

The Regulated Services (Service Providers and Responsible Individuals) (Wales) (Amendment) Regulations 2022

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

Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of *The Regulated Services (Services Providers and Responsible Individuals) (Wales) (Amendment) Regulations 2022*. I am satisfied that the benefits justify the likely costs.

Julie Morgan MS

Deputy Minister for Health and Social Services

21 June 2022

PART 1

1. Description

- 1.1 The 2022 Regulations amend regulation 35 of the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017, which makes provision about the fitness of staff.
- 1.2 The effect of the amendments is to extend the requirement that employees and workers providing care and support are registered with Social Care Wales to care home services for adults and to residential family centre services.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

- 2.1 None.

3. Legislative background

- 3.1 Section 80(1) (b) of the Regulation and Inspection of Social Care (Wales) Act 2016 (“the 2016 Act”) requires Social Care Wales to keep a register of social workers and social care workers of any other descriptions specified by the Welsh Ministers in regulations.
- 3.2 The Social Care Wales (Specification of Social Care Workers) (Registration) (Amendment) Regulations 2020 made amendments to The Social Care Wales (Specification of Social Care Workers) (Registration) Regulations 2016, made under Section 80 (1) (b) of the 2016 Act. This amendment required Social Care Wales (SCW) to open the workforce register to individuals who are employed or engaged under a contract for services in connection with a care home provided wholly or mainly for adults and/or a residential care service on a voluntary basis from 2020.
- 3.3 The 2022 Regulations amend regulation 35 of the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017, which makes provision about the fitness of staff.
- 3.4 Implementation of the registration of adult residential care workers and residential family centre workers will be carried out by SCW through the amendment of the Social Care Wales Rules made under sections 83 (registration requirements) and 84 (qualification requirements) of the 2016 Act.
- 3.5 The Regulations are subject to the draft affirmative procedure.

4. Purpose and intended effect of the legislation

4.1 The Welsh Government has made a commitment to the mandatory registration of adult residential care workers by 2022. This commitment was expressed in written statements in October 2015¹ and November 2016².

4.2 These regulations will require a provider of:

- An adult care home service
- A residential family centre

To employ persons who are registered with SCW where they work in roles providing care and support. The requirement to be registered applies both to employees and to workers employed under a contract for services. Workers must be registered within six months of commencing their employment or within six months of first being engaged under a contract for services to provide care and support.

4.3 The introduction of a requirement on these services to only employ workers registered with the workforce regulator is intended to provide greater reassurance to the public and to users of those services that workers are held to account against a Code of Professional Practice and that they hold the appropriate qualifications to undertake the role.

4.4 In advance of the introduction of the requirement to register, the Welsh Government introduced a period of voluntary registration for these groups of workers which commenced in April 2020.

4.5 To enter on to the register, a person must be appropriately qualified. This means that they must have successfully completed a course approved by Social Care Wales.

4.6 As part of the registration programme, SCW has the power to charge a registration fee, under the 2016 Act, and is responsible for setting this fee.

5. Consultation

5.1 In July 2019, the Welsh Government held a formal twelve-week consultation on proposals to extend the regulation of social care workers. This considered the principle of registration.

5.2 The consultation received 55 responses from various stakeholders ranging from representative bodies, local authorities, health boards, service providers and individuals. An analysis of the responses received showed

¹ <http://www.senedd.assembly.wales/documents/s45151/15%20October%202015.pdf> - lines 125 and 126.

² <http://www.assembly.wales/en/bus-home/pages/rop.aspx?meetingid=3488&assembly=4&c=Record%20of%20Proceedings#C259695>

that:

- a. The majority of responses felt that social care workers working for agencies should be subject to the same standards and rules as those directly employed by a service provider (i.e. not personal assistants) to deliver care and support services.
- b. The majority of respondents agreed that guidance should be provided and that this should be simple, concise and easy to find and use “...*supportive, clear and encouraging language...*” It was felt that guidance would be useful for a number of audiences including new entrants to the sector, current employees, employers/providers and agencies.
- c. The majority of respondents agreed that a two-year voluntary period of registration prior to introducing the requirement would allow sufficient time for the sector to engage with registration. Some recognised that it struck a balance between providing a reasonable lead-in period that could “...*lead to complacency, and then a blockage of the system as the deadline looms...*” and a lead-in period which is too short and does not realistically allow individuals and providers enough time to prepare, which could ultimately compromise “*patient safety*”.

5.3 A further 10-week consultation was held in December 2021 on the 2022 regulations. As the principle of mandatory registration for domiciliary care workers and adult residential care workers had already been consulted on in a 12-week consultation in July 2019, this 10-week consultation provided an opportunity to test and refine the regulatory guidance provided to the sector.

5.4 The consultation ran from 20 December 2021 to 28 February 2022 and the majority of responses focused on the following key themes:

- a. There should be clear and concise guidance to help workers understand who should register; how the process can be completed and more workshops to help employers and employees to complete the process.

The Welsh Government will work with SCW to review and consider the development of clear guidance and supportive material to help employers and employees through the process as possible.

- b. Whether flexibility could be built into the registration process to allow part-time workers, those on maternity or long-term sickness had sufficient time to complete the process and meet the necessary training requirements.

The Welsh Government will work with SCW to review these suggestions.

- c. That the statutory guidance is updated to include clear guidance on who was to register and provide clarity around several Regulations to avoid doubt.

The Welsh Government will work with Care Inspectorate Wales and SCW to review and update the statutory guidance to ensure that it remain current and incorporates recent legislative changes.

5.5. Section 27(4) of the 2016 Act provides that “Before making regulations under this section the Welsh Ministers must – (a) consult any persons they think appropriate, and (b) publish a statement about the consultation.” To discharge this requirement, a summary of the responses to the 10-week consultation, together with the Welsh Government’s analysis and conclusions, is published at:
<https://gov.wales/sites/default/files/consultations/2022-06/summary-of-responses.pdf>

5.6 In addition, section 27(5) of the 2016 Act provides that “the Welsh Ministers must lay a copy of a statement published under subsection (4)(b) before the National Assembly for Wales”. Therefore, a copy of the summary of responses can be found at:
<https://senedd.wales/search/?SiteHomePagelId=0&Culture=en-GB&SearchTerm=laid+documents>

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Background

1. The Regulation and Inspection of Social Care (Wales) Act 2016 (“the 2016 Act”) was passed by the National Assembly for Wales on 24 November 2015 and received Royal Assent on 18 January 2016. It provides the statutory framework for the regulation and inspection of social care services and the social care workforce, including the establishment of Social Care Wales (SCW) – the workforce regulator.
2. During the passage of the Regulation and Inspection of Social Care (Wales) Bill through the National Assembly for Wales in 2015, consideration was given to the registration of the social care workforce. In light of this discussion, the Welsh Government made several statements that indicated the next groups of the workforce to be registered would be domiciliary care workers and workers in regulated care home services provided wholly or mainly for adults.
3. In April 2020, the Social Care Wales (Specification of Social Care Workers) (Registration) (Amendment) Regulations 2020 (“the 2020 Regulations”) came into effect. These regulations allowed for the opening of the register by SCW to employees and workers in care homes services for adults and residential families centres on a voluntary basis in advance of a proposed deadline of 2022 when such registration would become mandatory. This action provided a two-year period for SCW to work with the sector to understand and prepare for the requirements of registration.
4. The 2022 Regulations will amend the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017, which make provision about the fitness of staff. The amendments have the effect that a requirement that employees and workers providing care and support are registered with Social Care Wales (no later than six months after commencing work in the service) is extended to apply to care home services for adults and to residential family centre services from October 2022.
5. Social Care Wales has previously amended the rules made under sections 83 (registration requirements) and 84 (qualification requirements) of the 2016 Act, through the Social Care Wales (Specification of Social Care Workers) (Registration) Regulations 2016 (the 2016 Regulations).
6. This regulatory impact assessment focuses on the impacts of extending the requirement that employees and workers providing care and support are registered with Social Care Wales to care home services for adults and to residential family centre services.

Registration fees

7. Under sections 74 and 83 of the 2016 Act, Social Care Wales (SCW) has the power to make provision for the payment of fees in connection with registration to the register. These fees must be specified in rules made by Social Care Wales.
8. The responsibility for the level at which the fees are set rests with SCW and not with the Welsh Government. The 2022 regulations do not change the powers for SCW to charge a fee, or the level of those fees. However, as these are costs associated with the implementation of the proposed regulations, they are considered as part of this Regulatory Impact Assessment.

Background to the current level of fee charged

9. The current registration fees were set in 2018, following a consultation by SCW. Whilst other nations in the UK had revised their fee levels at various times since early 2000, fee levels in Wales had not changed since they were originally set in Wales in 2003 and were not comparable with Scotland and Northern Ireland social care workforce regulators. SCW's revised fees bring the registration fee regime in Wales in line with the other social care regimes across the UK – except for England who do not register these groups of social care workers.
10. Following the consultation SCW determined to raise the fees on an incremental basis over several years starting in 2018-2019 and ending in 2021-2022. The new scale saw increases across the three-year period that began for:
 - social workers and social care manager fees over that period by increments of £10 starting from £50 to £80; and
 - social care workers by increments of £5 beginning at £15 and rising to a maximum of £30.
11. Students studying towards a career in social care would pay a set fee of £15 over the same three-year period.
12. The Welsh Government worked with the regulator on the issue of registration fees to ensure that there were a number of options considered and that these were set at a level that is both affordable and proportionate in accordance with Welsh Ministerial commitments made in 2015.
13. There are no immediate plans to increase the fees further but this remains subject to review.

Table A – Welsh registration fees for adult care home workers

Roles	2018-19	2019-20	2020-21	2021-22
Social care workers	£15	£20	£25	£30

14. In comparison, the table below (*Table B*) shows the registration rates per UK nation as at June 2021:

Table B – comparison of registration fees for social care workers across the UK

Roles	England	Northern Ireland	Scotland	Wales
Social care workers	N/A ³	£30	£35	£30

³ Neither Social Work England nor UK Govt. Department for Health and Social Care require other social care workers to register or therefore pay a registration fee.

7. Options

The Welsh Government has made clear its intentions to require adult care home and residential family centre workers to register with the workforce regulator, Social Care Wales, since the development of the Regulation and Inspection of Social Care (Wales) Act 2016. This work has already commenced for domiciliary care and is now being extended to workers in care home services for adults and to residential family centre services.

We have consulted with the social care sector on the purpose, risks and benefits of registration. The social care sector supports this proposal, which forms part of an overall policy objective which is to professionalise the workforce.

The aim of registration, as part of a wider professionalisation agenda, is to maintain quality of care and to raise the profile of the sector. It will also provide greater assurance for the public and users of social care services that workers have the appropriate qualifications and skills and that they are held to account against a Code of Professional Practice.

The two options are:

Option one: Do nothing - retain the status quo of voluntary registration;

Option two: To place a requirement on care home services for adults and residential family centre services providers to only employ and/or engage under a contract for services individuals who are registered with Social Care Wales (SCW) from 1 October 2022.

Option one: Do nothing - retain the status quo of voluntary registration

Under this scenario, it would not be necessary for workers and employees in adult care home services and residential family centres in Wales to register with the workforce regulator in order to be employed in the service. Registration would remain an option for these workers. It is likely that this would see only a fraction of the estimated workforce register with SCW, as it would not impact their employment if they were not registered and there would be a more limited incentive to do so, particularly for workers that do not have the required qualifications.

This would mean that the anticipated benefits of registration including public assurance in the qualifications and accountability of the workforce, as well as wider ambitions relating to professionalisation, improved public perceptions of social care work and improved quality of care, would not be achieved.

This could also significantly damage the Welsh Government's reputation given public commitments already made to this agenda.

Option two: To place a requirement on care home services wholly or mainly for adults and residential family centre services to only employ and/or engage under a contract for services individuals who are registered with Social Care Wales (SCW) from 1 October 2022.

This would place a requirement on service providers that are engaging workers or employees under a contract for services, to provide care and support to any person in connection with an adult care home service, only to employ workers registered with Social Care Wales as a social care worker.

This will help provide public assurance in the qualifications and accountability of the workforce. Registration also provides workers with the ability to record and show that they are appropriately skilled and qualified to deliver quality care and support. It will contribute to a professionalisation agenda, in which social care workers are recognised as qualified professionals, thereby helping to the profile of social care work as a career.

Social Care Wales, in exercise of its powers under sections 73(2) and (4) and 91(2) of the 2016 Act are required to set out the requirements for registration in its Registration Rules. These are periodically reviewed to take account of any changes that have been made to legislation or registration requirements.

Employees or workers that join the register must be ‘appropriately qualified’, which means that they would need to have successfully completed a course approved by Social Care Wales. In practice, this currently means that they would need to hold the necessary Level 2 or 3 Diploma in Health and Social Care or Level 2 award for Social Care Induction (Wales) or have completed the All Wales Health and Social Care Induction Framework or the Social Care Wales Principles and Values Award.

Not introducing this requirement would create an inconsistency across the workforce, as registration has been mandatory for domiciliary care workers since April 2020. This could create a two-tier workforce within the sector which could be de-stabilising if users of social care consider domiciliary workers to be better qualified and more professional than their counterparts in care homes, for example.

Service regulator (Care Inspectorate Wales)

The Care Inspectorate Wales (CIW) is the independent regulator of social care and childcare services in Wales and is responsible for registering and inspecting adult care home services in Wales. CIW will take action to ensure services meet legislative and regulatory requirements. Any provider employing workers or employees that are not registered could be subject to a sanction imposed by Care Inspectorate Wales if it was found not to be meeting the requirements of this regulation. The powers to introduce a sanction are set out in Chapter 5 of the 2016 Act.

8. Costs and benefits

Option one: Do nothing - retain the status quo of voluntary registration

Costs

Workforce/Service Providers (Employers)

There would be no additional costs for workers and employees, or for service providers. Any costs incurred would remain voluntary.

Workforce regulator (Social Care Wales)

Under option one, as the regulator has already received some additional funding from the Welsh Government to help with its preparations for extending the register, there would be no additional costs. Costs for the voluntary register have been set out when this was introduced.

If the scheme continues as a voluntary process, it is unlikely that any large numbers of social care workers in adult care home settings would continue to register without reason to, which could result in a loss of income as it would impact the revenue gathered through the collection of the annual registration fee. This may impact the amount of funding that the regulator can re-invest into its programme of work to help support the regulation and continued improvement of the social care workforce.

Service Regulator (Care Inspectorate Wales)

Under this option, as registration of adult care home workers and residential family centre workers would be voluntary, no additional duties would be placed on the service regulator as part of its inspection of services and therefore there would be no additional costs incurred.

Benefits

It could be argued that the primary benefit of retaining the status quo is that there will be no obligation on service providers to employ or engage under a contract for services individuals who are registered with Social Care Wales, avoiding the associated costs to service providers and/or individuals of doing so.

Risks

The primary risk to option one and retaining the status quo is that social care workers in adult care homes and residential family services will not engage with the registration process. This means that the benefits of registration will not be obtained.

Given the significant efforts to promote registration, not proceeding to mandatory registration could lead to confusion about the status of individuals not on the register, for example whether they are suitable to employ.

There is also a risk of reputational damage to the Welsh Government which has committed to professionalising and raising the profile the social care workforce. Stakeholders in the sector have been supportive of the registration of the workforce and have understood the benefits therefore not proceeding could result in some of these stakeholders becoming disengaged with future policy development.

Workers that are accused of failings or misconduct will have no recourse to defend themselves from such accusations. The option to be able to present their side of events to an independent Fitness to Practice panel that would afford them some protection from any negative impacts of such allegations on their reputations if these are then found to be untrue.

A system which only supports voluntary registration could also lead to a 'two-tier' approach to the workforce, with a perception that workers that are not registered are not as skilled as those that are. There is also a risk of an inconsistent approach to training in the sector and less investment in learning and development across the workforce.

Option two: To place a requirement on care home services wholly or mainly for adults and residential family centre services to only employ and/or engage under a contract for services individuals who are registered with Social Care Wales (SCW) from 1 October 2022.

Costs

Workforce

Social care workers will be subject to the annual registration fee. There is anecdotal evidence which suggests that the cost is often met by the employer, rather than the worker. However, for the purpose of this RIA it is assumed to be a cost to the workforce.

This may not be an additional cost for all workers, as some of them may work in a service where registration with SCW is already required and these workers will not need to register twice. For example, where an individual works part-time in adult care homes and part-time for a domiciliary care service. Without accurate figures on the numbers of part-time workers who may also work as part-time domiciliary care workers and already have paid the registration fee, it is not possible to accurately forecast the total cost to the workforce. Social Care Wales is currently taking steps to improve workforce data and we will keep our assumptions on the costs under review.

However, with an estimated 20,000 social care workers in adult care homes, if 30% (6,000) of them were to already registered as domiciliary care workers the

cost of registration to the workforce could be up to £420,000 (14,000 x £30) per annum from 2022-23. This figure could be considerably higher given turnover in the system but without accurate figures on turnover including the number of workers exiting the sector compared to those that move to work for other social care services, it is difficult to estimate the potential cost implications.

Registrants can apply to HMRC⁴ to reclaim a proportion of this fee back as a tax deduction. The guidance provided by the UK Gov website outlines that “...an individual can claim tax relief on fees or subscriptions you pay to approved professional organisations if it relates to your job.” However, an individual would not be able to claim fees or subscriptions that they have not paid for themselves (e.g. if the employer has paid for them). This may have a marginal impact on the Welsh tax base and the Welsh Government’s new tax raising powers but, given that voluntary registration has been phased in over two years, we envisage this to be almost negative.

Social Care Wales also provides several payment options to registrants, including direct debits for either a single payment or monthly instalments spread out over a year.

In addition to the fee, there is an associated cost relating to the time taken to complete the registration process. It is difficult to determine the extent to which this cost is likely to fall on individual workers or their employers, and if it were to fall on individual workers, it becomes increasingly difficult to quantify as people will complete the process at different rates. For example, some may not have all of their qualifications or certificates to hand, have to speak to previous employers for copies of certificates, etc. Therefore, for the purposes of this RIA while the fee is assumed to be a cost to the workforce, the assumption is that work of registration will be undertaken in work hours. On this basis, an estimated cost has been produced based on the burden being incurred by employers is set out below.

Social Care Services Providers (Employers)

Impact on recruitment and retention

Concerns have been raised regarding the impact that registration could have on recruitment and retention. There is no data or other evidence to suggest that this risk has materialised significantly in relation to domiciliary care, where workers have been required to register since April 2020.

Using data provided by the Social Care Worker Development Programme (SCWDP), Social Care Wales (SCW) estimated that there were between 17,000 and 20,000 domiciliary care workers in Wales prior to registration. By April 2020, over 20,000 existing workers had registered with the regulator and the number has remained broadly consistent. We are aware that there has been “churn” within the system where workers leave or move between

⁴ Guidance on how and what can be claimed back can be found at <https://www.gov.uk/tax-relief-for-employees>

employers within the sector. This happens across the social care sector for a variety of reasons from better terms and conditions, less stress and higher wages in the retail sector to those who use social care as a platform into healthcare.

Cost of Registration

There may be a potential financial cost for service providers, who may pay the registration fee on behalf of their staff either as an inducement to join or remain with their company. However, we have no information on how common this practice is and the workforce regulator does not hold this data. We have therefore simply noted that this practice might occur, as any assumption would risk double counting possible costs.

Cost to Complete the Registration Process

On 15 February, the Welsh Government announced that, from April 2022, it would be providing funding to pay social care workers in adult care homes and residential family centre services the Real Living Wage Foundation's Real Living Wage (RLW) of £9.90. It is estimated that it would take approximately two hours to complete the registration process (with all the necessary papers and qualifications to hand); which equates to the cost of approximately £19.80 per worker (based upon 2 x £9.90 per hour from April 2022 as our baseline). However, when factoring in an employer's on-costs for such things as national insurance and pension contributions, we estimate this would add an extra 30% (or £5.94) equating to a total cost of £25.74 per worker. This figure could increase significantly if workers do not have the necessary paperwork readily to hand or are completing the registration process through the "confirmed competence" or completion of the Principles and Values Award routes. Without accurate data on the numbers of workers who fit into each of these categories, it is not possible to provide detailed cost implications for completing the registration.

With a significant number of workers on part-time contracts (80% of local authority workers and 55% of commissioned residential care workers⁵), it is possible that the completion of the registration may take longer for these individuals, as they seek to fit in registration around their service delivery and working patterns. It is not possible to estimate the time this might take, as this might vary significantly across the workforce.

Additional costs could include time for managers to learn about and to manage the record keeping requirements for the registration process. This is more difficult to quantify as it will vary depending on the previous knowledge and experience of the manager, the number of staff they manage, and their salary level. In order to try and understand these costs, we have used the 2020 Office of National Statistics (ONS) average salary figures as the 2021 statistics have shown that COVID-19 has impacted the average weekly earnings data. In

⁵ Figures provided by SCW based upon 2019 workforce data at <https://socialcare.wales/research-and-data/workforce-reports> - 2020 data was not collected to ease pressure on the sector during the pandemic.

2020 there were 1,249 managers registered with Social Care Wales, with an average salary of £28,181 per annum⁶. If we assume that these workers are paid £14.89 an hour and require 6 hours on average to understand and familiarise themselves with the requirements, this equates to a cost of £89.34 per manager; or £116.14 when employer's on-costs (approx. an extra 30% or £26.80) for such things as national insurance and pension contributions are factored in. However, to mitigate any of these costs, Social Care Wales (SCW) will be tasked with making the registration and record-keeping processes as accessible as possible.

Training Costs

Linked to the registration of staff is the cost of meeting the required qualification requirements set out by Social Care Wales (SCW) in its registration rules. Sections 73 and 74 of the 2016 Act empowers SCW to develop and publish rules regarding registration, approval of courses, training and Codes of Practice. A new suite of qualifications was launched in September 2019, and SCW has determined that the minimum qualification requirements will be level 2 in Health and Social Care (Diploma, QCF or NVQ) or equivalent. Social Care Wales estimate that it will take 460 hours to complete over the 3 years of registration. The qualification requirement must begin within the first six months of a new employee joining the service and be completed by the time they re-register after 3 years. Anecdotal evidence indicates that a worker would on average need to complete 12.7 hours of study a week to meet this requirement.

The estimates below are, for the purposes of this Regulatory Impact Assessment, included to provide a “worst-case” scenario for service providers based upon workers undertaking formal courses. We do not have accurate data on how social care workers complete the necessary training, whether through formal courses provided via service providers or local authority sponsored programmes, informally through “on-the-job” training or through apprenticeship placements. Therefore, providing an accurate estimate of the direct impact on service providers is not possible. With the high levels of staff turnover in the social care sector, it is also not possible to fully determine the levels of workers who may move within the sector or leave to join the healthcare or retail sectors at this time. However, whether these workers move to another role or leave the sector completely there is a cost incurred by service providers to “fill” the vacancy both in terms of paying additional registration fees and training costs.

It should also be noted that the estimates were based around the costs of staff attending these courses being paid by their employer at the National Living Wage (NLW) rate. However, since April 2022, the Welsh Government will be providing funding to help uplift the wages of social care workers, including adult care home workers, to the Real Living Wage (RLW) of £9.90. This would increase the costs below, but we have retained the NLW estimates, as the

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<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/a/she1997to2015selectedestimates-table7SIC07> Human health and social work activities

Welsh Government is providing funding to the sector for the uplift to the Real Living Wage.

Service providers may be expected to pay individuals for the time spent on training, which can either be on the job training or through “classroom” based courses but the cost of this is difficult to estimate due to the individualised nature of the training. However, if we take a standardised notion of 1 day training off-site per week of a total 460 hours of training we can estimate that the cost would equate to 92 hours at a cost of approximately £1136 (£9.50 real Living Wage plus 30% employer on-costs). However, for the reasons outlined above this may not accurately reflect what is happening on the ground. This discounts the cost of the principles and Values award as this forms part of the all-Wales Induction Framework, which is a requirement separate to registration. This cost also assumes that workers that are not registered would not receive any other training covering similar content.

Social Care Wales estimates that 40% of the current social care workforce may not have attained the necessary qualifications to register. To bring this number of the workforce up to the required qualifications would equate to a cost of £9 million for the sector in salary costs alone⁷ (or £3 million per annum over the three-year registration period). Workers are also required to complete additional CPD in order to remain registered, once they have achieved the qualification. This equates to 90 hours over three years although this figure is being reviewed. Most of this learning can be undertaken ‘on the job’ with the individual required to provide evidence of the learning. If 50% of the hours are at cost to the service provider, the salary cost would be £185 per worker per annum including on-costs or £2.6m per annum for 14,000 individuals.

In answer to some concerns from the sector that some individuals would not be interested in acquiring a qualification and would likely leave the sector, SCW has extended the solutions it found for domiciliary care to this programme to help retain these staff and help them to register. Social care workers in adult care homes will also be able to follow either:

- the qualification route;
- follow the conferred competence route – where employees endorsed by their managers that they have the right skills and competences; and
- where workers are new and will not have time to complete the qualification requirements by the mandatory deadline, they could complete the first module (and associated assessment) of the induction framework on skills and values for working in social care prior to registration.

This would help ease the immediate pressure on service providers relating to the cost of training, but there will still be costs relating to continued professional development for staff going forward. It is difficult to quantify the savings that

⁷ This figure is based upon the current National Living Wage of £9.50 and 8,000 workers needing to attain this qualification.

these options would give service providers. It is likely that some of these costs will have already been mitigated as many workers would have undertaken some of this training in the years leading up to the “voluntary” registration of adult care home workers. However, we recognise that the COVID-19 pandemic may well have had an adverse impact during the “voluntary” registration period, as the focus would have been on delivering care and support. However, we do not have data available on the current (pre-registration) training costs incurred.

However, these costs are not a consequence of this regulation alone. It is reasonable to expect, even without mandatory registration, that there will be a cost to service providers for training staff and ensuring that they have the right skills to do the job.

Overall, a more consistent approach to training across the sector is likely to result in greater value for money to service providers. It could even introduce some cost savings, for example where workers move from one employer to another as these skills are transferable.

Importantly, Social Care Wales is investigating whether it might be possible to reduce the study time for the level 2 qualification further to help mitigate these costs further in respect of part-time staff. Anecdotal evidence suggests that most people in the sector work part time.

Workforce Regulator (Social Care Wales (SCW))

The costs associated with maintaining the register and regulating social care workers in adult care home services and residential family services include:

- Direct staffing costs arising from the demands of managing the registration process estimated to rise from £108,500 in 2018-19 to £194,500 in 2021-22;
- Direct staffing costs arising from additional staff needed to oversee an anticipated increased number of conduct and fitness to practice processes, estimated to rise from £431,300 in 2018-19 to £933,500 in 2021-22. Some of these costs will be offset by the increase in registration fees collected from those workers being added to the workforce register; and
- Indirect costs such as for venue hire for conduct committees and conduct committee expenses.

However, as outlined above, the workforce regulator has already received funding to help cover the initial costs associated with preparing for the inclusion of more social care workers to the workforce register. The Welsh Government has provided additional funding outside of Social Care Wales’ revenue grant-in-aid funding to cover additional staffing costs to help with the increase in the registration process for the registration of domiciliary care workers. There is no expectation of additional funding provision being made for this exercise. It also provided an in-principle agreement to provide a further increase in the costs to

help with any potential significant rise in the number of fitness to practice hearings for the regulator, which would be a substantial financial and administrative cost. The details of these costs are outlined below.

The additional funding the Welsh Government provided covered the recruitment of additional staff resources to manage the expected increase in activity relating to administering both registration exercises. For increasing the register with domiciliary and adult care home staff, SCW estimated that it would require an additional 27 whole time equivalent (WTE) members of staff to cover the increase in activity (6 WTE in the Registration department, 17 in the Fitness to Practice department and 4 in the Committee management team). The regulator also estimated it would also require £200,000 of additional funding to cover the costs of running the three regulation departments and £170,000 to cover accommodation costs to house the new staff and a further £80,000 of support costs.

Revenue collected through registration fees

With the review and increase in registration fees for all groups of the workforce required to register, SCW received an additional £448,000⁸ of revenue in 2019-20 from this source. This brought its total income from registration fees to £978,000 for that year. This figure increased by a further £177,000 in 2020-21⁹ with the completion of the registration of the domiciliary care workforce and the beginning of the adult care home worker “voluntary” registration period. Assuming 20,000 adult care home workers join the register by October 2022, this will increase the revenue stream by a further £600,000 at the end of this exercise and an overall revenue stream totalling £1.7 million at the end of that financial year. It is worth noting however that some individuals may already hold a registration with Social Care Wales which may decrease this potential revenue stream. This registration fee revenue is re-invested by SCW back into the regulation and training of the social care workforce in Wales and are considered when its annual grant-in-aid funding is negotiated with the Welsh Government.

Fitness to practice hearings

Fitness to practice processes are triggered by a referral alleging that a person’s fitness to practice is impaired for one of a variety of reasons. These investigations take up a significant amount of the regulator’s resources and SCW estimates that the costs associated with maintaining the register and regulating adult residential care workers will increase from £2,994,000 in 2021-2022¹⁰ by an estimated further £700,000 per annum¹¹. These costs include direct staffing expenditure to manage the registration process and to oversee

⁸ https://socialcare.wales/cms_assets/file-uploads/Annual-report-and-accounts-2020.pdf - page 40

⁹ https://socialcare.wales/cms_assets/file-uploads/Annual-report-and-accounts-2021.pdf - page 50

¹⁰ Figure provided by Social Care Wales to aid the Regulatory Impact Assessment for opening up the register to workers in 2018.

¹¹ Figures provided by Social Care Wales to aid this Regulatory Impact Assessment are based on estimated costs (average cost of a hearing at £16,000) in light of between 20,000 and 25,000 adult care home workers joining the register.

the conduct and Fitness to Practise processes, as well as some indirect costs for the hire of a venue for holding the conduct committees and conduct committee expenses. SCW estimate the average cost of a Fitness to Practise hearing as being approximately £16,000 per case. Social Care Wales estimates that, with the inclusion of both the full domiciliary care workforce required to register and the adult residential care workforce (approximately 40,000 workers in total) the number of cases could increase from 25 by a further 84 cases going to full hearing by 2022, thus incurring an additional expenditure of £1,092,000 to their overall regulatory costs, equating to a total of £1,417,000 per annum. In total, the figures provided show that SCW expect to see an increase in its conduct panel activity costs to increase to £1,741,000 by 2021-22. SCW confirmed that just over 900 investigations were undertaken in 2020-21 relating to domiciliary support workers, which is almost 5% of the 20,000 domiciliary support workers registered. We can assume that, given that the expected number required to register could see a similar number of cases fall out of adult care home worker registrations. However, it is difficult to determine the overall cost of investigating such numbers as some would result in minor sanctions whilst other could go to full Fitness to Practise hearings and suspensions.

Whilst the regulator will use some of the income generated by the registration fee to offset these costs, these funds will not meet the entire cost of regulation and will still require additional funding from the Welsh Government. If the number of cases increase additional funding may be required to meet this demand. We will work with the regulator to keep this under review.

Care Inspectorate Wales

Care Inspectorate Wales samples staff records as part of its regular inspection processes. This has added some additional time to each inspection. However, CIW has not undertaken any costings associated with the time taken to check a sample of workers' contracted hours, etc. as this will vary from service to service and the number of staff at that venue. If a care home is found to be employing workers not registered with Social Care Wales, they face the prospect of sanction from CIW.

Welsh Government

The Welsh Government currently provides funding to the regulator through grant-in-aid funding. In preparation for the opening up of the voluntary register, the Welsh Government provided the regulator with additional funding to meet the direct costs associated with this exercise to cover additional staffing and IT costs. Whilst it is expected that the additional revenue generated by the increase in registration fees will go some way to offsetting the need for further funding, subsidies continue to be required in order to keep registration costs low. The Welsh Government is therefore continuing to work with SCW to monitor what additional costs may arise from the demand for fitness to practice reviews and hearings that may arise from the increase to the workforce register.

The Welsh Government currently also funds apprenticeships for Level 2 in Health and Social Care and Child Care and it is possible that extending the register could see potential increased in demand for this route. Social care is one of the highest sector demands for this funding programme. The Welsh Government is currently monitoring take up of the apprenticeship.

Benefits

The registration of the adult care home workforce will further build on steps taken to professionalise the sector, which is the overall objective of the work. The anticipated benefits of registration include:

- Improved assurance among the public that social care workers are appropriately qualified and that they can be held to account against a Code of Professional Practice¹²;
- ‘Fitness to Practice’ governance surrounding registration means that individuals will have recourse to a panel should they wish to defend themselves against allegations of malpractice.
- Workers in social care feel they are valued and respected for the important role which they are carrying out could lead to improved recruitment and retention;
- Improved recruitment and retention would lead to improvements in the quality of care;

In addition, although mandatory registration is not the only route to ensuring greater support from SCW for workers in the sector, it does mean that they would be more likely to access the advice, access to training programmes and online training tools and guidance that will be made available.

These benefits are difficult to quantify however and are dependent on a number of other factors including improving employment terms and conditions. There is also limited comparable evidence on the benefits of registering workers, beyond consultation and other anecdotal evidence. The impact of introducing these changes will need to be subject to evaluation.

A benefit to service providers of recruiting registered workers it could reduce recruitment and training costs for workers that are already registered. If the other benefits are achieved, this would result in improved quality of care provided by the service. It would also afford service providers the opportunity of checking with the regulator to see whether a potential worker or employee has been subject to any disciplinary action in the past.

¹² Social Care Wales’ published Code of Professional Practice for social care workers - https://socialcare.wales/cms_assets/file-uploads/Code-of-Professional-Practice-for-Social-Care-web-version.pdf

Risks

Concerns have been raised throughout this process about the risk that mandatory registration will cause an increase in the existing turnover level. The risk is considered to be particularly acute in the first six months of employment and that if registration was considered too costly to either workers or service providers, and the benefits were not considered to be of sufficient value, retention of staff could be a problem and they leave the sector or move to another unregistered area (i.e. personal assistants). Another argument focused on an impact upon recruitment, where the registration fee could put some people off joining the sector. This was considered to be a particular concern in a sector that is already perceived as having very low wages.

However, evidence from the introduction of mandatory registration in Scotland has not shown signs of increased staff losses there¹³. Similar concerns were raised throughout the domiciliary care worker registration. Although we did not gather data on leakage from the sector following the introduction of the domiciliary care registration requirement, the number of individuals that registered by April 2020 exceeded expectations at over 23,000 workers (compared to an estimated 20,000). Social Care Wales has worked hard to minimise these risks through communicating the benefits of registration and making it as accessible as possible through developing different routes to qualification and different options for payment of registration fees.

Figures provided by SCW show that, as at 1 December 2021, 1,444 social care workers in adult care home services had joined the register on a voluntary basis. There is a risk that not all workers will register by the October deadline. SCW is therefore proposing, with agreement from the service regulator, Care Inspectorate Wales, to afford an extension of six months of mandatory registration to help ensure that all existing workers are able to register. After this point, if they have not completed registration the worker and their employer would have failed to meet the requirements set out in regulation and face the appropriate sanction.

Summary and preferred option

Two options have been considered. Option one is to retain the existing system whereby the workforce would not be required to register with the regulator but can do so voluntarily. This option could lead to an inconsistent approach to registration in the sector, with many 'opting out'. This means that the full benefits of registration of the workforce will not be achieved.

Option two will ensure a consistent approach to registration of the adult care home and family residential services workforce with those of domiciliary care and children's care home workers and would ensure that the benefits of

¹³ <https://data.sssc.uk.com/images/WDR/WDR2017.pdf> - Scottish Social Service Sector: Report on 2017 Workforce Data, published 29 August 2018

registration are realised fully including the associated investment in workforce skills on the part of service providers.

Therefore option two is the preferred option.

9. Competition Assessment

A competition filter test has been applied to the 2022 Regulations which shows the Regulations are not likely to 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.

10. Post implementation review

The Welsh government will work with Social Care Wales to develop a post-implementation review of the registration programme by 2024.