

Explanatory Memorandum to:

The Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017

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:

The Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017.

I am satisfied that the benefits justify the likely costs.

Huw Irranca-Davies
Minister for Children and Social Care

17 November 2017

Part 1 – OVERVIEW

1. Description

In 2011 the Welsh Government published the white paper Sustainable Social Services: A Framework for Action, which set out an ambitious plan to create a new integrated and person-centred approach to social services provision in Wales. To achieve this new approach, in the last assembly term, the Welsh Government made two pieces of primary legislation: the Social Services and Well-being (Wales) Act 2014 (“The 2014 Act”) and the Regulation and Inspection of Social Care (Wales) Act 2016 (“The 2016 Act”).

The 2016 Act reforms the regulation and inspection regime for social care in Wales and provides the statutory framework for the regulation and inspection of social care services and the social care workforce. It also enables the Welsh Ministers to put in place a number of items of subordinate legislation through the making of regulations, the publication of guidance and the issuing of codes of practice.

This Explanatory Memorandum relates to *the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017* which will come into force in April 2018.

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

There are no matters of special interest to the Constitutional and Legislative Affairs Committee.

3. Legislative background

The powers enabling these Regulations to be made are contained in a number of sections within the 2016 Act. They are, as follows:

- Section 2(3) – exceptions to regulated services. These are services which, despite Schedule 1, are not to be treated as regulated services for the purposes of this Act;
- Section 21(5) - the circumstances in which the Welsh Ministers (instead of service providers) may designate a responsible individual.
- Section 27 – Regulations about regulated services;
- Section 28 – Regulations about responsible individuals;
- Section 30 – Regulations about service providers who are liquidated etc
- Section 31 – Regulations about service providers who have died
- Section 45 – Regulations which provide for offences in the event of failure by a service provider to comply with specified requirements in regulations under section 27;
- Section 46 – Regulations which provide for offences in the event of failure by a responsible individual to comply with specified requirements in regulations under section 28.

The Regulations will be laid under the affirmative procedure.

4. Purpose & intended effect of the legislation

The purpose of these Regulations is to ensure that providers of social care services achieve the required standard of care and support so that people's well-being and safety is maintained. When implemented alongside other work streams, including the improvement of commissioning practices, these Regulations will help to ensure that individuals who need care and support receive the high quality care that they deserve. The key aspects of the Regulations have been broken down into a number of areas as follows.

Exceptions

Part 2 of the Regulations covers Exceptions. Regulated services are listed in section 2 (1) of the 2016 Act and are defined in Schedule 1. Section 2(3) of the 2016 Act enables Welsh Ministers to make regulations which prescribe things which are not to be treated as regulated services, even though they would otherwise fall within one of the definitions.

Requirements on Service Providers as to the standard of care and support to be provided

Section 27 of the 2016 Act is a regulation-making power which allows the Welsh Ministers to prescribe the requirements to be imposed on a service provider in relation to a regulated service¹. The Regulations must include requirements as to the standard of care and support to be provided, and when making regulations imposing such requirements, Ministers must have regard to the importance of the well-being of any individuals to whom care and support will be provided. When making regulations imposing such requirements, Ministers must also have regard to the quality standards included in any code issued under section 9 of the 2014 Act (codes to help to achieve outcomes specified in well-being statements). However, no such code has been issued.

In developing requirements under section 27 of the 2016 Act we have focussed on six key areas: information, person-centred care, safeguarding, environment (including premises), staffing and governance. The decision to focus on these areas was based on previous stakeholder engagement during the drafting of the Regulation and Inspection of Social Care (Wales) Bill. These areas are the foundation on which the regulations have been developed due to their importance in relation to providing care and support. However, they do not necessarily make up the specific headings within the Regulations. Further information about these particular areas is outlined below:

¹ The regulated services defined in the 2016 Act include services that are not within the scope of this Explanatory Memorandum and Regulatory Impact Assessment. The regulated services that relate to this document are Care Home Services, Domiciliary Support Services, Secure Accommodation Services and Residential Family Centre Services.

Information

The requirements about information are intended to ensure that individuals have clear, accessible and up to date information about the service and the specific arrangements which relate to them. Individuals should be supported to understand the information. Providers and their staff should be clear about the purpose, aims and objectives of the regulated service and provide the service accordingly.

Person-centred care

The requirements about person-centred care support the changes that were made under the 2014 Act. The 2014 Act places an individual's wellbeing at the heart of care and support, with the emphasis on people being supported to achieve what matters to them. This is expressed in the National Outcomes Framework². "Well-being" in the 2016 Act has the same meaning as that in the 2014 Act.

These Regulations aim to support a system of regulation which is flexible and allows the provider to tailor care and support to the needs and preferences of individuals.

Safeguarding

The requirements in relation to safeguarding are intended to ensure that individuals are safe, feel safe, and are protected from abuse, neglect and improper treatment.

Environment

Requirements about the environment cover premises, facilities, equipment and supplies. Some of the requirements will relate to all services and some are only applicable where accommodation is provided. Premises, facilities and equipment must be suitable for the type of regulated service being provided, suitable to meet people's care and support needs and support the achievement of their personal outcomes. Where accommodation is provided we expect it to feel like a home for the people living there.

Staffing

The requirements under this section emphasise the importance of the role of staff and ensure providers recruit wisely, take time to inform, support and develop their staff and take consistent action in relation to inappropriate behaviour. Providers must also ensure that at all times there are a sufficient number of suitably qualified, trained, skilled, competent and experienced staff deployed to work at the service.

Governance

Requirements about governance relate to the overall leadership, management and operation of a service. The requirements are intended to ensure providers have arrangements in place to ensure the smooth and effective running of the service.

² <http://gov.wales/docs/dhss/publications/160610frameworken.pdf>

Specific requirements on providers of domiciliary support services

Requirements on providers of domiciliary support services relate to clearly delineating between travel and care time; and offering domiciliary care workers employed on non-guaranteed hours contracts the choice of an alternative contract after three months of employment if certain conditions are met. These requirements are intended to help improve the continuity and quality of care.

Delineation of Care and Travel times

The regulations will require providers of domiciliary support services to maintain systems that differentiate between travel and care time when scheduling visits. This will provide greater transparency in the system so that all can see exactly how much time is scheduled to travel between visits and deliver quality care to those who require it. We feel that these requirements should help to address the issue of “call clipping” where visits are cut short because of poorly set rotas with inadequately allocated times for travelling to service users and the delivery of care to them.

Non-guaranteed hours contracts

This regulation is intended to help improve the continuity and quality of care and builds on The Regulated Services (Annual Returns) (Wales) Regulations 2017 which require all service providers to provide information on the types of contracts under which staff are employed.

The regulation requires a domiciliary care worker to be offered the choice of an alternative contract if certain conditions are met.

The types of contract which may be offered are:

- A contract of employment where the number of hours required to be worked per week is at least the average number of hours worked per week during the preceding three months;
- A contract of employment where the number of hours required to be worked per week is less than the average number of hours worked per week during the preceding three months;

Requirements on Responsible Individuals (RIs)

Section 28 of the 2016 Act is a regulation-making power which allows the Welsh Ministers to prescribe requirements on RIs. RIs must meet the eligibility and fitness criteria prescribed in section 21 of the 2016 Act.

The requirements on RIs relate to the oversight of the service, ensuring the management is supervised, making reports on the quality of care, adequacy of resources and other matters. The RI must also make visits to the service in person and ensure the service is complying with other requirements, such as making notifications, recording incidents and complaints.

Service providers who are liquidated

The regulations under section 30 place requirements on an “appointed person” to notify the Welsh Ministers (in practice, CSSIW) of their appointment without delay, and their intentions regarding the future operation of the service. An “appointed person” is defined in the 2016 Act as:

- a receiver or administrative receiver of the property of a service provider who is a body corporate or partnership;
- a liquidator, provisional liquidator or administrator of a service provider who is a body corporate or a partnership;
- a trustee in bankruptcy of a service provider who is an individual or a partnership.

Service providers who have died

The regulations under section 31 require that the personal representatives of an individual provider who has died notify the Welsh Ministers (in practice, CSSIW) of the death. The regulations also allow for the personal representatives of the individual to act in the capacity of the service provider for a certain period of time. The regulations also make modifications to the requirements which would otherwise apply to a service provider under the 2016 Act.

Designation of a responsible individual

The regulations under section 21(5) specify the circumstances in which the Welsh Ministers may designate a RI despite the eligibility requirements of the 2016 Act not being met. The regulations modify the requirements of the 2016 Act in so far as they relate to a RI who is designated by the Welsh Ministers. The purpose of these regulations is to enable an otherwise competently run service to continue without its registration being cancelled where there is no-one capable of being designated as the RI.

Offences: failure by service providers and responsible individuals to comply with requirements in regulations

Section 45 is a regulation making power which allows the Welsh Ministers to provide that it is an offence for a service provider to fail to comply with a specified provision of the regulations made under section 27 of the 2016 Act (duties on service providers). Section 46 is a regulation making power which allows the Welsh Ministers to provide that it is an offence for a responsible individual to fail to comply with a specified provision of regulations made under section 28 (duties on responsible individuals). Only breaches of these requirements can be dealt with via criminal prosecution.

The regulations under sections 45 and 46 are intended to ensure that there is a proportionate approach to the creation of offences to enable CSSIW to take criminal action when it is appropriate to do so – both when a breach is sufficiently serious and when there is enough evidence to meet the threshold to commence legal proceedings.

5. Consultation

Regulations imposing requirements on service providers and responsible individuals

A 12 week consultation on the Parts 2 – 10 and Parts 12 to 23 of the regulations ran between 2 May and 25 July 2017. Further details on the consultation process are set out in the Regulatory Impact Assessment Annex A.

The consultation summary report and a list of respondents to the consultation can be found at:

<https://consultations.gov.wales/consultations/phase-2-implementation-regulation-and-inspection-social-care-wales-act-2016>

Regulations imposing requirements on providers of domiciliary support services

An eight week consultation on Part 11 of the regulations ran between 12 June and 7 August 2017. Further details on the consultation process are set out in the Regulatory Impact Assessment Annex B.

The consultation summary report and a list of respondents to the consultation can be found at:

<https://consultations.gov.wales/consultations/phase-2-implementation-regulation-and-inspection-social-care-wales-act-2016-workforce>

Part 2 - Regulatory Impact Assessment - Summary

Due to the size of the regulations, and the breadth of the areas covered, we have provided this short summary of the various subject areas that are encompassed within these regulations. For ease of reference the following information is a brief summary of the options being considered, the preferred option and an overview of any key information or associated costs for that option. Further detail on the options, together with cost, benefit and risk analysis can be found in: annex A (for service related areas) and annex B (for workforce related areas).

Exceptions to regulated services (See: **Annex A for more detail)**

- Option one: replicate, as far as possible, the exceptions from the regulations under the Care Standards Act 2000 in regulations under the Regulation and Inspection of Social Care (Wales) Act 2016
- Option two: replicate, as far as possible, the exceptions from the regulations under the Care Standards Act 2000 in regulations under the Regulation and Inspection of Social Care (Wales) Act 2016, with some additions

Preferred Option: Option two is the preferred option.

Option two includes additional exceptions which will add clarity where we believe it is disproportionate to regulate. This also aligns with the approach taken in England and responds to stakeholders' feedback from the consultation process.

The exceptions under option one do not go far enough in clarifying the services we do not wish to be regulated under the 2016 Act. There is therefore a risk that services that we do not wish to regulate – as it would be disproportionate to do so – would fall within the definition of a particular regulated service. This could lead to an additional burden on CSSIW in terms of having to regulate additional providers which were not intended to be regulated.

No additional costs have been identified for the Welsh Government or service providers under the preferred option.

Requirements on services providers – information (See: **Annex A for more detail)**

- Option one: as far as possible, replicate in regulations, the requirements within the regulations under the Care Standards Act 2000
- Option two: harmonise, in regulations, the requirements across all services, with some additional requirements

Preferred Option: Option two is the preferred option.

The requirements under option two supports the policy intention in the 2016 Act of ensuring people have access to sufficient and comparable information about a service. This would be achieved by having consistent requirements across the range of regulated services in relation to the guide to the service. They would also support the principle of “voice and control” in the Social Services and Well-being (Wales) Act 2014 (“the 2014 Act”), which is that an individual should be supported to have a greater voice in, and control over, their own care and support.

Option one does not require providers to ensure individuals have the information they need to make, or participate in, assessments and day to day decisions about the way care and support is provided to them. There is a risk that the individual will not be able to participate in key decisions about their own lives.

No additional costs have been identified for the Welsh Government or service providers under the preferred option.

Requirements on services providers – person centred care (See: **Annex A** for more detail)

- Option one: as far as possible, replicate in regulations, the requirements within the regulations under the Care Standards Act 2000
- Option two: harmonise the requirements across all services, with some additional requirements in regulations

Preferred Option: Option two is the preferred option.

The proposals under option one in relation to person-centred care are not consistent across the range of services and do not fully meet the policy intention of consolidating and streamlining the legislation. The proposals for option two are more outcomes-focussed than task-based, which is in line with the policy intention of both the 2014 Act and the 2016 Act. This means services must, as far as possible, tailor their care and support around what matters to the individual, rather than fitting individuals into routines that are convenient for the service.

No costs have been identified for Welsh Government under the preferred option. There may be some additional costs to providers under the preferred option in relation to meeting the language and communication needs of individuals. This will vary depending on the specific circumstances and could be met by the provider in different ways. Should a provider be required to hire an interpreter, this has been identified as a cost of approximately £28 per hour.

Requirements on services providers – safeguarding (See: **Annex A** for more detail)

- Option one: as far as possible, replicate in regulations, the requirements within the regulations and NMS under the Care Standards Act 2000

- Option two: harmonise the requirements across all services, with some additional requirements in regulations

Preferred Option: Option two is the preferred option.

Under option two requirements would be consistent across the range of regulated services, in line with the policy intent of the 2016 Act. The requirements would also address some of the concerns from the Flynn Report, *In Search of Accountability*³, the Older People's Commissioner for Wales' report, *A Place to Call Home* and the Francis report, which were all drivers for changes to the current system of regulation and inspection in Wales.

The requirements in relation to safeguarding under option one do not meet the policy intention of ensuring requirements are consistent across the range of regulated services and reduce complexity.

No additional costs have been identified for the Welsh Government or service providers under the preferred option.

Requirements on services providers – environment/premises (See: **Annex A** for more detail)

- Option one: do not set minimum requirements in regulations, but ensure regulations focus on the general suitability of the environment to enable people to achieve their outcomes
- Option two: take a high-level approach but create more prescribed requirements in relation to certain categories of premises

Preferred Option: Option two is the preferred option.

Requirements under option one would be consistent with the policy intention of having high-level requirements which are flexible to the needs of individuals, as well as the approach of not managing services from a distance via prescriptive requirements. However under option one it will be difficult for CSSIW to apply a consistent approach to the registration of care premises. CSSIW would not have a benchmark from which to judge whether a building is suitable to meet the needs of individuals; this could create a weak evidence base on which to reject applicants. Some premises could be approved that fall below what is considered acceptable within the current system of NMS, resulting in a drop in premises standards in the sector.

³ <http://gov.wales/topics/health/publications/socialcare/reports/accountability/?lang=en>

Under option two providers will be clearer at the point of registration whether the premises are suitable and likely to be registered due to the minimum requirements. It will also be easier for CSSIW to evidence that the premises are suitable to meet the needs of the individuals or, more importantly, that they are not.

Setting some prescriptive requirements in regulations under this option will strike an appropriate balance between the high-level flexibility envisioned in the original policy intent, and ensuring standards in the sector do not drop below what is considered acceptable.

No costs have been identified for Welsh Government under the preferred option. Potential additional costs have been identified for service providers who intend to buy and re-register a previously registered care home that is not occupied at the point of sale, or providers who intend to sell an existing, vacant care home to a new provider. These buildings are described as “category C” premises under the preferred option. Providers registering category C premises must ensure the building meets the more prescriptive standards, which includes having an en-suite bathroom in every bedroom. There may be substantial costs in bringing some premises up to the required standard, due to the age of the current stock.

Because of the many different types of care homes in Wales it would not be possible to give a meaningful estimate of how much it would cost to bring care homes falling under Category C up to the standards under this option. However, feedback from providers during the consultation process has indicated costs may be significant.

Requirements on services providers – staffing (See: **Annex A** for more detail)

- Option one: as far as possible, replicate in regulations, the requirements within the regulations and NMS under the Care Standards Act 2000
- Option two: harmonise the requirements across all services, with some additional requirements in regulations

Preferred Option: Option two is the preferred option.

Requirements under option two meet the policy intention of streamlining the existing legislation and applying consistent requirements across all regulated services. This option also reduces complexity and provides the flexibility for providers to tailor the care and support to the needs of the individuals at the services rather than for the service regulator to manage them at arm’s length via prescriptive “tick-box” requirements.

The requirements under option one do not fully meet the policy intention of consolidating and streamlining legislation under the 2016 Act and could have reputational risk that the Welsh Government are making regulations that are inconsistent with the stated aims of primary legislation.

No additional costs have been identified for the Welsh Government or service providers under the preferred option.

Requirements on service providers – governance (See: **Annex A** for more detail)

- Option one: replicate, as far as possible, the requirements in the regulations under the Care Standards Act 2000
- Option two: harmonise the requirements across all services, with some additions

Preferred Option: Option two is the preferred option.

Under option one both CSSIW and providers are familiar with the current system of governance; however the requirements under this option do not meet the policy intention of streamlining the regulations and applying them consistently across the range of services.

Under option two the requirements will be streamlined and made consistent across the range of services, making the system more straightforward for both CSSIW and providers. In addition, transferring some of the notification requirements to the responsible individual as proposed under this option will ensure they are fully involved in the oversight of the service.

No additional costs have been identified for Welsh Government under the preferred option.

The number of recording requirements have been reduced overall which should reduce the administrative burden on providers. However, there are a small number of additional core policies and procedures for some services which may create some small additional costs in terms of staff time in drafting the policies. The degree to which there will be a saving or a cost will be dependent on the provider and the current policies and procedures they have in place.

Requirements on Responsible Individuals (See: **Annex A** for more detail)

- Option one: replicate, as far as possible, the requirements on in the regulations under the Care Standards Act 200
- Option two: shift some responsibilities to the Responsible Individuals and create some additional responsibilities.

Preferred Option: Option two is the preferred option.

There are no identified benefits for option one. However under option two, by shifting some responsibilities to the Responsible Individuals, in addition to creating some new requirements, this will support the policy intention of ensuring accountability for service quality and compliance is held at the most appropriate level within an organisation.

No additional costs have been identified for Welsh Government under the preferred option. Some additional costs may be incurred by providers as a result of the preferred option. These relate to Responsible Individuals undertaking additional reporting requirements and making visits. It is estimated that the additional reporting requirements will bear a cost equivalent to that of creating annual reports, which was estimated in the RIA for the Act. It stated 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.

Using the ONS data from the Annual Survey of Hours and Earnings, which states that the gross hourly earnings for managers and directors in Social Services' in 2016 was £18.86, it is estimated that, assuming RIs spend most of their working day (8 hours) at a service during their visit, this would give a total cost of £196 per visit. Some RIs may have more than one service at different locations so this cost will vary depending on the size of the service.

Service providers who are liquidated (See: **Annex A** for more detail)

- Option one: do not create regulations which place requirements on an appointed person in the event of a provider experiencing financial difficulties
- Option two: create regulations which place requirements on an appointed person in the event of a provider going into administration

Preferred Option: Option two is the preferred option.

There are no specific benefits for option one; however it would be difficult for CSSIW to have the adequate oversight of the service during an uncertain period, such as a provider going into administration, liquidation or bankruptcy.

Option two will ensure that the service regulator has the necessary oversight of the provider and can ensure the safety and well-being of those using the regulated service, should circumstances arise that mean it is necessary for an administrator, liquidator or trustee in bankruptcy to be appointed.

Negligible additional administrative costs have been identified for both the Welsh Government and the service provider under the preferred option.

Service providers who have died (See: **Annex A** for more detail)

- Option one: do not create regulations which place requirements on an appointed person in the event of an individual provider's death
- Option two: create regulations which place requirements on an appointed person in the event of an individual's provider's death

Preferred Option: Option two is the preferred option.

As with service providers who have been liquidated, there are no specific benefits for option one, however it would be difficult for CSSIW to have the adequate oversight of the service during an uncertain period.

Option two will ensure that the service regulator has the necessary oversight of the provider and can ensure the safety and well-being of those using the regulated service.

Negligible additional administrative costs have been identified for both the Welsh Government and the service provider under the preferred option.

Designation of a Responsible Individual (See: **Annex A** for more detail)

- Option one: do not create regulations which specify the circumstances in which the Welsh Ministers (instead of a service provider) may designate an individual to be a responsible individual despite the eligibility requirements of a responsible individual not being met
- Option two: create regulations which specify the circumstances in which the Welsh Ministers (instead of a service provider) may designate an individual to be a responsible individual despite the eligibility requirements of a responsible individual not being met

Preferred Option: Option two is the preferred option.

While the requirements on the face of the 2016 Act under section 21 relating to the eligibility of Responsible Individuals would be upheld under option one, without regulations that give some flexibility it could result in a service providers' registration being cancelled in an otherwise well-run service.

Options two provides that level of flexibility which would ensure that an otherwise well-run service could continue to operate. There is a small risk that the regulation may be relied upon too heavily in circumstances where eligible individuals do not wish to take on this role, preferring instead to nominate a more junior individual in the organisation. We are keen that responsibility for the service should not be delegated inappropriately to someone who does not in reality have influence over the service. We believe the narrow set of circumstances set out under this option will mitigate this risk.

Negligible additional administrative costs have been identified for both the Welsh Government and the service provider under the preferred option.

Offences: failure by a service provider and responsible individual to comply with requirements in regulations (See: **Annex A** for more detail)

- Option one: create regulations which specify that *all* of the requirements in regulations under section 27 and 28 may be offences
- Option two: make regulations which specify that some of the requirements in section 27 and 28 are offences

Preferred Option: Option two is the preferred option.

Option one would enable CSSIW to prosecute against all of the requirements on service providers and responsible individuals, and send a clear message that non-compliance will be taken seriously. Option two is considered a more proportionate approach to offences which would allow CSSIW to maintain a purposeful relationship with the sector that focuses on improvements but maintains a clear use of enforcement if necessary to do so.

The preferred option aims to take a proportionate approach to the creation of offences. This ensures CSSIW can develop and maintain a purposeful relationship with the sector which balances a focus on securing improvement whilst ensuring clear enforcement is taken when it is necessary to do so. There are likely to be fewer prosecutions brought forward under the preferred option due to the fewer number of offences overall. Therefore, the costs to CSSIW and to providers under this option are likely to be less than under option one.

Delineation of Care Time and Travel Time (See: **Annex B** for more detail)

- Option one: Do nothing – maintain the status quo.
- Option two: Regulate to ensure that travel and care times are clearly identified on scheduled rotas.

Preferred Option: Option two is the preferred option.

Option one is to retain the existing system whereby service providers continue to provide rotas as they see fit, which are in some cases without clear delineation between travel and care times. This can cause confusion or be open to misinterpretation. Option two places a requirement on service providers to clearly detail care and travel times on their rotas to ensure that there are no misunderstandings between the two times. This would make it easier for staff and the regulator to determine whether there is sufficient time to deliver quality care to the service user in accordance with their needs and to travel between the last and next visits.

There are no additional substantial costs identified for service regulators, service providers, local authorities or the Welsh Government, associated with the preferred option.

Offering domiciliary care workers on non-guaranteed hours contracts the choice of alternative contractual arrangements (See: **Annex B** for more detail)

- Option one: Do nothing and retain the status quo.
- Option two: Regulate to limit the use of zero hours contracts/non guaranteed hours contracts (ZHCs/NGHCs) through the requirement to offer a choice of contract after a set period.

Preferred Option: Option two is the preferred option.

Option one has been considered to be unsustainable in the long term if we are to seek to address the issues affecting the recruitment and retention of the workforce which in turn have significant impacts for the continuity and quality of care provided. Without stability and security, more of the workforce will leave the sector for more profitable work in other sectors and increase the problems that we are currently experiencing.

Whilst we are not proposing to ban the use of ZHCs/NGHCs, we feel that seeking to limit their use as outlined under the regulation proposed under Option two will offer a workable solution to this problem. It provides the ability to retain the flexibility for the appropriate use of such contracts but also helps to address some of the concerns that have been raised within the sector. When taken into account as part of a range of measures to help create a more stable workforce (i.e. changes in commissioning practices, professionalization of the workforce, raising the profile of the sector, etc.) the Welsh Government believes that we can change the culture of the sector to one that builds upon the good practices and work that are already being delivered.

It is up to individual businesses to determine how these reviews are undertaken, but in the event a business chooses to conduct them separately from other management reviews for example those required under Regulation 36, then there will be a potential requirement to undertake these reviews with each member of staff currently on a zero hours contract (which will vary from business to business). The estimate of this cost is approximately £275,330 based on approximately 11,000 that would need to be reviewed.

Additionally there is an expected cost for domiciliary care agencies with familiarising themselves with the changes to legislation and issuing new contracts. Using the Barnett Formula on the costs estimated by UK Government to amend zero hours contracts to remove exclusivity clauses in contracts, we estimate that this would equate to approximately £69,500.

Taking both of these factors into account there is an anticipated potential cost of approximately £344,830 for service providers associated with the preferred option.

ANNEX A - REGULATORY IMPACT ASSESSMENT (RIA) FOR THE REGULATED SERVICE (SERVICE PROVIDERS AND RESPONSIBLE INDIVIDUALS) REGULATIONS 2016 (Parts 2 to 10 and Parts 12 to 23)

Introduction and approach

Due to the breadth of this policy area, this RIA has been split into 12 sections, set out below:

1. Exceptions
2. Requirements on services providers – information
3. Requirements on services providers – person centred care
4. Requirements on services providers – safeguarding
5. Requirements on services providers – environment/premises
6. Requirements on services providers – staffing
7. Requirements on service providers - governance
8. Requirements on Responsible Individuals
9. Service providers who are liquidated
10. Service providers who have died
11. Designation of a Responsible Individual
12. Offences: failure by a service provider and responsible individual to comply with requirements in regulations

Each of these sections is broken down into the different options considered, along with their respective costs, benefits and risks.

The RIA seeks to compare, as far as possible, the requirements on service providers under the existing system – the Care Standards Act 2000 (“the 2000 Act”) – and the proposed requirements on service providers under the Regulation and Inspection of Social Care (Wales) Act 2016 (“The 2016 Act”).

It is common for a RIA to introduce a “do nothing” option, enabling a comparison of an approach that does not introduce regulations and an approach that does. However, this is not a realistic option, as the social care sector will always require a degree of regulation due to the vulnerability of individuals who use care and support services, to ensure they are safeguarded and their wellbeing is promoted. The only areas for which this has been considered are in relation to sections 9 and 10, which relate to requirements on representatives and appointed persons.

The 2016 Act makes some fundamental changes to the way care and support services are regulated, inspected and delivered. This makes it difficult to compare exactly the regulations under the 2000 Act, and proposed regulations under the 2016 Act. For example, the eligibility criteria for Responsible Individuals (“RI’s”) under the 2016 Act is much stricter than under the 2000 Act. This ensures that accountability for service quality and compliance is held by someone at an appropriately senior level within an organisation. However, this makes it difficult to compare exactly the duties on RIs under the 2000 Act and the proposed duties under the 2016 Act.

The approach to regulation is different under the 2016 Act. Rather than each type of service having its own set of Regulations and National Minimum Standards (NMS) -

described as “duplicative” and “unwieldy” in the RIA for the Bill⁴ - the intention is to create a consistent set of requirements that would apply across all regulated services. This approach moves away from focussing on minimum standards to continual improvement.

The NMS will, therefore, no longer apply. Instead, statutory guidance will be developed alongside the regulations to give further detail to providers about how they may comply with requirements in the regulations. This new approach will provide an opportunity for Wales to deliver a more effective and efficient legal framework for care and support. However, it also means that an exact comparison of requirements under each system is difficult.

Whilst the RIA focusses on the changes being made in regulations, references have also been made to the NMS throughout this document. Whilst the NMS are not statutory, they are currently the means by which the service regulator, CSSIW, measures whether providers have complied with the regulations. Therefore, it is important to take these standards into account when comparing the different options. Some requirements in the regulations proposed under option 2 of the RIA may appear to be new requirements. However, in many instances, these are actually NMS which have been moved into regulations. Therefore, in many circumstances, providers are already undertaking these duties.

CSSIW collects data on the extent to which providers are already complying with the NMS. As of 31 March 2017, there were 201 non-compliances reported.

The table below shows in which category non compliance is greatest

Non Compliance Category	Number of non-compliance notices in Adults & Children’s services
<i>From Inspection Framework which came into effect in October 2016</i>	
Well-being	57
Care and Support	33
Leadership and Management	77
Environment	15
<i>From previous Inspection Framework (prior to October 2016)</i>	
Quality Of Leadership and Management	70
Quality Of Life	76
Quality Of Staffing	25
Quality Of The Environment	15

⁴ Page 11, Regulation and Inspection of Social Care (Wales) Bill, Explanatory Memorandum incorporating Regulatory Impact Assessment and Explanatory Notes, [http://www.assembly.wales/laid%20documents/pri-ld10106-em%20-%20regulation%20and%20inspection%20of%20social%20care%20\(wales\)%20bill/pri-ld10106-em-e.pdf](http://www.assembly.wales/laid%20documents/pri-ld10106-em%20-%20regulation%20and%20inspection%20of%20social%20care%20(wales)%20bill/pri-ld10106-em-e.pdf)

The level of non-compliance is relatively small in comparison with the total number of services across Wales⁵. According to CSSIW's 2015-16 annual report 90% of services met the standard expected, but there were a core of 22 services that did not.

1. Exceptions

Options

Option one: replicate, as far as possible, the exceptions from the regulations under the Care Standards Act 2000 in regulations under the Regulation and Inspection of Social Care (Wales) Act 2016

The current exceptions⁶ are as follows:

Establishments which are not care homes

- (1) An establishment is excepted from being a care home if—
 - (a) it provides accommodation, together with nursing or personal care, only for a relative of the person carrying it on;
 - (b) it provides accommodation, together with nursing or personal care, for less than 28 days in any 12 month period;
 - (c) it is a health service hospital at which nursing is provided;
 - (d) it provides accommodation, together with nursing, and is vested—
 - (i) in the National Assembly for the purposes of its functions under the National Health Service Act 1977,
 - (ii) in an NHS trust, or
 - (iii) in a Local Health Board;
 - (e) it is a university;
 - (f) it is an institution within the further education sector as defined by section 91(3) of the Further and Higher Education Act 1992;
 - (g) it is a school; or

⁵ According to the 2015-16 CSSIW Annual report, there were 144 children's homes, 423 domiciliary support services, 456 younger adult care homes and 653 older adult care homes.

⁶ There no like-for-like comparison of the exceptions under the 2000 Act and those under the 2016 Act as the definitions of regulated services have changed. For example, children's homes now fall within the overarching definition of "care home services"

(h) all the persons who are accommodated in the home are the subject of adult placement agreements which comply with the provisions of the Adult Placement Schemes (Wales) Regulations 2004 or, where regulations made in England apply to an adult placement agreement, with the provisions of those regulations.

(2) For the purposes of paragraph (1), “university” includes–

(a) any university college;

(b) any college, or institution in the nature of a college, of a university.

(3) The exception in paragraph (1)(f) does not apply if–

(a) the establishment provides accommodation together with nursing or personal care to any person; and

(b) the number of such persons is more than a tenth of the number of students to whom it provides both education and accommodation.

Establishments which are not children’s homes

(1) Any establishment falling within any of the following descriptions is excepted from being a care home for children –

(a) an institution within the further education sector as defined by section 91(3) of the Further and Higher Education Act 1992;

(b) subject to paragraph (2), an establishment used to accommodate children only for the purposes of any one or more of the following–

(i) a holiday;

(ii) a leisure, recreational, sporting, cultural or educational activity; so long as no one child is accommodated there for more than 28 days in any twelve month period;

(c) subject to paragraph (2), premises at which a person provides day care within the meaning of section 79A(6) of the 1989 Act, unless paragraph (3) applies;

(d) subject to paragraph (2), an establishment used to accommodate children aged 16 and over only for the purposes of any one or more of the following–

(i) to enable the children to undergo training or an apprenticeship;

(ii) a holiday;

(iii) (iii) a leisure, recreational, sporting, cultural or educational activity;

(e) any approved bail hostel or approved probation hostel;

(f) any institution provided for young offenders under or by virtue of section 43(1) of the Prison Act 1952 .

(2) The exceptions in paragraph (1) (b), (c) and (d) do not apply to any establishment whose provision of accommodation is wholly or mainly for children of a description falling within section 3 (2) of the Act.

(3) This paragraph applies to premises described in paragraph 1(c) if in any 12 month period there are 28 or more periods of 24 hours during which more than 15 hours of day care are provided in relation to any one child (whether or not that child is aged under twelve, and for the purposes of this paragraph no day care shall be taken to be provided when a child is in the care of his or her parent, relative or foster parent.

Undertakings which are not domiciliary care agencies

(1) An undertaking is excepted from the definition of “domiciliary care agency” –

(a) if it is carried on by an individual who–

(i) carries it on otherwise than in partnership with others;

(ii) is not employed by an organisation or unincorporated association to carry it on;

(iii) does not employ any other person for the purposes of the undertaking; and

(iv) provides or arranges the provision of personal care services to fewer than four service users;

(b) in so far as it arranges for the provision of personal care for persons accommodated in a care home in respect of which a person is registered under Part II of the Act;

(c) to the extent that it arranges the provision of personal care by an agreement with an undertaking which is registered under the Act and these Regulations;

(d) in so far as it arranges for the personal care of persons who are accommodated under adult placement agreements which comply with the Adult Placement Schemes (Wales) Regulations 2004, or, where regulations made in relation to England apply to an adult placement agreement, with the provisions of those regulations.

(2) The provisions of these Regulations set out in paragraph (3) shall not apply to domiciliary care agencies to the extent to which they are also employment agencies.

(3) The regulations are 13 (Conduct of agency), 14 (Arrangements for the provision of personal care), 16 (Staffing), 17 (Staff handbook and code of conduct) and 19 (Identification of workers).

Establishments which are not Residential Family Centres

(1) An establishment is excepted from being a residential family centre if –

(a) it is a health service hospital, an independent hospital, an independent clinic or a care home;

(b) it is a hostel or a domestic violence refuge; or

(c) in any other case, the main purpose of the establishment is to provide accommodation together with other services or facilities to adult individuals, and the fact that those individuals may be parents, or may be accompanied by their children, is incidental to the main purpose of the establishment.

Option two: replicate, as far as possible, the exceptions from the regulations under the Care Standards Act 2000 in regulations under the Regulation and Inspection of Social Care (Wales) Act 2016, with some additions

Under this option, the regulations would replicate all of the above exceptions, with some additions, as follows:

Things which are not to be treated as care home services

For an adult, the provision of accommodation, together with nursing care, in the course of a family or personal relationship and for no commercial consideration would not be a care home service. A family relationship includes a relationship between two persons who live in the same household, and treat each other as though they were members of the same family. The definition of a family relationship is broader under option two and is not just limited to relatives of the individual.

Things which are not to be treated as domiciliary support services

The provision of care and support for an adult in the course of a family or personal relationship and for no commercial consideration would not be a domiciliary support service.

The provision of support only (as opposed to both care AND support) to a person who by reason of vulnerability or need is unable to provide it for him or herself, would not be classed as a regulated domiciliary support service. This is to address the fact that the definition of care and support under the 2016 Act is broader than the meaning of “personal care” under the 2000 Act, in so far as the definition of care and support under the 2016 Act can include both “care” , “support” and “both care and support”

The provision of care and support to four or fewer named individuals at any one time would not be a domiciliary support service. This is wider than the current exception under the Domiciliary Care Agencies (Wales) Regulations, as it applies to care and support provided by an organisation, not just to services provided by an individual.

The provision of care and support by a carer where such care and support is provided without the involvement of an undertaking acting as an employment agency or employment business (within the meaning given to those expressions by section 13 of the Employment Agencies Act 1973(4)) and where the carer works wholly under the direction and control of a related third party. For the purposes of this exception a “related third party” would include a trust established for the purpose of providing services to meet the care and support needs of a named individual. This exception is intended for Independent User Trusts (IUT). An IUT is a mechanism for helping an individual to have better control over their care by delegating the delivery of care, as far as possible, to persons acting on behalf of the individual, instead of care being commissioned by the NHS or a social services department.

Costs

Option one: replicate, as far as possible, the exceptions from the regulations under the Care Standards Act 2000 in regulations under the Regulation and Inspection of Social Care (Wales) Act 2016

No additional costs have been identified for the Welsh Government or service providers under this option, as there are no specific costs associated with excepting services from the scope of regulation.

Option two: replicate, as far as possible, the exceptions from the regulations under the Care Standards Act 2000 in regulations under the Regulation and Inspection of Social Care (Wales) Act 2016, with some additions

No additional costs have been identified for the Welsh Government or service providers as there are no specific costs associated with excepting services from the scope of regulations.

Benefits

Option one: replicate, as far as possible, the exceptions from the regulations under the Care Standards Act 2000 in regulations under the Regulation and Inspection of Social Care (Wales) Act 2016

No specific benefits have been identified under this option.

Option two: replicate, as far as possible, the exceptions from the regulations under the Care Standards Act 2000 in regulations under the Regulation and Inspection of Social Care (Wales) Act 2016, with some additions

Including the additional exceptions under this option will add clarity where we believe it is disproportionate to regulate. This also aligns with the approach taken in

England, as well as responding to stakeholders' feedback from the consultation process

Risks

Option one: replicate, as far as possible, the exceptions from the regulations under the Care Standards Act 2000 in regulations under the Regulation and Inspection of Social Care (Wales) Act 2016

The exceptions under this option do not go far enough in clarifying the services we do not wish to be regulated under the 2016 Act. There is, therefore, a risk that services that we do not wish to regulate – as it would be disproportionate to do so – would fall within the definition of a regulated service. This would create an unnecessary burden on CSSIW in regulating providers that do not need to be regulated. It would also create a burden on those additional services, as they would be required to meet the requirements in regulations.

Option two: replicate, as far as possible, the exceptions from the regulations under the Care Standards Act 2000 in regulations under the Regulation and Inspection of Social Care (Wales) Act 2016, with some additions

Some stakeholders raised concerns about the growth of direct payment co-operatives, stating they could undercut regulated domiciliary support services and leave people vulnerable due to being unregulated.

This risk has been mitigated by excepting care and support services with four or fewer named individuals at any one time. We feel this is a proportionate approach that will enable the growth of individual-led co-operatives, whilst ensuring larger organisations that fall within the definition of a domiciliary support service, are regulated as such.

2. Requirements on service providers – information

Option one: as far as possible, replicate in regulations, the requirements within the regulations under the Care Standards Act 2000

Under this option, regulations would seek to replicate, as far as possible, the current requirements within each of regulations under the Care Standards Act 2000 that relate to information. Under the current system, the requirements differ across the range of regulated services. A link to the regulations and NMS which contain these requirements is below:

<http://cssiw.org.uk/providingacareservice/regs-nms/adult-services/?lang=en>

Option two: harmonise, in regulations, the requirements across all services, with some additional requirements

Under option two, regulations would create consistent requirements across the range of regulated services, with some additional requirements for certain services.

The requirements would include producing a guide to the service with information about how the service provides care and support to individuals. Requirements would state that the guide must provide individuals with the information they need to raise concerns and make complaints to the service provider if they are dissatisfied with the service.

It would also inform individuals of how to escalate concerns if they are not satisfied with the response. This broadly replicates the existing position.

Providers would have to ensure every individual is given a signed copy of any service agreement relating to the care and support, and any other services, provided to the individual. This is an enhanced requirement for children's homes, as there is no equivalent regulation in the Children's Homes (Wales) Regulations 2002. However, the NMS for Children's Homes states, *on moving to or leaving the home children are provided with written and verbal information which is designed to be appealing and understandable, providing facts which they need and wish to have.*

Requirements would state that individuals must be supported to understand any information given to them. This is not a new requirement and similar requirements are set out in the NMS for all services.

Finally, providers would also have to ensure individuals have the information they need to make or participate in assessments, plans or day to day decisions about the way in which care and support is provided to them. This is a new requirement in regulations for all services but there are similar provisions in the NMS in relation to involving individuals in decisions relating to their care and support.

Costs

Option one: as far as possible, replicate in regulations, the requirements within the regulations and NMS under the Care Standards Act 2000

No additional costs have been identified for either the Welsh Government or service providers under this option as it replicates, as far as possible, the current approach.

Option two: harmonise the requirements across all services, with some additional requirements

No additional costs have been identified for the Welsh Government under this option.

Service providers are already required to produce a service guide to help individuals understand what to expect from the service. However, requirements under this option would ensure greater consistency across the range of services. The inclusion of a service agreement, including information about the costs, terms, and conditions of the service, would be formalised in regulations, but there are similar expectations in the NMS for all services. Therefore, this should not result in increased costs for providers.

Ensuring individuals have the necessary information to be involved in assessments, plans and day to day decisions would be a new requirement in regulations. However, the NMS for all services contain requirements about ensuring individuals are

supported to participate in various aspects of the service. Many providers should be doing this currently. It is therefore not expected to result in significantly higher costs for providers.

Benefits

Option one: as far as possible, replicate in regulations, the requirements within the regulations and NMS under the Care Standards Act 2000

No specific benefits have been identified under this option aside from providers being familiar with the current information requirements which this option replicates as far as possible.

Option two: harmonise the requirements across all services, with some additional requirements in regulations

The requirements under this option support the policy intention in the 2016 Act of ensuring people have access to sufficient and comparable information about a service. This would be achieved by having consistent requirements across the range of regulated services in relation to the guide to the service.

The requirements under this option would also support the principle of “voice and control” in the Social Services and Well-being (Wales) Act 2014 (“the 2014 Act”), which is that an individual should be supported to have a greater voice in, and control over, their own care and support. Requiring providers to give individuals the information they need to participate in assessments, plans and day to day decisions about the way care and support is provided to them and how they are supported to achieve their personal outcomes, supports this principle.

Ensuring service agreements are part of the information that individuals receive when commencing a service creates greater transparency with regards to fees, something that has been highlighted as a concern by the Competition and Markets Authority. Their report, *the Care Homes Market Study – Update Paper*⁷, states, “*Entering a contract with a care home is a major decision which can have significant financial implications for residents and their families. A Citizens Advice survey (in England) found that over a third (36%) of people said they were only given a copy of the contract after the resident had moved in, or not at all. We have also been told about people not being given sufficient time to read and consider the contract properly, or being asked to sign the contract before it was explained to them*”. Ensuring individuals receive information about the costs, terms, and conditions of the service including termination of contracts and notice period will help address these issues.

Risks

Option one: as far as possible, replicate in regulations, the requirements within the regulations and NMS under the Care Standards Act 2000

⁷ <https://assets.publishing.service.gov.uk/media/5941057be5274a5e4e00023b/care-homes-market-study-update-paper.pdf>

Without the requirement for providers to ensure individuals have the information they need to make or participate in assessments and day to day decisions about the way care and support is provided to them, there is a risk that the individual will not be able to participate in key decisions about their own lives. This is contrary to the principles in the 2014 Act set out above.

Following the implementation of the 2014 Act there is an increased emphasis on people being supported to achieve their personal outcomes. Without involvement from the individual, providers will not be able to judge accurately what really matters to the individual.

Option two: harmonise the requirements across all services, with some additional requirements in regulations

Streamlining the legislation and adopting a high-level approach within the regulations and statutory guidance means that providers will not have a detailed set of standards to comply with, specific to each service. Whilst the policy intention is to focus on outcomes for individuals and to enable providers to tailor care and support to the individual's needs, there is a small risk that by reducing the level of detail in regulations and guidance, there may be discrepancies between what a provider and what an inspector deems to be sufficient. We received feedback from the consultation that some providers would like more information in order to understand "what good looks like". CSSIW will use the regulations, guidance and its inspection framework (which is aligned to the regulations) to determine whether providers are meeting the necessary requirements. This will mitigate the risk of discrepancies.

3. Requirements on services providers – person centred care

Option one: as far as possible, replicate in regulations, the requirements within the regulations under the Care Standards Act 2000

Under this option, regulations would seek to replicate, as far as possible, the current regulations relating to person-centred care under the Care Standards Act 2000. We consider that person-centred care requirements encompass the following topics:

- Assessments, care planning and reviews
- Standards of care
- Continuity of care
- Dignity and respect
- Access to health and other services
- Medication
- Statement of purpose

Under the current system, the requirements differ across the range of regulated services. A link to the regulations and NMS which contain these requirements is below:

<http://cssiw.org.uk/providingacareservice/regs-nms/?lang=en>

Option two: harmonise the requirements across all services, with some additional requirements in regulations

Under this option, regulations would create consistent requirements across the range of regulated services, with some additional requirements for certain services, as outlined below:

A greater emphasis would be placed on providers making a determination, from the outset, as to whether their service is suitable to meet the care and support needs of an individual. A provider would be required to take into account any assessments the individual may have already had – for example, by the local authority - in making this determination. If the individual had no care and support plan, the provider would have to undertake an assessment themselves by involving the individual and any representative (where appropriate) in this process.

There are some similar requirements in the current NMS. The NMS for care homes for older people states: *The registered person is able to demonstrate the home's capacity to meet the assessed needs, including specialist needs, of individuals admitted to the home.* The NMS for domiciliary support services states: *The agency is able to demonstrate its capacity to meet the needs (including specialist needs) of individuals accepted by the agency.* The closest equivalent requirement in the NMS for children's homes is, *both the needs of the child concerned, and the likely effects of his/her admission upon the existing group of residents, are taken into account in decisions on admission to the home.* There is no equivalent requirement in the NMS for residential family centres. The requirement for providers to make a determination as to the suitability of the service within regulations, is new.

The service provider would have to prepare a personal plan for each individual⁸, setting out how care and support would be provided on a day to day basis for that person. The NMS for all services currently require individuals to have a plan, so this is not a new requirement. For children's homes, under the 2000 Act, this is referred to as the "placement plan". For all other services this is a "service delivery plan / service user plan". Under option two this would be referred to as "personal plan" for consistency across the range of services. This plan would have to be reviewed as and when required but no less than every 3 months. This timescales for renewal of the plan is currently different for all services. The Children's Homes (Wales) Regulations 2002 and the Residential Family Centres (Wales) Regulations 2003, do not specify a timescale for renewal, only that the plan must be reviewed "as necessary." For domiciliary support services the service delivery plan must be renewed "annually." In relation to care homes for older people, the plan must be reviewed "at least once a month."

There would be an overarching requirement to ensure that care and support is provided in a way which protects, promotes and maintains the safety and well-being of individuals. The service provider would have to ensure that care and support is provided to each individual in accordance with their personal plan. The provider would also have to ensure that care and support is delivered in way which maintains

⁸ For Residential Family Centre Services, the "individual" may refer to the family as a whole.

good personal and professional relationships with individuals and staff. This is not different from current arrangements.

A service provider would have to put arrangements in place for individuals to be registered with a general practitioner, a dental practitioner and access treatment, advice and other services as necessary. People must be supported to access such services. This replicates existing requirements for all services.

Service providers would be required to take reasonable steps to meet the language needs of individuals. They would have to ensure individuals are provided with access to such aids and equipment as may be necessary to facilitate the individual's communication with others. This means the provider would put arrangements in place to assist individuals with their specific communication needs in line with the statement of purpose. Where necessary this would include putting in place measures to ensure that individuals can communicate meaningfully, which includes the individual's language of need and choice. This is an enhanced requirement in comparison with the regulations under the 2000 Act.

Requirements would state that care must be provided in a way which is sensitive to an individual's needs and is respectful to them. Arrangements would have to be made to ensure people have continuity of care where reasonable, to foster positive professional relationships between individuals and care workers. This reinforces current requirements.

There would also be an increased emphasis on the statement of purpose, which is a written document that sets out the aims and objectives of the service and the way in which the provider will meet these aims. Although the statement of purpose is an existing requirement, this document will be much more comprehensive in setting out how services are able to meet people's care and support needs and can support people to achieve their personal outcomes under the new system. The statement of purpose requirements are set out in *the Regulated Services (Registration) (Wales) Regulations 2017*. Care would have to be delivered in accordance with the aims and objectives set out in the statement of purpose. Because of the importance of this document there would be a requirement under this option to notify CSSIW of any changes to the statement of purpose.

Costs

Option one: as far as possible, replicate in regulations, the requirements within the regulations and NMS under the Care Standards Act 2000

No additional costs have been identified for Welsh Government or providers under this option, as this option represents the current position as far as possible.

Option two: harmonise the requirements across all services, with some additional requirements in regulations

No additional costs have been identified for Welsh Government under this option.

There may be some additional costs to service providers under this option.

The main difference under this option is the strengthening of the requirement for providers to make their own determination as to the suitability of the service for an individual, before agreeing to provide care and support to that person. This is currently a requirement in the regulations for care homes but not for children's homes, domiciliary support services or residential family centres. However, this is considered good practice and many providers will be doing this already. Therefore, any cost increase to providers in respect of this is expected to be negligible.

There is an enhanced requirement for providers under this option in relation to meeting the language needs of individuals. This means that providers must identify an individual's communication needs as part of their determination as to whether the service is suitable for the individual. It also includes putting in place measures to ensure that individuals can communicate meaningfully. This relates to the individual's language of need and choice, including alternative methods of communicating, such as British Sign Language, Makaton or PECS.

There are currently similar requirements in the NMS for Children's Homes and Domiciliary Care Agencies. However under this option, these requirements will be applied consistently across all services.

The cost implication to providers of applying requirements consistently across services would be difficult to determine, as a provider could meet this requirement in a number of ways. For example, a provider may wish to hire an interpreter or they could develop the language skills of staff internally, such as providing training courses for staff. The costs of this would vary greatly depending on the levels of language need identified within the service, the current abilities of staff employed within the service to meet that need and, if not, the subsequent level of interpretation required, or training needs.

An example of the cost of using an interpretation service in Wales, current as of October 2017 is from £28 per hour.⁹ However this cost will likely vary depending on the company used and the volume of interpretation required.

Benefits

Option one: as far as possible, replicate in regulations, the requirements within the regulations under the Care Standards Act 2000

Some providers may prefer having more detailed requirements specific to their service, such as those which are set out in the NMS. They may prefer an approach which prescribes the tasks that must be completed in order to be compliant.

This approach is arguably easier for CSSIW to inspect against, due to the emphasis on compliance with a list of standards. However, in practice the regulation and inspection regime in Wales has already moved towards an outcome-based approach. The current approach takes into account NMS but is increasingly more focused on the experiences of services users around the quality themes of:

⁹ Taken from <https://bostico.uk/interpreter/wales.htm>, 18 October 2017

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

Option two: harmonise the requirements across all services, with some additional requirements in regulations

The requirements under option two are more outcomes-focussed than task-based, which is in line with the policy intention of both the 2014 Act and the 2016 Act. This means services must, as far as possible, tailor their care and support around what matters to the individual, rather than fitting individuals into routines that are convenient for the service. The language within these requirements aims to reflect this approach. For example, the term “individual” rather than “service user” has been used throughout, at the advice of the stakeholder advisory group established to develop the proposals for the regulations.

Because of the focus on the individual, providers must do their best to understand, from the outset, the care and support needs of an individual in order to determine whether they can care for and support that person. Ensuring providers have sufficient oversight of an individual’s transition into their service will help prevent individuals from being placed in services that are not suitable. Ensuring providers involve the individual, and any representative of the person in the assessment process (if, indeed, the individual wishes a representative to be involved), is essential in supporting the principle of “voice and control”, in which individuals feel they have a strong voice in, and control over, their own care and support. Part of ensuring “voice and control” is enabling the communication of the individual, which is why the requirement on language and communication has been strengthened. Feeling able to communicate one’s preferences is a fundamental part of receiving good care and support. One of the recommendations from the Older People Commissioner for Wales’ report, *A Place to Call Home?*¹⁰, is for people to be better supported during the transition to the care home, ensuring emotional needs are catered for and communication challenges are understood and supported on an individual basis. Requirements under this option aim to support this recommendation.

Risks

Option one: as far as possible, replicate in regulations, the requirements within the regulations and NMS under the Care Standards Act 2000

The requirements in relation to person-centred care proposed under this option are not consistent across the range of services and do not fully meet the policy intention of consolidating and streamlining the legislation. There is therefore, a risk of an increased variation in the quality of person centred care between different services under this option.

¹⁰ <http://www.olderpeoplewales.com/en/news/news/14-11-10/A Place to Call Home Care Home Review Report.aspx>

In addition, the requirements under this option do not adequately support the principle of “voice and control” as there is little emphasis on communication and language, and supporting people to be involved in assessments. Therefore, there is a risk of regulations under this option not reflecting the wider voice and control principles emphasised in other regulations made under the 2014 Act.

Option two: harmonise the requirements across all services, with some additional requirements in regulations

As identified by stakeholders during the consultation process, there is a risk that providers will not always be able to get hold of up-to-date and timely information about individuals before making a determination as to their suitability for the service. However, while it is recognised that there are many factors that influence a person’s transition into a service, requirements under this option are intended to support and empower providers in this process.

There is also a risk of duplication between the local authority assessment/planning process and the provider assessment/plan. This is particularly pertinent in relation to children’s services, as most children moving into a home will already have a care and support plan from the local authority. Individuals receiving care and support could feel they have to repeat information already given, which may not be desirable. However, the intention of the provider assessment and personal plan is not to duplicate the local authority assessment and planning process but to be informed by it, in order to plan the best way to support and care for them on a day-to-day basis.

Streamlining the legislation and adopting a high-level approach within the regulations and statutory guidance means that providers will not have a detailed set of standards to comply with, specific to each service. Whilst the policy intention is to focus on outcomes for individuals and to enable providers to tailor care and support to the individual’s needs, there is a small risk that by reducing the level of detail in regulations and guidance, there may be discrepancies between what a provider and what an inspector deems to be sufficient. We received feedback from the consultation that some providers would like more information in order to understand “what good looks like”. CSSIW will use the regulations, guidance and its inspection framework (which is aligned to the regulations) to determine whether providers are meeting the necessary requirements. This will mitigate the risk of discrepancies.

4. Requirements on services providers – safeguarding

Option one: as far as possible, replicate in regulations, the requirements within the regulations under the Care Standards Act 2000

Under this option, regulations would seek to replicate, as far as possible, the current requirements relating to safeguarding within each of the regulations under the Care Standards Act 2000. A link to the regulations and National Minimum Standards which contain these requirements is below:

<http://cssiw.org.uk/providingacareservice/regs-nms/adult-services/?lang=en>

Option two: harmonise, in regulations, the requirements across all services, with some additional requirements

Under this option, requirements would be streamlined and applied consistently across all services. Providers would have to have effective policies and procedures in place to prevent and protect people from harm, abuse, neglect and improper treatment. If an allegation is made, or there is evidence of potential abuse, neglect or harm, a provider must:

- act in accordance with its safeguarding policy and procedures;
- take immediate action to ensure the safety of people using the regulated service;
- keep a record of the substance of the allegation/matter and any action taken.

This would be no different from current requirements. Providers would have to put safeguards in place to ensure an individual's money is only be paid into accounts in the individual's name or an account which enables clear demarcation of each individual's money. Any such account must not be used in connection with the management of the service.

In addition, as far as practicable, a service provider must not act as an agent for an individual. This is an existing requirement in the Care Homes Wales Regulations 2002 and there are currently some general requirements in the NMS about protecting individuals' money and belongings for the other regulated services. However, this requirement would be strengthened under this option.

There would also be a new requirement about conflicts of interest under this option. The service provider must ensure that any person with a financial interest in the ownership of a service does not act as the medical practitioner for any individual for whom that service is provided. There must also be arrangements in place to identify, record and manage any conflicts of interest.

Requirements relating to the appropriate use of control and restraint would be consistent across all regulated services, under this option. The requirement states that the service provider must have a policy on the appropriate use of control and restraint. The requirement would include a definition of control and restraint which includes chemical constraint. There should only be very limited circumstances in which the use of control and restraint is deployed. These circumstances would be set out in the requirement under this option. Anyone using control or restraint must be suitably trained.

Providers and responsible individuals must adhere to a duty of candour which states that the service provider must act in an open and transparent way with individuals who are receiving care and support, any representatives of those individuals and, in the case of a child who is provided with accommodation, the placing authority. This is a new requirement.

Providers must operate a whistleblowing policy so that all staff and volunteers working at the service can raise concerns about individuals' wellbeing. This represents very little difference to the current system, as there are requirements in

the NMS. However, the requirements would be in regulations and would be consistent across the range of services.

There must be a policy for the control of infection, as well as arrangements in place to ensure satisfactory standards of hygiene and the appropriate disposal of general waste. Any risks to the health and safety of individuals must be identified and reduced as far as reasonably practicable. Arrangements must also be in place to ensure medicines are stored and administered effectively. This represents very little difference to the current system. However, the requirements will be more consistent across the range of services.

Regulations would state there must be a policy on complaints so that appropriate action is taken to respond to a complaint and so that information about complaints can be collated and analysed to identify areas for improvement. This represents very little difference to the current system. However, the requirements would be more consistent across the range of services.

Notifications are a key part of safeguarding as they ensure organisations are made aware of relevant issues which may have an impact upon the safeguarding of individuals receiving care and support.

Under this option, notification¹¹ requirements for providers have been streamlined. There are also some additional and updated notifications, as follows:

Notifications to CSSIW

- Any occurrence of a category 3 or 4 pressure ulcer, an unstageable pressure ulcer or a deep tissue injury.

Notifications to the placing authority where a care home service is provided to children

- Any occurrence of a category 3 or 4 pressure ulcer, an unstageable pressure ulcer or a deep tissue injury.

Notifications to the local authority in whose area the home is situated where a care home service is provided to children

- Death of a child and the circumstances.
- Any incident of child sexual exploitation or suspected child exploitation.
- Any incident where an accommodated child goes missing or has an unexplained absence.
- Every admission of a child into the accommodation and every discharge of a child from the accommodation

Some prescriptive requirements under option one would not be replicated under this option. In the *Children's Homes (Wales) Regulations 2002* there is an extensive list of prohibitions in relation to punishments, such as the use or withholding of

¹¹ Detail on the notifications from CSSIW to local authorities required under Section 39 the 2016 Act is contained in The Regulated Services (Notifications) (Wales) Regulations 2017. Subject to the negative resolution procedure, those regulations are due to come into force on 2 April 2018.

medication or medical or dental treatment as a disciplinary measure, and the intentional deprivation of sleep. Whilst service providers must of course not use any of these measures against children, the requirements have not been replicated as this would be covered sufficiently by the overarching requirement to provide the service in a way which ensures that individuals are safe and are protected from abuse and improper treatment.

Costs

Option one: as far as possible, replicate in regulations, the requirements within the regulations under the Care Standards Act 2000

No additional costs have been identified for either Welsh Government or providers under this option as it replicates as far as possible the current approach.

Option two: harmonise the requirements across all services, with some additional requirements in regulations

The only new requirements under this option would be those which relate to conflicts of interest (stating that individuals must not be registered with a medical practitioner who has a financial interest in the ownership of a service) and a duty of candour, which states that providers must act in an open and transparent way. We do not believe these requirements would result in any additional cost to Welsh Government or providers.

Although there are also new notification requirements under this option, the number of notification requirements overall has been reduced. This should not, therefore, result in any additional costs to either providers or Welsh Government.

Benefits

Option one: as far as possible, replicate in regulations, the requirements within the regulations under the Care Standards Act 2000

Some providers may prefer having more detailed requirements specific to their service, such as those which are set out in the NMS. They may prefer an approach which prescribes the tasks that must be completed in order to be compliant.

This approach is arguably easier for CSSIW to inspect against, due to the emphasis on compliance with a list of standards. However, in practice the regulation and inspection regime in Wales has already moved towards an outcome-based approach. The current approach takes into account NMS but is increasingly more focused on the experiences of services users around the quality themes of:

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

Option two: harmonise the requirements across all services, with some additional requirements in regulations

Under this option, requirements would be consistent across the range of regulated services, in line with the policy intent of the 2016 Act. The requirements would also address some of the concerns from the Flynn Report, *In Search of Accountability*¹², the Older People's Commissioner for Wales' report, *A Place to Call Home* and the Francis report, which were all drivers for changes to the current system of regulation and inspection in Wales. One of the recommendations from the Flynn report was that "the significance of deep pressure ulcers is elevated to that of a notifiable condition." Under option two there would be a requirement to notify CSSIW and the placing authority where a care home service is provided to children of any occurrence of a category 3 or 4 pressure ulcer, an unstageable pressure ulcer or a deep tissue injury.

The Flynn Report states, *There is no doubt that having GPs associated with the ownership of residential and nursing homes can lead to a conflict of interest, particularly where they are directly sourcing residents from their patient lists and/or are responsible for the primary healthcare of the residents and patients at such homes.*

Therefore, under this option, the service provider must ensure that a person having a financial interest in the ownership of a service does not act as a medical practitioner for any individual for whom that service is provided.

One of the recommendations from the Francis report is for a system which recognises and applies the values of transparency, honesty and candour. This would be addressed under this option by including a duty of candour on service providers and responsible individuals to act in an open and transparent way with individuals who are receiving care and support, any representatives of those individuals and, in the case of a child who is provided with accommodation, the placing authority.

Risks

Option one: as far as possible, replicate in regulations, the requirements within the regulations under the Care Standards Act 2000

The requirements in relation to safeguarding under this option do not meet the policy intention of ensuring requirements are consistent across the range of regulated services and reduce complexity. They also do not address some of the key concerns from the reports cited above.

Option two: harmonise the requirements across all services, with some additional requirements in regulations

Streamlining the legislation and adopting a high-level approach within the regulations and statutory guidance means that providers will not have a detailed set of standards to comply with, specific to each service. Whilst the policy intention is to focus on outcomes for individuals and to enable providers to tailor care and support to the individual's needs, there is a small risk that by reducing the level of detail in regulations and guidance, there may be discrepancies between what a provider and

¹² <http://gov.wales/topics/health/publications/socialcare/reports/accountability/?lang=en>

what an inspector deems to be sufficient. We received feedback from the consultation that some providers would like more information in order to understand “what good looks like”. CSSIW will use the regulations, guidance and its inspection framework (which is aligned to the regulations) to determine whether providers are meeting the necessary requirements. This will mitigate the risk of discrepancies.

5. Requirements on services providers – environment/premises

Option one: create regulations that focus on the general suitability of the environment to enable people to achieve their outcomes

Under option one, providers would ensure any premises used for the operation of the service have adequate facilities for the supervision of staff and the secure storage of records. The service provider would have a duty to ensure that any facilities and equipment used for the provision of the service are suitable and safe, properly maintained, kept clean and stored appropriately. A sufficient quantity of suitable supplies must be available.

Where accommodation is provided, essential requirements would have to be met such as ensuring premises are accessible, adequately lit, heated, secure, suitably furnished, equipped, free from hazards and properly maintained, etc. Regulations under this option would specify that bedrooms must be of an adequate size, comfortable and allow the person living there freedom of movement and privacy. Premises must also have sitting, recreational and dining space separate from the individual’s private accommodation. Premises must have toilets, bathrooms and showers which are of sufficient number and of a suitable type to meet the needs of individuals, appropriately equipped and accessible. Premises must have external grounds which are accessible, suitable for, and safe to use by, individuals.

Option two: create regulations that focus on the general suitability of the environment but add some specific requirements for certain categories of premises

Under option two regulations would replicate all of those requirements listed in option one, with some additional, more prescriptive, requirements relating to shared rooms and certain categories of premises, as follows:

Shared rooms for adults

Under this option, the number of adults who are accommodated in shared rooms would not be permitted to be more than 15% of the total number of adults accommodated by the service (unless all the adults currently accommodated in shared rooms were sharing a room with another adult at the time these Regulations came into force). In addition, a care home service would only provide accommodation in shared rooms under this option if:

- an adult agrees to sharing a room with another adult;
- sharing a room is consistent with the well-being of both adults; and
- the personal plans of both adults have been reviewed and revised as necessary;

Shared rooms for children

Under this option the child must have their own room unless all of the below apply:

- They are sharing with no more than one other child
- The child is not of the opposite sex or a significantly different age (except in the case of siblings), and
- sharing a room will promote the child's well-being, is provided for in the child's care and support plan and wherever practicable is agreed with the child.

Certain categories of premises

Under this option there would also be some additional requirements for premises which fall into one of three categories. These categories are:

- Category A: The premises used for the provision of the service consist of a new building or an existing building which has been converted for the purpose of providing the service, and, in either case, the building has not previously been used for the purpose of providing an accommodation-based service.
- Category B: The premises consist of an extension to a building which is used for the purpose of providing the service at a place specified as a condition to the service provider's registration.
- Category C: The premises consist of a building which was unoccupied immediately prior to the service provider's registration but was previously used for the purpose of providing an accommodation-based service at a place specified as a condition to the registration of another service provider

For premises in these categories, there would be additional requirements in respect of en-suite facilities, room sizes, communal space, outdoor space and passenger lifts, as follows:

Room sizes

All bedrooms used for the provision of the service must have a minimum of 12 square metres of useable floor space. If the person in the room uses a wheelchair on a permanent and constant basis because of the nature of their disability, the room must have a minimum of 13.5 square meters of useable floor space. If the bedroom is shared, there must be a minimum of 16 square meters of useable floor space (these are the same measurements for new builds, extensions and all first time registrations for care homes for older people from 1 April 2002 within the current NMS).

En-suites

All bedrooms used for the provision of the service must have an en suite which includes an accessible wash hand basin, lavatory and shower.

Communal space

The amount of sitting, recreational and dining space which is used for the provision of the service must be at least 4.1 square metres for each individual and 5.1 square metres for wheelchair users (these are the measurements for sitting, recreational

and dining space for care homes older people in current use within the current NMS).

Outdoor space

The external grounds which are used for the provision of the service must be accessible to individuals in wheelchairs or with other mobility problems, have sufficient and suitable seating, and be designed to meet the needs of all individuals including those with physical, sensory and cognitive impairments.

Passenger lifts

Where the accommodation used for the provision of the service is on more than one floor, and this is consistent with the statement of purpose for the service, there must be a passenger lift.

In respect of the above requirements for categories of premises, these requirements would not apply if the service involves the provision of accommodation to four or fewer individuals

Costs

Option one: create regulations that focus on the general suitability of the environment to enable people to achieve their outcomes

No additional costs have been identified for either Welsh Government or providers under this option.

Although CSSIW has reported this option would make their role more difficult in terms of registering service providers if there are no prescribed requirements for room sizes, etc, it would not necessarily take them longer to do this compared with the current system.

No additional costs for service providers have been identified under this option.

Option two: create regulations that focus on the general suitability of the environment but add some specific requirements for certain categories of premises

Under this option, providers who are building new accommodation-based services (Category A), adding an extension (Category B) or buying an unoccupied building that has previously had a registration with CSSIW (Category C) must ensure the building meets the additional, more prescriptive, requirements.

Currently, CSSIW determines whether a building meets the requirements in the regulations by checking whether it complies with the NMS. The requirements relating to room sizes, communal space, en-suites, outdoor space and passenger lifts in the NMS for care homes for older people, care homes for children and residential family centres, is set out at **tables 1A, 1B and 1C**.

The main difference between the requirements under option two and those set out in the NMS (NMS) is that, under this option, the definition of an en-suite includes an accessible shower, in addition to a wash basin and lavatory.

The addition of an accessible shower in requirements under this option would suggest a potential cost to providers under this option. This would be in terms of the cost of having to install an accessible shower in addition to the wash basin and lavatory currently required in the NMS.

However, Welsh Government has been advised by a specialist advisor for buying and selling care homes that in their experience, new care homes and extensions are currently built with en-suite facilities (including a shower) in every bedroom, as standard. This is in response to the needs of the market, specifically in terms of the increased expectations of the public in respect of care homes. Furthermore, in their experience, banks are also more likely to lend to providers if these facilities are included, as it raises the value of the property and the revenue that can be generated.

As stated in the Public Policy Institute for Wales report, *The Care Home Market in Wales: Mapping the Sector*, “*The value of a care home will depend on its level of compliance with the minimum standards ...in general, those care homes that demonstrate compliance and high quality reap the rewards*”. Therefore, because new care homes are already built to these enhanced standards under this option, we do not anticipate that the requirement under this option will have significant cost implications for providers in terms of new buildings and extensions (Category A and Category B premises as described under this option).

There are likely to be cost implications for providers in relation to the third category of premises (Category C) described under this option. This relates to existing, unoccupied care homes that are being sold to a new provider. Under this option, if the new provider wishes to register the premises as a care home they will be required to meet the more prescriptive requirements of this option, such as adding en-suites with accessible showers.

In terms of estimating the cost to providers in respect of Category C premises, it is important to assess the current care home stock in Wales in order to indicate the types of premises that would potentially come onto the market as vacant premises in the future.

Much of the current care home stock in Wales is made up of buildings over 50 years of age which are not likely to meet the requirements for premises under this option. In January 2017, CSSIW received information from providers' self assessment of services statements (SASS) about a number of issues, including the age of care home buildings and the number of bedrooms with en-suites. The information is set out in the below tables:

Approximate age of main buildings

Service type		Adult Care Homes – Older	Children’s Homes
Total responses		1,014	141
Approximate age	< 10 years	64 (6.3%)	8 (5.7%)
	Between 10 and 20 years	91 (9.0%)	11 (7.8%)
	Between 21 and 30 years	163 (16.1%)	12 (8.5%)
	Between 31 and 50 years	175 (17.3%)	19 (13.5%)
	>50 years	475 (46.8%)	72 (51.1%)
	Don’t know	45 (4.4%)	18 (12.8%)

Bedrooms with en-suite facilities

Service type	Adult Care Homes – Older	Children’s Homes
Total bedrooms	22,563	511
Total bedrooms with en-suite facilities	12,755 (56.5%)	167 (32.7%)
Total bedrooms without en-suite facilities	9,808 (43.5%)	344 (67.3%)
Intended to be used as shared rooms	839 (3.7%)	14 (2.7%)
Intended to be used as single rooms	21,724 (4.4%)	497 (97.3%)

The data shows that, of those who responded, almost half of care home premises are over 50 years old and just over half have bedrooms for adult care homes for older people with en-suite facilities (around a third for children). This indicates that a large proportion of the current stock, if it was sold to a new provider as unoccupied, would require investment to bring it up to the requirements under this option.

Also relevant in terms of estimating the costs to providers in respect of bringing Category C premises up to the requirements proposed under this option, is the care home market in Wales more generally.

According to the Public Policy Institute for Wales report, *The Care Home Market in Wales: Mapping the Sector*, “*Of the care homes advertised for sale in Wales in June 2015, none were described as being of the highest quality. Instead there was emphasis on either high occupancy levels or potential for development as selling points.*” This indicates that the premises that are currently being sold are not likely to meet the requirements under this option in terms of en-suite facilities with an accessible shower.

Another factor within the care home market that will have a bearing on costs in respect of Category C, is the frequency with which care homes change hands. It is not possible to estimate this over the long term for this RIA; however in terms of a snapshot of the market, on a single day in October 2017, 25 care homes were listed as being for sale in Wales by Christie and Co, one of the major business selling care homes. Most of these homes had a mixture of single rooms, twin rooms and en-suites. They were all advertised as being under management, indicating that none were vacant properties and would not, therefore, be required to meet the requirements for Category C. Another major estate agent for care homes, Savills, did not have any care homes for sale in Wales on this date. This gives an indication of the number and types of care homes being sold at the moment in Wales.

CSSIW has advised that there are currently 7 care homes in Wales with dormant registrations. This means a provider has previously operated a care home from the premises but is no longer doing so. CSSIW has data on 3 of these homes. The data shows that overall, approximately a quarter of bedrooms would require modification to include en-suites and a third of bedrooms would need modification to increase the room sizes. However, all 3 homes would meet the requirements for communal areas providing none of the residents were wheelchair users, in which case some adaptations would be needed.

Because of the many different types of care homes in Wales it would not be possible to give a meaningful estimate of how much it would cost to bring care homes falling under Category C up to the standards under this option. Providers have informed the Welsh Government via the consultation that these costs may be significant. According to quotes gained from a number of reputable home improvement websites, the cost of fitting an en-suite usually ranges from around £3000 to £4500 plus VAT. However, the cost to install an en-suite including a shower would vary significantly depending on whether there was an existing en-suite present in the room with space for a shower to be installed, the quality of the materials used for the en-suite, the location of the premises and the number of en suites being installed at any one time.

Reports suggest it is also challenging for providers to obtain loans to undertake the investment needed to improve properties. As stated in the Mapping the Sector report, *“particularly for small prospective owner–managers with limited resources, financing is difficult to come by as deposits need to be high (30- 40% for new entrants), the cost of new builds has increased significantly, and the return from fees is regarded as low.”* This could result in closed care homes which fall under Category C being sold for other purposes – either for residential use or for other businesses - thus reducing the overall care home bed capacity in Wales.

Benefits

Option one: create regulations that focus on the general suitability of the environment to enable people to achieve their outcomes

Requirements under this option would be consistent with the policy intention of having high-level requirements which are flexible to the needs of individuals, as well as the approach of not managing services from a distance via prescriptive requirements.

Option two: create regulations that focus on the general suitability of the environment but add some specific requirements for certain categories of premises

Under this option, providers will have clarity at the point of registration as to whether the premises are suitable and likely to be registered. It will also help give assurances to CSSIW that the premises are, or are not, suitable to meet the needs of the individuals.

Setting some prescriptive requirements in regulations under this option will strike an appropriate balance between the high-level flexibility envisioned in the original policy intent, and ensuring standards in the sector do not drop below what is considered acceptable.

Risks

Option one: create regulations that focus on the general suitability of the environment to enable people to achieve their outcomes

Under this option it will be difficult for CSSIW to apply a consistent approach to the registration of care premises. CSSIW would not have a benchmark from which to judge whether a building is suitable to meet the needs of individuals. This could create a weak evidence base on which to reject applicants. Some premises could be approved that fall below what is considered acceptable within the current system of NMS, resulting in a drop in premises standards in the sector.

Whilst there is some competition in the market for care homes for older people, which will, to a certain extent, drive up standards due to the demand for better facilities from citizens, we understand this is not the case for care homes for younger adults. Care homes for younger adults are primarily publicly funded, so there is little or no competition from self-funders. This means that government regulations are the only driving force for quality. There is a risk therefore that without some minimum requirements in this sector, standards will fall.

There is some evidence to support this in the Care homes market study - Financial analysis working paper¹³ by the Competition and Markets Authority. The report states “*Some providers have told us that they have scaled back their capital expenditures on those care homes, which primarily cater for local authority-funded residents and that they are spending only limited amounts to undertake basic refurbishments or to meet minimum care standards.*” There is, therefore, a risk of disparity in standards in care homes for older people and care homes for younger adults.

Option two: create regulations that focus on the general suitability of the environment but add some specific requirements for certain categories of premises

Setting prescriptive requirements in regulations is not consistent with the policy intention of moving away from minimum standards, which are inflexible. It could appear inconsistent with other requirements in these Regulations. However, there are still high-level requirements within the regulations envisaged under this option - for example the inclusion of an overarching requirement to ensure the premises, facilities and equipment are suitable for the service, having regard to the statement of purpose.

There is also a risk that, by setting prescriptive requirements in regulations, it would require providers to spend money on elements of a building which are not consistent with the care that is intended to be delivered and which may never be used. For

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https://assets.publishing.service.gov.uk/media/59b2bb0ae5274a5cfcda2d18/financial_analysis_working_paper.pdf

example, feedback from stakeholders has been that some individuals, with very acute needs, may not be able to use the en-suite facilities in their room. However, we feel this risk is outweighed by the advantages of providing these facilities, namely the additional flexibility it gives should the room be occupied by a person with less acute needs in the future.

In relation to requirements on premises in Category C, there is a risk that providers will not be willing to, nor able to, make the investments required to meet the requirements in relation to en-suites and room sizes. Closed care homes may be sold for different purposes, thus reducing the overall care home bed capacity in Wales, placing further pressure on the system.

6. Requirements on services providers – staffing

Option one: as far as possible, replicate in regulations, the requirements within the regulations and NMS under the Care Standards Act 2000

Under this option, regulations would seek to replicate, as far as possible, the current requirements relating to staffing within each of the regulations under the Care Standards Act 2000. Under the current system, the requirements differ across the range of regulated services. A link to the regulations and NMS which contain these requirements is below:

<http://cssiw.org.uk/providingacareservice/regs-nms/adult-services/?lang=en>

Option two: harmonise the requirements across all services, with some additional requirements in regulations

Under this option, regulations would seek to streamline the requirements in relation to staffing, adopting a high-level approach.

The service provider would have to ensure that at all times a sufficient number of suitably qualified, trained, skilled, competent and experienced staff are deployed to work at the service. In addition, the service provider must be able to demonstrate the way in which the determination has been made as to the types of staff deployed and the number of staff of each type deployed. Current requirements relating to minimum ages for staff (at least 18 years old, or 21 years for management roles) and staff ratios (one staff member for every five children) would not be set out in regulations.

The requirements within the Care Homes (Wales) Regulations 2002 would also not be set out in regulations under this option. Regulation 18 of the 2002 regulations includes this requirement:

- “(3) Where the care home –
 - (a) provides nursing to service users; and
 - (b) provides, whether or not in connection with nursing, medicines or medical treatment to service users;the registered person shall ensure that at all times a suitably qualified registered nurse is working at the care home.”

Instead the requirement would be modified to state that if an individual had been assessed as needing 24 hour nursing care then there must be a sufficient number of suitably qualified registered nurses deployed to work at the service at all times.

This would enable some flexibility where a service requires nursing oversight but not a full time member of staff.

Staff would also have to demonstrate evidence of satisfactory linguistic ability. DBS checks must be made every 3 years for staff, unless they are on the DBS update service. Staff who provide care and support to children in care homes for children and secure accommodation services must be registered¹⁴ as a social care worker with Social Care Wales. This is not different from the current system. The current NMS for Children's Homes state that leaders of staff shifts must have one year's experience in child care. However, there would be no minimum requirements in relation to experience under this option - service providers would have to make a judgement as to the appropriate skills and experience of staff on duty.

The service provider would have to have a policy in place for the support and development of staff and ensure that any person working at the service (including a person allowed to work as a volunteer)—

- receives an induction appropriate to their role;
- is made aware of his or her own responsibilities and those of other staff.
- receives appropriate supervision and appraisal;
- receives core training appropriate to the work to be performed by them;
- receives specialist training as appropriate;
- receives support and assistance to obtain such further training as is appropriate to the work they perform.

This would harmonise the existing approach but would not introduce anything new.

Under this option, the service provider would also have to ensure that all persons working at the service (including any person allowed to work as a volunteer) are provided with information about the service and the way it is provided. The service provider must put in place and operate a disciplinary procedure. Again, this would create a consistent approach across all services but would not introduce anything new.

Costs

Option one: as far as possible, replicate in regulations, the requirements within the regulations and NMS under the Care Standards Act 2000

No additional costs have been identified for either Welsh Government or providers under this option as it replicates as far as possible the current approach.

Option two: harmonise the requirements across all services, with some additional requirements in regulations

¹⁴ The Qualification Framework for the Social Care Sector in Wales sets the qualifications required for social care workers in Wales https://socialcare.wales/cms_assets/file-uploads/Qualification-Framework-Sept-2016.pdf

No additional costs have been identified for either Welsh Government or providers under this option.

Benefits

Option one: as far as possible, replicate in regulations, the requirements within the regulations and NMS under the Care Standards Act 2000

Some providers may prefer having more detailed requirements specific to their service, such as those which are set out in the NMS. They may prefer an approach which prescribes the tasks that must be completed in order to be compliant.

This approach is arguably easier for CSSIW to inspect against, due to the emphasis on compliance with a list of standards. However, in practice the regulation and inspection regime in Wales has already moved towards an outcome-based approach. The current approach takes into account NMS but is increasingly more focused on the experiences of services users around the quality themes below, which is consistent with option two:

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

Option two: harmonise the requirements across all services, removing some prescriptive requirements

Requirements under this option meet the policy intention of streamlining the existing legislation and applying consistent requirements across all regulated services.

This option also reduces complexity and provides the flexibility for providers to tailor the care and support to the needs of the individuals at the services rather than for the service regulator to manage them at arm's length via prescriptive "tick-box" requirements.

Staffing ratios may not always be adequate for the needs of a particular group of individuals. Providers may be compliant with the staff ratio without sufficiently meeting the needs of the individuals. Removing the requirement for a staffing ratio for children's homes and the 24-hour requirement in relation to nurses on duty places the onus on the provider to make this determination themselves, based on the particular needs of the individuals rather than a generic standard. There is an added safeguard within these requirements, however, that providers must be able to demonstrate the way in which the staff numbers and type of staff have been determined, so the regulator can be assured the determination has not been made arbitrarily.

Risks

Option one: as far as possible, replicate in regulations, the requirements within the regulations and NMS under the Care Standards Act 2000

The requirements in relation to staffing proposed under this option are not consistent across the range of services and therefore do not fully meet the policy intention of consolidating and streamlining legislation under the 2016 Act. There is therefore a reputational risk to Welsh Government in terms of being seen to make regulations that are inconsistent with the stated aims of the 2016 Act.

Option two: harmonise the requirements across all services, removing some prescriptive requirements

Streamlining the legislation and adopting a high-level approach within the regulations and statutory guidance means that providers will not have a detailed set of standards to comply with, specific to each service. Whilst the policy intention is to focus on outcomes for individuals and to enable providers to tailor care and support to the individual's needs, there is a small risk that by reducing the level of detail in regulations and guidance, there may be discrepancies between what a provider and what an inspector deems to be sufficient. We received feedback from the consultation that some providers would like more information in order to understand "what good looks like". CSSIW will use the regulations, guidance and its inspection framework (which is aligned to the regulations) to determine whether providers are meeting the necessary requirements. This will mitigate the risk of discrepancies.

7. Requirements on services providers – governance

Option one: replicate, as far as possible, the requirements on the regulations under the Care Standards Act 2000

Under this option, requirements in respect of governance would replicate, as far as possible, the requirements in regulations under the Care Standards Act 2000. Under the current system, the requirements differ across the range of regulated services.

A link to the regulations and NMS which contain these requirements is below:

<http://cssiw.org.uk/providingacareservice/regs-nms/adult-services/?lang=en>

Option two: harmonise the requirements across all services, with some additions

Under this option, requirements would be streamlined across all services. There would be an overarching requirement for the provider to ensure that there are effective arrangements in place for monitoring, reviewing and improving the quality of care and support provided by the service. This is no different from current arrangements. Under this option, the provider would also be required in regulations to support the RI to carry out their duties effectively.

Regulations under this option would also require reasonable steps to be taken to ensure that the service is financially sustainable for the purpose of achieving the aims and objectives set out in the statement of purpose. The service provider must also maintain appropriate and up to date accounts for the service.

The following core policies would have to be in place must also be in place, if relevant to the particular service:

For all services:

- Medication
- Supporting individuals to manage their money
- Infection control
- The appropriate use of control or restraint
- Whistleblowing
- Admissions and commencement of the service
- Complaints
- Safeguarding
- Staff support and development
- Staff discipline

Also, for services for children:

- Prevention of bullying
- Procedure to deal with allegations of bullying
- Procedure to be followed when a child is absent without permission

There are more core policies and procedures for all services under this option in comparison with requirements in the current regulations. Some policies and procedures have not been replicated under this option compared with the current system, such as the requirement for a manual handling and safe working policy, which is a current requirement for domiciliary support services. However, the regulations would state that the service provider must have such other policies and procedures in place as are reasonably necessary to support the aims and objectives of the regulated service set out in the statement of purpose, so the number of policies and procedures will vary across the range of services.

The service provider must keep a record of personal plans, revised plans, the outcome of reviews and provide a copy to individuals and representatives on request unless this would not be appropriate.

Under this option the requirements for records would be reduced overall and the recording and notification requirements would be applied consistently across all regulated services. Some of the notifications would also be the responsibility of the RI. A table showing the revised records and notifications is included at **tables 3A and 3B**.

Costs

Option one: replicate, as far as possible, the requirements on in the regulations under the Care Standards Act 2000

No additional costs have been identified for either Welsh Government or providers under this option as it replicates as far as possible the current approach.

Option two: harmonise the requirements across all services, with some additions

No additional costs have been identified for either Welsh Government or providers under this option as it replicates as far as possible the current approach.

The number of recording requirements have been reduced overall which should reduce the administrative burden on providers. However, there are a small number of additional core policies and procedures for some services which may create some small additional costs in terms of staff time in drafting the policies. The degree to which there will be a saving will be dependent on the provider and the current policies and procedures they have in place.

Benefits

Option one: replicate, as far as possible, the requirements on in the regulations under the Care Standards Act 2000

No particular benefits have been identified for either Welsh Government or providers under this option other than the fact that both CSSIW and providers will be familiar with the current system.

Option two: harmonise the requirements across all services, with some additions

Under this option, the requirements will be streamlined and made consistent across the range of services, making the system more straightforward for both CSSIW and providers. In addition, transferring some of the notification requirements to the RI as proposed under this option will ensure they are fully involved in the oversight of the service. This is reflective of the overall policy intention for RIs, as set out in the 2016 Act.

Risks

Option one: replicate, as far as possible, the requirements on in the regulations under the Care Standards Act 2000

The requirements under this option do not meet the policy intention of streamlining the regulations and applying them consistently across the range of services. There is therefore a reputational risk to Welsh Government in terms of creating regulations that are inconsistent with the stated aims of the 2016 Act.

Option two: harmonise the requirements across all services, with some additions

Streamlining the legislation and adopting a high-level approach within the regulations and statutory guidance means that providers will not have a detailed set of standards to comply with, specific to each service. Whilst the policy intention is to focus on outcomes for individuals and to enable providers to tailor care and support to the individual's needs, there is a small risk that by reducing the level of detail in regulations and guidance, there may be discrepancies between what a provider and

what an inspector deems to be sufficient. We received feedback from the consultation that some providers would like more information in order to understand “what good looks like.” This risk will be mitigated however as inspectors will also use these regulations, statutory guidance and their inspection framework (which will be aligned to these regulations) in order to determine what is ‘sufficient.’

8. Requirements on Responsible Individuals (RIs)

Option one: replicate, as far as possible, the requirements on in the regulations under the Care Standards Act 200

Under this option, regulations would replicate, as far as possible, the requirements on the RI¹⁵ in the current regulations under the Care Standards Act 2000. Under the current regulations the only requirements on the responsible individuals relate to visits, training and notification of offences, as follows:

Visits

There would be a requirement on RIs in care homes to visit once every three months. There would be a requirement on RIs in residential family centres to visit at least once a month. There is currently no equivalent requirement on RIs in children’s homes and domiciliary support services.

Training

There would be a requirement on RIs in all services to undertake, from time to time, such training as is appropriate to ensure that he or she has the experience and skills necessary for carrying on the service.

Notification of offences

There would be a requirement on RIs in all services to notify the Welsh Government if they commit a criminal offence.

Option two: place greater responsibilities on the RI and create some additional responsibilities.

Under this option, greater responsibility will be placed on the RI within the service. The key additions to the RI role are set out below:

Engagement with individuals and others

The RI would have responsibility for ensuring suitable arrangements are in place for obtaining the views of the individuals who are receiving care and support, any

¹⁵ It is not possible to compare exactly the requirements of the current system (option one) against requirements under option two because of the changes that have been made on the face of the 2016 Act. Section 21 of the 2016 Act places stricter requirements on who is eligible to be a responsible individual. Under the current system the responsible individual is described more broadly. The Care Homes (Wales) Regulations 2002 defines the responsible individual as “a director, manager, secretary or other officer of the organisation and is responsible for supervising the management of the care home.”

representatives of the individuals, the placing authority (for children), service commissioners and staff employed at the service, on the quality of care and support provided and how it could be improved. This is currently a duty on the service provider only.

Quality of care review

The RI would have to ensure suitable arrangements in place for monitoring, reviewing and improving the quality of care and support at least every six months. This is currently an annual requirement of the service provider.

Notifications

The RI would also be required to make the following notifications:

- The appointment of a manager;
- The expected absence of the appointed manager for 28 days or more, 7 days prior to the commencement of the absence;
- The unexpected absence of the appointed manager, no later than 7 days after the commencement of the absence;
- The unexpected absence of appointed manager for 28 days or more where no prior notification has been given, immediately on the expiry of 28 days following the commencement of the absence;
- Return from absence of appointed manager;
- Interim arrangements where the manager is absent for longer than 28 days;
- Someone other than the appointed manager is proposing to manage or is managing the service;
- The appointed manager ceases, or proposes to cease, managing the service.

The following requirements are additional responsibilities, not currently required in the current system.

Oversight of adequacy of resources

The RI would have to report to the service provider on the adequacy of resources available to provide the service. Such reports would be made on a quarterly basis.

Other reports to the service provider

The RI would have to report to the service provider any concerns about the management or provision of the service and any significant changes to the way the service is managed or provided.

Duty of candour

The RI must act in an open and transparent way with individuals, their representatives and the placing authority (for children).

The existing duties on RIs would also be maintained and made consistent across the range of services, as follows:

Visits

There would be a requirement on RIs to visit each place in respect of which they are designated RI, in person, at least every three months.

Costs

Option one: replicate, as far as possible, the requirements in the regulations under the Care Standards Act 2000

No additional costs have been identified for either Welsh Government or providers under this option as it replicates as far as possible the current approach.

Option two: place greater responsibilities on the RI and create some additional responsibilities.

No additional costs have been identified for Welsh Government under this option as the additional requirements on RIs under this option primarily affect providers.

We do not anticipate there will be significantly greater costs to providers under this option, as many RIs are already very involved in their services and many will be undertaking the duties set out under this option already.

There are, however, some additional requirements which may result in some additional costs. These are set out as follows:

Quarterly reporting on the adequacy of resources

To comply with this requirement, the responsible individual should have systems and processes in place that provide information about the service and any areas that may need closer observation/consideration and/or improvement. This may include, but not be limited to:

- staff turnover;
- staff sickness levels;
- complaints;
- safeguarding issues;
- inspection reports by the service regulator,
- inspection outcomes and or reports from Health and Safety Executive (HSE), Food Standards Agency (FSA) and fire service.

This system would enable the responsible individual to alert the service provider urgently if required where the service is:

- not complying with policies and procedures;
- failing or unable to meet or address issues raised in inspection reports; and
- providing a service not included in the statement of purpose.

Service providers should already have governance systems in place to monitor the running of the service. This requirement ensures the responsible individual takes greater ownership of the governance of the service and is proactive in reporting concerns to the service provider (this would not apply if the service provider is an individual). There may be a small increase in staff time to undertake this more formal reporting, however the cost should be negligible as there should already be systems in place.

Quality of care review every 6 months

It is existing practice for providers to undertake an annual quality of care review. This duty would be placed on the responsible individual with the intention that it should be a responsive and on-going process rather than a one-off annual requirement.

The responsible individual must assess and monitor the quality of the service in meeting people's care and support needs and in supporting people to achieve their personal outcomes, in accordance with the Statement of Purpose. This would include:

- taking account of the views of people who use the service and others including their carers and representatives and those with parental responsibility, staff and any local authority and/or health board which has commissioned the service.
- analysing the aggregated data on incidents, notifiable incidents, safeguarding matters, whistleblowing, concerns and complaints;
- reviewing any action taken in relation to complaints;
- considering the outcome of any audit of the accuracy and completeness of records;
- reporting on the standard of care and support provided;
- making recommendations for the improvement of the service to board level or equivalent.

Where this requirement corresponds to the date on which the service provider's annual return is due, much of the information from the quality of care review can be used to complete the relevant section of the annual return in order to avoid unnecessary duplication.

Costs to service providers in submitting the quality of care review report are anticipated to be comparable to the submission of the annual report. According to the Regulatory Impact Assessment for the Bill¹⁶:

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.

¹⁶ [http://www.assembly.wales/laid%20documents/pri-ld10106-em%20-%20regulation%20and%20inspection%20of%20social%20care%20\(wales\)%20bill/pri-ld10106-em-e.pdf](http://www.assembly.wales/laid%20documents/pri-ld10106-em%20-%20regulation%20and%20inspection%20of%20social%20care%20(wales)%20bill/pri-ld10106-em-e.pdf)

Data collection and analysis is normally delegated by the service manager to members of staff best placed to undertake the task¹³. 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 14 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.

Visits

There are existing requirements on service providers to visit services. Where a service provider is an organisation, this duty can be discharged by arranging for the RI to visit but can also be discharged by arranging for the service to be visited by another of the directors or by other persons responsible for the management of the organisation or by an employee of the organisation who is not directly concerned with the conduct of the care home. Under this option, the duty to visit is placed on the RI in person, requiring RIs to visit as often as required but no less than every 3 months. Under this option, the duty is likely to fall on an individual more senior in the organisation than previously, considering the stricter eligibility requirements for RIs on the face of the 2016 Act. It is not possible however to estimate a precise cost of this to providers associated with a more senior individual fulfilling the RI role as this will vary greatly depending on the salary of the individual fulfilling the RI role under this option.

The ONS data from the Annual Survey of Hours and Earnings states that the gross hourly earnings for managers and directors in Social Services' in 2016 is £18.86. Increasing this by 30% to reflect on-costs (employer's national insurance and pension contributions) gives a figure of £24.5 per hour. Assuming RIs will spend most of their working day (8 hours) at a service during their visit, this would give a total cost of £196 per visit. This cost would obviously increase if RIs have more than one service or are on a higher salary.

Benefits

Option one: replicate, as far as possible, the requirements on in the regulations under the Care Standards Act 2000

There do not appear to be any obvious benefits to Welsh Government or providers under this option.

Option two: place greater responsibilities on the RI and create some additional responsibilities.

Placing greater responsibilities on the RI, in addition to creating some new requirements, will support the policy intention of ensuring 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. Whilst managers and service providers will retain accountability for their own role, the statutory role of RI ensures that a

clear chain of accountability is established which includes the corporate responsibility of the board, the responsible individual and the service manager.

Risks

Option one: replicate, as far as possible, the requirements on in the regulations under the Care Standards Act 2000

Under this option there are only three clear duties on the RI relating to visits, training and notifications. There is, therefore, a risk that maintaining only these three requirements will not fully ensure that accountability for oversight of the service rests with the RI. As a consequence, where service failings occur as a result of poor leadership and oversight of a service, it will be difficult for CSSIW to take action at the level of the responsible individual and to prosecute if there was evidence of malpractice.

As the requirements on RIs would be different across the regulated services under this option, there is therefore a risk that providers will not be clear on the responsibilities of RIs for particular services. This again could result in accountability for oversight of the service not resting fully with the RI.

Option two: shift some responsibilities to the responsible individual and create some additional responsibilities.

Section 21 of the 2016 Act prescribes who is eligible to be a responsible individual depending on the type of organisation seeking to register. The impact of the duties on RIs will, therefore, vary depending on the organisational model. During the consultation we became aware of risks regarding the duties as they relate to registered charities and RIs of larger organisations.

We were advised that, because trustees of charities (unincorporated bodies) are unpaid volunteers, they may not necessarily be willing, suitable or have the relevant expertise and understanding of the care and support service to take on the responsibility of the RI role. We were also advised that the option of paid officers/senior managers within the charity (which is where they suggest that the RI role should be placed) joining the board is not possible.

Larger organisations providing a number of regulated services in Wales have also identified challenges with the requirement for the RI to be a director. Their concerns focus on the duties being placed on RIs – including the requirement to visit the service – and the extent to which these duties can be delegated. They advised that the directors of larger organisations are too removed from the service and the provision of care and support services and may not be suitably experienced or qualified to carry out the duties of the RI effectively. Similarly, they advised that the number of services these organisations provide would make it impossible for the directors to carry out this role. Furthermore, they suggested that this may deter future investment in Wales. There is therefore a risk here in terms of the RI role being carried out properly, consistent with the policy intent.

This risk will be mitigated by applying a wide interpretation to the term 'or similar officer' so that this could include the Chief Executive or a very senior level employee. This would provide a pragmatic solution for both charities and larger organisations without overly compromising the policy intent. The RIs would still be designated as part of the registration of the service and therefore the service regulator will have the opportunity to test their suitability for this role. The regulator would ensure a consistency of approach and an appropriate level of seniority within the organisation by applying the following criteria:

- authority to hire and fire managers and any other staff working in care services;
- authority to set pay rates for all staff working directly within the care services;
- authority to decide on investment decisions for the care services;
- oversight of the health and safety within the relevant care services;
- accountability for determining assurance arrangements and setting any benchmarks.

The proposed approach set out in this advice, coupled with the amendments to the RI duties as set out in the draft regulations, is intended to provide a workable solution without compromising the policy intent.

This will ensure that the application and interpretation of section 21 of the 2016 Act by the service regulator is consistent, equitable across different types of organisations and consistent with the policy intent.

9. Service providers who are liquidated

Option one: do not create regulations which place requirements on an appointed person in the event of a provider experiencing financial difficulties

Under this option there would be no regulations created under section 30(1) of the 2016 Act which place requirements on an appointed person. Section 30(2) states that an "appointed person" means a person appointed as –

- (a) a receiver or administrative receiver of the property of a service provider who is a body corporate or a partnership;
- (b) a liquidator, provisional liquidator or administrator of a service provider who is a body corporate or a partnership;
- (c) a trustee in bankruptcy of a service provider who is an individual or a partnership.

Option two: create regulations which place requirements on an appointed person in the event of a provider going into administration

Under this option, regulations would be created under section 30(1) of the 2016 Act that state that an appointed person must:

- without delay, give written notification to the service regulator of their appointment and the reasons for their appointment;

- within 28 days of their appointment, notify the service regulator of their intentions regarding the future operation of the service.

This is intended to cover situations where the provider is experiencing financial difficulties and the company has gone into administration, liquidation or will be declared bankrupt.

Costs

Option one: do not create regulations which place requirements on an appointed person in the event of a provider experiencing financial difficulties

No additional costs have been identified for either Welsh Government or providers under this option as this represents the 'do nothing' option.

Option two: create regulations which place requirements on an appointed person in the event of a provider going into administration

There would be a very small cost to Welsh Government under this option, specifically CSSIW as the service regulator.

This would be in terms of CSSIW staff updating records following the appointment of an appointed person, and noting their intentions regarding the future operation of the service. However, these costs would be negligible and would be absorbed within CSSIW's 'business as usual' costs.

There would also be a very small cost to providers in terms of the appointed person giving written notification of their appointment to CSSIW, and notifying them of their intentions regarding the future operation of the service. However, these costs would be negligible.

Benefits

Option one: do not create regulations which place requirements on an appointed person in the event of a provider experiencing financial difficulties

No specific benefits have been identified under this option.

Option two: create regulations which place requirements on an appointed person in the event of a provider going into administration

The requirement under this option will ensure that the service regulator has the necessary oversight of the provider and can ensure the safety and well-being of those using the regulated service, should circumstances arise that mean it is necessary for an administrator, liquidator or trustee in bankruptcy to be appointed. The requirements will also ensure that the regulator is able to take regulatory action in relation to the regulated service should that be necessary.

Risks

Option one: do not create regulations which place requirements on an appointed person in the event of a provider experiencing financial difficulties

By not placing any requirements on an appointed person in the event of a provider going into administration it will be difficult for CSSIW to have the adequate oversight of the service during an uncertain period, such as a provider going into administration, liquidation or bankruptcy. This could have governance implications for the service and, therefore, safeguarding implications for the individuals who receive care and support from the service.

In addition, there is also a risk to the continuous provision of support and care to service users should a provider go into liquidation or be declared bankrupt. This goes beyond safeguarding issues.

Option two: create regulations which place requirements on an appointed person in the event of a provider going into administration

There do not appear to be any obvious risks to this option.

10. Service providers who have died

Option one: do not create regulations which place requirements on an appointed person in the event of an individual provider's death

Under this option there would be no regulations created under section 31 of the 2016 Act (which places requirements on a personal representative of the individual to notify the Welsh Minister's of the provider's death).

Option two: create regulations which place requirements on an appointed person in the event of an individuals provider's death

Under this option, regulations would state that, where a service provider who is an individual has died, the personal representatives of the individual must—

- without delay, give written notification of the death to the service regulator (CSSIW);
- within 28 days of the death, notify the service regulator of their intentions regarding the future operation of the service.

The regulation would also state that the personal representatives of the individual may act in the capacity of the service provider for a period not exceeding 28 days or for such longer period (not exceeding one year) as the service regulator may agree.

Costs

Option one: do not create regulations which place requirements on an appointed person in the event of an individual provider's death

No additional costs have been identified for either Welsh Government or providers under this option as this option represents the 'do nothing' option.

Option two: create regulations which place requirements on an appointed person in the event of an individual provider's death

There would be a very small cost to Welsh Government under this option, specifically CSSIW as the service regulator. This would be in terms of CSSIW staff updating records following the appointed person notifying them of a death of a provider and notifying them of their intentions regarding the future operation of the services. However, these costs would be negligible and would be absorbed within CSSIW's 'business as usual' costs.

There would also be a very small cost to providers in terms of the appointed person giving written notification of the death of a provider to CSSIW, and notifying them of their intentions regarding the future operation of the services. However, these costs would be negligible.

Benefits

Option one: do not create regulations which place requirements on an appointed person in the event of an individual provider's death

No specific benefits have been identified under this option.

Option two: create regulations which place requirements on an appointed person in the event of an individual provider's death

The requirements under this option will ensure that the service regulator has the necessary oversight of the service and can ensure the safety and well-being of those using the regulated service, should a provider who is an individual die. It will also ensure that the regulator is able to take regulatory action in relation to the regulated service should that be necessary.

Risks

Option one: do not create regulations which place requirements on an appointed person in the event of an individual provider's death

By not placing any requirements on an appointed person in the event of a provider's death it will be difficult for CSSIW to have the adequate oversight of the service during an uncertain period. This could have governance implications for the service and, therefore, safeguarding implications for the individuals who receive care and support from the service.

In addition, there is also a risk to the continuous provision of support and care to service users in the event of an individual provider's death. This goes beyond safeguarding issues.

Option two: create regulations which place requirements on an appointed person in the event of an individual's provider's death

No risks have been identified under this option.

11. Designation of a Responsible Individual

Option one: do not create regulations which specify the circumstances in which the Welsh Ministers (instead of a service provider) may designate an individual to be a responsible individual despite the eligibility requirements of a responsible individual not being met

Under this option there would be no regulations made under section 21(5) of the 2016 Act that would specify the circumstances in which the Welsh Ministers (instead of a service provider) may designate an individual to be a responsible individual despite the eligibility requirements of a responsible individual not being met.

Option two: create regulations which specify the circumstances in which the Welsh Ministers (instead of a service provider) may designate an individual to be a responsible individual despite the eligibility requirements of a responsible individual not being met

Section 21 of the 2016 Act requires that the service provider must designate a responsible individual in respect of each place at, from or in relation to which a regulated service is carried on.

A regulated service may be cancelled where there is no designated responsible individual and no application for a variation of the registration has been made within 28 days. The 2016 Act also sets out eligibility and fitness criteria for a responsible individual.

Under this option, regulations would specify the circumstances in which the Welsh Ministers may designate an individual to be a responsible individual despite the eligibility requirements of a responsible individual not being met. However, any person designated as responsible individual by the service regulator would still need to meet the fitness requirements set out in section 9 of the 2016 Act (fit and proper person: relevant consideration). Regulations would specify that these circumstances are, as follows:

- The service provider is an individual who has died and the personal representatives of the service provider have notified the service regulator that they do not intend to make an application to designate a different RI under section 11(1)(c) of the Act;
- The service provider is an individual and they have notified the service regulator—
 - (i) that they are no longer able to comply with their duties as a responsible individual, and
 - (ii) the reasons for this being the case;

- The service provider is a corporate body or partnership and they have notified the service regulator—
 - (i) that the individual designated by the service provider as the responsible individual is no longer able to comply with their duties as a responsible individual,
 - (ii) the reasons for this being the case, and
 - (iii) that there is no other individual who is eligible to be a responsible individual and who is able to comply with the duties of a responsible individual.

Costs

Option one: do not create regulations which specify the circumstances in which the Welsh Ministers (instead of a service provider) may designate an individual to be a responsible individual despite the eligibility requirements of a responsible individual not being met

No additional costs have been identified for either Welsh Government or providers under this option as it represents the 'do nothing' option.

Option two: create regulations which specify the circumstances in which the Welsh Ministers (instead of a service provider) may designate an individual to be a responsible individual despite the eligibility requirements of a responsible individual not being met

There would be a potential cost to Welsh Government under this option. This would be in respect of the circumstances described in regulations under this option whereby Welsh Ministers would need to designate an individual to be a responsible individual. In practice however, the task of designating a suitable RI would fall to the service provider and the decision regarding the suitable RI would be recorded by CSSIW as the service regulator.

The potential costs to CSSIW of recording the designation of a new RI would be in terms of staff time. However, these costs would be negligible and would be absorbed within CSSIW's 'business as usual' costs.

In the same way, the potential costs to providers of notifying CSSIW they wish to designate a different RI and their reasons for this would be negligible.

Benefits

Option one: do not create regulations which specify the circumstances in which the Welsh Ministers (instead of a service provider) may designate an individual to be a responsible individual despite the eligibility requirements of a responsible individual not being met

The requirements on the face of the 2016 Act under section 21 relating to the eligibility of RIs would be upheld under this option. This would meet the original

policy intention of ensuring only individuals who meet the suitable criteria would be eligible to be an RI

Option two: create regulations which specify the circumstances in which the Welsh Ministers (instead of a service provider) may designate an individual to be a responsible individual despite the eligibility requirements of a responsible individual not being met

Giving some flexibility to the designation of a responsible individual, in prescribed, exceptional circumstances, would allow a provider maintaining an otherwise well-run service to avoid having their registration cancelled. This would ensure a service could continue to operate whilst the situation is regularised and until an individual who does meet both the eligibility and fitness requirements is designated as responsible individual on a permanent basis.

Risks

Option one: do not make regulations which specify the circumstances in which the Welsh Ministers (instead of a service provider) may designate an individual to be a responsible individual despite the eligibility requirements of a responsible individual not being met

Without regulations that give some flexibility as to the designation of a RI in exceptional circumstances, this option could result in a service providers' registration being cancelled in an otherwise well-run service.

This would cause unnecessary upheaval and distress for individuals who rely on the service, as they would have to be transferred to another service.

Option two: make regulations which specify the circumstances in which the Welsh Ministers (instead of a service provider) may designate an individual to be a responsible individual despite the eligibility requirements of a responsible individual not being met

There is a small risk that the regulation may be relied upon too heavily in circumstances where eligible individuals do not wish to take on this role, preferring instead to nominate a more junior individual in the organisation. We are keen that responsibility for the service should not be delegated inappropriately to someone who does not in reality have influence over the service. We believe the narrow set of circumstances set out under this option will mitigate this risk.

12. Offences: failure by a service provider and responsible individual to comply with requirements in regulations¹⁷

Option one: create regulations which specify that all of the requirements in regulations under section 27 and 28 may be offences

The regulation-making powers under sections 45 and 46 enable the Welsh Ministers to establish offences in the event that the registered service provider or the

¹⁷ Penalty notices are dealt with under a separate Regulatory Impact Assessment.

designated RI fails to comply with specific provision of the regulations made under section 27 (for providers) or section 28 (for RIs).

Under this option, *all* of the requirements on service providers and RIs, if breached, may be prosecuted by CSSIW as criminal offences. This would broadly replicate the approach taken under the 2000 Act.

The current approach is that breaches of all regulations made under section 22 of the Care Standards Act 2000 are offences established in regulations – albeit summary only offences (an offence where a criminal offence can only be prosecuted before a Magistrates' court). Under the 2016 Act stronger penalties may be applied to reflect the severity of the offence so it is not possible to compare the two systems exactly

Option two: make regulations which specify that some of the requirements in section 27 and 28 are offences

Under this option, only some breaches of regulations under section 27 and 28 of the 2016 Act would be treated as offences per se and other breaches would require a further qualification as to the specific circumstances before a breach could be determined a criminal offence. These circumstances are that the breach resulted in avoidable harm (whether of a physical or psychological nature to an individual), an individual being exposed to a significant risk of such harm occurring, or in a case of theft, misuse or misappropriation of money or property, any loss by an individual of the money or property concerned. The full list of offences under this option are set out in **tables 2A and 2B**.

Related to this option are the draft Regulated Services (Penalty Notices) (Wales) Regulations 2017 (“the penalty notices regulations”), due to be debated on 5 December 2017 alongside these regulations. Those Regulations, made under Section 52 of the 2016 Act, set out the details of a penalty notice system which will be operated by CSSIW in relation to offences committed under sections 47, 48 and 49 of the 2016 Act.

The intention of those Regulations is to create a more flexible system of regulation so that CSSIW has a full range of powers at its disposal to deal with continual non-compliance.

An EM and RIA has also been prepared for the penalty notices regulations and will be available to view on the National Assembly for Wales website once those regulations are laid in November 2017.

Costs

Option one: make regulations which specify that all of the requirements in section 27 and 28 may be offences

There would be a potential cost to Welsh Government, specifically CSSIW, under this option. Based on the service regulator's experiences of pursuing prosecutions under the 2000 Act, CSSIW has advised that the process is expensive and resource-

intensive. Therefore, making regulations which specify that all of the requirements in section 27 and 28 may be offences could result in increased costs to CSSIW as a result of potentially pursuing an increased number of prosecutions.

In terms of estimating the numbers of prosecutions and costs to CSSIW under this option, some comparison can be made with the number of prosecutions pursued by CSSIW under the current system. Since 2010, CSSIW has pursued 3 prosecutions against providers of adult or children's services which resulted in conviction and fines ranging between £2,250 and £5,500. The precise cost to CSSIW of pursuing each of these prosecutions is difficult to calculate. However, CSSIW has advised the costs incurred in terms of legal fees and staff time were substantial.

There would also be a potential cost to service providers under this option, due to the increased likelihood of providers being prosecuted by CSSIW as a result of the increased number of offences under this option, compared with option two. It is not possible to estimate the precise increase in costs to providers under this option as it is impossible to accurately predict how many prosecutions against providers are likely to be brought forward by CSSIW. It is also not possible to accurately predict the success rate for CSSIW of prosecutions made under this option, nor the resulting costs.

Option Two: make regulations which specify that some of the requirements in section 27 and 28 may be offences

There would be a potential cost to Welsh Government, specifically CSSIW, under this option. In terms of estimating the numbers of prosecutions and costs to CSSIW, some comparison can be made with the number of prosecutions issued by CSSIW under the current system. This has been explained under option one, above.

CSSIW has advised that the costs to them of pursuing individual prosecutions under this option is likely be the same as those under the current system. However, there are likely to be fewer prosecutions under this option due to the fewer number of offences overall. Therefore, the costs to CSSIW under this option are likely to be less than option one.

CSSIW would also operate a system of penalty notices for some of the offences under this option. Details of the costs, benefits and risks relating to the implementation of a penalty notice system are set out in a separate regulatory impact assessment.

There would also be a potential cost to providers under this option in terms of having to undergo the prosecution process and pay any fines associated with this. However, as outlined above, compared with option one, there are likely to be fewer prosecutions under this option due to the fewer number of offences. Therefore the costs to providers under this option are likely to be less than option two.

Benefits

Option one: create regulations which specify that all of the requirements in section 27 and 28 may be offences

Enabling CSSIW to prosecute against all of the requirements on service providers and responsible individuals sends a clear message to the sector that non-compliance is taken seriously and could result in a criminal conviction. This could serve to drive up standards across the sector.

Option two: create regulations which specify that some of the requirements in section 27 and 28 may be offences

Creating a more proportionate approach to offences as proposed under this option ensures CSSIW can develop and maintain a purposeful relationship with the sector which balances a focus on securing improvement whilst ensuring clear enforcement is taken when it is necessary to do so.

Risks

Option one: create regulations which specify that all of the requirements in section 27 and 28 may be offences

Creating offences for all of the requirements under sections 27 and 28 of the 2016 Act could raise expectations with the public that CSSIW will pursue prosecutions as a matter of course should something go wrong. Reaching the evidence threshold to commence legal proceedings can be very difficult, as it relies on matching complex evidence to the prescribed wording of a regulation.

Since 2010, CSSIW has pursued 3 prosecutions against providers of adult or children's services which resulted in conviction and fines ranging between £2,250 and £5,500 (as set out in more detail within the 'costs' section for option one). CSSIW advises that the legal fees and its own costs in pursuing these cases were substantial and disproportionate to the outcomes achieved. Given the increase in offences envisaged, this is also a substantial risk under this option.

Option two: create regulations which specify that some of the requirements in regulations under section 27 and 28 may be offences

Creating regulations under this option which specify that some of the requirements in regulations under section 27 and 28 may be offences may still pose some of the risks highlighted above in terms of CSSIW incurring substantial costs in pursuing prosecutions.

Conclusion

Having appraised the options for each of the 12 sections, the preferred option is option two in all cases.

The decision to recommend option two has been made on the basis of thorough engagement with Welsh Government policy colleagues across Health and Social Services and CSSIW, as well as in consultation with officials from legal services and the Welsh Treasury. In addition, officials have taken into account the key research and reports referenced throughout the document, as well as the feedback from

external stakeholders across the public and independent sectors, both prior to and following the drafting of the regulations and statutory guidance.

Consultation

A 12 week consultation on these regulations ran between 2 May and 15 July 2017. Further details on the consultation process are set out in the Regulatory Impact Assessment in Part 2.

114 responses were received. A number of changes were made to the draft regulation as a result of feedback from respondents. This is set out in the consultation summary report which will be published on the Welsh Government website to coincide with the laying of the regulations on 14 November.

The competition filter test

Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	Not known
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	Not known
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	Not known
Q4: Would the costs of the regulation affect some firms substantially more than others?	Yes
Q5: Is the regulation likely to affect the market structure, changing the number or size of firms?	Yes
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	Yes
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector categorised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

The competition assessment filter test has been completed on the proposed regulation. It has been determined that there will be some effect on competition.

The filter test has been completed based on the existing data and knowledge available on the sector. During the process of developing these regulations, and this RIA, a need has been identified however for more detailed data to be gathered on the social care market in Wales, both on a regional and national level.

CSSIW has identified that the nature of the care market may change as a result of re-registration of services, which will take place between February 2018 and March 2020 (including the services in phase 3 of implementation). After re-registration there may be an opportunity to undertake further research in relation to the market.

Where an answer of 'yes' has been given in the table above, an explanation is set out below

Q4

The regulation may affect some firms substantially more than others due to the enhanced requirements on premises, principally the stricter requirements regarding single rooms and the requirement for en suites with showers for certain categories of premises. In particular, the regulation may affect firms with older buildings as these may be more difficult to convert, in terms of both creating new single rooms and installing showers. Such buildings may also be listed, limiting the options for creating additional space, for example by knocking through walls or substantially altering existing spaces.

Q5 and Q6

Due to the stricter requirements in certain areas, such as the requirements on premises outlined above, these regulations may substantially affect the market structure. For example, as previously described for premises in Category C, there is a risk that providers will not be willing to, nor able to, make the investments required to meet the requirements in relation to en-suites and room sizes. Closed care homes may be sold for different purposes, thus reducing the overall care home bed capacity in Wales, placing further pressure on the system. This also relates the higher set-up costs for new or potential suppliers considered as part of question 6.

Post implementation review

CSSIW will monitor the implementation of these Regulations following their coming-into-force date of April 2018.

TABLE 1A

Care homes for older people – current NMS summary		
Requirement from 1 April 2002	Homes in current use	For new builds or extensions and all first time registrations from 1 April 2002.
Single room	9.3 sq m	12 sq m
Single room, wheelchair user	12 sq m	13.5 sq m
Door width	760mm	760mm
Usable floor space for shared rooms (N/A to homes with < 3 residents)	16 sq m	16 sq m
Bed width	900mm	900mm
Shared rooms	No more than 2 residents, who have chosen to share	No more than 2 residents, who have chosen to share
Bathrooms	Ratio of at least one assisted bath or shower to eight service users	En suites (minimum a toilet and hand basin) are provided to all service users. (N/A to homes with < 3 residents)
Toilets	Ratio of at least one toilet per four service users	En suites (minimum a toilet and hand basin) are provided to all service users. (N/A to homes with < 3 residents)
Doorway widths	N/A	Minimum 800mm (N/A to homes with < 3 residents)
Sitting, recreational and dining space	4.1 sq m for each service user, (5.1 sq m for wheelchair users).	4.1 sq m for each service user, (5.1 sq m for wheelchair users).
Communal space	Includes: <ul style="list-style-type: none"> • rooms in which a variety of social, cultural and religious activities can take place; • Place where service users can meet visitors in private • dining room(s) to cater for all service users • a smoke free sitting room 	
Outdoor space	Must be available and accessible to everyone.	
furnishings to be included in room	<ul style="list-style-type: none"> • a clean comfortable bed & bed linen • curtains or blinds • mirror • ceiling lighting and bedside lighting • comfortable seating for two people • drawers and enclosed space for hanging clothes • at least 2 accessible double electric sockets • a bedside cabinet or table • tables to sit at and for bed-side use • wash hand basin, unless en suite WC and wash hand basin are provided (This requirement will not apply to homes with three residents or fewer). 	
Passenger lifts	Service users have access to all parts of service users' communal and private space, through the provision of ramps and lifts where required to achieve this.	
Other	Room is carpeted or equivalent, Locks fitted to doors, Lockable storage space for medication, money and valuables	
Requirement by 2005	Single rooms make up at least 70% of resident places	
Requirement by 2007	Single rooms make up at least 80% of resident places	
Requirement by 2010	Single rooms make up at least 85% of resident places	

TABLE 1B

Children's homes – current NMS summary	
Requirement from 1 April 2002	
Bedrooms	Each child's bedroom is of an adequate size to be comfortable for the child and to allow freedom of movement and privacy, taking account of the furniture layout, of the child's age and of any particular needs of the child (for example the need for wheelchair access and turning and room for carers on either side of the bed).
Shared rooms	- In a school that is a home - no more than 4 children in a bedroom. - The registered person takes into account the potential for abusive behaviour before agreeing to the sharing of bedrooms - single occupancy bedrooms are provided for all children
Bunk beds	Bunk beds are not used for children aged 13 or over unless they request it, and are not used for children for whom there would be a safety risk
furnishings to be included	<ul style="list-style-type: none"> • suitable bed and bedding, • seating, • storage for clothes, • lockable or otherwise safe storage for personal possessions, curtains or other window coverings, • lighting sufficient to read by, • carpet or other appropriate floor covering, • heating.
Other	Staff sleep-in rooms are not part of the communal living area, and are located close to children's bedrooms to respond to children's night time needs. Where more than one staff member sleeps in on the same night there are separate sleep-in rooms.
Location & design	location & design is of a size that is in keeping with its statement of purpose and serves the needs of the children it accommodates. It takes into account the need for young people to have ready access to education, health, employment, leisure and transport facilities.

TABLE 1C

Residential Family Centres – current NMS summary	
Requirement from 1 April 2002	
Bedrooms	<ul style="list-style-type: none"> - Table, chest of drawers and an easy chair are provided for each occupant over 10 years old - wardrobe/cupboard space and lockable storage space is provided; - Space for service users' usual possessions and bedding, curtains and floor covering of good quality and design suitable for the family are provided; - Suitable beds/cots appropriate to the age and size of the child/adult - using them are provided; - There is a facility to lock the door leading to the family's rooms.
Shared rooms	<ul style="list-style-type: none"> - No more than one family share a bedroom; - Each child must have their own bed; - Children do not share bedrooms other than with their parents or siblings;
Bathrooms	WCs and bathrooms (handbasin and shower or bath) are shared by no more than five people, regardless of age.
Communal space	<p>Shared spaces include:</p> <ul style="list-style-type: none"> - Outdoor space proportionate to the number of service users and staff on duty; - Kitchen and laundry facilities which are domestic in scale and provide sufficient space for food preparation, cooking, food and equipment; - Fridge space for storing food and drinks; - Furnishings suitable to the ages of the children who stay at the unit; - Dining table and chairs sufficient for the whole family to eat at the same time; - Rooms in which parents and children can meet privately with visitors and for play; - A play area for children; - Recreation and key working; - A separate smoking area if the centre does not have a no-smoking policy.
Other	There are separate toilet facilities for staff.
Location & design	

TABLE 2A

OFFENCES AGAINST A SERVICE PROVIDER			
Reg no.	Regulation	Prosecution directly	Prosecution with qualifications ***
6	Requirements in relation to the provision of the service The service provider must ensure that the service is provided with sufficient care, competence and skill, having regard to the statement of purpose.		x
7(1)	Requirements in relation to the statement of purpose The service provider must provide the service in accordance with the statement of purpose.		x
7 (3)	Requirements in relation to the statement of purpose The service provider must notify the service regulator, the individuals, the placing authority (where relevant) and, where appropriate, any representative of any revision to be made to the statement of purpose at least 28 days before it is to take effect.	x	
7(5)	Requirements in relation to the statement of purpose If paragraph (4) applies, the service provider must, without delay, notify the persons listed in paragraph (6) of any revision made to the statement of purpose.	x	
11 (3)	Requirements in relation to the financial sustainability of the service The service provider must provide copies of the accounts and any related documents to the Welsh Ministers within 28 days of being requested to do so.	x	
12 (1)	Requirements to provide the service in accordance with policies and procedures The service provider must ensure that the following policies and procedures are in place for the service— Admissions and commencement of the service (see Part 5, regulation 14) Safeguarding (see Part 8, regulation 27) Supporting individuals to manage their money (see Part 8, regulation 28) Use of control or restraint (see Part 8, regulation 29) Staff support and development (see Part 10, regulation 36) Staff discipline (see Part 10, regulation 39) Infection control (see Part 14, regulation 56) Medication (see Part 14, regulation 58) Complaints (see Part 15, regulation 64) Whistleblowing (see Part 15, regulation 65)	x	
12(2)	Requirements to provide the service in accordance with policies and procedures Where the service includes the provision of accommodation for children, the service provider must have a policy in place on the prevention of bullying, procedures for dealing with an allegation of bullying and a procedure to be followed when any child for whom accommodation is provided is absent without permission.	x	
21(5)	Requirements to provide the service in accordance with policies and procedures The service provider must ensure that the service is provided in accordance with those policies and procedures.		x
14(1)	Suitability of the service The service provider must not provide care and support for an individual unless the service provider has determined that the service is suitable to meet the individual's care and support needs and to support the individual to achieve their		x

	personal outcomes.		
14(3)	<p>Suitability of the service</p> <p>The determination under paragraph (1) must take into account—</p> <ul style="list-style-type: none"> (a) the individual's care and support plan, (b) if there is no care and support plan, the service provider's assessment under paragraph (4), (c) any health or other relevant assessments, (d) the individual's views, wishes and feelings, (e) any risks to the individual's well-being, (f) any risks to the well-being of other individuals to whom care and support is provided, (g) any reasonable adjustments which the service provider could make to enable the individual's care and support needs to be met, and (h) the service provider's policy and procedures on admissions and commencement of the service. 		x
15(1)	<p>Personal plan</p> <p>The service provider must prepare a plan for the individual which sets out—</p> <ul style="list-style-type: none"> (a) how on a day to day basis the individuals' care and support needs will be met, (b) how the individual will be supported to achieve their personal outcomes, (c) the steps which will be taken to mitigate any identified risks to the individual's well-being, and (d) the steps which will be taken to support positive risk-taking and independence, where it has been determined this is appropriate. 		x
15(3)	<p>Personal plan</p> <p>The personal plan must be prepared prior to commencement of the provision of care and support to the individual, unless paragraph (4) applies.</p>		x
15(5)	<p>Personal plan</p> <p>If paragraph (4) applies, the personal plan must be prepared within 24 hours of the commencement of the provision of care and support to the individual.</p>		x
16(1)	<p>Review of personal plan The personal plan must be reviewed as and when required but at least every three months.</p>		x
16(5)	<p>Review of personal plan</p> <p>Following the completion of any review required by this regulation, the service provider must consider whether the personal plan should be revised and revise the plan as necessary.</p>		x
18(1)	<p>Provider assessment</p> <p>Within 7 days of the commencement of the provision of care and support for an individual, the service provider must—</p> <ul style="list-style-type: none"> (a) assess how the individual's care and support needs can best be met, (b) assess how the individual can best be supported to achieve their personal outcomes, (c) ascertain the individual's views, wishes and feelings, and (d) assess any risks to the individual's well-being. 		x
18(6)	<p>Provider assessment</p> <p>A provider assessment must be kept under review and revised as necessary.</p>		x
18(7)	<p>Provider assessment</p> <p>Following the completion of the provider assessment and any revised assessment, the personal plan must be reviewed and revised as necessary.</p>		x
19(1)	<p>Information about the service</p> <p>The service provider must prepare a written guide to the service.</p>	x	
19(2)	<p>Information about the service</p> <p>The guide must be—</p>	x	

	<ul style="list-style-type: none"> (i) dated, reviewed at least annually and updated as necessary, (j) in an appropriate language, style, presentation and format, having regard to the statement of purpose for the service, (k) given to all individuals who are receiving care and support, (l) in the case of child who is looked after by a local authority, given to the placing authority, and <p>made available to others on request, unless this is not appropriate or would be inconsistent with the well-being of an individual</p>		
19(3)	<p>Information about the service</p> <p>The guide must contain the following information—</p> <ul style="list-style-type: none"> (m) information about how to raise a concern or make a complaint; (n) information about the availability of advocacy services. 	x	
20(1)	<p>Service agreement</p> <p>The service provider must ensure that every individual is given a signed copy of any agreement relating to—</p> <ul style="list-style-type: none"> (o) the care and support provided to the individual; (p) any other services provided to the individual. 	x	
21(1)	<p>Standards of care and support - overarching requirements</p> <p>The service provider must ensure that care and support is provided in a way which protects, promotes and maintains the safety and well-being of individuals.</p>		x
21(2)	<p>Standards of care and support - overarching requirements</p> <p>The service provider must ensure that care and support is provided to each individual in accordance with the individual's personal plan.</p>		x
22	<p>Continuity of care</p> <p>The service provider must put arrangements in place to ensure that individuals receive such continuity of care as is reasonable to meet their needs for care and support.</p>		x
26	<p>Safeguarding - overarching requirement</p> <p>The service provider must provide the service in a way which ensures that individuals are safe and are protected from abuse and improper treatment.</p>		x
33(1)	<p>Access to health and other services</p> <p>The service provider must put arrangements in place for individuals—</p> <ul style="list-style-type: none"> (a) to be registered with a general practitioner, (b) to be placed under the care of a registered dental practitioner, (c) to be able to access treatment, advice and other services from any health care professional as necessary, and (d) to be supported to access such services. 		x
34(1)	<p>Staffing - overarching requirements</p> <p>The service provider must ensure that at all times a sufficient number of suitably qualified, trained, skilled, competent and experienced staff are deployed to work at the service, having regard to—</p> <ul style="list-style-type: none"> (a) the statement of purpose for the service; (b) the care and support needs of the individuals; (c) supporting individuals to achieve their personal outcomes; (d) the requirements of the regulations in Parts 3 to 14. 		x
34(2)	<p>Staffing - overarching requirements</p> <p>In the case of a care home service where any individual to whom accommodation is provided has been assessed as needing 24 hour nursing care, the service provider must ensure that there is a sufficient number of suitably qualified registered nurses deployed to work at the service at all times.</p>		x
34(3)	<p>Staffing - overarching requirements</p> <p>The service provider must be able to demonstrate the way in which the determination has been made as to—</p>		x

	(a) the types of staff deployed, and(b) the numbers of staff of each type deployed.		
35(1)	Fitness of staff The service provider must not— a) employ a person under a contract of employment to work at the service unless that person is fit to do so; b) allow a volunteer to work at the service unless that person is fit to do so; c) allow any other person to work at the service in a position in which he or she may in the course of his or her duties have regular contact with individuals who are receiving care and support or with other persons who are vulnerable unless that person is fit to do so.	x	
38(1)	Information for staff The service provider must ensure that all persons working at the service (including any person allowed to work as a volunteer) are provided with information about the service and the way it is provided.	x	
59(1)	Records The service provider must keep and maintain the records specified in Part 1 of Schedule 2 in respect of each place at, from or in relation to which the service is provided.		
59(2)	Records (1) Where the service provider is registered to provide a care home service, a secure accommodation service or a residential family centre service, the service provider must in addition keep and maintain the records specified in Part 2 of Schedule 2 in respect of each place at which such a service is provided.	x	
59(3)	Records (2) The service provider must— (a) ensure that records relating to individuals are accurate and up to date; (b) keep all records securely; (c) make arrangements for the records to continue to be kept securely in the event the service closes; (d) in the case of records about a child accommodated in a care home service provided wholly or mainly for children, ensure that the records are delivered to the placing authority when the service ceases to be provided in respect of the child to whom the records relate; (e) make the records available to the service regulator on request; (f) retain records relating to adults for three years from the date of the last entry; (g) retain records relating to children for fifteen years from the date of the last entry, unless the records are returned to the placing authority in accordance with sub-paragraph (d); (h) ensure that individuals who use the service— (i) can have access to their records; and (ii) are made aware they can access their records.	x	
60(1)	Notifications The service provider must notify the service regulator of the events specified in Parts 1 and 2 of Schedule 3.	x	
60(3)	Notifications Where the service provider is providing a care home service for children, the provider must— (a) notify the placing authority of the events specified in Part 4 of Schedule 3; (b) notify the local authority for the area in which the home is situated of the events specified in Part 5 of Schedule 3; (c) notify the appropriate police officer of the events specified in Part 6 of Schedule 3; (d) notify the health board in whose area the home is situated of the events specified in Part 7 of Schedule 3.	x	
60(5)	Notifications	x	

	Unless otherwise stated, notifications must be made without delay and in writing.		
61(3)	<p>Notification with respect to children admitted into, or discharged from, a place at which accommodation is provided to children (3) The service provider must notify, without delay, the local authority for the area in which the accommodation is located of every admission of a child into the accommodation and every discharge of a child from the accommodation.</p>	x	
62(3)	<p>Notification with respect to the death of a child accommodated in a secure children's home (3) If this regulation applies, the service provider must without delay notify—</p> <ul style="list-style-type: none"> (a) the appropriate office of the service regulator; (b) the placing authority; (c) the local authority in whose area the secure accommodation service is located; (d) the Local Health Board in whose area the secure accommodation service is located; (e) the Prisons and Probation Ombudsman for England and Wales (“the PPO”); and (f) the child's parent or person who has parental responsibility for the child. 	x	

TABLE 2B

OFFENCES AGAINST A RESPONSIBLE INDIVIDUAL			
Reg no.	Regulation	Prosecution directly	Prosecution with qualifications
63(1)	Duty to appoint a manager The responsible individual must appoint a person to manage the service. But this requirement does not apply if paragraph (2) applies.	x	
68(1)	Fitness requirements for appointment of manager The responsible individual must not appoint a person to manage the service unless that person is fit to do so.	x	
71(1)	Duty to report appointment of manager to the workforce and service regulators On the appointment of a manager in accordance with regulation [63](1), the responsible individual must give notice to the workforce and service regulators of— (a) the name, date of birth and Social Care Wales registration number of the person appointed, and (b) the date on which the appointment is to take effect.	x	
71(2)	In a case where the service provider is an individual and the service regulator has agreed to the service provider managing the service, the service provider must give notice to the workforce regulator of— (a) the name, date of birth and Social Care Wales registration number of the service provider, and (b) the date from which the service provider is to manage the service.	x	
73(1)	Visits In the case of care home services, secure accommodation services and residential family centre services(1), the responsible individual must— (a) visit each place in respect of which the responsible individual is designated, and (b) meet with staff and individuals at each such place.	x	
73(2)	In the case of any other regulated services(18), the responsible individual must— (i) meet with members of staff who are employed to provide a regulated service at, from or in relation to each place in respect of which the responsible individual is designated, and meet with individuals for whom a regulated service is being provided at, from or in relation to each such place.	x	
73(3)	The frequency of such visits and meetings is to be determined by the responsible individual having regard to the statement of purpose but must be at least every three months.	x	
74(1)	Oversight of adequacy of resources 70.—(1) The responsible individual must report to the service provider on the adequacy of the resources available to provide the service in accordance with the requirements on service providers in Parts 3 to 14 of these Regulations.	x	
74(2)	Oversight of adequacy of resources Such reports must be made on a quarterly basis.	x	
75(1)	Other reports to the service provider The responsible individual must, without delay, report to the service provider—	x	

(18) See section 2(1) of the Act for the services included within the definition of “regulated service”.

	(a) any concerns about the management or provision of the service; (b) any significant changes to the way the service is managed or provided.		
80(4)	Quality of care review On completion of a review of the quality of care and support in accordance with this regulation, the responsible individual must prepare a report to the service provider which must include— (a) an assessment of the standard of care and support provided, and (b) recommendations for the improvement of the service.	x	
81(1)	Statement of compliance with the requirements as to standards of care and support The responsible individual must prepare the statement required to be included in the annual return under section 10(2)(b) of the Act, in so far as it relates to the place or places in respect of which the responsible individual has been designated.	x	
84(1)	Notifications The responsible individual must notify the service regulator of the events specified in Schedule 4	x	
84(3)	Notifications Unless otherwise stated, notifications must be made without delay and in writing.	x	

TABLE 3A

Records	Care Homes	Children's Homes	Dom Care Agency	Secure Accommodation for Children	Residential Family Centres
In respect of each service user, records of: <ul style="list-style-type: none"> • Assessments • Service delivery plans • Reviews of service delivery plans including any result of any review of the placing authority's plan • Care provided including daily records or records of specific aspects care interventions • Correspondence, reports and records in relation to additional support provided by education, health and other allied services 	✓	✓	✓	✓	✓
A record of furniture brought by a service user into the room occupied by him or her where accommodation is provided	✓	✓		✓	✓
A record of the service's charges to service users, including any extra amounts payable for additional services not covered by those charges, and the amounts paid by or in respect of each service user	✓	✓	✓		✓
A record of all medicines kept in the service for the service user, and the date on which they were administered to the service user	✓	✓	✓	✓	✓
A record of all money or other valuables deposited by a service user for safekeeping or received on the service user's behalf, which– (a) shall state the date on which the money or valuables were deposited or received, the date on which any money or valuables were returned to a service user or used, at the request of the service user, on his behalf and, where applicable, the purpose for which the money or valuables were used; and (b) shall include the written acknowledgement of the return of the money or valuables.	✓	✓	✓	✓	✓
A record of any of the following events that occur in the service– (a) any serious illness accident or event which is significantly detrimental to the wellbeing of the service user (b) the outbreak of infectious disease in the service (c) any fire where accommodation is provided (d) any theft or burglary, (e) any safeguarding referral made in respect of a person using the service (f) unexplained or unauthorised absence where accommodation is provided (g) death of a person using the service where accommodation is provided (h) falls and of consequent treatment provided to	✓	✓	✓	✓	✓

<p>the service user</p> <p>(i) incidence of pressure sores and of consequent treatment provided to the service user</p> <p>(j) date and circumstances of any measures of control, restraint or discipline used on the person using the service</p>					
<p>A record of all visitors to the service, including the names of visitors and the person they are visiting where accommodation is provided</p>	✓	✓	✓	✓	✓
<p>A record of every fire practice, drill or test of fire equipment (including fire alarm equipment) conducted in the service and of any action taken to remedy defects in the fire equipment.</p>	✓	✓	✓	✓	✓
<p>A record of all complaints made by service users or representatives or relatives of service users or by persons working at the service about the operation of the service, and the action taken by the registered person in respect of any such complaint</p>	✓	✓	✓	✓	✓
<p>A record of all persons working at the service, which shall include the following matters–</p> <p>(a) his or her full name, address, date of birth, qualifications and experience;</p> <p>(b) a copy of his or her birth certificate and passport (if any);</p> <p>(c) a copy of each reference obtained in respect of him or her;</p> <p>(d) the dates on which he or she commences and ceases to be so employed;</p> <p>(e) the position he or she holds at the service, the work that he or she performs and the number of hours for which he or she is employed each week;</p> <p>(f) records of disciplinary action and any other records in relation to his or her employment</p> <p>(g) a record of the date of a DBS certificate and whether there was any action taken as a result of the content of the certificate</p>	✓	✓	✓	✓	✓
<p>A copy of the duty roster of persons working at the service, and a record of whether the roster was actually worked</p>	✓	✓	✓	✓	✓

TABLE 3B

Notifications	Appropriate office of the national assembly	Placing authority	Local authority in whose area the home is situated	Appropriate police officer	Health authority in whose area the home is situated
<u>Information</u>					
Any revision to the SoP 28 days prior to coming into effect	✓ *				
<u>Governance</u>					
Appointment of a manager	✓				
Absence of appointed manager for 28 days or more* *in emergency – within one week of the emergency's occurrence	✓				
Absence of appointed manager for 28 days or more where no notification has been given	✓				
Return from absence of appointed manager	✓				
Someone other than the appointed manager is proposing to manage, or is managing, the service	✓				
The appointed manager ceases, or proposes to cease, managing the service	✓				
Registered provider (individual or company) changes their name	✓				
Where the service provider is— (i) an individual, the appointment of a trustee in bankruptcy in relation to that individual, or (ii) a company or partnership, the appointment of a receiver, manager, liquidator or provisional liquidator in relation to that company or partnership.	✓				
Death of registered provider where more than one person is registered	✓				
Death of sole registered provider (notified by a personal representative) within 28 days of their intentions regarding the	✓				

future running of the home					
<u>Responsible Individual</u>					
Absence of RI for 28 days or more* *in emergency – within one week of the emergency's occurrence	✓				
Absence of RI for 28 days or more where no notification has been given	✓				
Return from absence of RI	✓				
Someone other than the RI is proposing to be the RI for the service	✓				
The RI ceases, or proposes to cease, being the RI for the service	✓				
<u>Safeguarding</u>					
Any abuse or allegation of abuse in relation to a service user that involves the provider and/or their staff	✓	✓ (where children are being cared for)			
Registered Provider / Responsible Individual convicted of criminal offence	✓				
Any allegation of misconduct by staff	✓				
Any occurrence of a grade 3 pressure ulcer [notified to Welsh Ministers in a prescribed form on the website]	✓				
Serious incident that occurs in the regulated service affecting the wellbeing of people using the service [e.g. theft, burglary];	✓				
Serious accident, injury to, or illness of, a service user;	✓	✓ (where children are being cared for)			
The outbreak of any infectious disease;	✓	✓ (where children are being cared for)			✓ (where children are being cared for)
Any incident reported to the police;	✓	✓ (where children are being cared for)			
Any events which prevent, or could prevent, the provider from continuing to deliver the service safely.					

Where accommodation is provided, the death of service user & the circumstances	✓	✓ (where children are being cared for)	✓ (where children are being cared for)		✓ (where children are being cared for)
Any request to a supervisory body in relation to DOLS	✓				
Additional requirements where children are being cared for or supported:					
Referral to the DBS pursuant to the Safeguarding Vulnerable Groups Act 2006	✓	✓			
An allegation that a child accommodated at the home has committed a serious offence		✓		✓	
Where the registered person is charged with any offence in respect of which an order may be made under Part II ¹⁹ of the Criminal Justice and Court Services Act 2000 ²⁰ (Protection of Children) he or she shall forthwith give notice in writing to the appropriate office of the National Assembly of the offence charged and the date and place of charge.	✓				
Absconding by a child accommodated yes at the home		✓			
Instigation and subsequent outcome of any child protection enquiry involving a child accommodated at the home	✓	✓			
Incident of child sexual exploitation or suspected child sexual exploitation	✓	✓	✓	✓	
If a child dies and was accommodated in a secure children's home the Prisons and Probation Ombudsman (PPO) must be notified by the registered provider, without delay	✓				
Environment					
Premises are, or are proposed to be, significantly altered or extended, or additional premises are, or are proposed to be, acquired as soon as practicable	✓				

¹⁹ <http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=213&crumb-action=replace&docguid=1436223C0E45111DA8D70A0E70A78ED65>

²⁰ <http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=213&crumb-action=replace&docguid=15FABE4E0E42311DAA7CF8F68F6EE57AB>

the name or address of the principal office is proposed to be changed 28 days prior to the move taking place	✓				

ANNEX B - REGULATORY IMPACT ASSESSMENT (RIA) FOR THE REGULATED SERVICE (SERVICE PROVIDERS AND RESPONSIBLE INDIVIDUALS) (WALES) REGULATIONS 2017 (Part 11)

WORKFORCE REGULATIONS:

1. Delineation of Care and Travel times
2. Limit the use of Zero Hours Contracts/Non Guaranteed Hours Contracts (ZHCS/NGHCS) through the requirement to offer a choice of contracts after a set period of time.

1. DELINEATION OF CARE AND TRAVEL TIMES

There are two options considered by the Welsh Government:

- **Option one:** Do nothing – maintain the status quo.
- **Option two:** Regulate to ensure that travel and care times are clearly identified on scheduled rotas.

Option one: Do nothing – maintain the status quo.

If no regulations are made, the status quo would be maintained, where work rotas or schedules are drafted but do not necessarily provide clarity between travel and care time or separate the two at all. Although the Regulation and Inspection of Social Care (Wales) Act 2016 introduces a requirement upon domiciliary care providers to ensure that domiciliary care visits are no less than 30 minutes (unless certain conditions are met) it does not place a requirement upon them on how they should record this. This approach can lead to some confusion as the worker receiving the schedule may not be clear as to how long the visit should last or whether the time included travelling to the next appointment.

Option two: Regulate to ensure that travel and care times are clearly identified on scheduled rotas

This regulation would place a requirement upon domiciliary care service providers to prepare a schedule of visits for their staff that clearly delineates sufficient time to be allocated for travelling between visits and the delivery of care and support to each individual in accordance with their personal plan (and if applicable the time allocated for rest breaks); and to subsequently record this schedule and make it available for inspection purposes. The requirement placed upon service providers does not dictate how this is done, but instead ensures that there is a clear record of the time allocated to create greater transparency for workers and help to reduce the practice of “call clipping.”

“Call clipping” is a term used to describe the practice where domiciliary care service delivery is systematically cut short due to domiciliary care workers not having enough, or any, time to travel between calls and deliver sufficient care services once they arrive at their destination. This action can result in the delivery of poor quality service because individuals feel that the care that the worker delivers is either rushed or is not completed due to the time constraints faced by the care worker needing to get to their next job.

There is evidence that many employers already have systems in place to provide schedules of work for their staff, but there is also clear evidence that, despite this, “call clipping” still happens for a variety of reasons. The evidence gathered as part of the research carried out by Manchester Metropolitan University and the Welsh Government’s subsequent consultation on potential solutions to the issues it raised around recruitment and retention in the domiciliary care sector, indicated that workers felt strongly they often found time had to be cut from delivering quality care to ensure that they could complete all of the rounds that they had been scheduled. There was clear agreement that providing clarity between travel and care time was

necessary, and that this should form part of the inspection process, particularly where they fell below the 30 minutes stated within the 2016 Act. The regulation reflects the evidence that we have received and seeks to provide a proportionate and effective way to deliver this approach.

Costs associated with each option

Option one: Do nothing – maintain the status quo.

Service regulator - Care and Social Services Inspectorate Wales (CSSIW)

There are no direct additional costs to the service regulator with this proposal. The Care and Social Services Inspectorate Wales (CSSIW) would continue to inspect domiciliary care services to ensure that they were abiding with the requirements of the 2016 Act.

Service providers

There are no direct additional costs to service providers with this proposal. Whilst the 2016 Act places a number of requirements upon domiciliary care providers – i.e. to ensure that domiciliary care visits are no less than 30 minutes (unless certain conditions are met) it does not place a requirement upon them on how they should record this.

Local authorities

As with service providers, there are likely to be no additional costs for local authorities who operate their own in-house domiciliary care services.

Option two: Regulate to ensure that travel and care times are clearly identified on scheduled rotas.

Service regulator - Care and Social Services Inspectorate Wales (CSSIW)

There are not likely to be any additional direct costs for the service regulator, CSSIW, with this proposal, as the information will form part of the annual report that service providers will be required to make available as part of the inspection process. The costs associated with publishing annual returns of registered service providers is outlined in the RIA section of the Explanatory Memorandum to The Regulated Services (Annual Returns) (Wales) Regulations 2017²¹.

Service providers

These regulations merely seek to ensure that staff have a clear understanding of the difference between these elements on their rotas to allow them to travel and deliver quality care within sufficient timescales.

²¹ <http://www.assembly.wales/laid%20documents/sub-ld11207-em/sub-ld11207-em-w.pdf>

Service providers are not expected to incur any additional costs with the production of a rota for staff which clearly delineates between travel and care time, as the majority of service providers already have some form of scheduling or rota system in place.

Whilst there is likely to be additional information requirements with collating the information for the annual report that service providers will be required to produce for inspection purposes, this information should be readily available to providers and any additional costs associated with collating it will therefore be minimal.

Staff rotas are already scheduled to ensure that each carer (or care team, where more than one carer might be necessary) have sufficient time to deliver care to a number of individuals throughout a day, this will not change under the regulation.

Evidence from the Manchester Metropolitan University research (and our own subsequent consultation) has shown that where times have overrun, or had to be extended, carers will work these times through or do additional tasks to ensure that they delivery high quality care to their clients often at their own expense.

Local authorities

For those local authorities that still have “in-house” domiciliary care teams, again it is not anticipated that the requirement for clearly delineated travel and care time will attract any additional costs for local authorities with in-house domiciliary care teams.

Evidence from the Manchester research and our own consultation has shown that local authorities already provide employees with schedules of work that provide a breakdown between travel and care time.

Benefits associated with each option

Option one: do nothing – maintain the status quo.

There are no real benefits to this option, as the proposal simply continues the process that currently exists.

Whilst service providers would not be required to provide a schedule that shows a clear delineation of travel and care time, they would still be required to report a clear indication that visits are scheduled to meet the minimum time requirement as set out in the 2016 Act (i.e. 30 minutes unless it met the criteria for being less than this period). Any savings on time and resources that service providers would make for not having to delineate between the two aspects of a visit would instead be offset in reporting an assurance that the visit was of the required duration and that the care was delivered within that timeframe.

The benefit to the regulator would be that CSSIW would only need to see an example of a schedule that clearly allocated the right length of time to each visit as part of the annual return to agree compliance with the regulations and this may be simpler to certify than assessing the sufficiency of the delineation between travel and care time proposed under option two. We do not envisage that CSSIW would check

individual rotas as part of the inspection process, but would expect that it may take a random sample to check to compliance.

Option two: Regulate to ensure that travel and care times are clearly identified on scheduled rotas.

Workers will benefit from the clearer delineation between travel and care time in a number of ways - they will be able to see exactly how long they have to spend delivering care and get from visit to visit and be able to determine whether they are being paid for their travel time. It should also provide them with confidence to discuss any potential issues with their employers over whether the travel time and care time is adequate to allow them to undertake their required roles.

A clearly delineated schedule would show individuals exactly how much time was being set aside for domiciliary care workers to arrive at their homes and the length of the time that their care and support supplier has set for workers to deliver the care and support they require. This would afford them greater confidence to challenge the domiciliary care providers or refer the matter to the regulator where there are concerns that “call clipping” may be taking place. The clear delineation of care and travel times will help to ensure that quality services are delivered that help to meet the required outcomes for the individuals they serve. This would also help to reinforce the Welsh Government’s aim to provide citizens with greater voice and control over the services that affect them. The Manchester research found that:

“care workers should arrive on time and keep scheduled appointments. This supports service user control and enables planning for their own daily schedule appropriate to their needs”

This regulation would also provide the service regulator, CSSIW, with a more detailed record with which to identify the times taken to travel to and deliver care, this would help during inspections to show the actual length of care time that service providers are delivering match those they are contracted for. With a clear delineation of care and travel times it will also be easier to identify whether calls are being clipped. This could provide the regulator with an opportunity to develop a more proactive and collaborative approach with service providers to head off any potential issues or the need for more direct sanction.

We understand that many service providers already have schedules and rotas that identify travel time and care time. However, where some providers utilise methods that do not accurately breakdown these two times but give a “generalised” timeframe, the proposal could deliver the benefit of providing them with greater understanding of how their workforce deliver services and the potential problems that they face. It could also give service providers a better negotiating position if they have a more realistic picture of the distances and times it would take to get around a prospective area when negotiating with commissioners. Greater intelligence derived from the delineation of travel and care times can also furnish service providers with a quicker ability to identify any potential problems or issues that their staff might face or to provide an opportunity to consider alternative scheduling of visits which might be more efficient.

Risks associated with each option

Option one: do nothing – maintain the status quo.

Available evidence suggests that, whilst service providers have rota systems in place, in some cases they do not provide a clear breakdown of the time that the care worker is meant to be with individuals to provide the agreed care and support or how long they have to travel to their next visit which can cause confusion. It could also be compounding concerns about whether service providers are paying their staff for travel times. There is evidence to suggest that the details are being made clear on wage slips but not on staff rotas, as these can change quite quickly and might be considered onerous to update.

The lack of clear delineation between care and travel time could lead some individuals to believe that they are regularly being “call clipped” and the regulator has to undertake further investigation to ascertain the truth. For example, if the individual is told as part of the assessment of the need that a domiciliary care worker would be coming to provide care and support to do a series of tasks each day, but sees that a care worker is rushed and does not appear to complete all of the tasks, it could give the impression that they were “call clipping” in order to get to their next scheduled visit. This will have a detrimental affect upon the individual, who not only would distrust the service being provided to them but also runs the risk that the care provided would be poor, or at worst, fail to deliver the required outcomes for that person.

The current system also does not provide service regulator, CSSIW, with a clear and understandable method of checking whether the visit has been less than 30 minutes and whether CSSIW should raise a challenge with the service provider during inspections. Without a clear requirement to record the actual time spent with a service user to deliver care and support or travelling between visits, it would not be possible for the service regulator to form a judgement on whether sufficient time had been allocated to meet the outcomes for that individual. Whilst CSSIW includes discussions with individuals as part of their inspection process, without this information there would be nothing to prevent an unscrupulous service provider from simply reporting that visits were in accordance with the legislation and delivering quality care, even if they were “call clipping” for any reason. The inspection process would not be able to identify any need for improvement or that anything was wrong and could quickly lose public confidence that action would be taken against any provider that was providing a poor service.

Option two: Regulate to ensure that travel and care times are clearly identified on scheduled rotas.

On their own, the regulations may not address the issue of “call clipping,” as there are a range of factors that are beyond the control of service providers that could lead to a call being cut short – i.e. staff sickness, traffic delays because of cultural or sporting events being held, road works, accidents.

There is also anecdotal evidence to confirm that service providers in some areas are already “handing” contracts back to local authorities because they argue that the cost of delivering them outweighs the amount they receive from commissioners. The Welsh Government has heard that many commissioners do not regularly increase their unit prices sufficiently to take into consideration other factors, including travel time, increases in the national minimum wage (or living wage); all of which fall on to service providers and the shortfall is pushing their businesses into financial difficulties.

Whilst service providers schedule rotas in advance, domiciliary care is very dynamic and rotas often have to change at short notice for example staff illness, service user admittance to hospital etc. The risk here is that the requirement on service providers could be too inflexible and not allow for any last minute changes to be taken into account.

Summary and preferred option

Two options have been considered. Option one is to retain the existing system whereby service providers continue to provide rotas as they see fit, which are in some cases without clear delineation between travel and care times. This can cause confusion or be open to misinterpretation. Option two places a requirement on service providers to clearly detail care and travel times on their rotas to ensure that there are no misunderstandings between the two times. This would make it easier for staff and the regulator to determine whether there is sufficient time to deliver quality care to the service user in accordance with their needs and to travel between the last and next visits.

Option two is the preferred option.

Competition Assessment

The competition filter test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of firms?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector categorised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose	No

the price, quality, range or location of their products?	
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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.

2. LIMIT THE USE OF ZERO HOURS CONTRACTS/NON GUARANTEED HOURS CONTRACTS (ZHCS/NGHCS) THROUGH THE REQUIREMENT TO OFFER A CHOICE OF CONTRACT AFTER A SET PERIOD.

Assumptions used in this Regulatory Impact Assessment (RIA)

In the development of this RIA, the Welsh Government has had to make a number of assumptions in light of varying evidence on the numbers of zero hours contracts or non guaranteed hours contracts (ZHCs or NGHCs) employed within the sector.

As there is no standard statistical definition of ZHCs or NGHCs, in respect of this RIA we have opted to use the definition that the Office of National Statistics (ONS) use in their publications, which outlines that they are often referred in general terms as being employment contracts in which an employer does not guarantee the individual any work and the individual is not obliged to accept any work offered, the Welsh Government has used the term to reflect any worker that is on a contract that does not guarantee a set number of hours each week. The regulation itself is based upon the legal definition of zero hours contracts that is contained within Section 27A of the Employment Rights Act 1996, as inserted by the Small Business, Enterprise and Employment Act 2015.

There are no precise figures on the number of zero hours contracts in use in the social care sector and in particular the domiciliary care sector. The ONS in its Labour Force Survey for 2016 estimated that, up to June 2016, there were 903,000 (or 2.9% of the entire workforce²²) such contracts in use across the entire UK workforce. Unfortunately, whilst the figures provide a breakdown into broad categories of the workforce (e.g. leisure industry, Health and Social work, etc.), they are not separated into national or regional levels.

The Welsh Government has therefore focused its estimation of the number of zero hours contracts being employed in the domiciliary care sector by examining the varying estimations from other bodies (e.g. from Social Care Wales (SCW), Unison, UK Homecare Association (UKHCA), and our own research) which range between 40% to 80% and taking an average of this data to create an approximate baseline.

Using these figures to determine an average, we have calculated that there are approximately 11,000 such contracts in Wales, which equates to approximately 55% of the domiciliary care workforce based upon an SCW estimated total of 20,000 workers.

There are two options considered by the Welsh Government:

- **Option one:** Do nothing and retain the status quo.

²² Office of National Statistics article: “Contracts that do not guarantee a minimum number of hours: September 2016

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/articles/contracts-that-donot-guarantee-a-minimum-number-of-hours/september2016>

- **Option two:** Regulate to limit the use of zero hours contracts/non guaranteed hours contracts (ZHCs/NGHCs) through the requirement to offer a choice of contract after a set period.

Options

Option one: Do nothing and retain the status quo

Under this option, “Do nothing and retain the status quo,” there would be no proposed changes to the way in which the social care sector currently employs ZHCs/NGHCs. Both employers and employees would retain the ability to continue to utilise these contracts in whatever way best suits their needs without restriction.

However, service providers will still be required to produce annual returns under the Regulated Services (Annual Returns) (Wales) Regulations 2017 and these must include details on staffing arrangements including contract details .

Option two: Regulate to limit the use of zero hours contracts/non guaranteed hours contracts through the requirement to offer a choice of contract after a set period of employment

This regulation seeks to limit the use of zero hours contracts by placing a requirement on service providers to give domiciliary care workers a choice as to whether they are employed on zero hours or an alternative contract if certain conditions are met, these are:

- They have been employed by the service provided under a non-guaranteed hours contract for the qualifying period,
- They have worked regular hours during the preceding three months,
- There is a continuing need for the hours to be worked on an ongoing basis; and
- They have performed satisfactorily during the qualifying period.

For the purpose of the regulations the qualifying period is three months.

The types of contract which may be offered are:

- A contract of employment where the number of hours required to be worked per week is at least the average number of hours worked per week during the preceding three months; or
- A contract of employment where the number of hours required to be worked per week is less than the average number of hours worked per week during the preceding three months.

This does not prevent the service provider employing the domiciliary care worker on any other type of contractual arrangement agreed between the provider and worker, including a further zero hours contracts/non-guaranteed hours contract. However, if

a worker remains on a non-guaranteed hours contract then a further review and contract discussion must be undertaken after a three month period.

This regulation follows on from those outlined in the Phase 1 regulations of the implementation of the Regulation and Inspection of Social Care (Wales) Act, where we consulted upon regulations that will require providers to publish details of their use of zero hours and other contracts within the public annual returns required by the Act.

Costs associated with each option

Option one: do nothing and retain the status quo

Service regulator (Care and Social Services Inspectorate Wales (CSSIW))

There are no direct costs to the service regulator with this option. Costs associated with the publication of annual returns, which will record employee contract details, were outlined in the Regulatory impact Assessment for the Regulated Services (Annual Returns) (Wales) Regulations 2017.

Justice system

There are no direct costs to the legal system with this proposal. The legal system would only become involved or take action if there was a dispute between employees and their employers around unfair dismissal or other issues of employment law.

Workforce

There are no direct costs associated with the proposal to retain the status quo. The workforce would continue to preserve the ability to accept or refuse work offered as part of ZHCs/NGHCs as it best suited their needs. They would continue to be protected by employment legislation and have the rights that these bestow upon them.

Service Providers

There are no direct costs associated with the proposal to retain the status quo. However, there will be a slight difference as the Regulated Services (Annual Returns) (Wales) Regulations place a requirement on employers to set out information in their annual returns, including details about which types of contracts their staff are employed on. Details of the costs associated with this requirement were considered as part of the RIA for the Regulation and Inspection of Social Care (Wales) Act, which estimated that the costs of the various options around the production of annual reports at paragraphs 7.81 to 7.127²³, including setting out the

²³ Pages 132 to 141 of the RIA for the Regulation and Inspection of Social Care (Wales) Bill, as revised following stage 2 proceedings within the Assembly.
<http://www.assembly.wales/laid%20documents/pri-ld10429/pri-ld10429-e.pdf>

information that the reports should cover – i.e. staff employed and their development information.

However, retaining the status quo will not help to address the relatively high levels of turnover within the industry (approximately 30%) and the resultant costs for employers of having to recruit and train new staff.

The impact will also be the same for those local authorities who still operate their own “in house” domiciliary care services.

Option two: Regulate to limit the use of zero hours contracts/non guaranteed hours contracts through the requirement to offer a choice of contract after a set period of employment

Service regulator - (Care and Social Services Inspectorate Wales (CSSIW))

There are no direct costs to the service regulator associated with this proposal. The service regulator, CSSIW, will not be directly required to corroborate whether service providers have offered a choice of contract, as this will be recorded within the annual returns but they are likely to check this information as part of their wider inspection process if concerns have been raised about the quality of care provided by a service provider.

A more detailed breakdown and analysis of the costs associated with The Regulated Services (Annual Returns) (Wales) Regulations 2017 can be found in that respective supporting Regulatory Impact Assessment (RIA).

Justice system

There are no direct costs to the legal system with this proposal. The legal system would only become involved or take action if there was a dispute between employees and their employers around unfair dismissal or other issues of employment law.

Workforce

There are no direct costs associated with this proposal, as the workforce would have the option to continue to work on a ZHC/NGHC and preserve the ability to accept or refuse work offered as part of such contracts as it best suited their needs. They would continue to be protected by employment legislation and have the rights that these bestow upon them.

However, we are unable to determine how many of the estimated 11,000 workers in the domiciliary care sector on a ZHC/NGHC contract would opt to change over to a fixed hour contract, as this will be dependent on personal circumstances. However, it is unlikely that workers will incur any direct monetary cost for either staying on a zero hours contract or for switching to a new guaranteed hours contract should they choose to under this new regulation. The workforce will continue to be paid either the national minimum wage or the national living wage depending on their age (i.e.

at national minimum wage levels between the ages of 18 to 24 and the national living wage from age 25 and above).

Any move to a fixed hours contract could be based upon the average number of hours that the worker has worked over the previous three months, or slightly less than the average number depending upon the discussion with their manager and agreement between both parties. In this way, the regulation retains a degree of flexibility and would not prevent a worker from completing more hours if required and agreed between employer and employee. This should not incur any change to their hourly wage or overall salary, particularly if there is already agreed flexibility in the number of hours to be worked.

Evidence we have received has shown that workers often work more hours than their current contracts (ZHC/NGHC or fixed hour) require of them. This proposal would not preclude them from either declining or accepting further hours from their employer should the necessity arise or incur any penalties for doing so.

Service providers

We anticipate that employers might face an initial increase in their costs with a transition of staff from a zero hours contract to a minimum hours contract, as the employer may be responsible for arranging revised pension contributions, sick pay, etc. It is not possible to determine the cost of any increased pension contributions, annual leave entitlements, etc. as this information varies from employer to employer. However, employers have, since 2012, been responsible for enrolling all eligible workers into a workplace pension so any increase in pension contributions resulting in a move towards fixed hours contracts are likely to be minimal. It is not possible to identify the cost of such action as this would depend upon the number of employees in each organisation and is therefore not quantifiable as median figure for each business²⁴.

It is possible that employers of domiciliary care services in Wales would incur costs to both familiarise themselves with this legislation and to amend contracts to fixed hour ones. If we apply a Barnett formula percentage (5%) to the estimated costs in the UK Government's RIA on "Banning exclusivity clauses in zero hours contracts"²⁵ for changing contracts to remove exclusivity clauses (£1.39 million), it would equate to a cost for domiciliary care agency businesses in Wales of approximately £69,500. It is not possible to break this figure down across all 417 domiciliary care agencies, as these can vary in size and we do not have access to data that would accurately determine what contracts their staff are employed on.

The employer will also be required to record the offer made in its annual return to show the number of employees they have and on which type of contract they are

²⁴ The UK Government's Impact Assessment for the banning exclusivity clauses in 2014 recognised that employers across the UK faced a one off cost of £1.39 million for removing exclusivity clauses and amending employment contracts (i.e. £0.48 million to familiarise themselves with the legislation, a cost of £0.29 million to amend contracts to include confidentiality clauses and ongoing reorganisation costs of £0.62 million a year for additional unavailability of workers no longer restricted to exclusivity clauses).

²⁵ UK Government's RIA on "Banning exclusivity clauses in zero hours contracts" – page 5 - published October 2014

employed in that year. Costs associated with the production of Annual Returns were detailed in the Regulatory Impact Assessment for the Regulated Services (Annual Returns) (Wales) Regulations 2017.

There will be some costs associated with a manager undertaking a supervisory review with each member of staff and this will vary depending upon the number of staff at each business. Industry representatives have informed us that the costs of a review would include a approximately ten minutes to arrange and travel to a meeting with the employee, an hour of the manager's time to conduct a review and twenty minutes to write up, a total of an hour and a half. As such, it is possible to estimate that it would cost a manager £25.03²⁶ to complete a review of each employee. This would equate to a total of approximately £275,330 for managers to complete a review of the estimated 11,000 workers on ZHCs/NGHCs. However, we would expect that the actual contract review would only require a short period of time to complete, or could be included as part of a wider review, for example those required under Regulation 36 of these regulations and therefore would not incur the totality of these costs. It is also hoped that the longer term gain of having employees available for a set number of hours and from greater face to face time would have other value for both employer and employee.

The requirement placed upon the employer provides some mitigation against potential costs, as one of the conditions for the offer of an alternative contract being made is that there is adequate work to cover the change in contract. The basis for this mitigation is that, if an analysis of the proceeding three month's work provides an average number of hours worked by the employee that can be agreed by both parties, it is not unreasonable to assume that they could continue to work said hours for the foreseeable future. For example, if an employee works on average 28 hours a week then we would expect an employer to offer them a minimum guaranteed hours contract after three months based on those average hours. They could also employ a flexible working hours contract, whereby they can build in a little flexibility, agreed by both parties, to allow for possible increases in work. If the employee is already working on average a certain number of hours it would not be unreasonable to assume there is sufficient work to mitigate any additional costs to employers might incur in providing a minimum hours contract as the work would already cover the hours and be providing a regular income to the business.

These proposals will also have similar impacts for local authorities who still operate their own "in house" domiciliary care services.

Benefits associated with each option

Option one: do nothing and retain the status quo

The evidence gathered by the Welsh Government has shown that there are positive and negative effects in relation to the use of ZHCs/NGHCs and some groups – i.e.

²⁶ Based upon a 2.0% increase in private sector pay over four years on the figure of £30,766 (Curtis 2013) used in the RIA for the Regulation and Inspection of Social Care (Wales) Bill (page 227), and on costs of £9,366 gives a total salary of approximately £42,539. The weekly cost, assuming a six week annual leave entitlement including bank holidays is £925.93. Assuming that the working week is 37 hours, the cost per hour equates to £25.03.

students, individuals, parents and grandparents – opt to use such contracts to work around their studies or caring responsibilities or family/other commitments and would therefore not be interested in a fixed hours contract.

The issue of ZHCs/NGHCs granting some workers flexibility is highlighted by the research undertaken by the Chartered Institute of Personnel and Development (CIPD)²⁷ in its “Zero hours contracts: Myth and Reality”²⁸ survey in November 2003, which highlighted that 48% of workers in the private sector had responded to their consultation to say that they were most likely to be satisfied having zero hours contracts. The majority of these workers (44%) cited that “...they liked to work flexibly as it suits my circumstances at the moment.” It also highlighted that these contracts suited older workers who cited that the lack of set hours suited their needs as they were retired and did not wish to commit to more, or were topping up their pensions, or they were used by those who were moving towards retirement and just wanted more flexible hours as they neared that point.

In retaining the status quo the benefits that ZHCs/NGHCs provide will remain within the system for those who wish to use them. For workers, the continuing use of ZHCs/NGHCs allows the flexibility to choose when they work and for how many hours and gives them the ability to fit their job in around their specific circumstances that best suits their needs. The rights of workers have also been enhanced with the introduction of the UK Government’s removal of exclusivity clauses from ZHCs/NGHCs in 2014, which has ensured that workers are no longer contractually tied to any specific employer, and they can, when there is no work available for them with one employer, look for similar or other work elsewhere.

Employers would also continue to benefit from the flexibility these types of contract provide to help meet unforeseen or emergency care packages from commissioners through what is commonly referred to as a “spot contract.” Evidence provided to the Welsh Government by the UK Homecare Association (UKHCA) explained that such contracts are common, particularly where individuals come out of hospital or are assessed in an emergency to require a specific care requirement. Whilst employers can react to meet these needs, the downside for employers is that there is no guarantee as to how long such contracts may last as the person could suddenly have to go back into hospital but the care package is expected to remain in place for a specific time period in case the stay is for only a short time. The evidence that we have received has indicated that, whilst the person is in hospital the provision of hours are effectively “on hold” until the outcome for that person is known and service providers are unable to supplement this work in case circumstances change and they need to resume care. To meet the demand around these cases, many domiciliary care providers employ workers on ZHCs/NGHCs, as they afford employers the ability to restrict hours if there is no further work available. A ZHC/NGHC in this instance also allows workers to seek alternative employment if there are not sufficient hours with this employer.

²⁷ CIPD is a registered Charity established to promote the art and science of the management and development of people for public benefit.

²⁸ CIPD research paper “Zero hours contracts: Myth and Reality” published November 2013
https://www.cipd.co.uk/Images/zero-hours-contracts_2013-myth-reality_tcm18-10710.pdf

Option two: Regulate to limit the use of zero hours contracts/non guaranteed hours contracts through the requirement to offer a choice of contract after a set period

There are some clear benefits of this proposal for individuals being cared for as the evidence and research that we have gathered has shown that ZHCs/NGHCs are a contributing factor that can have a detrimental impact on the continuity and delivery of quality care. If workers are employed on fixed hours contracts rather than zero hours contracts individuals are more likely to continue to see the same care workers who have developed a good rapport and trust with them and who understand their individual needs. The Manchester research found that:

“Use of zero-hours contracts is particularly problematic for continuity of care. The majority of domiciliary care workers do not have guaranteed hours, and can be required to work a wide variety of patterns”

The benefits for workers, detailed below, are also likely to have a positive impact on the quality of care delivered as workers will feel more valued and secure in their employment.

There are also benefits for workers who are offered the choice of switching from a zero hours contract to a minimum hours contract. As well as providing them with greater job security and ability to secure loans and mortgages, the offer would also provide them with clear evidence that there is sufficient work available with the company to meet the hours on offer providing greater job security. The issue of financial security has often been highlighted in anecdotal evidence we have received (i.e. the research we commissioned and our consultation responses), as being difficult for these workers as they have no secure hours of work for financial institutions to take into consideration when they apply for loans or mortgages.

Greater clarity around the hours that they work will also afford workers more opportunity to plan their lives and provide certainty that they will have guaranteed work, which will gradually draw to a close the practice of not knowing whether there will be any work for them until they arrive for work or of having to be available for potential work at certain times. This greater job security will also help with the delivery of continuity and quality of care provided to individuals. The Manchester research found:

“High levels of turnover mean a constant flow of new staff requiring induction and ongoing training. Where this is inadequate, skills and knowledge and care quality are again likely to be compromised”.

Whilst there is evidence some workers might still prefer a zero hours contract, as it provides them with flexibility to meet their own personal needs, there is anecdotal evidence to suggest that not all employers offer any choice so employees simply accept such contracts as being the norm. The regulation does not seek to remove this flexibility, if that is what a care worker wishes to remain on; what our regulation seeks to ensure is that the offer of a choice of alternate contracts is given to help

retain staff who might otherwise feel that they can only have a ZHC/NGHC and therefore leave the sector.

We recognise that it may only be the small minority of employers who unscrupulously use ZHCs and we are aware that in some instances employers employ workers on zero hours contracts in order to fulfil specific time bound roles or contracts. However, employers can also benefit from this regulation. An offer of a minimum guaranteed hours contract might provide some indication to staff that there is greater job security with the company and that there was a possibility their terms and conditions could further improve over time. A more contented workforce that feels both valued and treated fairly is more inclined to stay with an employer which improves the continuity of care and to deliver a higher quality of care, which in turn will help that business reap longer term savings as it will reduce the need for continued induction training of new staff and help to slow down the loss of staff to other professions. This will deliver benefits for the successful delivery of quality care that helps individuals achieve their outcomes and live their lives as independently and to their fullest. The Manchester Metropolitan University research highlighted that:

“A number of managers indicated that they were increasingly offering contracted hours to recruit and retain high quality care workers:

“We contract some of our staff who have been with the company for over six months. So if someone wants to get a mortgage and they're a very reliable member of staff, we offer them a contract...

Some had, indeed, moved to offering contracted hours to all staff. As well as supporting recruitment and retention, this created greater security for service providers as care workers could not then simply turn down work offered:

“Purely because the staff, if they worked on zero-hours they would leave us because they couldn't get mortgages, they couldn't get car loans, things like that. So it's better off for us”.

This also has a direct impact on the continuity of care as the research highlights:

“High levels of turnover create lack of continuity as there is a constant churn of care workers working with a given service user”.

Employers will also benefit from greater control over the scheduling of workloads, as there will be more staff available to work the hours necessary to deliver high quality services to individuals. This will have more prominence once the changes in commissioning practice begin to deliver fruit in due course, as they will help ensure the continuity of high quality services that will help businesses build their reputation.

Workers too will see the benefit of the regulation as it will continue to afford them flexibility as they can still, at the point of review, opt to remain on a ZHC/NGHC. The regulation will allow for this but will provide a further opportunity for the employer and the worker to review the initial decision at a later date in case their circumstances change.

Risks associated with each option

Option one: do nothing and retain the status quo

In contrast to the benefits outlined above, the key risk with retaining the status quo is that it would enable the continued abuse of these types of contract and the ongoing high turnover of staff who leave the sector because of the job insecurity with a resulting negative impact on the quality and continuity of care for individuals. Whilst there will always be the need for flexibility to meet the needs of both workers and employers – i.e. work life/lifestyle balances or “spot contracts” - there is a risk that some unscrupulous employers will continue to operate these contracts more widely and without regard to employee or the needs of those individuals they serve .

The ongoing high turnover of staff in the domiciliary care sector, which has been estimated at approximately 30%²⁹, has far reaching consequences for both employers and those who need these services. The consequence of having to train and induct new staff means that the quality and continuity of care suffers until that care worker has completed these aspects and develop sufficient knowledge and skills, but also has a further impact due to the need to build rapport and trust with an individual and develop an understanding of the needs of that individual they provide care and support to. This invaluable if the service is to deliver on the agreed outcomes for that individual.

ZHCs/NGHCs, like casual work, on-call work, agency temping or other forms of contingent work transfer some of the business risk from the employer to the employee. However, employers also take on the risk that employees on such contracts might be unwilling or unavailable to work when the employer requires them because they could have other commitments at that time or work with another business. The commissioned research³⁰ and consultation responses have shown that these contract arrangements are one of the factors that impact upon the recruitment and retention of domiciliary care workers. The evidence also shows that there is an excessive use of these contracts in areas such as domiciliary care that leads to greater recruitment and retention problems which ultimately has a direct impact on the quality and continuity of the care delivered to individuals. The Manchester Metropolitan University research³¹ found evidence that suggested that ZHCs/NGHCs had a negative impact upon workers that subsequently had an affect on their health and ultimately the quality of work that they delivered. The research found that:

²⁹ UKHCA An overview of the domiciliary care sector.

³⁰ The Manchester Metropolitan University research “Factors that affect the recruitment and retention of domiciliary care workers”

<http://gov.wales/statistics-and-research/factors-affect-recruitment-retention-domiciliary-care-workers/?lang=en>

The Welsh Government’s consultation “Domiciliary Care Workforce: Improving the recruitment and retention of Domiciliary Care workers in Wales”

<https://consultations.gov.wales/consultations/domiciliary-care-workforce?lang=en>

³¹ Page 36, The Manchester Metropolitan University research “Factors that affect the recruitment and retention of domiciliary care workers”

<http://gov.wales/statistics-and-research/factors-affect-recruitment-retention-domiciliary-care-workers/?lang=en>

“Combined with an intrinsic motivation to deliver high quality care, these same authors demonstrate employment practice reforms, such as zero-hour contracts, and associated challenging working conditions have led to reduced job quality and work intensification. This has in turn created significant, and rising levels, of stress and burnout across social care (Taris et al., 2003) and work-related stress is higher in English social care employees than other international contexts (Chen, 2014). Non-standard working hours and zero-hours contracts are key factors in high levels of work-related stress in domiciliary care workers (Zeytinoglu et al., 2015).”

The Manchester research also found that:

“Continuity and reliability are also often comprised by high labour turnover, the use of zero-hour contracts and working time practices that offer care workers insecure and inconsistent working patterns which create fragmented care delivery”.

The workforce regulator, Social Care Wales, has estimated that there are approximately 20,000 domiciliary care workers in Wales, of which the Welsh Government has estimated that there are approximately 11,000 (55%) domiciliary care workers on such contracts. Maintaining the status quo, there is a risk some unscrupulous service providers could continue to employ the majority of their staff only through zero hours contracts regardless of whether there is work to cover the cost of alternative contracting arrangements, in order to minimise the financial cost to their business and in turn this impacts on the quality and continuity of care provided.

In its research report, “Zero hours contracts: Myth and Reality,” CIPD identified that there were some interesting trends in the way in which these contracts were being used across the UK workforce. The CIPD research showed that 32% of private sector employers use ZHCs/NGHCs as a medium term feature of their workforce strategy, this was significantly lower than the public sector which tends to use them as a longer term solution. Whilst this report confirmed the view that these contracts offered flexibility to both staff and employers, it identified that 32% of employers expected staff to either be available for work or were contractually required to be available for work. It also showed that 20% of staff reported they were either sometimes or always penalised if they were not available for work³².

The above example highlights the uncertainty that currently exists within the area of zero hours contracts, where employers and employees have differing views of what these contracts mean for them. Whilst they may offer both parties greater flexibility, without clearly defined parameters, this confusion will continue. All of which can have a potential impact upon the quality and continuity of care that individuals receive, particularly if there is a disagreement between employer and employee that leaves a care worker becoming distracted or disengaged with their employment. We believe that the offer of choice of the type of contract will contribute to the creation of a more stable workforce, which will help to ensure a quality and continuity of care for those individuals so that they can continue to receive the services that best help to ensure that they lead their lives as independently, or to the best quality that they can.

³² Page 4 of the CIPD research paper “Zero hours contracts: Myth and Reality” published November 2013.

Option two: Regulate to limit the use of zero hours contracts/non guaranteed hours contracts through the requirement to offer a choice of contract after a set period

There is a risk that even with a regulation which places a requirement upon employers to offer a choice of contractual arrangements to their workforce this may not limit exploitative or bad practices from taking place. Evidence gathered as part of the Manchester Metropolitan University research outlined an example where staff members had been offered and accepted a move to a fixed hours contract of 40 hours a week, but there was an imbalance in the workloads where some were receiving forty hours of work a week and others were receiving less (i.e. 27 hours) because they were told that was all the work that was available. Whilst this is an anecdotal example, it would suggest that even if a worker is on a guaranteed hours contract, circumstances could arise that mean an employer might not have sufficient work to meet those contracted hours. The regulation attempts to mitigate this potential problem, as it proposes that at the point of review the employer examines the average hours staff members have actually worked across a specific period and allows for the negotiation of a more realistic contract that allows some flexibility. Combined with other measures and requirements (for example annual returns) this would help to ensure employers afford a greater degree of stability for the worker based upon realistic hours of employment, which in turn is likely to lead to greater continuity and quality of care for individuals.

Another possible risk is that we could be placing a requirement upon service providers that is impractical with how the sector currently works. The evidence gathered in 2014 by UKHCA, "*Zero Hours Contracts: Some Key Questions*,³³" outlined that agencies across the UK utilise a range of contracts that could be considered ZHCs/NGHCs, each affording different rights and terms and conditions for those on them. The research suggests that developing guaranteed hours contracts for the domiciliary care sector would be impractical as the demand for services can fluctuate during the day, with the peak times for the service falling outside of the normal "9 to 5" working patterns (i.e. in the morning, at lunchtime and at bedtime). The analysis indicated that employers were unable to guarantee the length of the contracts they were being asked to supply to local commissioners and were therefore fearful that employing staff on fixed hour contracts would open them up to potential costs such as redundancy payments if things went wrong. They argued that unless service providers have sufficient work during the rest of the day for all of their staff, the only guaranteed hours they would be able to provide would focus on those peak times and be considered unsociable.

The implications of this research can be read in a number of ways, which highlights the complexities of ZHCs/NGHCs. On the one hand, they clearly offer both employers and employees flexibility, with employers able to offer work when there is a demand or at short notice, whilst employees can decide whether or not they wish to work those hours. However, there are also some negative issues that come with these contracts. Some employers consider ZHCs/NGHCs to be a more cost effective option in terms of keeping costs down and can use these contracts to penalise those

³³ United Kingdom Homecare Association (UKHCA) publication: *Zero Hours Contracts: Questions and Answers* (Sutton: UKHCA) – published 2014

who continually refuse to work the hours offered them. However, employees can find that, because of the lack of guaranteed work and hours, they are financially limited when they come to seek a loan or a mortgage which in turn can affect their work.

The improvement of workforce stability will have implications for the impacts on the quality and continuity of care provided to individuals by helping to ensure that we do not lose valuable workers to alternative employment, or have to constantly recruit and train new staff and the added implications of that work (i.e. rebuilding a rapport and the trust with those that they will care for and understand their individual needs). All of these things have costs and benefits that are difficult to quantify in financial terms but can be invaluable to delivering the best outcome for a person that needs this care and support.

There are potential risks to both the workforce and employers with this regulation particularly around the rapid changes that often occur within the sector. We have evidence that shows that some employers are facing harsh choices about whether to continue delivering services or return contracts to commissioners as costs increase. This can happen very rapidly, so despite the offer of contract choice, it could mean that the number of hours that a worker is required for could still change and revert back to a zero hours contract/non-guaranteed hours contract. This could have significant impacts for whether a business continues or has to let staff go that would have equally significant impacts on the quality and continuity of care for the individuals that require these care and support services.

One such risk with limiting the use of zero hours contracts can be that it becomes less flexible to meet the needs of “spot contracts” where an individual could be taken into hospital for a prolonged period of time, or even passes away suddenly, and no work can be found to bridge the gap in hours. Evidence that has been provided to the Welsh Government indicates that, in such circumstances, it is often the case that employers are unable to supplement this work with other contracts if the individual is admitted to hospital as the commissioning body will expect the contract to remain open until circumstances change. That would mean that, if the care worker is on a fixed hour contract, employers would need to find suitable work to cover these hours. It may be that, in these instances, ZHC/NGHC contracts are the only option for employers taking on such emergency cases. However, employers may feel less confident of taking on such contracts for fear that they could be stigmatised if they would not be able to offer anything but zero hours in these instances, particularly if they could not guarantee how long they might have this work.

Historical evidence has shown that the sector has moved away from having “in house” public sector services to one where the majority of the services are provided by the private sector. Therefore, unlike in the healthcare sector where there are banks of nursing staff that can be tapped into to help cover emergencies, the social care sector is less able to call upon staff to cover any gaps in service provision.

The service regulator, CSSIW, has also indicated that verifying compliance with the regulations would not be an individual line of investigation in its inspections, but would be considered as part of the wider process to determine whether there has been a lack of quality service provision that has had a negative impact upon

individuals receiving care and support. CSSIW argues that it would be very difficult to directly demonstrate the link between poor care and the use of zero hour contracts and therefore the regulation may be difficult to enforce. The accuracy of annual reporting by employers will identify the number of staff it employs and whether there is a clear indication of them offering choice to their staff, but they may be limited in the information provided, focusing more on the numbers of staff employed on which contract, rather than evidencing the reviews that have taken place. However, this does not preclude CSSIW from following this up as a potential line of questioning during its inspection process.

Summary and preferred option

Two options have been considered. Option 1 has been considered to be unsustainable in the long term if we are to seek to address the issues affecting the recruitment and retention of the workforce which in turn have significant impacts for the continuity and quality of care provided. Without stability and security, more of the workforce will leave the sector for more profitable and secure work in other sectors and increase the problems that we are currently experiencing.

Whilst we are not proposing to ban the use of ZHCs/NGHCs, we feel that seeking to limit their use as outlined under the regulation proposed under Option 2 will offer a workable solution to this problem. It provides the ability to retain the flexibility for the appropriate use of such contracts but also helps to address some of the concerns that have been raised within the sector. When taken into account as part of a range of measures to help create a more stable workforce (i.e. changes in commissioning practices, professionalization of the workforce, raising the profile of the sector, etc.) the Welsh Government believes that we can change the culture of the sector to one that builds upon the good practices and work that are already being delivered.

Such an approach is intended to ensure zero hours contracts are not used in ways that are detrimental to the continuity and quality of care, whilst recognising that some workers prefer the flexibility of being on a zero hours contracts and provides flexibility for providers to respond to fluctuating demands for example spot contracts. The aim of the regulation is to seek to help stabilise the workforce and, through this enhanced job security for care workers, improve the quality and continuity of care that is delivered to individuals. The constant turnover of staff has a direct impact upon the well-being of individuals as much as it does for employers, as each time a member of staff is lost the rapport, trust and understanding of that individual's needs and outcomes has to be rebuilt and explained again to another care worker. For the individual receiving the care and support this can be a source of anxiety and frustration, particularly for those with complex needs or suffers of such mental conditions as Alzheimer's or dementia, which in turn can have a detrimental affect on their well-being and for meeting their agreed outcomes.

It also takes forward the Welsh Government's objective to root out the misuse of these contracts in the sector to stimulate greater accountability towards staff, clients and regulators. The proposal is the result of working with stakeholders to understand the issues around zero hours contracts and how best we can help to tackle the abusive use of such contracts. However, it is impractical to impose a one size fits all limit on such a diverse sector and we recognize that, for some individuals,

the flexibility of non guaranteed hours can be important to balance their work and personal commitments. We also understand that there are circumstances that employers can find themselves in where ZHCs/NGHCs may be the most appropriate way to help to meet urgent or emergency cases and because of the unpredictability of the length of time that such work could be available to them. In both circumstances, our aim is to ensure that there is no loss to, or direct affect upon the overall quality of care and support that is provided of using such contracts. Therefore, by referencing the hours worked during the previous three months and the continuing need for the hours to be worked on an ongoing basis, the choice based approach is responsive to both the demand for services and the needs of workers.

Option two is therefore the preferred option.

Post implementation review

This will be completed once we have sufficient data from the annual reports to provide a baseline to identify the level and use of ZHCs/NGHCs in the domiciliary care sector. Once we have this information, we can continue to monitor this over the next few years to see how the proposed regulations have affected the use of these contracts.

Competition Assessment

The competition filter test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of firms?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector categorised by rapid technological change?	No
Q9: 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.