

## **Explanatory Memorandum to:**

- 1. The Social Care Wales (Extension of Meaning of “Social Care Worker”) Regulations 2016**
- 2. The Social Care Wales (Specification of Social Care Workers) (Registration) Regulations 2016**
- 3. The Social Care Wales (Content of Register) Regulations 2016**
- 4. The Social Care Wales (List of Persons Removed from the Register) Regulations 2016**
- 5. The Social Care Wales (Constitution of Panels: Prescribed Persons) Regulations 2016**
- 6. The Social Care Wales (Proceedings before panels) Regulations 2016**

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

### **Minister’s Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of:

- 1. The Social Care Wales (Extension of Meaning of “Social Care Worker”) Regulations 2016**
- 2. The Social Care Wales (Specification of Social Care Workers) (Registration) Regulations 2016**
- 3. The Social Care Wales (Content of Register) Regulations 2016**
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- 6. The Social Care Wales (Proceedings before panels) Regulations 2016**

I am satisfied that the benefits justify the likely costs.

Rebecca Evans  
Minister for Social Services & Public Health  
22 November 2016

## Part 1 – OVERVIEW

### 1. Description

The Regulation and Inspection of Social Care (Wales) Act 2016 (the 2016 Act) provides 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*<sup>1</sup> published by the Welsh Government in February 2011. This in turn built upon *Fulfilled Lives, Supportive Communities: A Strategy for Social Services in Wales Over the Next Decade*<sup>2</sup>, published four years earlier, and was also a direct response to the work of an independent commission established to review social services.

The Regulations elaborate essential matters of workforce regulation set out in the 2016 Act. The rules developed by Social Care Wales (SCW) work with the Act and the Regulations to complete the workforce regulatory framework.

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

There are no specific matters that have been identified that are of interest to the Constitutional and Legislative Affairs Committee.

The Regulations to be laid will be considered under the following procedures:

• The Social Care Wales (Extension of Meaning of “Social Care Worker”) Regulations	Affirmative
• The Social Care Wales (Specification of Social Care Workers) (Registration) Regulations	Affirmative
• The Social Care Wales (Content of Register) Regulations	Negative
• The Social Care Wales (List of Persons Removed from the Register) Regulations	Negative
• The Social Care Wales (Constitution of the Panels: Prescribed Persons) Regulations	Negative
• The Social Care Wales (Proceedings before the Panels) Regulations	Negative

### 3. Legislative background

The following sections of the 2016 Act contain the powers to enable these regulations to be made:

<sup>1</sup> <http://gov.wales/topics/health/publications/socialcare/guidance1/services/?lang=en>

<sup>2</sup> <http://gov.wales/topics/health/publications/socialcare/strategies/lives/?lang=en>

- Section 79 - The Social Care Wales (Extension of Meaning of “Social Care Worker”) Regulations,
- Section 80 - The Social Care Wales (Specification of Social Care Workers) (Registration) Regulations,
- Section 91 - The Social Care Wales (Content of Register) Regulations,
- Section 110 - The Social Care Wales (List of Persons Removed from the Register) Regulations,
- Section 174 - The Social Care Wales (Constitution of the Panels: Prescribed Persons) Regulations, and
- Section 175 - The Social Care Wales (Proceedings before the Panels) Regulations.

#### **4. Purpose & intended effect of the legislation**

##### The Social Care Wales (Extension of Meaning of “Social Care Worker”) Regulations (Affirmative Procedure)

Section 79(1) sets out those persons who are “social care workers” for the purposes of the 2016 Act. Subsection (2) of section 79 enables the Welsh Ministers, by regulations, to treat other categories of persons as social care workers for the purposes of this Act, and subsection (3) lists those categories. These include persons such as 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”.

These Regulations set out the additional persons who are to be considered as social care workers for the purpose of SCW functions under sections 68(2), 112, 114 and 116 of the 2016 Act. This is important because it defines the scope of who SCW can support and help in its work and who is subject to the Code of Professional Practice for Social Care.

The definition of a social care worker for the purposes of section 79 of the Act is intentionally wider to the list of those social care workers for whom SCW must keep a register under section 80. The intended effect of these Regulations is to encompass the whole range of potential workers described within the Act within the definition of social care worker for the purposes of certain SCW functions. This will give SCW the freedom and powers to support the full breadth of the workforce. This has proved a successful approach under the Care Standards Act 2000 (the 2000 Act) and its regulations, and will be even more valuable for SCW, given its expanded role across workforce and service improvement.

##### The Social Care Wales (Specification of Social Care Workers) (Registration) Regulations (Affirmative Procedure)

Section 80 of the 2016 Act requires SCW 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 requirement for

social care workers to register with a regulatory body does not arise by virtue of section 80. That requirement exists through service regulation. These Regulations set out a separate requirement for SCW to keep a register of certain social care workers.

The intended effect of these Regulations is to require SCW to maintain a register of those social care workers who manage a regulated service, provide care and support in connection with a children's home or secure accommodation, or who are undertaking a course approved by SCW in order to become registered as a social worker.

#### The Social Care Wales (Content of Register) Regulations (Negative Procedure)

Sections 91(1)(a) and (b) of the 2016 Act already set out certain information which must always appear on the register, namely:

- (a) the date on which the person was entered onto the register
- (b) the person's qualifications to practise work of the kind to which his or her registration relates.

These Regulations are made under sections 91(1) (c) and (d) of the Act and provide that the register must also show the following information:

- (c) such other qualifications, knowledge or experience relevant to the person's registration as may be prescribed; and
- (d) such information relating to the person's fitness to practise as may be prescribed.

SCW may also make rules requiring or authorising the registrar to include information in addition to that prescribed by the Welsh Ministers in an entry in the register (section 91(2)(a)).

The intended effect of these Regulations is to ensure the register contains sufficient information to provide effective public protection. The prescribed information has been kept to the essential minimum to avoid those examining the register being overwhelmed by excessive information, whilst also having regard to the rights of social care workers to privacy. Thus, the register will include information where a person has been approved to act as an approved mental health professional (section 91(1)(c)) and information about certain fitness to practise interventions, examples of which include advice, warnings, suspension, removal and agreed undertakings (section 91(1)(d)).

#### The Social Care Wales (List of Persons Removed from the Register) Regulations (Negative Procedure)

For reasons of public protection, the register will reflect sanctions imposed and certain decisions made by a fitness to practise panel in relation to a registered person (under regulations being made under section 91(1)(d)). However, the register will not reflect that a person's entry has been removed. Section 110 of the 2016 Act therefore provides that SCW is required to keep a list of persons whose entries in the register have been removed under section 110(1) of the 2016 Act. These Regulations, made under section

110(6) of the 2016 Act, make provision about the form and content of the list; the publication of the list or of specified information from the list, and the circumstances in which an entry relating to a person must be removed from the list.

The intended effect of these Regulations is to ensure that the list of persons removed from the register is constructed and presented in such a way as to enable straightforward access and understanding by those seeking such information, for example, employers and members of the public who wish to check whether a person has been removed from the register. In common with the approach to the register, this list needs to strike an appropriate balance between simplicity and comprehensiveness so that it effectively serves its function of providing public protection, whilst also balancing the rights of social care workers to privacy.

#### The Social Care Wales (Constitution of the Panels: Prescribed Persons) Regulations (Negative Procedure)

Section 174 provides that SCW must by rules make provision for there to be registration appeal panels, interim orders panels and fitness to practise panels. Section 174 and rules made under it set out 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 decisions without being affected by conflicts of interest. Subsection (5) lists the types of person who are prohibited from being panel members

- (a) a person who is a member or a member of staff of—
  - (i) SCW,
  - (ii) the Health and Care Professions Council,
  - (iii) the Scottish Social Services Council, or
  - (iv) the Northern Ireland Social Care Council;
- (b) a prescribed person.

and paragraph (b) provides the Welsh Ministers with the power to make regulations prohibiting additional persons.

The intended effect of these Regulations is to ensure that the parties to panels and the general public at large are confident in the quality and impartiality of the panel processes that are at the heart of workforce regulation. There can then be confidence in the decisions made by panels and that the decisions and processes of panels support public protection and respect the rights of registrants. In particular the Regulations necessarily distinguish the functions of investigation and adjudication so that the parties to the panels can be assured that each of these processes has been carried out independently of the other.

#### The Social Care Wales (Proceedings before the Panels) Regulations (Negative Procedure)

These Regulations set out how the three panels, namely registration appeals panels, fitness to practise panels and interim order panels, established by SCW, will operate.

The Regulations make provision about the panels' procedure. The Regulations allow SCW to make rules about matters relating to such proceedings.

The intended effect of these Regulations is to enable the panels at the heart of the regulatory process to operate efficiently and effectively. The Regulations set out how the panels will operate in a range of crucial areas such as the duties of the parties involved, the standards of evidence, the summoning of witnesses. The Regulations also provide for SCW to make rules relating to how panels will operate. It is intended that this combined approach delivers clarity in regulations on the most significant areas of how panels will work with flexibility for the regulator to address matters of detail in rules that may need to be adapted over time.

## **5. Consultation**

A 12 week consultation on these regulations ran between 28 June 2016 and 20 September 2016. Overall the Regulations were well received with respondents generally supporting the proposals. Where responses have resulted in material changes to the Regulations, these have been reflected in the final version of the Regulations being laid. Further details on the consultation process are set out in the Regulatory Impact Assessment in Part 2.

A summary report of the consultation responses is available on the Welsh Government website at:

<https://consultations.gov.wales/consultations/phase-1-implementation-regulation-and-inspection-social-care-wales-act-2016>

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

### **1. The Social Care Wales (Extension of Meaning of “Social Care Worker”) Regulations 2016 (Affirmative Procedure)**

Section 79 (1) of the Regulation and Inspection of Social Care (Wales) Act 2016 (the 2016 Act) sets out a definition of those workers who are considered to be “social care workers” under that Act. These regulations made under section 79(2) provide the Welsh Ministers with the power to broaden the definition of who can be considered to be social care workers for the purposes of the provision of support by SCW and the Code of Professional Practice for Social Care.

#### **Options**

##### *Option 1: Do nothing*

In the event that these regulations are not made, the definition of “social care worker” would be limited to the definition outlined at section 79(1) of the 2016 Act. This would prevent SCW from supporting the broader workforce or from developing specific training programmes to focus on “specialisms” such as dementia care, as these would fall outside of its specified remit.

##### *Option 2: Bring Regulations into force*

These regulations will ensure that SCW has the power to support and work with the wider social care workforce to improve standards within the sector and to focus its efforts to meet specific issues as and when considered necessary. This will reinforce SCW’s general aim to maintain a broad and inclusive approach to the sector and respond positively to the multi-disciplinary nature of the workforce, the Welsh Government’s integration agenda between Health and Social Care and any future changes in the sector.

#### **Costs & benefits / Risks**

##### *Costs, risks and benefits for Option 1:*

There are no additional costs were these regulations not made, as the definition of social care worker would not be added to at all, and the role and remit of SCW would not be extended to any additional workers.

##### *Costs, risks and benefits for Option 2:*

These regulations are intended to preserve the existing scope of the definition of “social care worker” and also to expand it to include groups of workers not previously considered to be social care workers. These additional groups include responsible individuals, personal assistants, child minders and day care providers for children. This involves approximately 5,000 individuals. This may consequentially incur costs for the

Care Council for Wales (Care Council), and subsequently SCW, in response to the developmental needs of some of these added groups. The Care Council has recognised there will need to be careful consideration of the development needs for these new groups that will include activities such as:

- Ensuring the code of professional practice applies to these workers
- Developing induction materials
- Contributing to the design of training and qualifications
- Producing practice guidance

This activity will be carried out by SCW through its remit letter. This will be set through a process of negotiation between Welsh Government and SCW to ensure that SCW has the resources necessary to complete the activity within the remit letter for each financial year.

The benefit of implementing these regulations would be that more workers would be recognised as social care workers and therefore fall within the remit of SCW, which will be better able to ensure that high quality services are being delivered and better safeguard the public using them.

## **2. The Social Care Wales (Specification of Social Care Workers) (Registration) Regulations 2016 (Affirmative Procedure)**

Section 80 of the 2016 Act requires SCW to keep a register of social workers, visiting social workers from relevant European States and social care workers of any other description specified by the Welsh Ministers in regulations. These regulations would require SCW to keep a register of those social care workers who manage a regulated service, provide care and support in connection with a children's home or secure accommodation, or who are undertaking a course approved by SCW in order to become registered as a social worker.

### **Options**

#### *Option 1: Do nothing*

In the event that these regulations are not made, SCW would be limited to registering only those categories outlined in section 80(a) and (c) of the 2016 Act. This would mean that some groups that are currently required to register with the Care Council for Wales would no longer be subject to this requirement with SCW.

These regulations are therefore necessary to ensure that the requirements contained within the Care Standards Act 2000 and its supporting regulations are replicated fully under the 2016 Act, allowing SCW to continue to register all of the current categories of "social care worker".

Failure to do so would effectively strip back the register and be a step backwards in relation to public protection.



### *Option 2: Bring Regulations into force*

Making these regulations maintains the key processes for regulating and registering the social care workforce in legislation.

In this instance, the Welsh Ministers are seeking to register managers of all regulated services and children's residential workers. The Act will also allow for a response in the future to any changes in the care and support sector, through the making of further regulations. This will effectively future proof 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.

The proposals do not continue the existing requirement for some categories of social care worker (e.g. day care managers, advocacy agency managers and fostering agency managers) to undertake dual registration with both the service and workforce regulators. In future, they will be required to register only with the workforce regulator

### **Costs & benefits / Risks**

#### *Costs and benefits for Option 1:*

There are no additional financial costs to not implementing these regulations. However, the unintended consequences of not implementing them would be that the register would not be expanded to provide public assurance and wider scrutiny of the social care workforce. The public and care service providers will not be able to check the suitability or qualifications of large sections of the workforce (who are currently registered with the Care Council for Wales).

#### *Costs and benefits for Option 2:*

There are a number of benefits to including additional descriptions of social care workers (including those already required to register with the Care Council for Wales) onto the register, these include providing:

- the Welsh Ministers with the opportunity to react more quickly to emerging models and practices of service provision, because registering workers provides more leverage to setting qualification and other requirements;
- greater opportunity for service users and employers to better scrutinise a wider scope of the workforce to check the eligibility and qualifications of those they seek to employ to provide care;
- the workforce regulator with the focus to develop suitable training programmes to ensure that there continues to be a sustainable and achievable pace of quality and qualified care being delivered to the public in Wales; and
- greater opportunity for the workforce to take a proactive approach to working with the regulator to target its training programmes to meet specific areas of care.

Evidence provided by the Care Council for Wales indicates that there would be an increase in its workload and costs if these Regulations were made, as they would gain responsibility for registering some additional groups of managers (i.e. responsible individuals, day care managers, fostering agency managers, advocacy managers) who were previously registered by the service regulator, the Care and Social Services Inspectorate Wales (CSSIW). The Care Council also expects there to be a need for some developmental work in relation to the qualifications, as well as registration activity, for these groups. The Care Council believe that the numbers within in these groups are comparatively small (e.g. there are currently only 18 advocacy agency managers) and the intention is that careful analysis to determine the needs of each group and the costs of meeting these needs will be undertaken when negotiating the Care Council's remit letters for 2017-18 and 2018-19. Given that the numbers are so small, there will need to be careful consideration of whether it would be value for money to develop and deliver a specific training programme. However, the Care Council have estimated that based on an Associate developing the concept of a module would be approximately £500 a day and take approximately three weeks to complete, including the engagement with the sector. This would equate to an estimated cost of £7,500.

The Regulatory Impact Assessment (RIA) for the 2016 Act identified that the costs of removing the dual registration<sup>3</sup> of managers would result in a cost saving to the service regulator (Care and Social Services Inspectorate Wales (CSSIW), estimated at £679,480<sup>4</sup>). It also indicated a potential annual saving of £63,800 a year for service managers who are currently required to be registered but who will no longer have to register with the service regulator.

The RIA for the 2016 Act indicated that, based upon registrations received by CSSIW in 2013/2014, there are an estimated 372 managers applying for registration each year. CSSIW received approximately £11,200 in annual registration fees for fresh applications to the workforce regulator and a further £72,500 in fees for remaining registered with SCW.

The RIA to the 2016 Act also identified a cost of extending registration to a mandatory group of an additional 55,199 workers<sup>5</sup>. That would increase the scope of workforce registration to cover the whole social care workforce. These regulations, however, provide for the extension of registration to some additional social care managers, which is a small proportion of this number, and therefore the additional costs will be much more limited. If we use the estimated number of managers applying to register each year, the estimated additional ongoing annual cost to the workforce regulator, SCW, for registering the increased manager numbers is estimated to be approximately £22,500.<sup>6</sup> However, some of these additional costs would be offset by the collection of the

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<sup>3</sup> Para. 7.506 Pages 225 to 229 of the Explanatory Memorandum and RIA for the Bill, published on the National Assembly for Wales website: <http://www.assembly.wales/laid%20documents/pri-ld10429/pri-ld10429-e.pdf>

<sup>4</sup> Para 7.506 Page 225 of Explanatory Memorandum and RIA for the Bill, published on the National Assembly for Wales website: <http://www.assembly.wales/laid%20documents/pri-ld10429/pri-ld10429-e.pdf>

<sup>5</sup> Paras. 7.566 and 7.567 Page 238 Explanatory Memorandum and RIA for the Bill, published on the National Assembly for Wales website: <http://www.assembly.wales/laid%20documents/pri-ld10429/pri-ld10429-e.pdf>

<sup>6</sup> Para 7.525 Page 229 of the Explanatory Memorandum and RIA for the Bill, published on the National Assembly for Wales website: <http://www.assembly.wales/laid%20documents/pri-ld10429/pri-ld10429-e.pdf>

approximate £11,200 (£30 each) in fees that each of the social care managers are required to pay towards their registration. The costs of workforce regulation will be taken into account when negotiating the Care Council's remit letters for 2017-18 and 2018-19.

The introduction of further categories of social care workers in due course would require more careful consideration of the costs incurred by the regulator and require new regulations (including a further RIA) to consider the benefits and to mitigate any potential impacts.

### **3. The Social Care Wales (Content of Register) Regulations 2016 (Negative Procedure)**

Sections 91(1)(a) and (b) of the 2016 Act already set out certain information which must appear on the register, namely the date on which the person was entered onto the register; and the person's qualifications to practise work of the kind to which his or her registration relates.

Section 91(c) and (d) provide the ability to make regulations adding requirements for information about other qualifications and fitness to practise decisions to be included on the register

Section 91(2) allows SCW, by rules, to authorise the registrar to include other information on the register.

#### **Options**

##### *Option 1: Do nothing*

In the event that these regulations are not made, whilst SCW would be able to add other information it considered to be in the interest of public protection to the register in addition to that outlined in section 91 of the 2016 Act, this would not be fixed as a requirement in regulations. This additional information is fundamental to the regulatory regime and therefore should be set out in regulations.

##### *Option 2: Bring Regulations into force*

Making these regulations would maintain the key processes for the workforce regulation in legislation, reinforcing the importance of specific information being included on the register. It would not however, prevent SCW from instructing the registrar to add other information when necessary.

The proposals not only provide the regulator with the power to annotate their registers to include other qualifications or experience that a registrant could bring to their role, but also follows the recommendations on recording fitness to practice actions outlined by the Law Commission to help protect the public.

## **Costs & benefits / Risks**

### *Costs and benefits for Option 1:*

There are no additional financial costs to not implementing these regulations. However, the unintended consequences of not implementing them would be that the register would not include essential information that could provide public assurance about the workforce.

### *Costs and benefits for Option 2:*

Whilst there is likely to be some minimal additional costs in implementing this regulation (i.e. some ICT costs to incorporating the changes to the presentation of the register), the Care Council estimate that the transition costs associated with amending this aspect of the workforce database and communicating the change to the relevant workforce would equate to approximately £1,800 and they expect that these costs can be absorbed by SCW. 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. There is a wider programme of work to amend the workforce database, which Care Council are currently undertaking as part of the wider implementation of the 2016 Act and its transition to SCW. The Welsh Government is working with the Care Council to ensure that these costs are met as part of the existing funding streams and the identified transition costs outlined within the RIA for the 2016 Act.

We do not anticipate any additional costs to the individual by these regulations, as they will allow the workforce regulator to determine what information is published as part of the register. These regulations do not prescribe any additional information that is required as part of the individual's application.

## **4. The Social Care Wales (List of Persons Removed from the Register) Regulations 2016 (Negative Procedure)**

Act, SCW will publish a list of persons whose entries in the register have been removed under section 110(1) of the 2016 Act. Regulations made under section 110(6) may make provision about the form and content of the list; the publication of the list or of specified information from the list, and the circumstances in which an entry relating to a person must be removed from the list.

These regulations mainly set out requirements to the way information which is already gathered by the Care Council must be published on the list; there is no requirement on the Care Council to collect any new information in addition to that which it already collates.

## Options

### *Option 1: Do nothing*

In the event that these regulations are not made, the workforce regulator (SCW) would be required to present a list of those removed from the register, but would not be provided with the method of doing this or the circumstances in which an entry must be removed from this list. This means that the regulations are required to complete the process (i.e. set out the way in which the content of the list is presented and the rules governing when a registrant is removed from the list).

### *Option 2: Bring Regulations into force*

The information provided in the updated list of those removed from the register would provide a data set for both the public and potential employers on those care workers who have faced the sanction of removal from the register and who have been barred from working in the care sector.

## Costs & benefits / Risks

### *Costs and benefits for Option 1:*

Failure to implement these regulations would mean that SCW could not take a comprehensive approach to maintaining a list of the workforce who have been removed from the register. This would be a significant threat to public protection, as the public and employers would have limited ability to check on whether anyone working as a social care worker had been subject to removal from the register. This could raise the risk of someone who might have been involved in the delivery of poor or potentially harmful or negligent care being allowed to continue working with vulnerable people

### *Costs and benefits for Option 2:*

The implementation of these regulations would help to mitigate the risk of someone continuing to be employed to provide care to vulnerable people, who might have been removed from the register. The additional information contained within the list that SCW would publish would also be useful for service users and their families or carers to check whether a potential care provider is suitable to deliver the care they require.

Whilst there is likely to be some minimal additional costs in implementing this regulation (i.e. some ICT costs to incorporating the changes to the presentation of the list of persons removed), the Care Council estimate that these will equate to approximately £1,800 and will be absorbed by SCW as part of the wider programme of work to amend the workforce database currently being undertaken as part of the implementation of the 2016 Act and its transition to SCW. The Welsh Government is working with the Care Council to ensure that these costs are met as part of the existing funding streams and the identified transition costs outlined within the RIA for the 2016 Act.

## **5. The Social Care Wales (Constitution of the Panels: Prescribed Persons) Regulations 2016 (Negative Procedure)**

SCW are under a duty to make provisions to establish panels pursuant to section 174 of the Act. Section 174(5) sets out those persons who are prohibited from being members of those panels, these include:

- (a) a person who is a member or a member of staff of:
  - (i) Social Care Wales;
  - (ii) the Health and Care Professions Council;
  - (iii) the Scottish Social Services Council; or
  - (iv) the Northern Ireland Social Care Council;
- (b) a prescribed person.

The regulations under section 174(5)(b) prescribe additional persons who are prohibited from being members of a panel. The Care Council already has a series of rules around the setting up of panels and clear guidance on who can sit on which ones to avoid conflicts of interests, etc.

### **Options**

#### *Option 1: Do nothing*

Without these regulations there is a clear potential for panel members to be chosen who may be involved in the investigation and adjudication processes, which could lead to the perception or reality of a biased judgement and an unfair hearing. There is a necessity for a clear separation of roles between those that investigate and those that pass judgement in relation to matters referred to SCW.

There is also a need for these regulations to ensure that the panels follow the approach recommended by the Law Commission to guaranteeing clarity, transparency and fairness whilst also ensuring that the public are safeguarded from inappropriate behaviour and poor care.

#### *Option 2: Bring Regulations into force*

Whilst making these regulations will continue the status quo in many respects (e.g. provide for panels, agreed through the rules developed by the SCW) they will ensure that there is a clear separation of roles between those that investigate and those that pass judgement in relation to matters referred to SCW. The regulations will ensure that are fair hearings and that the panels follow the approach recommended by the Law Commission to such panels.

## **Costs & benefits / Risks**

### *Costs and benefits for Option 1:*

The consequence of not implementing these regulations would be that the panels would not be in keeping with the recommendations of the Law Commission in guaranteeing clarity, transparency and fairness whilst also ensuring that the public are safeguarded from inappropriate behaviour and poor care.

There is considerable risk that, if SCW cannot set the rules that govern the population and governance of the various panels appropriately, there could be members appointed that could lead to conflicts of interest (i.e. who may have been involved in investigating possible issues to be considered by that panel), which could lead to the perception or reality of biased or unfair decisions, or the breach of human rights laws. This would leave the panels open to greater examples of challenge and increase the number of appeals or other court action that would be both costly to the public purse and damage the reputation of the regulator

### *Costs and benefits for Option 2:*

Evidence provided by the Care Council for Wales indicates that there would be no additional costs incurred by these regulations, as this part of the 2016 Act reiterates the current situation and merely adds a number of other groups to the exclusion list of those who can sit on the panels.

The benefit of the regulations is that they will ensure that there is a fair tribunal hearing and that the panels follows the approach of the Law Commission to such panels and abides by human rights legislation.

## **6. The Social Care Wales (Proceedings before the Panels) Regulations 2016 (Negative Procedure)**

The regulations set out under section 175 underline how the three panels (e.g. namely registration appeals panels, fitness to practise panels and interim order panels) will be established and operated by SCW. The regulations make provision about the panels' procedure and allow SCW to make rules about matters relating to such proceedings.

## **Options**

### *Option 1: Do nothing*

In the event that these regulations are not made, there would be nothing in regulations setting out how panels should operate. In addition, SCW would have no powers to set the rules that govern the way such panels operate, are appointed and conduct themselves other than what is set out on the face of the 2016 Act. Failure to enact these regulations would prevent SCW from ensuring that these panels are fair and objective thus opening the panels to greater challenge over any decision they make.

### *Option 2: Bring Regulations into force*

Whilst making these regulations will continue the status quo in many respects (e.g. provide for panels, agreed through the rules developed by the SCW). These regulations will now allow for additional provisions to be introduced such as the creation of paper panels, which would permit panels to gather evidence and report on findings where registrants do not engage in the process or request such a hearing rather than take part in a formal hearing.

The regulations will also ensure that there is a fair tribunal hearing and that the panels follows the Law Commissions approach to such panels and abides by human rights legislation.

### **Costs & benefits / Risks**

#### *Costs and benefits for Option 1:*

Without the regulations, SCW would be limited to setting up the panels in accordance with what is on the face of the 2016 Act. This would limit the ability of the panels to conduct their investigations, deliberate their findings and make a fair judgement and set back the good work that these panels have already achieved.

#### *Costs and benefits for Option 2:*

These regulations provide greater scope for the SCW to investigate concerns or complaints against the workforce, as it provides new powers to summon witnesses to give evidence or for those facing the panel to submit written evidence if they do not wish to engage with the process. It is not expected that there will be a significant increase in the number of investigations. Figures around the potential costs were included within the RIA for the 2016 Act at page 258<sup>7</sup> All of this allows for a more inclusive approach and detailed investigation of any potential breach of regulations and the consideration and delivery of a more just and appropriate decision.

Evidence provided by the Care Council for Wales indicates that whilst the 2016 Act largely reiterates the current situation and will not incur any significant additional costs in respect of the implementation of these regulations. However, the Care Council feel that, as the next phase of regulations are brought forward, further analysis and consideration of the potential costs will be required to reflect the Welsh Government's commitment to regulate domiciliary care workers and care workers and this is felt will result in significant future cost.

In respect of issuing a witness summons, it was felt that these regulations would not incur any greater expense than already incurred through the court costs of obtaining such a summons as the use of these methods are limited.

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<sup>7</sup> Para 7.652, page 238 Explanatory Memorandum and RIA for the Bill, published on the National Assembly for Wales website: <http://www.assembly.wales/laid%20documents/pri-ld10429/pri-ld10429-e.pdf>



## 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 categorised 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

The filter test shows that it is not likely that the regulation will have any detrimental effect on competition; therefore a detailed assessment has not been conducted.

We do not consider it necessary to undertake a competition assessment for these Regulations since they will not affect the business sector in any significant way.

### Post implementation review

The post implementation arrangements for regulations can be handled as part of a wider post implementation review of the overarching Regulation and Inspection of Social Care (Wales) Act 2016 ('the 2016 Act') as a whole.

The 2016 Act makes provisions 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 Act has been in achieving its aims of:

- securing the well-being of citizens; and
- improving the quality of social care.

The reporting mechanisms that are being strengthened through regulations, such as those that are the subject of this explanatory memorandum, 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 service regulator.
- The annual report of the workforce regulator.

In addition, a performance measurement framework has been developed 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 mechanisms will also contribute to the overall post implementation review of the 2016 Act and its subordinate legislation.