only, namely, false statements in documents, failure to submit an annual return, or a failure to provide information.

#### **Sections 55-57 - Chapter 6 - Local authority social services**

92. The 2014 Act imposes statutory duties on local authorities in respect of their social services functions which are listed in Schedule 2 to that Act. The Welsh Ministers currently regulate local authorities in respect of those functions using powers that are currently found in Chapter 6 of Part 2 of the Health and Social Care (Community Health and Standards) Act 2003 ("the 2003 Act").

#### **Reports by local authorities and general duty of the Welsh Ministers (Section 55), reviews, investigations and inspections (Section 56)**

93. Section 144 of the 2014 Act imposes a duty on local authorities to appoint a director of social services for the purpose of its social services functions. The starting point of any review Welsh Ministers currently carry out in respect of a local authority will involve reviewing the annual report prepared by Directors of social services. The requirement to prepare that annual report is currently contained in guidance. Section 55 inserts section 144A into the 2014 Act and places the duty to prepare such an annual report on a statutory footing.
94. Given that the 2014 Act is intended to be a stand alone piece of legislation in relation to local authority social services functions, sections 55 to 57 insert provisions into that Act that are concerned with the Welsh Ministers regulatory powers in respect of those functions.
95. Chapter 6 of Part 2 of the 2003 Act referred to above is to be repealed (see section 184) and paragraph 18 of Part 1 to Schedule 3). Those powers have then been re-stated with amendments in sections 55 and 56 that insert sections 144A to C, sections 149A to D, substitutes section 161 and inserts sections 161A to C.

96. The power of review in section 149B has been updated to include a power for the Welsh Ministers to specifically focus on the commissioning of services by local authorities in connection with the exercise of their social services functions. For example, a local authority will be obliged to have in place domiciliary support services. Local authorities can provide those services directly but they may also commission such services. If Welsh Ministers decide to review a particular local authority with regard to the provision of domiciliary care then Welsh Ministers must have regard to the matters set out in section 149D – this includes the quality and effectiveness of the service (section 149D(b) and the effectiveness of the service in achieving well being outcomes (section 149D(h)).
97. In bringing across the powers in the 2003 Act to the 2014 Act it has been necessary to amend some of the powers of intervention in Part 8 of the 2014 Act in order to provide consistency in relation to the powers that are available to the Welsh Ministers at the beginning of the process of regulation (the review stage) to the later stage of the process (the intervention stage).

### **Regulation of local authority functions relating to looked after and accommodated children (Section 57)**

98. Part III of the 2000 Act currently provides the Welsh Ministers with the function of regulating “relevant fostering functions.” Part 6 of the 2014 Act makes provision in relation to looked after and accommodated children and there are a number of regulation making powers provided to the Welsh Ministers to make provision about the exercise of those functions.
99. Those functions under Part 6 are therefore to be regulated under new sections 94A and 94B inserted into the 2014 Act by section 57. Section 94A states that regulations can make provision for the regulation of local authority functions in relation to looked after and accommodated children and section 94B provides for regulations to specify that breaches of regulations under section 94A may be an offence. As with offences relating to breaches of requirements under Part 1 of the Bill (see sections 43, 44 and 50) an offence under section 94B of the 2014 Act is an either way offence punishable by a maximum of 2 years in prison, an unlimited fine or both. This replaces the provisions about regulation of “relevant fostering functions” in the 2000 Act that are to be repealed in relation to Wales.

### **Sections 58-62 – Chapter 7– Market oversight**

#### **Specifying criteria for application of market oversight regime (Section 58), determining whether criteria apply to service provider (Section 59), assessment of financial sustainability of service provider (Section 60), informing local authorities where failure of service provider is likely (Section 61), national market stability report (Section 62)**

100. Sections 189 to 191 of the 2014 Act place duties on local authorities to meet the needs of people receiving service provision from a person who is registered in respect of an establishment or agency under Part 2 of the 2000 Act but becomes unable to carry on or manage the establishment or agency due to business failure.
101. Sections 58 to 62 are a series of provisions aimed at identifying those providers of regulated services that provide a service which, if it were to fail, would have an impact on the care and support market in Wales and would be the trigger point for the local authority duties to be exercised under sections 189 to 191 of the 2014 Act.

102. Sections 58 to 61 derive from the market oversight provisions in the Care Act 2014. Section 58 requires the Welsh Ministers to establish criteria in regulations that will be used to identify providers who will be the subject of the market oversight provisions in the Bill. Where the criteria apply to a particular provider, section 60 requires the Welsh Ministers to assess the financial sustainability of the provider's business. Where there is found to be a significant risk to that business, powers in section 60(3) permit the Welsh Ministers to require the service provider to develop a plan for how those risks will be mitigated or eliminated and to arrange directly or require the provider to arrange for there to be an independent review of the business.
103. Subsection 6 of section 60 provides a power to Welsh Ministers to make regulations enabling them to obtain, from certain persons information which may be helpful to them in assessing the financial sustainability of the provider. The type of information that the Welsh Ministers may need is likely to be information which relates to the finances of the care provider or which relates to the financial position of the particular entity – if the care provider is financially dependent on such an entity. The type of person that may be prescribed in the regulations may include companies within the same group as the provider and companies that hold a significant ownership stake in the provider.
104. The requirement for the Welsh Ministers to prepare and publish a national sector stability report in section 62 does not derive from the Care Act 2014 provisions. The aim of this report is to provide information to current and prospective providers of regulated services and local authorities about the social care market in Wales in general. The information in this report will not be limited to information about providers who are subject to the market oversight provisions but is intended to provide a picture of where there is ample provision of particular services and where there are or are likely to be a shortfall in the provision of particular types of services. The report must include an assessment of the effect of commissioning of services by local authorities on the exercise of their social services functions. Section 62(2) requires that this report is prepared in consultation with Social Care Wales given that Social Care Wales has as its main objective the protection, promotion and maintenance of the safety and well-being of the public in Wales (see explanatory note accompanying section 67 for details about Social Care Wales objectives).

## **Sections 64-65 - Part 2 - Overview and interpretation of Parts 3 to 8**

### **Overview of Parts 3 to 8 (Section 64), interpretation of Parts 3 to 8 (Section 65)**

## **Sections 66-77 - Part 3 - Social Care Wales**

**Social Care Wales (Section 66), SCW' objectives (Section 67), advice and assistance in relation to care and support services (Section 68), studies as to economy, efficiency etc. (Section 69), engagement with the public and social care workers (Section 70), statement of policy with respect to bringing criminal proceedings (Section 71), rules: general (Section 72), rules: fees (Section 73), consultation before making rules etc. (Section 74), guidance (Section 75), directions (Section 76), default powers of the Welsh Ministers (Section 77)**

105. The Care Council for Wales ("the Council") was established by Part 4 of the 2000 Act for the purpose of: a) promoting high standards of conduct and practice among social care workers; and b) promoting high standards in their training. This Bill restates and modifies the Council's existing functions under Part 4 of the 2000 Act and confers additional functions upon it (more on which appears below).

106. On the coming into force of Parts 3 to 8 of this Bill, Part 4 of the 2000 Act will no longer apply in relation to Wales (see the relevant repeals in Part 2 of Schedule 3). Section 66 provides for the Council's continuation under a new name, despite the repeal of section 54 of the 2000 Act; the Council will now be known as "Social Care Wales". The change of name is a consequence of the conferral of new functions on Social Care Wales; see sections 68 and 69 and the provision about prohibition orders in Part 7 in particular.
107. Schedule 2 makes provision about the membership and operational arrangements of Social Care Wales. This replaces provision made for the Council's membership and operation by Schedule 1 to the 2000 Act (and regulations made by the Welsh Ministers under it (the Care Council for Wales (Appointment, Membership and Procedure) Regulations 2001); these provisions of the 2000 Act will be replaced by Schedule 2 to this Act on the coming into force of section 66(4).
108. Social Care Wales' members will be appointed by the Welsh Ministers, and it will comprise a maximum of 15 persons, including a chairing member: the Welsh Ministers may currently appoint up to 25 members to the Council, a number that has proved to be unnecessarily high. The provision made by paragraph 2(6) of Schedule 2 has been included as a safeguard to avoid a situation where Social Care Wales' membership is dominated by members or representatives of the social care workforce (see section 78) in respect of whom Social Care Wales will exercise functions.
109. A significant part of the Council's role under Part 4 of the 2000 Act relates to the maintenance of a register of particular kinds of social care worker, including social workers. Much of the detail of the system established by Part 4 is left to rules made by the Council; these rules are subject to the approval of the Welsh Ministers.
110. The requirement to maintain a register has been retained in the Bill, but the restated system is less reliant on the content of rules made by Social Care Wales; the detailed provisions appear in Part 4 of this Bill and are explained below.
111. Other functions of note conferred on the Council by Part 4 of the 2000 Act include: a) the power to issue codes of practice setting out standards of conduct and practice expected of social care workers, as well as standards expected of persons employing social care workers; b) powers in relation to approving courses for prospective social workers, and arranging inspections in relation to those courses.
112. Again, these functions have been retained subject to some modification. The relevant part of the Bill is Part 5 (Social care workers: standards of conduct, education etc.) and is explained below.
113. Social Care Wales' new functions in sections 68 and 69 relate to those services regulated under Part 1 of this Bill (see the explanatory note for section 2) as well as any other service in Wales which involves the provision of care and support by social care workers (together, "care and support services"). Section 69 is a restatement with modification of a function of the Welsh Ministers in section 95(1) of the 2003 Act (on the coming into force of section 69 section 95 will be repealed by Schedule 3 to this Act). Section 69 is broader than section 95 of the 2003 Act; while section 95 is limited to local authority social services functions, section 69 applies to any care and support service. Social Care Wales will be able to undertake or commission research to identify improvement priorities and best practice for



care and support services; by virtue of section 68 Social Care Wales will also be able to work with care and support services to implement any recommendations it identifies.

114. Section 70 requires Social Care Wales to raise and maintain awareness of what it does among: a) the public; and b) social care workers generally. Information could be made available by publishing information electronically (which would probably amount to publication on Social Care Wales' website) or in any other way Social Care Wales considers appropriate (by public meetings or events, for example). This section also requires Social Care Wales to develop and publish a policy on engaging the public and social care workers in the exercise of its functions. The way in which it does so will be something for Social Care Wales to determine when it develops its policy and may vary depending on the nature of the function in question; but section 74 is also relevant here: it requires Social Care Wales to consult before issuing certain documents, including rules made under powers contained elsewhere in this Bill.
115. Under the 2000 Act, the Council has extensive powers to make rules filling in the detail of the system established under Part 4 of the 2000 Act. These rules must be approved by the Welsh Ministers before being made. The approval process is particularly time intensive and limits the Council's ability to respond to change. The system which is currently contained in rules is now largely set out in the Bill; and Social Care Wales' powers to make rules will concentrate on procedural arrangements. As a result, the requirement for Ministerial approval has not been restated. Social Care Wales can therefore make or amend rules without the approval of the Welsh Ministers.
116. With greater autonomy for Social Care Wales there is a need to ensure that Social Care Wales is held to account by the public, key stakeholders and the Welsh Ministers. Social Care Wales is therefore required to consult before making or varying any rules or issuing any codes or guidance under the Act. There are some instances where a full public consultation might not be appropriate, for example because the rules need to be amended to reflect a change in EU law or a change is necessary to correct a mistake. In such circumstances the Welsh Ministers can agree that a consultation is not necessary.
117. A consequence of the new framework is that section 124 and Schedule 9 of the Health and Social Care Act 2008 ("the 2008 Act") is repealed (see Part 2 of Schedule 3). This provided power to the Welsh Ministers to modify through regulations the regulation of social care workers. The system of regulating social care workers is now determined by provisions in the Act and not through regulations. This power is therefore no longer appropriate in the context of the reform being introduced by the Act.
118. Social Care Wales is required to have regard to guidance given to it by the Welsh Ministers and comply with any directions issues by the Welsh Ministers (see sections 75 and 76). Guidance could include the Welsh Ministers setting out how Social Care Wales should approach its annual review of staff pay. A direction could be given in circumstances where the Welsh Ministers had concerns about the governance of Social Care Wales or the manner in which it is carrying out its activities.
119. Section 77 confers default powers on the Welsh Ministers in respect of Social Care Wales. The Welsh Ministers currently have the same powers in relation to the Council. This power could be relied upon if Social Care Wales failed to comply with any directions issued by

the Welsh Ministers under section 76 or if Social Care Wales was acting in breach of European Union law for example.

#### **Sections 78-110 - Part 4 - Social care workers**

##### **Meaning of “social care worker” etc. (Section 78)**

120. Section 78 sets out those persons who are “social care workers” for the purposes of the Bill. Subsection (1) derives from the definition of social care worker in section 55 of the 2000 Act. The social care workers listed in paragraphs (b)-(d) manage, or provide care and support in connection with regulated services; therefore this section needs to be read in conjunction with section 2. Persons not involved with the provision of care and support but employed at places where care and support is provided will not be captured by the definition; so persons who are employed as gardeners or electricians at a care home, for example, would not be “social care workers”.
121. Subsection (2) of section 78 enables the Welsh Ministers by regulations to treat other categories of person as social care workers for the purposes of this Bill, and subsection (3) lists those categories. These include persons such as those responsible individuals designated by service providers, student social workers, inspectors of care services and persons who provide care and support in connection with care and support services which are not “regulated services”. This is intended to capture the breadth of persons who work in the social care sector and do things which relate to care and support and therefore might need to be treated as social care workers, for example for the purpose of giving advice or for training purposes. The regulations enable the Welsh Ministers to designate categories within a particular description of persons listed in subsection (3) to be treated as social care workers.

##### **The register (Section 79), duty to appoint a registrar (Section 80), application for registration (Section 81), registration (Section 82), “appropriately qualified” (Section 83), qualifications gained outside of Wales (Section 84), renewal of registration (Section 85), lapse of registration (Section 86), rules about applications for registration or renewal (Section 87), notice of decisions in respect of registration or renewal (Section 88), visiting social workers from relevant European States (Section 89), content of the register (Section 90)**

122. Registration lies at the heart of regulating the social care workforce. This Part sets out the framework in relation to the register. Section 79 is a restatement of section 56 of the 2000 Act and requires Social Care Wales to keep a register of relevant social workers, visiting social workers from relevant European States and social care workers of any other description specified by the Welsh Ministers in regulations. The Welsh Ministers can therefore require Social Care Wales to keep a register of managers of regulated services or those employed in a regulated service. The requirement for social care workers to register does not arise by virtue of section 79. This is simply a requirement for Social Care Wales to keep a register of certain social care workers. See paragraphs 124 and 125 for an explanation of how the requirement to register is imposed on social workers and social care workers. If for example the Welsh Ministers require managers of regulated services to register with Social Care Wales, regulations would have to be made under section 79 to require Social Care Wales to keep a register of those managers.
123. The register will comprise of parts; a part for relevant social workers; a part for each description of social care workers specified by the Welsh Minister in regulations; and a part for visiting social workers. If the Welsh Ministers require Social Care Wales to keep a

register of managers of regulated services and those employed in a regulated service for example, there must be a separate part of the register for managers and then a separate part for those employed in a regulated service.

124. By virtue of section 110 social workers who wish to call themselves social workers or hold themselves out as registered social workers must be registered with Social Care Wales or an equivalent regulator in the UK (further explanation is provided below). Social workers provide assistance to vulnerable members of the public and therefore registration is a way of ensuring that any persons who call themselves social workers have been assessed as suitable to practise social work.
125. The 2000 Act does not require social care workers of other descriptions to register. Certain categories of social care workers are required to register by virtue of requirements set out in regulations made pursuant to section 22 of the 2000 Act. For example regulation 9(6) of the Care Homes (Wales) Regulations 2002 (SI 2002/324) states that a person is not fit to manage a care home unless the person is registered as a manager of a care home with the Council. The intention is that regulations made under section 26 of the Bill will set out similar requirements. See explanatory notes for sections 26 for further details. The criteria for the fitness of managers of regulated services and staff at regulated services could include that they must be registered with Social Care Wales. The intention is that those who are currently required to register with the Council by virtue of regulations made under the 2000 Act will continue to be required to register with Social Care Wales. Managers of regulated services and care home workers appointed to work in children's care homes will therefore be required to register.
126. The Welsh Ministers could require further categories of social care workers to register by virtue of regulations made under sections 26 if they considered that this was necessary for reasons of public protection. The Welsh Ministers could also impose a requirement to register on other categories of social care workers by extending the protection of title afforded to social workers by virtue of section 110 to other categories of social care workers. Subsection (2) enables the Welsh Ministers, through regulations, to provide that it is an offence for a category of social care worker, such as managers of a regulated service, to call themselves or hold themselves out as a register manager without being registered with Social Care Wales or an equivalent regulator. If such regulations are made to require categories of social care workers to register, regulations will also have to be made under section 79 to require Social Care Wales to maintain a register of those social care workers. The provisions of the Bill which relate to registration will only apply to those social workers who are required to register by virtue of regulations made under section 26 or 110. They will not apply to the broad descriptions of persons in section 78(3) who can be treated as social care workers.
127. Although the duty to maintain the register will be imposed on Social Care Wales, it will be required to appoint a registrar (see section 80). The registrar will be a member of Social Care Wales' staff and will have various responsibilities in relation to registration; most of these are set out in the Bill, but some additional responsibilities are likely to be specified in rules made by Social Care Wales. The registrar will be accountable to Social Care Wales for the way in which the various responsibilities of that office are exercised. The duty to appoint a registrar is a new requirement that does not currently apply to the Council under the 2000 Act (although the Council has chosen to appoint a registrar). Under the new arrangements Social Care Wales could continue to appoint a person specifically as a

registrar or its chief executive could fulfil the role. This will be a matter for Social Care Wales to determine.

### **Applications for registration**

128. The register is a list of social care workers that the registrar considers to be suitable to work in the social care sector. The registrar will make that judgment by reference to three criteria; to be registered a person must satisfy the registrar that he or she is: a) appropriately qualified ("condition 1"); b) fit to practise ("condition 2") and, c) intend to practise work to which their entry relates ("condition 3"). More about these criteria appears below. In order to be registered in the social worker part or an added part of the register applicants must satisfy the three conditions. The conditions do not apply to those who wish to be registered in the part for visiting social worker; details of how they are registered appear below.

### **Condition 1: appropriately qualified**

129. Section 83 sets out how applicants can demonstrate that they are appropriately qualified for the purpose of registration. This will depend on whether the applicant is a social worker or a social care worker.

#### *Social workers*

130. Paragraph (a)(i) provides that social workers are considered appropriately qualified if they have undergone a course which has been approved by Social Care Wales under section 113. The Council currently provides approval in respect of courses for training social workers under section 63 of the 2000 Act. Social Care Wales will retain this function. Courses will be approved by Social Care Wales if it is satisfied that the course will enable persons completing it to attain the required standard of proficiency in social work (a standard that will be specified in rules made by Social Care Wales). Social Care Wales can be satisfied therefore that graduates from such courses meet its standards of proficiency and are therefore eligible for registration.
131. Paragraph (a)(ii) provides that social workers are also considered appropriately qualified if they satisfy the requirements of section 84. Section 84 of this Bill deals with the recognition of qualifications in social work gained in other parts of the UK and other parts of the world. This section is therefore relevant for social workers with a qualification from England for example. If Social Care Wales considers that a qualification gained from outside Wales is of equivalent standard to a qualification it approves, then an applicant who holds that qualification is considered appropriately qualified. A graduate from a social work degree course in England therefore satisfies condition 1 if that qualification meets Social Care Wales' standard of proficiency. If Social Care Wales is of the view that there are major difference between the professional qualification obtained outside Wales and those approved by Social Care Wales it can require the applicant to demonstrate their proficiency in other ways in order to satisfy condition 1. How an applicant can demonstrate their proficiency will depend on where they come from.
132. For applicants from a country within the European Economic Area ("EEA States") and Switzerland, Social Care Wales can require the applicant to complete an adaptation period or pass an aptitude test. EEA States include all European Union Member States plus Iceland, Liechtenstein and Norway. Social Care Wales could therefore require an applicant from Germany or from France to pass an aptitude test to demonstrate their skills and ability to practise social work. Normally, applicants will be required to complete an adaptation period or pass an aptitude test if the applicant's training was significantly

shorter than training in Wales or did not cover the range of activities that are covered by courses approved by Social Care Wales. Applicants can appeal Social Care Wales' decision to require them to complete an adaptation period or pass an aptitude test to the First-Tier Tribunal (see section 104).

133. For applicants from any other country, Social Care Wales can require the applicant to undergo any other training as it considers necessary in order that the applicant meets Social Care Wales' standard of proficiency (see section subsection (2) of section 84). Therefore for example, Social Care Wales could require a qualified social worker from Asia or America to complete practical work based training to understand the professional role of social workers in Wales.
134. Applicants will be considered appropriately qualified if they complete any additional requirements imposed by Social Care Wales under section 84.
135. If a social worker has not completed an approved course and does not satisfy the requirements of section 84 they can demonstrate that they are appropriately qualified if they satisfy any training requirements set out by Social Care Wales in rules (section 83(a)(iii)). The Council currently has a similar rule making power and uses this to recognise applicants who hold qualifications that are no longer offered by universities or colleges. Therefore qualifications obtained in the 1970s for example which are no longer offered are regarded by the Council as evidence of satisfactory training.

#### *Social Care workers*

136. Paragraph (b)(i) provides that social care workers are considered appropriately qualified if they have undergone a course which has been approved by Social Care Wales under section 113. Currently the Council can only approve courses for social workers. The provision made in section 113 in relation to the approval of courses will now apply in respect of courses for social care workers of any description. Social Care Wales will therefore be able to approve courses for managers of regulated services for example. Completion of an approved course will satisfy Social Care Wales that a social care worker is appropriately qualified.
137. As the Council does not approve course for social care workers, there are currently no approved courses available. Section 83(b)(ii) therefore enables social care workers to demonstrate that they are appropriately qualified if they satisfy any training requirements set out by Social Care Wales in rules. This is currently the method used by the Council for assessing whether social care workers are appropriately qualified. The rules set out the qualifications and training that the Council recognise. This differs depending on the description of social care worker. Therefore for example there is a list of qualifications that managers must hold in order to be eligible for registration.

#### **Condition 2: "fit to practise"**

138. The concept of fitness to practise is of central importance to the regulation of social care workers. By virtue of their work, social care workers have access to some of the most vulnerable members of society. The public is entitled to expect therefore that a registered social care worker is fit to exercise the responsibilities of their role. Fitness to practise is not just about professional performance and ensuring that registrants are competent in what they do. It is also about ensuring public confidence in the profession. The registrar will be required to determine whether applicants are fit to practise. Section 58 of the 2000 Act required applicants to be of good character and physically and mentally fit to perform the

work to which their registration relates. Assessments of an applicant's fitness to practise will now be made in reference to the grounds of impairment set out in section 116. The statutory grounds are categories of conduct or underlying reasons for impairment. The registrar must be satisfied that the registrant's fitness to practise is not impaired on any of those grounds.

139. Fitness to practise is an ongoing requirement. Any allegations or suggestions that a person registered on the register maintained by Social Care Wales' ("registered person") fitness to practise is impaired will be investigated by Social Care Wales. If Social Care Wales considers that a registered person's fitness to practise may be impaired it must refer the matter to a fitness to practise panel for consideration. Fitness to practise panels can remove registered persons from the register if they are no longer considered fit to practise; panels can also impose sanctions on registered persons to restrict their practise. See the explanatory notes which accompany Part 6 for further detail about fitness to practise proceedings.

### **Condition 3: intention to practise**

140. The register is a way of regulating those who practise or intend to practise social care work. Therefore to be eligible to become registered the registrar must also be satisfied that the person intends to practise work to which their entry relates. Applicants could be required to sign a declaration for example confirming that they intend to practise as a social worker.

### **Granting or refusing applications**

141. Applications for registration which satisfy the requirements in section 82 must be granted by the registrar. Anyone whose application for registration has been refused has the right to appeal the registrar's decision to a registration appeals panel who will review the decision (see sections 100 to 102)
142. The registration conditions in sections 82 to 83 do not apply to visiting social workers. The expression "visiting social workers" refers to social workers from EEA States or Switzerland who are lawfully established to practise social work in their home country but are practising in the United Kingdom on a temporary or occasional basis (see section 89). For an explanation of EEA States see explanation note at paragraph 123 above.
143. What constitutes temporary or occasional practice is a question of fact which will vary from case to case and it will be for Social Care Wales to determine although applicants can appeal Social Care Wales' decision to the First Tier Tribunal (see section 104). The relevant law on this is contained in Part 2 of the General Systems Regulations (see the definition in subsection (8)) The General System Regulations is the system for the recognition of professional qualifications introduced by Directive 89/48/EEC and supplemented by Directive 92/51/EEC. It is to enable those who are qualified to practise a profession in one EEA country and Switzerland to have their qualifications recognised in another EEA country or Switzerland, in order to practise there. Visiting social workers are still established as social workers in their home country; for this reason there are different arrangements for checking their qualifications to determine whether they meet the standards of proficiency for practice in Wales. This is different to becoming established in Wales and being registered in the social worker part of the register. In order to register in the social worker part of the register, social workers who have qualified outside Wales are required to satisfy the registration conditions referred to above.

144. Visiting social workers are not required to demonstrate that they are appropriately qualified or fit to practise in accordance with sections 82 and 83 provided that they are lawfully allowed to practise in their own country and are only practising in the United Kingdom temporarily. If they have the benefit of regulation 8 of the General Systems Regulations they must be registered by the registrar and appear in the visiting European part of the register. Regulation 8 enables Social Care Wales to check the qualifications of visiting social workers for any substantial differences which are harmful to public health or safety and if there are any such difference Social Care Wales can require the visiting social worker to pass an aptitude test.
145. An entry for applicants whose applications for registration are granted will be included in the part of the register to which their employment relates. Section 90 sets out the information that will appear on the register in respect of registrants. The Welsh Ministers can set on in regulations that the register must show additional qualifications or experience that the registered person has gained. Social Care Wales could therefore annotate an entry to show that the registered person has gained an additional qualification which has been quality assured by Social Care Wales. Annotating the register to reflect different levels of qualification could be used to support the implementation of a career structure model for social care workers. The register could be annotated for example to show that a social worker has completed a senior social work programme. Social Care Wales can make rules requiring or authorising the registrar to include other information in an entry in the register. The register maintained by the Council contains the town or country at which the registrant is employed or provides services from. Rules made under this section could require the registrar to include such information in the register. Rules made under this section could also require the registrar to include information in the register on the Welsh language skills of registered persons.
146. Social Care Wales will have the power by rules to require a person to renew his or her registration periodically. The Council currently requires renewal on a 3 year basis, but Social Care Wales may revise its approach and decide on a different period. It would also be possible for Social Care Wales to specify that different periods could be specified for different categories of social care worker. For renewals, registered persons do not have to demonstrate that they are appropriately qualified as they have already had to demonstrate this when they first applied to be registered. Rather they must demonstrate that they have complied with any continuing professional development requirements imposed by Social Care Wales under section 112. This could include work-based learning, seminars, teaching or other activities which aim to advance a registered person's professional development.
147. Entries in the register that are not renewed will automatically lapse (section 86). This will not be the case however if the registered person is subject to fitness to practise proceedings or a fitness to practise panel has determined that their practice is impaired (see explanatory notes on Part 6 for explanation of the fitness to practise procedures). This is to avoid a situation where a registered person can let their registration lapse as a way of avoiding their case being subject to examination and possibly a sanction being imposed upon them.

**Removal by agreement (Section 91), death of a registered person (Section 92), entries based on false or misleading information (Section 93)**

148. The registrar is required to ensure that the register is accurate and up to date. Currently the procedures the Council follows for updating the register are set out in rules. This detail is now set out in sections 91 to 93; section 91, for example, would allow Social Care Wales to

make rules about removing an entry on a person's retirement from practising as a social care worker.

**Duty to restore a register entry (Section 94), power to restore a register entry (Section 95), restoration following fitness to practise proceedings (Section 96), restoration proceedings (Section 97), review of suspension of right to apply for restoration (Section 98), power to make rules about applications under Sections 95 and 96 (Section 99)**

149. A person who has been removed from the register can apply to be restored to the register. An application for restoration could be made by a retired social worker, for example, who wishes to return to work. Social Care Wales must set out in rules the procedure for making such applications (see section 99). The rules could provide, for example, that all applications are treated as a first application for registration.
150. Where a person's entry in the register has been removed from the register by a fitness to practise panel because they were not considered fit to practise, the decision as to whether they should be allowed back on to the register must be made by a registration appeals panel. Section 173 provides that Social Care Wales must set up a panel adjudication system for the purpose of appeals relating to the register. This section needs to be read in conjunction with section 174 which together make provision about the constitution, operation and procedure of the panel. Registration appeals panels are required to review the decisions made by the registrar in relation to registration and make decisions in relation to whether individuals should be restored to the register. Applications to be restored following removal by a fitness to practise panel cannot be made until 5 years after the applicant was removed and then only one application per year can be made. This minimum time period is intended to reflect the permanency and gravity of a decision to remove a person from the register. (See explanatory notes on Part 6 for an explanation of the fitness to practise procedures).
151. If a person has had two or more applications for restoration refused, a registration appeals panel can give a direction that the person is suspended from making further application for restoration of his or her entry to the register (see section 97(4)). That person is prevented therefore from making any further applications for restoration. However three years from the date of the direction, the applicant can apply to the registrar for that suspension to be reviewed by a registration appeals panel (see section 98(2)). If the registration appeal panel revokes the direction the applicant is free to apply for restoration once again. However if a registration appeal panel considers that the direction should remain in place the applicant remains unable to apply for restoration. The applicant can however request a further review after the expiry of another three year period.

**Appeals against decisions of the registrar (Section 100), appeals to the registration appeals panel: procedure (Section 101), decisions on appeal to the registration appeals panel (Section 102), appeals against decisions of a registration appeals panel (Section 103), other appeals: decisions made under the General Systems Regulations (Section 104)**

152. Registration appeal panels are required to review the decisions made by the registrar in relation to registration and are required to make decisions whether to restore individuals to the register following their removal by a fitness to practise panel.



153. Section 103 introduces a further right of appeal against the decision of the panel to the First-Tier Tribunal. The Tribunal can hear appeals on matters of law and fact and it has a chamber that specialises in dealing with social care matters.

**Duty to notify the registrar of changes to registration information (Section 105), requests for information relating to fitness to practise (Section 106), publication etc. of the register (Section 107), publication of certain registration appeal panel decisions (Section 108), list of persons removed from the register (Section 109), use of title “social worker” etc. (Section 110)**

154. It is important that the register is as up to date and as accurate as is possible. Social Care Wales is required therefore by rules to require registered persons to inform the registrar of any changes to the information recorded about him or her in the register. This could include informing the registrar of a change in employer for example if rules made by Social Care Wales require that such information must appear in the register.
155. Section 106 enables Social Care Wales to take a pro-active approach in respect of registered persons’ fitness to practise; instead of waiting for an allegation to be made or information being brought to its attention in another way that a registered persons’ fitness to practise may be impaired, section 106 enables Social Care Wales to conduct periodic surveys of registered persons to satisfy itself that their fitness to practise remains unimpaired. If the registrar was made aware of any issues through this process it could notify Social Care Wales who could refer the matter for further investigations under Chapter 2 of Part 6 (see explanatory note which accompanies Part 6 for further information).
156. For reasons of public protection the register can reflect those sanctions imposed by a fitness to practise panel on a registrant (see section 90). However, the register will not reflect that a person’s entry has been removed. Therefore Social Care Wales is required to keep a list of those persons whose entries have been removed. If members of the public had concerns about a social worker and couldn’t find their name on the register, they could check the list of removed persons to see if they had in fact been removed on the basis of being unfit to practise.
157. Section 110 provides protection of the title “social worker”. This is currently protected under section 61 of the 2000 Act. Subsection (2) provides a regulation-making power for the Welsh Ministers to be able to add other descriptions of social care workers whose title might require protection. Regulations could for example make it an offence for a person who is not registered as a manager of a regulated service to use that title or hold themselves out as being registered with an intention to deceive. Social Care Wales is required to set out its policy on prosecuting offences under 110 (see section 71). This could for example set out that it will leave prosecutions to be brought by the Crown Prosecution Service, or that in certain cases it will bring private prosecutions.

**Sections 111-115 - Part 5 - Social Care Workers: Standards of conduct, education etc. Codes of practice (Section 111)**

158. The development of codes of practice is an important aspect of workforce regulation as the codes set out and describe the standards of practice expected of social care workers. The Council currently produces codes under section 62 of the 2000 Act. This function is retained. The codes will be relevant where complaints have been made about a social care worker’s fitness to practise; a failure to comply with a standard in a code may be evidence

of a person being unfit to practise. Codes could set standards for social care workers generally or Social Care Wales could make specific codes relevant to particular categories of social care workers only, for example a code of practice for managers of regulated services.

159. Social Care Wales will also be able to produce codes of practice for approved mental health professionals (AMHP). AMHPs exercise functions under the Mental Health Act 1983 ("the 1983 Act"). Those functions relate to decisions made about individuals with mental disorders, including the decision to apply for compulsory admission to hospital. Social workers can train to become AMHPs and therefore Social Care Wales is able to set out the standards expected of such social workers. The Council has the function of approving courses for AMHPs under section 114A of the 1983 Act. Social Care Wales will retain this function.
160. The performance of workers is influenced by their employment environment and it will be important for Social Care Wales to be able to set out standards expected of those employing social care workers; section 111 allows for these standards to be set. Such standards might require employers to ensure that employees are only required to carry out work which is appropriate or suitable for them by having regard to their qualifications and experience. All of the codes of practice will need to be kept up to date so that they reflect the latest developments in what can be a quickly changing industry; to that end, Social Care Wales will be required to keep the codes under review and vary them where appropriate.

### **Continuing professional development (Section 112)**

161. The purpose of the training that may be required under this section will be to ensure that social care workers maintain and up-date their knowledge and competence in an ever-developing environment. Registered persons will need to comply with any CPD requirements in order to renew their registration (see section 85). Rules made by Social Care Wales in relation to such training must take into account any training that a visiting social worker from an EEA country or Switzerland has undertaken in their home country to ensure that such workers are not discriminated against.

### **Approval of courses etc. (Section 113)**

162. The Council currently approves qualifying and post-qualifying courses in social work. Section 113 retains this function but also provides Social Care Wales with the power to approve courses suitable for other social care workers. Requiring that social care workers must have certain qualifications in order to be registered is a way of ensuring workers are qualified but it does not in itself guarantee the quality of the courses that give rise to the qualifications. The intention of giving Social Care Wales a role in approving such courses is to maintain a high standard in the quality of the education to be provided to actual and prospective social care workers.

### **Inspection in connection with certain courses (Section 114)**

163. As part of its power to approve training courses in social care work Social Care Wales will need to be able to visit and report on the places delivering this training. It will also need to assess on an ongoing basis whether providers are continuing to meet the standards required for approval as part of its quality assurance process. The Council currently inspects providers of courses in social work. Section 114 enables Social Care Wales to

continue to do this but also enables Social Care Wales to inspect providers of course for other social care workers. This power could be used to visit educational institutions but could also for example be used to visit practice placements where students go to develop their practical skills.

### **Other functions of Social Care Wales in respect of education and training (Section 115)**

164. Subsection (1) will allow Social Care Wales to make provision for the training for social care workers and prospective workers; that might be through it providing training itself, or by commissioning appropriate courses from another person. This situation could arise if Social Care Wales took the view that the number or quality of training courses available to student social care workers of a particular kind was having a detrimental effect on the quality of care and support being offered in Wales.

## **Sections 116-163 - Part 6 -Social care workers: fitness to practise**

### **Chapter 1 - Grounds of impairment**

#### **Fitness to practise (Section 116)**

165. This Part sets out the framework for the investigation of allegations of impaired fitness to practise of registered persons and the framework governing fitness to practise hearings. Section 163 sets out the meaning of registered person and confirms that it means a person who is registered in the social worker part, an added part or the visiting European part of the registers. Part 6 of the Bill only applies therefore to social care workers who are required to register, for example social workers. It does not apply to unregistered social care workers. The current system operated by the Council is set out in rules made under the 2000 Act. This system is now set out in detail in this Part (although Social Care Wales will still make rules; these will supplement what appears in this Part and will mostly be about procedural matters).
166. Fitness to practise panels will make decisions about whether a registered person's fitness to practise is impaired. These panels also decide what sanctions are appropriate following consideration of a case (see section 173 for provision requiring Social Care Wales to establish fitness to practise panels and the explanatory note which accompanies sections 173 and 174 for an explanation of the constitution and procedures of panels).
167. Section 116 provides that a person's fitness to practise is to be regarded as impaired by reason only of one or more of the grounds specified in subsection (1).
168. In subsection (1)(a), evidence of "deficient performance as a social care worker" is likely to include failures to comply with the standards of conduct and practice expected of social care workers set out in the codes of practice issued by Social Care Wales under section 111, although persons evaluating a social care worker's performance will not be limited to just considering compliance with codes. This ground is intended to capture serious or persistent failures to follow the standards of conduct expected by practising social care workers. Therefore a single instance of negligent treatment could constitute deficient performance, as could persistent technical failings or other repeated departures from good practice.
169. In subsection (1)(b), serious misconduct refers to conduct which may or may not be related to the exercise of professional skills, but which brings disgrace upon the registered person and thereby prejudices that person's ability to practise safely and the reputation of the profession. Therefore behaviour that takes place outside a social care worker's professional

practice may lead to action where public confidence in social care workers might be undermined if action was not taken.

170. In subsection (1)(c), “barred list” refers to a list of individuals who have been deemed unsuitable to work with children or vulnerable adults. In England, Wales and Northern Ireland this list is maintained by the Disclosure and Barring Service under the Safeguarding Vulnerable Groups Act 2006. In Scotland the list is maintained by Disclosure Scotland under the Protection of Vulnerable Groups (Scotland) Act 2007. Typically persons are barred because they have committed criminal offences which relate to the ill-treatment or abuse of children or vulnerable adults.
171. Determinations by a relevant body are determinations made by equivalent regulators of social care workers and the nursing and midwifery regulator for the United Kingdom: the NMC. Therefore if for example the regulator for social workers in England, the Health and Care Professions Council, made a decision that a social worker is not fit to practise, the registrar could rely on that decision to refuse that social worker’s application to register with Social Care Wales. This will prevent persons from circumventing the decision of one regulator by registering with another. Similarly, findings made in the Welsh context about a registered person’s fitness to practise may inform decisions in relation to registers maintained by other regulators in the United Kingdom and further afield.
172. In respect of subsection (1)(e), Social Care Wales will not ordinarily need to be involved merely because a social care worker suffers from an illness. This ground should be relied upon only if a social care worker has a medical condition (including an addiction to drugs and alcohol) that is affecting his or her ability to practise to an acceptable standard.
173. Not every finding of impairment under subsection (1) will automatically mean the registrant’s fitness to practise is impaired. Other relevant factors will be taken into account, including for example in a case involving deficient performance, whether the issues in question are easily remediable or whether action has been taken to address the problem.

## **Chapter 2 – Preliminary procedures**

**Referral of allegations etc. of impaired fitness to practise (Section 117), preliminary consideration (Section 118), eligibility for onward referral (Section 119), direct referral to a fitness to practise panel (Section 120), notice: ineligibility for onward referral (Section 121), notice: onward referral (Section 122), notice: referral to an interim orders panel (Section 123)**

174. This chapter sets out the framework for the investigation of allegations of impaired fitness to practise made to Social Care Wales in respect of a registered person; the chapter also applies where Social Care Wales has other grounds for believing that a person’s fitness may be impaired (for example, if Social Care Wales became aware through a report in the media that a social worker had been arrested or sacked).
175. Preliminary consideration refers to the process of considering allegations or information to determine whether or not a case should proceed to be given further consideration. It will be Social Care Wales’ process for screening such allegations and information; and this process could be carried out by a member or members of Social Care Wales’ staff or by other persons appointed for that purpose. Social Care Wales can treat any information which comes to its attention as a potential allegation and there are no strict requirements as to the form of allegations (section 117).

176. The purpose of preliminary consideration is to decide whether the matter merits further investigation or, because of its severity, a direct referral to a fitness to practise panel. Section 119 sets out the criteria for eligibility for onward referral for investigation or immediate panel consideration.
177. If a matter is eligible for onward referral it must be referred for investigation or directly to a fitness to practise panel. Social Care Wales must refer allegations concerning convictions for offences in respect of which a custodial sentence was, or could have been imposed directly to a fitness to practise panel and will have powers to specify in rules any other categories of cases that must be referred directly. This is because there is no need to investigate the facts giving rise to convictions of this nature and Social Care Wales will need to be able to act quickly to deal with registered persons convicted of serious offences.
178. At any stage in the fitness to practise process, including preliminary consideration, a registered person's case can be referred to an interim orders panel. Interim order panels consider if any immediate measures are needed to protect the public or the registered person while matters are being considered and investigated. These measures could include restricting the range of activities the registered person is permitted to carry out, or suspending the registered person's registration; the detailed provisions dealing with interim measures appear in Chapter 4 of this Part and are explained below.

**Duty to investigate (Section 124), powers following an investigation (Section 125), notice: referral or disposal (Section 126), warnings (Section 127), undertakings (section 128), mediation (Section 129)**

179. Sections 124-129 provide for allegations of impaired fitness to practise to be investigated by Social Care Wales, or investigated by persons acting on Social Care Wales' behalf. Social Care Wales could for example provide that all or particular kinds of investigations are to be carried out by staff members or by other individuals appointed for that purpose. Alternatively, it could establish an investigation committee for conducting investigations. The Council currently use an investigation committee to investigate complaints. Social Care Wales will also be able to appoint advisors such as health advisors. This might be necessary when investigating allegations that a registered person's fitness to practise may be impaired due to a health condition and an understanding of the condition is required or an assessment of their capacity.
180. Upon the conclusion of the investigation, Social Care Wales must refer the matter to a fitness to practise panel if the matter satisfies the realistic prospect test in section 125(2)(a) and it is in the public interest to refer the matter.
181. Where a case is not referred to a fitness to practise panel, Social Care Wales will have a range of options available to it to dispose of the case; these are set out in section 125. Where Social Care Wales decides that warning the registered person about their behaviour may be appropriate, the registered person has a right to request an oral hearing. This is to provide the person with an opportunity to make representations if they feel that a warning is not appropriate: a warning that has been issued can be recorded on the entry in the register relating to that person. Social Care Wales can also agree undertakings with registered persons. This could be, for example, an agreement that the registered person must complete a training course where the investigation has revealed that he or she may benefit from additional training.

182. There is provision in section 129 for introducing mediation as a means of disposing of cases referred for investigation. Mediation can be introduced only if provision is made by regulations made by the Welsh Ministers. Mediation is an emerging concept in fitness to practise proceedings. It is not a well-established way of resolving fitness to practise issues and therefore its use in the process has not been fully assessed or analysed. It is felt that such assessment should take place before it is introduced into Social Care Wales' fitness to practise process. Mediation could, however, be beneficial in cases where allegations do not amount to impaired fitness to practise but there is a need to resolve issues between the registered person and the complainant which are likely to have an ongoing and detrimental effect to an ongoing relationship. If mediation were to be introduced a draft of the regulations would need to be approved by the National Assembly before being made (see section 186(2)).

**Review of decisions by SCW (Section 130), cancellation of referral to fitness to practise panel (Section 131), referral by SCW for review proceedings (Section 132)**

183. Section 130 provides a mechanism for reviewing certain decisions made upon conclusion of preliminary consideration and investigation. This enables Social Care Wales to reconsider decisions to ensure they are properly made or to reconsider decisions in light of new information which was not available at the time the original decision was made. Anyone Social Care Wales considers to have an interest in the decision can apply for a review. The review power does not include decisions to refer cases to an interim orders or fitness to practise panel. Social Care Wales has a separate power to cancel such referrals in section 131.
184. Section 130 requires Social Care Wales to review a decision mentioned in subsection (2) if it appears to Social Care Wales that the decision is materially flawed. This might be because of an error made by Social Care Wales in the administrative handling of the case which undermines the decision, such as the loss of relevant evidence, or an error of judgement or reasoning by the decision-maker. Social Care Wales has a broad rule-making power to determine the process that will apply to reviews under section 130. Social Care Wales could for example provide that the registrar makes the final decision.
185. Upon conclusion of an investigation or following consideration by a fitness to practise panel, sanctions can be imposed on a registered person. These include imposing conditions on a registered person's registration, for example restricting the areas in which they can practise, suspending the registered person for a period of time or requiring the register person to agree to an undertaking (see explanatory note accompanying section 125 and sections 134-154). There is a significant public interest in reviewing sanctions to ensure compliance with sanctions and to assess a registered person's fitness to practise in light of sanctions imposed. Chapter 5 sets out the system for reviewing conditional registration orders, suspension orders and undertakings. Review hearings are undertaken by fitness to practise panels and there are two ways in which a review can be initiated.
186. The first is a review must take place if this has been directed in the original order or undertaking. For example an undertaking agreed between a registered person and fitness to practise panel to complete a training course requires a review to take place after 6 months to assess compliance with the undertaking. Section 150, subsections (1)-(6), requires fitness to practise panels to carry out reviews where it is a requirement of the

undertaking, conditional registration order or suspension order. See explanatory note which accompanies Chapter 5.

187. Section 132 sets out the second method of initiating a review. Social Care Wales is responsible for monitoring compliance with conditions, suspensions and undertakings. Section 132(3) places a duty on Social Care Wales to refer cases to a fitness to practise panel to carry out a review if it has reason to believe that a registered person has breached an undertaking or condition. If, for example, Social Care Wales became aware that a registered person was failing to comply with a conditional registration order and was practising in an area he or she was prohibited from practising, Social Care Wales would be required to refer the matter for review. This information would not be treated as a new allegation and investigated accordingly. It would be referred immediately to a fitness to practise panel to review.
188. Social Care Wales is also able to refer matters for review proceedings at any time if it considers that a review is desirable (section 132(2)). This might be because Social Care Wales has received an allegation that a registered person subject to a conditional registration order is acting in a way which calls into question their fitness to practise. Once again, this allegation would not be treated as a new allegation rather it would be referred immediately to a fitness to practise panel to review.

### **Chapter 3 – Disposal of fitness to practise cases**

**Scope and interpretation of Chapter 3 (Section 133), removal from register on consensual basis (Section 134), other consensual disposals by fitness to practise panel: undertakings (Section 135), disposals by fitness to practise panel: finding of no impairment (Section 136), disposals by fitness to practise panel: finding of impairment (Section 137), disposals: further provision about conditional registration, suspension and removal orders (Section 138), immediate orders for conditional registration or suspension (Section 139), fitness to practise decisions: notification and taking effect (Section 140), regulations about disposals by fitness to practise panels (Section 141)**

189. Fitness to practise panels consider allegations that a registered person's fitness to practise is impaired. This Chapter sets out the various powers the panels have to dispose of cases.
190. Fitness to practise panels must determine whether a person's fitness to practise is impaired on any of the grounds listed in section 116. The panel has the power to impose sanctions following a finding of impairment (see section 137). The main purpose of a sanction is not punitive but to protect the public, although it may also have a punitive effect. Where a panel's finding is that a registered person's fitness to practise is not impaired, the panel has a range of options as to how to dispose of the case; these including warning the registered person about their behaviour or giving advice about changing their conduct in future (see sections 134 and 136). Social Care Wales can publish guidance which fitness to practise panels will be required to take into account when imposing sanctions or disposing of cases (see section 161). The guidance could set out for example, the factors the panel should take into account when considering whether to issue a warning.
191. Any conditions imposed on a registered person by a fitness to practise panel can only be imposed for a period of 3 years in the first instance and a registered person's registration can only be suspended by a suspension order for 12 months in the first instance. The review process for reviewing conditions and suspensions imposed is set out in Chapter 5 and is explained below. Conditions and suspensions can be extended beyond time limits

imposed by a fitness to practise panel on review. A social worker could, for example, be suspended from practising as a social worker for 12 months by a fitness to practise panel; in making the relevant suspension order the panel could specify that a review of the suspension order would be conducted by another fitness to practise panel a month before the expiry of the order. If the panel conducting the review considered that the person's fitness to practise remained impaired, it could use section 153 to extend the suspension order for another year. It could not, however use section 153 to extend the suspension for a period exceeding 12 months. In the same way it could not extend a conditional registration order for a further period exceeding 3 years. Extensions cannot exceed the time limits imposed in section 138.

192. There are however circumstances when suspension orders can be extended for longer than 12 months. Registered persons whose fitness to practise is impaired on health grounds can be suspended indefinitely following a two year period of suspension. See explanatory notes for Chapter 5 for further explanation.
193. Registered persons can appeal any sanction imposed by a fitness to practise panel following a finding of impairment to the First-Tier Tribunal (section 157). Sections 139 and 140 give fitness to practise panels the power to issue immediate conditional registration and suspension orders pending the outcome of any appeal to the Tribunal. Whilst the purpose of such orders is the same as interim orders, the ways in which they operate are different. Immediate orders are not reviewed periodically like interim orders and their duration is linked to the appeal process. (See the explanatory note for Chapter 4 of this Part for further details about interim orders.) Therefore an immediate suspension order might be imposed if a fitness to practise panel has ordered that an entry relating to a registered person be removed from the register. This removal will not come into effect until the period for appealing has passed or an appeal is concluded; therefore the immediate order would be a measure taken to protect the public in the intervening period.

#### **Chapter 4 – Interim orders and review of interim orders**

**Scope and interpretation of Chapter 4 (Section 142), interim orders (Section 143), appeals against interim orders (Section 144), review of interim orders: timing (Section 145), review of interim orders: possible decisions (Section 146), extension of interim order by the tribunal (Section 147), revocation of interim orders (Section 148)**

194. The purpose of interim orders is to enable temporary restrictions to be imposed in respect of a registered person while investigations are undertaken into allegations made against the registrant for the public's protection. The Council currently operates a similar system for imposing orders of this nature; the relevant provision about these orders is contained in rules made by the Council under Part 4 of the 2000 Act.
195. Social Care Wales is required by section 173 to make rules for the establishment of interim order panels; broadly, the role of these panels will be to impose and review interim orders. There are two types of interim orders: an order for interim conditional registration which allows the registered person to continue practising but in a limited capacity; and an interim suspension order which prevents the registered person from practising at all until there is a final determination of his or her case.
196. The panel imposing or reviewing an interim order is not charged with making a final determination about whether allegations concerning a person's unfitness to practise are true. The test for imposing or, on review, confirming an order is whether it is necessary for



the protection of the public or it is otherwise in the public interest or the interests of the registered person.

197. Interim orders take effect immediately and can be imposed for up to 18 months; a person in respect of whom an order is made does have a right of appeal under section 144; any appeal would be considered by the First-tier tribunal. Orders which are in force must be reviewed by an interim orders panel in accordance with the requirements of section 145; orders can be extended if Social Care Wales considers that necessary on application to the First-tier Tribunal.

## **Chapter 5 - Review proceedings**

**Review proceedings: interpretation and general (Section 149), review proceedings (Section 150), review of undertakings: disposals by fitness to practise panels (Section 151), review of conditional registration orders: disposals by fitness to practise panel (Section 152), review of suspension orders: disposals by fitness to practise panel (Section 153), review of indefinite suspension orders (Section 154), decisions in review cases: notification and taking effect (Section 156)**

198. This Chapter sets out the system for reviewing conditions of practice, suspension orders and undertakings. All review hearings under this Chapter will be carried out by fitness to practise panels. Hearings must take place if this has been directed by the original panel, or agreed in the case of an undertaking. Therefore a conditional registration order to complete a training course within 6 months could provide that a review must take place before expiry of the order to ensure that the registered person has completed the course. Hearings should also take place if Social Care Wales becomes aware of new evidence suggesting that a sanction imposed on a person should be reviewed. For example if Social Care Wales was made aware of an allegation that a suspended social worker was practising, a review hearing should take place. See explanatory note to sections 130-132 for further detail.
199. Panels are able to decide that the original order; whether that be a conditional registration order, a suspension order, or an undertaking, should be confirmed or revoked, extend or reduce the period of the order, or adjust or remove any of the conditions. The panel can also impose any sanction or other form of disposal it considers more appropriate. For example, a persistent and serious breach of conditions may mean that a removal order is necessary.
200. Upon review of a suspension order, panels can extend the order indefinitely if a registered person has been suspended for at least two years for reason only of adverse health. Those subject to indefinite suspension orders can request that a fitness to practise panel review the order. A first application for review cannot be made until 2 years have passed since the order was made; and subsequent applications for review are subject to similar restrictions: once an unsuccessful application has been made, a person must wait for a period of 2 years before making another application. This would be relevant to workers who might be suffering from a long-term illness and cannot practise for a considerable period of time and therefore for whom regular reviews are not appropriate.

## **Chapter 6 - Appeals and referrals to the tribunal**

**Appeals against decisions of a fitness to practise panel (Section 157)**

201. Section 157 provides for appeals against decisions of a fitness to practise panel to the First-Tier Tribunal. Therefore registered persons who are dissatisfied with a condition that had

been imposed or with the fact that they had been removed from the register for example could ask the Tribunal to look at this decision.

## **Chapter 7 - General and supplementary**

**Disclosure of information about fitness to practise (Section 158), power to require information (Section 159), publication of fitness to practise decisions (Section 160), guidance about fitness to practise (Section 161), suspension: supplementary (Section 162), meaning of “registered person” in Part 6 (Section 163)**

202. The timely supply of relevant information is essential for the efficient and effective functioning of the fitness to practise process. Delays or refusal from registered persons or their employers to supply information could result in difficulty progressing and concluding cases. Section 159 enables Social Care Wales to require persons to produce information and, in the event of non-compliance, apply to the Tribunal for it to require disclosure of the information being withheld. Persons cannot, however, be required to produce information that is protected from disclosure by other legislation or rule of law. A request for information could not override anything barring disclosure contained in the Data Protection Act 1998, for example.
203. Section 160 requires Social Care Wales to publish all decisions made by fitness to practise panels and interim order panels, except decisions to take no further action. This also applies to decisions made on review. This is to ensure that the process is transparent and that the information is available to the public.
204. Section 162 provides that subject to the exceptions in subsection 3, persons are not to be treated as registered persons if they are subject to a suspension order despite the fact that their name still appears on the register. This will ensure that social workers subject to a suspension order cannot call themselves a registered social worker or hold themselves out as being registered.

## **Sections 164-172 - Part 7 - Orders prohibiting work in social care: unregistered persons**

**Designation of regulated activity (Section 164), conditions for making a prohibition order (Section 165), interim prohibition orders (Section 166), prohibition orders: supplementary provision (Section 167), interim prohibition orders: review (Section 168), appeals (Section 169), offences (Section 170), list of prohibited persons (Section 171), standards of conduct (Section 172)**

205. Provisions under Part 8 enable the Welsh Ministers to establish by regulations a prohibition scheme. The Council currently maintains a register for categories of social care workers who are not legally required to register. Such social care workers can therefore register on a voluntary basis. Voluntary registration does not provide public assurance and has led to confusion as to the status of such workers. Social Care Wales therefore will only maintain a register of those social care workers who are required to register. Social care workers will no longer be able to voluntarily register with Social Care Wales. The introduction of a prohibition scheme is a means of regulating the social care workforce for which a part of the register does not exist in order to ensure that social care workers are competent and fit to provide care to the public. This would be done by fitness to practise panels making orders prohibiting particular individuals from carrying out activities designated by regulations made by the Welsh Ministers. The scheme will therefore not

restrict entry to practise but will allow Social Care Wales to take action against a person who fails to comply with proper standards of conduct.

206. “Designated activities” is intended to capture those activities which are ordinarily carried out by unregistered social care workers which involve the provision of care and support to vulnerable persons including children. This could, for example, include providing advocacy support to meet the care and support needs of vulnerable persons, or providing domiciliary care to vulnerable persons. Regulations designating regulated activities for the purposes of prohibition orders cannot be made unless they are approved in draft by the National Assembly for Wales (see section 186(2)).
207. Regulations can set out what conditions must be met before a fitness to practise panel can make a prohibition order in respect of a person. This could include that the person has been convicted of a particular kind of criminal offence, for example. As with the fitness to practise process in Part 7, there is provision for interim prohibition orders to be made to provide immediate public protection whilst cases are investigated. Breach of a prohibition order or interim prohibition order is a criminal offence which would be tried in the magistrates’ court only. Conviction will result in an unlimited fine being imposed. The Welsh Ministers will also be able to make regulations making it a criminal offence for persons to employ or appoint persons subject to prohibition orders as a social care worker. Any such regulations must also be approved in draft by the National Assembly before being made (see section 186(2)).

### **Sections 173-174 - Part 8 - Social Care Wales: Duty to establish panels etc.**

#### **Duty to establish panels (Section 173), proceedings before panels (Section 174)**

208. Section 173 provides that Social Care Wales must by rules make provision for there to be registration appeal panels, interim orders panels and fitness to practise panels. Section 173 and rules made under it sets how each of the panels are to be constituted. The provisions are intended to ensure that there are safeguards in place to ensure that panel members are impartial and can make decision without being affected by conflicts of interest. Under subsection (5)(b), the Welsh Ministers can prescribe persons who are prohibited from being members of panels. This could include for example a person who is not a member of Social Care Wales’ staff (who would be prohibited by virtue of paragraph (a)) but has given preliminary consideration to a matter, or a person who has sat on another kind of panel.
209. Section 174 allows the Welsh Ministers to make regulations in respect of proceedings before the panels. The procedures for the Council’s current panel proceedings are set out in rules made under Part 4 of the 2000 Act. The regulations could, for example, set out Social Care Wales’ case management powers and other procedural matters relating to hearings before panels. The regulations could provide that different procedures apply to different panels so for example that in some cases interim orders panels must hear cases in private.
210. Section 125 of the 2008 Act provides that the standard of proof applicable to proceedings relating to the registration of social care workers before the Council or a committee or officer of the Council is the civil standard of proof. This section is repealed (see Part 2 of Schedule 3). Subsection (4) of section 174 provides that the same standard of proof will apply to the proceedings of all panels established under this Bill. Panels will be required therefore to determine questions of fact on the balance of probabilities.

**Sections 175-181 - Part 9 - Co-operation and joint working by the regulatory bodies etc.**  
**The regulatory bodies (Section 175), relevant authorities (Section 176), co-operation in the exercise of functions (Section 177), joint exercise of functions (Section 178), delegating functions to another regulatory body (Section 179), sharing information (Section 180), sharing information to protect well-being (Section 181)**

211. Sections 175 to 181 apply to the Welsh Ministers in the exercise of their functions as services regulator under the Bill, and to Social Care Wales. These sections also apply to the Welsh Ministers in the exercise of their functions under section 15 of the Adoption and Children Act 2002 in connection with the inspection of premises relating to adoption services, and to certain of their functions under the Social Services and Well-being (Wales) Act 2014. Section 177 also applies to the relevant authorities listed in section 176. The aim of this set of provisions is to provide legal certainty to the services regulator (CSSIW as a department of the Welsh Government acting for the Welsh Ministers), the workforce regulator (Social Care Wales) and the relevant authorities in relation to the extent of their duties to co-operate and work with each other in exercising their respective functions.
212. These provisions have their origins in the Law Commission report on the Regulation of Health Care Professions and the Regulation of Social Care Professions in England. The Commission cites the report of the public enquiry into the events at the Mid Staffordshire NHS Foundation Trust, which it says highlighted the importance of co-operation between the regulators, and the effective sharing of information between the regulators and educational and training institutions. These provisions make it clear that the relevant public authorities are legally entitled to work together with other public authorities and indeed that they must do so where that is consistent with their respective functions.
213. The Welsh Ministers and Social Care Wales must always co-operate with each other when exercising the functions mentioned above if they think that doing so will bring the benefits mentioned in section 177. Section 176 contains a list of relevant authorities who are required to co-operate with the regulators under section 177, but only when requested to do. Such a request may only be made if the regulator in question thinks that the co-operation will have a positive effect on the manner in which their functions are exercised or will assist them in achieving their general objectives as set out in sections 4 and 67 of the Bill. Those functions and objectives apply only in relation to Wales. Such a duty will apply unless the circumstances set out in section 177(3) apply (see below). Section 177(4) is a reciprocal duty on the regulators to cooperate with the relevant authorities when requested to do so.
214. Section 177 does not explicitly limit what is meant by co-operation. It is designed to capture any kind of assistance that one organisation can give to another. Examples of the kind of co-operation that the section could entitle a regulatory body to request or give, include-
- co-ordination of enforcement activity where regulatory jurisdictions overlap;
  - liaison on how media interest is to be handled in relation to matters of mutual concern;
  - input on standards, rules, educational requirements etc.
  - lending of expertise for staff training events;

- sharing of analyses and assessments in relation to mutually relevant patterns or trends.
215. A regulatory body will be entitled to request the co-operation of an authority listed in section 176 so long as the regulatory body decides that co-operation will either have a positive effect on the way it exercises its existing functions or that the co-operation will help the regulator achieve the general objectives it has under section 4 or 67.
216. Once one of the regulatory bodies requests co-operation from an authority the authority has to comply with the request unless one of three exceptions apply (see section 177(3)(a), (b) and (c)). The exceptions are –
- The law prevents the authority from co-operating in the way that has been requested (this could be law in another piece of statute or even a common law rule);
  - The authority reasonably thinks that to co-operate as requested would not be compatible with the authority’s own functions; or
  - The authority thinks that the co-operation would have an adverse effect on their functions (for example, even in a case where the law allowed the authority to co-operate and the authority thought it would complement it’s own functions it might still refuse to co-operate because of the cost of doing so. That is to say, the authority reasonably considers the costs of co-operating would lead to an adverse effect on its own functions.)
217. An illustration of the importance of the two regulators (i.e. the Welsh Ministers and Social Care Wales) working together in the exercise of their respective functions is the approach taken in the Bill in relation to managers. The current system requires managers of establishments and agencies registered under Part II of the 2000 Act to register with both the service regulator and the workforce regulator. A consequence of the new system of regulation under the Bill is that managers will no longer be required to register with the service regulator. Regulations made under sections 26 and 27 will require managers to register with the workforce regulator only and regulations could be made under section 79(1)(b) to require Social Care Wales to maintain a register in respect of managers of regulated services.
218. The responsible individual in relation to a place at, from or in relation to which a service is provided will be responsible for employing a fit manager and for the supervision of the management. The service regulator will be required to take action against the responsible individual (and not the manager) where there are failings in the management. Given that it is the service regulator that is likely to have the most contact with managers and will be more aware of when a manager is under performing, the workforce regulator will be reliant on the service regulator to share information about managers and, where necessary, to support the workforce regulator in bringing fitness to practise proceedings against managers of services.
219. Section 178 permits both regulators to jointly exercise functions that each has, i.e. the Welsh Ministers have function A, Social Care Wales has function B, and when the Welsh Ministers and SCW arrange to exercise functions A and B jointly under this section, both bodies will be legally accountable for the exercise of function A and B. This means that both bodies will be respondents to any judicial review challenge to the exercise of each

other's function. This power could be used for example, to allow the bodies to establish a joint committee to exercise the Welsh Ministers function of reviewing studies and research into local authority social services functions and to review those functions (see sections 149A and 149B of the 2014 Act as inserted by section 56) alongside SCW's function of undertaking comparative or other studies under section 69.

220. Section 179 permits the regulators to delegate any of their functions to the other. This could be used, for example, to allow the Welsh Ministers as services regulator to delegate their function of authorising persons to carry out inspections under section 32 to Social Care Wales who have functions relating to the appointment of persons to conduct fitness to practise investigations (see section 124).
221. The purpose of sections 178 and 179 is to make it clear that the regulators have powers (and in some circumstances, a duty) to work together innovatively and more efficiently, with the aim of reducing unnecessary costs and improving the ability of the system as a whole to deliver public protection.
222. Sections 180 and 181 are information sharing provisions that aim to provide certainty to the regulators about the extent to which they have the power to share information in the course of exercising their functions.

## **Annex B: Estimate of the social care workforce in Wales**

### **Social workers**

In March 2013, there were 5,881 social workers registered with the Care Council for Wales. Not all registered social workers are employed within the social care workforce. In 2013, 3,621 social workers were employed by local authority adult social services departments and children's social services departments in Wales, in roles which are within the scope of this Bill. In 2012, there were 247 social workers employed by the private sector. Of these, 134 worked in foster care organisations and 25 worked in roles where registration is mandatory, such as managers of adult residential homes. As such, they will be registered as both a manager and as a social worker.

Assuming there was no change in the number of social workers employed by private sector foster care agencies between June 2012 and March 2013, it is known that at least 3,780 of the 5,881 registered social workers were employed within the social care workforce within scope of this Bill. Adjusting for the dual registration of social workers who are managers, there are 3,755 known social workers who fall within the scope of this Bill.

Of the remaining 2,126 social workers, it is expected most of these will be employed in aspects of social care work outside of the scope of this Bill. This includes, for example, working in local authority children's social services departments on child protection or working within the NHS. In addition, some social workers will be employed by further and higher education institutions.

There is, however, potential that some social workers are employed by the voluntary sector and are working in areas within the scope of this Bill. It has not been possible to get figures for this group of people and, as such, the estimated 3,755 is considered to be the minimum number.

### **Social care workers providing adult domiciliary care**

The Welsh Government routinely collects data on the number of local authority domiciliary care workers in Wales. In 2011-12, there were 5,109 domiciliary care workers and 359 senior domiciliary care workers employed by Welsh local authorities (Stats Wales, 2012a), who delivered 3,594,021 hours of publicly funded domiciliary care to adults (Stats Wales

2012b). This compares to 8,322,627 hours of publicly funded domiciliary care contracted out to independent sector (Stats Wales 2012b).

Data on the number of domiciliary care workers employed by the private and voluntary sectors (referred to collectively as the independent sector) are not routinely collected. It is, however, possible to estimate the number of domiciliary care workers employed by independent sector, using the data above.

In 2011-12, a total of 11,916,648 hours of publicly funded domiciliary care was provided to clients in Wales (Stats Wales 2012b). Of these, 3,594,021 (30%) (Stats Wales 2012b) were provided by 5,109 domiciliary care workers and 359 senior domiciliary care workers employed by Welsh local authorities (Stats Wales 2012a). Assuming that local authority providers and independent providers employ the same ratio of senior care workers to care workers and that these workers work the same number of hours per week, have the same annual leave entitlements and have the same levels of absence, it can be estimated that the remaining 8,322,627 (70%) (Stats Wales 2012b) hours of domiciliary care were provided by an estimated 11,831 domiciliary care workers and 831 senior domiciliary care workers employed by the independent sector.

Up to an estimated 14% (1,773) of domiciliary care workers, not employed by local authorities, could be self-employed as personal assistants to individuals in receipt of direct payments<sup>112</sup>. This estimate is based on the number of adults in Wales receiving direct payments in 2012 (3,211) (Statistics for Wales, 2012) as a percentage of the total number of adults (23,617) (StatsWales, 2013b) receiving publicly funded domiciliary care during a sample week in September 2012. This calculation is based on an assumption that the average number of hours of care purchased per client using direct payments is equivalent to the average number of hours of care received per client via domiciliary care.

### **Domiciliary care workers providing care for children and young people**

In 2011-12 there were 411 domiciliary care workers and 11 senior domiciliary care workers delivering domiciliary care to children and young people employed by Welsh local authorities (StatsWales, 2012a). Assuming that, as with domiciliary care for adults, 30% of

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<sup>112</sup> Clients in receipt of direct payments can choose to purchase their care from a self-employed domiciliary care worker or from an agency, in which case the care worker will be employed.



domiciliary care for children and young people is directly provided by local authorities, it is estimated there are 955 domiciliary care workers and 30 senior domiciliary care workers employed by the independent sector to provide social care for children and young people in Wales. Thus, there are an estimated 1,366 domiciliary care workers providing social care to young people in Wales and an estimated 41 senior domiciliary care workers providing social care for children and young people.

### **Domiciliary care managers and deputy domiciliary care managers of settings providing social care to adults, children and young people**

Mandatory registration for domiciliary care managers was introduced in February 2013.

Existing domiciliary care managers have until the 31 December 2013 to register.

Domiciliary care managers have, however, been slow to register with the Care Council for Wales (CCW, 2013b). In March 2013, there were 409 domiciliary care settings registered with the Care and Social Services Inspectorate Wales (CSSIW, 2014) and 305 managers of settings providing domiciliary care services had registered with the Care Council for Wales (CCW, 2013b). It is not possible to make a distinction between managers of domiciliary care settings for adults and those for children and young people as CSSIW do not have information on the age of the service user for domiciliary care settings.

Since it is possible for a domiciliary care setting to register more than one domiciliary care manager with the Care Council for Wales, it can not be assumed that there are 409 domiciliary care managers in Wales. Also, it is not possible to assume there are 409 deputy domiciliary care managers in Wales, since it is only mandatory to register a deputy domiciliary care manager where a domiciliary care setting has a named deputy manager.

In October 2013, there were 47<sup>113</sup> local authority domiciliary care settings in Wales. In March 2013, local authorities employed a total of 111 managers of which 100 were managers of domiciliary care settings for adults and 11 were managers of domiciliary care settings for children and young people (StatsWales, 2013b). Local authorities also employed 58 deputy care managers of which 56 were deputy managers of domiciliary care settings for adults and two were deputy managers of domiciliary care settings for children and young people (StatsWales, 2013b). Using this information it is possible to

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<sup>113</sup> Information provided by CSSIW, October 2013.

estimate the number of managers and deputy managers of domiciliary care services employed by the independent sector.

Assuming the number of managers and deputy managers employed by local authorities did not change between March 2013 and October 2013, local authorities employed an average of 2.4 managers and 1.2 deputy managers of domiciliary care settings. Using this information, it can be estimated that for the 362 independent domiciliary care settings, there were 855 managers and 447 deputy managers. Thus, there are an estimated 966 managers and 505 deputy managers of domiciliary care settings in Wales.

### **Care Workers: adult residential services**

In October 2013, there were 2,855 residential care home care workers providing publicly funded care to adults employed by local authorities in Wales. In October 2013, local authority social care workers provided care up to a maximum of 2,786 residents<sup>114</sup>, who resided in 120 local authority residential care homes<sup>115</sup>. Local authority care homes can provide up to 10% of places available for adults who require residential care.

**Table 44: residential care workers providing services to adults in residential care employed by local authorities by type of care provided**

Type of residential care provided	Number of carers
Residential services for elderly and elderly mentally infirm people	2,208
Residential services for adults with physical or sensory disabilities	34
Residential services for adults with learning disabilities	569
Residential services for adults with mental health problems	44
<b>Total</b>	<b>2,855</b>

In October 2013, the independent sector provided social care for up to a maximum 24,172 residents, who resided in 1,012 independent residential care homes. Assuming that the independent sector employs the same proportion of staff to residents as local authorities, their terms and conditions are equal and that they have the same level of absence as local authority staff, it can be estimated that the independent sector employs an estimated

<sup>114</sup> Information provided by CSSIW. Numbers are based on the maximum number of residents the home is registered to provide care for, not the actual number of residents within a given home.

<sup>115</sup> Information provided by CSSIW.

24,771 residential home care workers. Thus, the estimated total of adult residential home care workers is 27,626.

### **Managers and deputy managers of adult residential care homes**

At October 2013, there were 1,132 adult residential care homes in Wales<sup>116</sup>. Of these, 120 were owned by local authorities. In March 2013, local authorities in Wales employed 125 managers and 119 deputy managers of adult residential care homes. A breakdown of this group of the care workforce is provided in table 45.

**Table 45: managers and deputy managers of residential care homes for adults employed by local authorities by type of service provided, March 2013**

Type of residential care provided	Number of managers	Number of deputy managers
Residential services for elderly and elderly mentally infirm people	95	96
Residential services for adults with physical or sensory disabilities	4	3
Residential services for adults with learning disabilities	22	17
Residential services for adults with mental health problems	4	3
<b>Total</b>	<b>125</b>	<b>119</b>

Source: Stats Wales (2012a)

Assuming the number of managers and deputy managers employed by local authorities did not change between March 2013 and October 2013, local authorities employed an average of just over one manager and just under one deputy manager per residential care home for adults.

Using this information, it can be estimated that for the 1,012 independent adult residential care homes, there were 1,054 managers and 1,004 deputy managers in March 2013. Thus, there are an estimated 1,179 managers and 1,123 deputy managers of residential care homes for adults.

### **Care workers: residential services for children and young people**

In October 2013, there were 147 residential homes for children and young people in Wales, of which 34 were owned by local authorities and 113 were owned by the

<sup>116</sup> Information provided by CSSIW, October 2013.

independent sector<sup>117</sup>. In March 2013, 462 care workers (StatsWales, 2013b) were employed by local authorities to provide social care up to a maximum 385<sup>118</sup> young people and children residing in care homes in Wales. Assuming the independent sector employs the same ratio of care workers to young people as local authorities, it can be estimated that the independent sector employs 2,278 care workers who provide social care up to a maximum 1,898 children and young people residing in care homes in Wales.

### **Managers and deputy managers of residential care homes for children and young people**

In March 2013, local authorities employed 22 managers and 49 deputy managers (StatsWales, 2013b) in 34 residential care homes for children and young people. Assuming the independent sector employs the same ratio of managers and deputy managers as local authorities, it can be estimated that the independent sector employs 73 managers and 163 deputy managers in the 113 independently owned residential care homes for children and young people.

### **Foster carers**

In March 2013, there were 2,553 (StatsWales, 2013b) foster carers registered with local authorities in Wales who provided social care to 4,440 children and young people<sup>119</sup>. Foster carers are also recruited through independent agencies but numbers are not reported. The Fostering Network estimates there are 3,350 fostering families in Wales. Between 69% and 79% of fostering families consist of married or cohabiting couples (see McDermid et al, 2012). Using the midpoint of 74%, it can be estimated that the 2,553 local authority foster carers make up 1,889 families. Thus, there are an estimated 1,461 independent fostering families in Wales which consist of an estimated 1,974 foster carers.

### **Inspectors**

In October 2013, the CSSIW employed 115 inspectors<sup>120</sup>.

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<sup>117</sup> Information provided by CSSIW

<sup>118</sup> As with the care homes for adults, where residential care homes for children and young have registered for a maximum of less than seven places, a maximum of six has been assumed.

<sup>119</sup> <https://statswales.wales.gov.uk/Catalogue/Health-and-Social-Care/Social-Services/Childrens-Services/Children-Looked-After/ChildrenLookedAfterInFosterPlacementsAt31March-by-LocalAuthority-PlacementType>

<sup>120</sup> Information supplied by CSSIW, October 2013.

## **Day and community services**

Local authorities employ 107 managers, 72 deputy managers, 232 supervisors and 2,071 care workers to provide social care to adults using day and community services. Thus, there are a total of 2,482 local authority employees working in day and community settings.

A study by Hussein (2010) found that in England, 87.3% of the adult day care workforce were local authority employees and that 12.7% were non-local authority employees<sup>121</sup>. Based on the assumption that the same percentage of the day care workforce in Wales is employed by local authorities and the independent sector, the total estimated day and community services workforce in Wales is 2,843. Of these, 361 are non-local authority employees. Assuming that the non-local authority day care workforce has the same job role profile as the local authority day care workforce, it can be estimated that there are 16 managers, 10 deputy managers, 34 supervisors and 301 care workers.

## **Adult placements**

Adult placement schemes are also referred to as Shared Lives Schemes. Shared Lives Schemes in Wales are run by local authorities and the third sector. There are currently 12 Shared Lives Schemes<sup>122</sup> in Wales providing social care to 751 adults (Shared Lives Plus, 2013). There are 676 Shared Lives carers who are approved by the Shared Lives scheme (Shared Lives Plus, 2013). The 10 local authority schemes have 46 employees consisting of 10 managers, one deputy manager, 33 officers and two care co-ordinators. The two third sector providers have 10 employees consisting of two heads of service, two scheme managers and six co-ordinators/co-ordinator assistants/officers. Thus, there are 732 individuals involved in delivering adult placements<sup>123</sup>.

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<sup>121</sup> This includes those employed in day and community settings who have their employer classified as other.

<sup>122</sup> There are a maximum 129 registered adult placement places in Wales. Where settings have registered under 7 places, an assumption of a maximum of 6 has been used. Information provided by CSSIW, October 2013.

<sup>123</sup> Staff, such as administrators, have not been included in the workforce numbers.

**Table 46: social care workforce by employment type and role**

Employer	Workforce group	Number	Date	
Independent sector	Social worker (foster care organisations)	134	Mar-13	actual
Local authority	Senior social work practitioner, senior practitioner (adult services)	362	Mar-13	actual
Local authority	Social worker (adult services)	1,001	Mar-13	actual
Local authority	Assessor care manager (adult social services)	78	Mar-13	actual
Local authority	Social worker trainee	9	Mar-13	actual
Local authority	Social work assistant (adult services)	414	Mar-13	actual
Local authority	Team manager (adult social services)	152	Mar-13	actual
Local authority	Senior social work practitioner, senior practitioner (children's social services)	462	Mar-13	actual
Local authority	Social worker (children's social services)	1,291	Mar-13	actual
Local authority	Assessor care manager (children's social services)	35	Mar-13	actual
Local authority	Social worker trainee (children's social services)	16	Mar-13	actual
Local authority	Social work assistant (children's social services)	675	Mar-13	actual
Local authority	Team manager (children's social services)	240	Mar-13	actual
Self-employed	Foster carers - local authority registered	2,553	Mar-13	actual
Self-employed	Foster carers - independent sector recruited	1,974	Nov-13	Estimate
CSSIW	Inspectors	115	Oct-13	actual
Local authority	Senior Domiciliary care worker (adult services)	359	Mar-12	actual
Local authority	Domiciliary care worker (adult services)	5,109	Mar-12	actual
Independent sector	Domiciliary care worker (adult services)	11,831	Mar-12	Estimate
Independent sector	Senior domiciliary care worker (adult services)	831	Mar-12	Estimate
Local authority	Domiciliary care worker (children's services)	411	Mar-12	actual
Local authority	Senior domiciliary care worker (children's services)	11	Mar-12	actual
Independent sector	Domiciliary care worker (children's services)	955	Mar-12	Estimate
Independent sector	Senior domiciliary care worker (children's services)	30	Mar-12	Estimate

Employer	Workforce group	Number	Date	
Local authority	Domiciliary care managers (adult and children's services)	111	Mar-13	actual
Local authority	Deputy domiciliary care managers (adult and children's services)	58	Mar-13	actual
independent sector	Domiciliary care managers (adult and children's services)	855	Mar-13	Estimate
Independent sector	Deputy domiciliary care managers (adult and children's services)	447	Mar-13	Estimate
Local authority	Care workers (residential homes for adults)	2,855	Oct-13	Estimate
Independent sector	Care workers (residential homes for adults)	24,771	Oct-13	Estimate
Local authority	Manager (residential homes for adults)	125	Mar-13	actual
Local authority	Deputy manager (residential homes for adults)	119	Mar-13	actual
Independent sector	Manager (residential homes for adults)	1,054	Mar-13	Estimate
Independent sector	Deputy manager (residential homes for adults)	1,004	Mar-13	Estimate
Local authority	Care worker (residential homes for children and young people)	462	Mar-13	actual
Independent sector	Care worker (residential homes for children and young people)	2,278	Mar-13	Estimate
Local authority	Manager (residential homes for children and young people)	22	Mar-13	actual
Local authority	Deputy manager (residential homes for children and young people)	49	Mar-13	actual
Independent sector	Manager (residential homes for children and young people)	73	Mar-13	Estimate
Independent sector	Deputy manager (residential homes for children and young people)	163	Mar-13	Estimate
Local authority	Manager (day and community services for adults)	107	Mar-13	actual
Local authority	Deputy manager (day and community services for adults)	72	Mar-13	actual
Local authority	Supervisor (day and community services for adults)	232	Mar-13	actual
Local authority	Care Workers (day and community services for adults)	2,071	Mar-13	actual
Independent sector	Manager (day and community services for children and young people)	16	Mar-13	actual

Employer	Workforce group	Number	Date	
Independent sector	Deputy manager (day and community services for children and young people)	10	Mar-13	actual
Independent sector	Supervisor (day and community services for children and young people)	34	Mar-13	actual
Independent sector	Care Workers (day and community services for children and young people)	301	Mar-13	actual
Local authority	Manager (adult placements)	10	2013	actual
Local authority	Deputy manager (adult placement)	1	2013	actual
Local authority	Officers and care co-ordinators (adult placement)	35	2013	actual
Independent sector	Head of Service (adult placement)	2	2013	actual
Independent sector	Manager (adult placements)	2	2013	actual
Independent sector	Officers, care co-ordinators and assistant care co-ordinators (adult placement)	6	2013	actual
Self-employed	Carers (adult placement)	676	2013	actual
	<b>Total</b>	<b>67,069</b>		



**Table 47 projected costs for extending workforce regulation**

Model	Year	Estimated cost (£)	Number of Registrants	Cost per registrant (£)	Estimated income from fees (existing rates)	Estimated grant in aid required (£)	Additional cost to the public purse (£)	Estimated income from fees (increased rate)	Estimated grant in aid (£)	Additional cost to the public purse (£)
A	2012-13	3,170,175	11,599	273.31	264,350	2,905,825				
B	2017-18	4,705,100	55,199	85.24	682,500*	4,022,600	1,116,800	1,830,900	2,874,200	-31,600
B	2017-18	5,717,000	67,069	85.24	829,000*	4,887,700	+1,981,900	2,072,100	3,644,900	+739,000
C	2017-18	8,698,840	67,069	130.00	829,000	7,869,840	4,964,015	2,072,100	6,626,740	3,720,915

\* Estimated income based on an average fee of £12.36 per registrant

## Annex C: Care Council for Wales costing model for registering an additional 42,000 workers on the register

Average No. On the Register

	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21
Students	789	789	789	789	789	789	789	789	789
Social Workers and CCOs	5,852	5,852	5,852	5,852	5,852	5,852	5,852	5,852	5,852
Managers	1,566	1,566	2,166	2,766	2,966	3,166	3,166	3,166	3,166
Support Workers	3,392	3,392	6,392	15,392	28,392	45,392	45,392	45,392	45,392
	11,599	11,599	15,199	24,799	37,999	55,199	55,199	55,199	55,199

New additions to the register

Managers	-	-	600	600	200	200	-	-	-
Support Workers	-	-	3,000	9,000	13,000	17,000	-	-	-

	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21
<b>Fee Rates</b>	<b>£</b>	<b>£</b>	<b>£</b>	<b>£</b>	<b>£</b>	<b>£</b>	<b>£</b>	<b>£</b>	<b>£</b>
Students	10.00	10.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00
Social Workers	30.00	30.00	75.00	75.00	75.00	75.00	75.00	75.00	75.00
Managers	30.00	30.00	75.00	75.00	75.00	75.00	75.00	75.00	75.00
Care Workers	10.00	10.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00
<b>1. Costs of running Registration function including Salaries</b>									
	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21

	£	£	£	£	£	£	£	£	£
Projected Expenditure	873,014	781,648	794,802	1,307,295	1,581,273	1,805,372	1,690,826	1,703,764	1,716,832
Projected Income	(264,350)	(264,350)	(780,875)	(1,050,875)	(1,390,875)	(1,830,875)	(1,830,875)	(1,830,875)	(1,830,875)
Projected Grant in Aid requirement	608,664	517,298	13,927	256,420	190,398	(25,503)	(140,049)	(127,111)	(114,043)
<b>2. Costs of running Registration function including Salaries and allocation of Premises Costs</b>	<b>2012/13</b>	<b>2013/14</b>	<b>2014/15</b>	<b>2015/16</b>	<b>2016/17</b>	<b>2017/18</b>	<b>2018/19</b>	<b>2019/20</b>	<b>2020/21</b>
	£	£	£	£	£	£	£	£	£
Projected Expenditure	992,689	901,169	914,323	1,486,253	1,777,641	2,017,217	1,891,122	1,906,023	1,921,054
Projected Income	(264,350)	(264,350)	(780,875)	(1,050,875)	(1,390,875)	(1,830,875)	(1,830,875)	(1,830,875)	(1,830,875)
Projected Grant in Aid requirement	728,339	636,819	133,448	435,378	386,766	186,342	60,247	75,148	90,179
<b>3. Costs of running Registration function including Salaries, allocation of Premises Costs and allocation of Enablers(excluding Management/Communications/Council)</b>	<b>2012/13</b>	<b>2013/14</b>	<b>2014/15</b>	<b>2015/16</b>	<b>2016/17</b>	<b>2017/18</b>	<b>2018/19</b>	<b>2019/20</b>	<b>2020/21</b>
	£	£	£	£	£	£	£	£	£
Projected Expenditure	1,422,810	1,328,234	1,339,738	1,912,385	2,203,642	2,444,832	2,323,110	2,341,045	2,359,137
Projected Income	(264,350)	(264,350)	(780,875)	(1,050,875)	(1,390,875)	(1,830,875)	(1,830,875)	(1,830,875)	(1,830,875)
Projected Grant in Aid requirement	1,158,460	1,063,884	558,863	861,510	812,767	613,957	492,235	510,170	528,262
<b>4.Costs of running Registration function including Salaries, allocation of Premises Costs and allocation of Enablers(including Management/Communications/Council)</b>	<b>2012/13</b>	<b>2013/14</b>	<b>2014/15</b>	<b>2015/16</b>	<b>2016/17</b>	<b>2017/18</b>	<b>2018/19</b>	<b>2019/20</b>	<b>2020/21</b>
	£	£	£	£	£	£	£	£	£

Projected Expenditure	1,838,917	1,741,137	1,748,832	2,322,674	2,614,857	2,857,964	2,739,718	2,760,388	2,780,569
Projected Income	(264,350)	(264,350)	(780,875)	(1,050,875)	(1,390,875)	(1,830,875)	(1,830,875)	(1,830,875)	(1,830,875)
Projected Grant in Aid requirement	1,574,567	1,476,787	967,957	1,271,799	1,223,982	1,027,089	908,843	929,513	949,694
<b>5. Full cost of Workforce Regulation including Salaries</b>	<b>2012-13</b>	<b>2013-14</b>	<b>2014-15</b>	<b>2015-16</b>	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>
	£	£	£	£	£	£	£	£	£
Projected Expenditure	1,724,714	1,649,915	1,669,430	2,413,701	2,862,665	3,148,777	3,096,316	3,171,409	3,196,702
Projected Income	(264,350)	(264,350)	(780,875)	(1,050,875)	(1,390,875)	(1,830,875)	(1,830,875)	(1,830,875)	(1,830,875)
Projected Grant in Aid requirement	1,460,364	1,385,565	888,555	1,362,826	1,471,790	1,317,902	1,265,441	1,340,534	1,365,827
<b>6. Full cost of Workforce Regulation including Salaries and allocation of Premises Costs</b>	<b>2012-13</b>	<b>2013-14</b>	<b>2014-15</b>	<b>2015-16</b>	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>
	£	£	£	£	£	£	£	£	£
Projected Expenditure	1,900,833	1,825,807	1,845,322	2,671,733	3,145,370	3,443,980	3,384,675	3,462,595	3,490,715
Projected Income	(264,350)	(264,350)	(780,875)	(1,050,875)	(1,390,875)	(1,830,875)	(1,830,875)	(1,830,875)	(1,830,875)
Projected Grant in Aid requirement	1,636,483	1,561,457	1,064,447	1,620,858	1,754,495	1,613,105	1,553,800	1,631,720	1,659,840
<b>7.Full cost of Workforce Regulation including Salaries, allocation of premises costs and allocation of Enablers(excluding Management/Communications/Council)</b>	<b>2012-13</b>	<b>2013-14</b>	<b>2014-15</b>	<b>2015-16</b>	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>
	£	£	£	£	£	£	£	£	£
Projected Expenditure	2,546,014	2,466,405	2,483,444	3,310,931	3,784,372	4,085,404	4,032,657	4,115,127	4,147,840
Projected Income	(264,350)	(264,350)	(780,875)	(1,050,875)	(1,390,875)	(1,830,875)	(1,830,875)	(1,830,875)	(1,830,875)
Projected Grant in Aid requirement	2,281,664	2,202,055	1,702,569	2,260,056	2,393,497	2,254,529	2,201,782	2,284,252	2,316,965
<b>8.Full cost of Workforce Regulation including Salaries, allocation of premises costs and allocation of Enablers(including Management/Communications/Council</b>	<b>2012-13</b>	<b>2013-14</b>	<b>2014-15</b>	<b>2015-16</b>	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>

	£	£	£	£	£	£	£	£	£
Projected Expenditure	3,170,175	3,085,759	3,097,085	3,926,365	4,401,194	4,705,101	4,657,569	4,744,142	4,779,988
Projected Income	(264,350)	(264,350)	(780,875)	(1,050,875)	(1,390,875)	(1,830,875)	(1,830,875)	(1,830,875)	(1,830,875)
Projected Grant in Aid requirement	2,905,825	2,821,409	2,316,210	2,875,490	3,010,319	2,874,226	2,826,694	2,913,267	2,949,113

## Annex D: Sensitivity analysis for extending mandatory registration across the social care workforce

**Table 48: breakdown of sensitivity analysis for model C**

Area cost incurred	Cost (£m)	Notes
Fitness to practise and conduct staff	<b>1.308</b>	<p>Model B (best case scenario) is based on an estimate that staff working on fitness to practise and conduct would increase from 10 to 19 the assumptions looked at different models of working and impact of changes to legislation.</p> <p>Model C (worst case scenario) is based on current working practices and extrapolation of costs in line increases in the number of registered workers. Using this assumption, it is estimated that 58 fitness to practise and conduct staff will be required.</p>
Fitness to practise panels	<b>1.500</b>	<p>Model B (best case scenario) is based on an assumption that costs will peak a few years after the implementation of mandatory regulation is completed in 2017/18.</p> <p>Model C (worst case scenario) is based on an assumption that costs will peak at the same time as the implementation of mandatory registration is completed; and that panel costs will increase in line with increases in the number of registered workers. This would lead to a Panels cost of £2m.</p>
Fitness to practise panel members fees	<b>0.185</b>	<p>Model B (best case scenario) is based on the assumption that panel members fees would not increase due new ways of working. Members fees for 2017/18 were estimated to be £56, 000.</p> <p>Model C (worst case scenario) assumes that panels costs will increase in line with increases in the numbers of registered workers which, in turn, is expected to result in increases in panel activity. As a result, panel members fees are estimated to be £250,000 in 2017/18.</p> <p>It should also be noted that the previous costings were low as it was assumed costs would peak a few years later than the extension of the workforce completion in 2017/18.</p>

Administration costs	<b>0.130</b>	<p>The cost of administration for model B(best case scenario) is estimated to be £70,000.</p> <p>The cost of administration for model C(worst case scenario) is estimated to £220,000. The estimate is higher under model C as increased panel activity will require an increase in administrative support.</p>
	<b>0.183</b>	<p>Model B is based on the assumption the registered workforce will increase from 11,599 to 55,199. The salary costs associated with registration are estimated to increase from approximately 21 staff (full time equivalent) to approximately 48 staff (full time equivalent).</p> <p>Model C is based on the assumption the registered workforce will increase from 11,599 to 67,069. The salary costs associated with registration are estimated to increase from approximately 21staff (full time equivalent) to approximately 55 staff (full time equivalent).</p>
	<b>0.075</b>	<p>Model B includes an estimated cost for registration administration of £400,000.</p> <p>Model C includes an estimated cost for registration administration of £475,000. The additional cost reflects the larger registered workforce assumed under model C which, in turn, requires additional staff to provide administrative support to staff undertaking registration activities.</p>
	<b>0.400</b>	<p>Model B does not include any increased costs associated with premises, other than increases in inflation.</p> <p>Model C assumes the estimated increase in staff numbers will result in a requirement for additional office space. This is estimated to be in the region of £400,000.</p>
	<b>0.213</b>	<p>Model B includes minimal increases in support costs.</p> <p>Model C includes additional support costs as a result of new premises and increased levels of staff. Model C includes an increase in functions and support staff. The Support functions are estimated to increase by five staff (full time equivalent) – three in Corporate Services and two in Communication.</p>
<b>Total additional cost</b>	<b>3.994</b>	

## **Annex E: Regulation and Inspection of Social Care (Wales) Bill – table of derivations**

This document is intended as an informal aid to debate on the Bill in the National Assembly for Wales. While care has been taken to ensure that the document is as accurate as reasonably practicable, it does not purport to be, and should not be relied on as, authoritative.

The attached table is intended to provide information on the derivation of the provisions of the Regulation and Inspection of Social Care (Wales) Bill. The table does not provide definitive or exhaustive guidance, and should be read in conjunction with the Bill and with the explanatory notes on the Bill.

### **KEY TO ABBREVIATIONS**

<b>Appointment Regulations:</b>	<b>Care Council for Wales (Appointment, Membership and Procedure) Regulations 2001, SI 2001/2136</b>
<b>CA 2014:</b>	<b>Care Act 2014</b>
<b>CSA 2000:</b>	<b>Care Standards Act 2000</b>
<b>Fitness to practise Rules:</b>	<b>The Care Council for Wales (Fitness to Practise) Rules 2014</b>
<b>HSC(CHSA) 2003:</b>	<b>Health and Social Care (Community Health Standards) Act 2003</b>
<b>HSC 2008:</b>	<b>Health and Social Care Act 2008</b>
<b>Registration Rules:</b>	<b>The Care Council for Wales (Registration) Rules 2014</b>



<b>REGULATION AND INSPECTION OF SOCIAL CARE (WALES) BILL – TABLE OF DERIVATIONS</b>		
<b>SECTION/ PARAGRAPH</b>	<b>CORRESPONDING REFERENCE IN EXISTING LEGISLATION</b>	<b>SUBSTANTIVE CHANGE</b>
<b>PART 1: REGULATION OF SOCIAL CARE SERVICES</b>		
1	New	
2	ss. 1,3,4 and 42 CSA 2000	Yes
3	New	
4	New	
5	s. 11(1) CSA 2000	Yes
6	s. 12 CSA 2000	Partial
7	s. 13 CSA 2000	Partial
8	s. 33 CSA 2000	Yes
9	New	
10	s. 13 CSA 2000	Partial
11	s. 14 CSA 2000	Yes
12	s. 15 CSA 2000	Partial
13	s. 14 CSA 2000	Yes
14	New	
15	New	
16	s. 17 CSA 2000	Partial
17	s. 19 CSA 2000	Partial
18	s. 19(1) CSA 2000	Partial
19	New	
20	New	
21	s. 20A CSA 2000	Partial
22	s. 20A CSA 2000	Partial
23	s. 20B CSA 2000	Partial
24	s. 21 CSA 2000	Partial
25	s. 28(1) CSA 2000	No
26	s. 22 CSA 2000	Yes
27	New	
28	New	
29	s. 34 CSA 2000	No
30	s. 35 CSA 2000	No
31	s. 31(1)and (1A) CSA 2000	Partial
32	New	
33	s. 31(2) to (4) and s. 32(1) to (3) CSA 2000	No
34	s. 32(5) and (6) CSA 2000	Partial
35	New	
36	s. 36 CSA 2000	Partial
37	s. 30A CSA 2000	Partial
38	s. 8(4), s. 12(2) CSA 2000	Yes
39	s. 8(2) CSA 2000	Yes
40	s. 33 CSA 2000	Yes
41	s. 24 CSA 2000	Partial

<b>REGULATION AND INSPECTION OF SOCIAL CARE (WALES) BILL – TABLE OF DERIVATIONS</b>		
<b>SECTION/ PARAGRAPH</b>	<b>CORRESPONDING REFERENCE IN EXISTING LEGISLATION</b>	<b>SUBSTANTIVE CHANGE</b>
42	s. 26 CSA 2000	Yes
43	s. 25 CSA 2000	Partial
44	New	
45	s. 27 CSA 2000	Partial
46	New	
47	s. 28(2) CSA 2000	No
48	s. 31(9)(b) CSA 2000	No
49	s. 31(9) CSA 2000	
50	New	
51	s. 30ZA and s. 30ZB CSA 2000	No
52	s. 30 CSA 2000	No
53	New	
54	s. 29 CSA 2000	Partial
55	s. 92 HSC(CHSA) 2003	Partial
56	s. 93,s. 94,s. 97 to 101 HSC(CHSA) 2003	Partial
57	s. 43(3)(b) and s. 48 CSA 2000	Partial
58	s. 53 CA 2014	No
59	s. 54 CA 2014	No
60	s. 55 CA 2014	No
61	s. 56 CA 2014	No
62	New	
63	New	
<b>PART 2: OVERVIEW AND INTERPRETATION OF PARTS 3 TO 8</b>		
64	New	
65	New	
<b>PART 3: SOCIAL CARE WALES</b>		
66	s. 54(1) CSA 2000	Partial
67	s. 54(3) CSA 2000	Yes
68	New	
69	s. 95 HSC(CHSA) 2003	Yes
70	New	
71	New	
72	s. 71(1) CSA 2000	No
73	s. 71(2)-(3A) CSA 2000	No
74	New	
75	s. 54(4)(b) CSA 2000	Partial
76	s. 54(4)(a) CSA 2000	Partial
77	s. 113 CSA 2000	No

<b>REGULATION AND INSPECTION OF SOCIAL CARE (WALES) BILL – TABLE OF DERIVATIONS</b>		
<b>SECTION/ PARAGRAPH</b>	<b>CORRESPONDING REFERENCE IN EXISTING LEGISLATION</b>	<b>SUBSTANTIVE CHANGE</b>
<b>PART 4: SOCIAL CARE WORKERS</b>		
78	s. 55(1)-(4) CSA 2000	Partial
79	s. 56 CSA 2000	No
80	New	
81	s. 57 CSA 2000	Partial
82	s. 58 CSA 2000	Yes
83	s. 58(2) CSA 2000	Partial
84	s. 64 CSA 2000	No
85	s. 60(c) CSA 2000	Yes
86	s. 60(c) CSA 2000	Yes
87	s. 57(1) and 60 (b) and (c) CSA 2000	Yes
88	s. 60 CSA 2000 and the Registration Rules made under it	Yes
89	s. 58A CSA 2000	No
90	s. 60(a) CSA 2000 and the Registration Rules made under it	Yes
91	s. 59(1) (a) and (e) CSA 2000 and the Registration Rules made under it	Yes
92	s. 59(1) (a) and (e) CSA 2000 and the Registration Rules made under it	Yes
93	s. 59(1) (a) and (e) CSA 2000 and the Registration Rules made under it	Yes
94	s. 59(1) (e) CSA 2000 and the Registration Rules made under it	Yes
95	s. 59(1) (b) and (e) CSA 2000 and the Fitness to Practise rules made under it	Yes
96	s. 59(1) (b) and (e) CSA 2000 and the Fitness to Practise Rules made under it	Yes
97	s. 59 (1) (b) and (e) CSA 2000 and the Fitness to Practise Rules made under it	Yes
98	s. 59(1) (b) and (e) CSA 2000 and the Fitness to Practise Rules made under it	Yes
99	s. 59(1)(b) and (e) CSA 2000 and the Registration Rules and Fitness to Practise Rules made under it	Yes
100	New	
101	New	
102	New	
103	s. 68(1) CSA 2000	Partial
104	s. 68(1A) CSA 2000	Partial
105	s. 60 CSA 2000 and the Registration Rules made under it	Yes

<b>REGULATION AND INSPECTION OF SOCIAL CARE (WALES) BILL – TABLE OF DERIVATIONS</b>		
<b>SECTION/ PARAGRAPH</b>	<b>CORRESPONDING REFERENCE IN EXISTING LEGISLATION</b>	<b>SUBSTANTIVE CHANGE</b>
106	s. 60 CSA 2000 and the Registration Rules made under it	Yes
107	s. 69 CSA 2000	No
108	s. 60 CSA 2000 and the Registration Rules made under it	Yes
109	New	
110	s. 61 CSA 2000	Yes
<b>PART 5: SOCIAL CARE WORKERS: STANDARDS OF CONDUCT, EDUCATION ETC.</b>		
111	s. 62 CSA 2000	No
112	s. 65 CSA 2000	No
113	s. 63 CSA 2000	Partial
114	s. 66 CSA 2000	No
115	s. 67(3) and (4) CSA 2000	Partial
<b>PART 6: SOCIAL CARE WORKERS: FITNESS TO PRACTISE</b>		
116-155	s. 59 CSA 2000 and the Fitness to Practise Rules made under it	Yes
156	s. 68 CSA 2000	Partial
157	s. 59 CSA 2000 and the Fitness to Practise Rules made under it	Yes
158	New	
159	s. 59 CSA 2000 and the Fitness to Practise Rules made under it	Yes
160	New	
161	New	
162	New	
<b>PART 7: ORDERS PROHIBITING WORK IN SOCIAL CARE: UNREGISTERED PERSONS</b>		
163-171	New	
<b>PART 8: SOCIAL CARE WALES: DUTY TO ESTABLISH PANELS ETC.</b>		
172	s. 59 and 60 CSA 2000 and the Fitness to Practise Rules and Registration Rules made under them	Yes
173	s. 59 and 60 CSA 2000 and the Fitness to Practise Rules and Registration Rules made under them and s.125 HSC 2008	Yes

<b>REGULATION AND INSPECTION OF SOCIAL CARE (WALES) BILL – TABLE OF DERIVATIONS</b>		
<b>SECTION/ PARAGRAPH</b>	<b>CORRESPONDING REFERENCE IN EXISTING LEGISLATION</b>	<b>SUBSTANTIVE CHANGE</b>
<b>PART 9: CO-OPERATION AND JOINT WORKING BY THE REGULATORY BODIES ETC.</b>		
174 – 180	New	
<b>PART 10: MISCELLANEOUS AND GENERAL</b>		
181	s. 10 CSA 2000	No
182	New	
<b>PART 11: FINAL PROVISIONS</b>		
183 – 188	New	
<b>SCHEDULE 1: REGULATED SERVICES: DEFINITIONS</b>		
1-8	ss. 1,3,4 and 42 CSA 2000	Yes
<b>SCHEDULE 2: SOCIAL CARE WALES</b>		
1-17	Schedule 1 CSA 2000 and Appointment, Regulations	Partial
<b>SCHEDULE 3: MINOR AND CONSEQUENTIAL AMENDMENTS AND REPEALS</b>		
1-58	New	

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