

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:

Committee Room 1 – Senedd

Meeting date: 2 March 2020

Meeting time: 14.30

For further information contact:

Gareth Williams

Committee Clerk

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1 Introduction, apologies, substitutions and declarations of interest
14.30

**2 Instruments that raise issues to be reported to the Assembly
under Standing Order 21.2 or 21.3**
14.30–14.35

Negative Resolution Instruments

**2.1 SL(5)504 – The Care and Support (Charging) (Wales) and Land Registration
Rules (Miscellaneous Amendments) Regulations 2020**

(Pages 1 – 16)

CLA(5)–08–20 – Paper 1 – Report

CLA(5)–08–20 – Paper 2 – Regulations

CLA(5)–08–20 – Paper 3 – Explanatory Memorandum

Affirmative Resolution Instruments

**2.2 SL(5)501 – The Social Care Wales (Specification of Social Care Workers)
(Registration) (Amendment) Regulations 2020**

(Pages 17 – 42)

CLA(5)–08–20 – Paper 4 – Report

CLA(5)–08–20 – Paper 5 – Regulations

CLA(5)–08–20 – Paper 6 – Explanatory Memorandum

**2.3 SL(5)502 – The Regulation and Inspection of Social Care (Wales) Act 2016 and
Regulated Services (Miscellaneous Amendments) (Wales) Regulations 2020**

(Pages 43 – 84)

CLA(5)–08–20 – Paper 7 – Report



CLA(5)–08–20 – Paper 8 – Regulations

CLA(5)–08–20 – Paper 9 – Explanatory Memorandum

3 Subordinate legislation that raises no reporting issues under Standing Order 21.7

14.35–14.40

(Pages 85 – 86)

CLA(5)–08–20 – Paper 10 – Subordinate legislation with clear reports

- 3.1 SL(5)505 – Code of practice on the exercise of social services functions in relation to Part 4 (direct payments and choice of accommodation) and Part 5 (charging and financial assessment) of the Social Services and Well-being (Wales) Act 2014**

4 Subordinate legislation that raises issues to be reported to the Assembly under Standing Order 21.7

14.40–14.45

- 4.1 SL(5)503 – Code of practice in relation to the performance and improvement of social services in Wales**

(Pages 87 – 109)

CLA(5)–08–20 – Paper 11 – Report

CLA(5)–08–20 – Paper 12 – Code of practice

CLA(5)–08–20 – Paper 13 – Explanatory Memorandum

5 Papers to note

14.45–14.50

- 5.1 Statement by the Welsh Government: Legislation related to leaving the EU**

(Pages 110 – 112)

CLA(5)–08–20 – Paper 14 – Statement, 26 February 2020

- 5.2 Letter from the Minister for Economy and Transport, the Minister for Environment, Energy and Rural Affairs and the Minister for Education: Update on intergovernmental relations**

(Pages 113 – 114)

CLA(5)–08–20 – Paper 15 – Letter from the Minister for Economy and Transport, the Minister for Environment, Energy and Rural Affairs and the Minister for Education, 25 February 2020

6 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:

14.50

7 Inquiry into justice-related matters: Consideration of the appointment of an expert adviser

14.50–15.05

(Pages 115 – 123)

CLA(5)–8–20 – Paper 16 – Discussion paper

8 Forward Work Programme

15.05–15.15

(Pages 124 – 125)

CLA(5)–08–20 – Paper 17 – Forward Work Programme

9 Local Government and Elections (Wales) Bill: Draft report

15.15–15.45

(Pages 126 – 183)

CLA(5)–08–20 – Paper 18 – Draft report

10 UK Bills relating to exiting the European Union: Briefing

15.45–15.50

(Pages 184 – 191)

CLA(5)–08–20 – Paper 19 – Briefing

Date of the next meeting – 9 March 2020

SL(5)504 – The Care and Support (Charging) (Wales) and Land Registration Rules (Miscellaneous Amendments) Regulations 2020

Background and Purpose

These Regulations amend the Care and Support (Charging) (Wales) Regulations 2015 (“the 2015 Regulations”) and the Land Registration Rules 2003 (“the Rules”).

The 2015 Regulations set out the requirements which local authorities must follow when making a determination of the amount of the charges which apply in relation to care and support which they are providing or arranging or propose to provide or arrange in the course of carrying out their functions under Part 4 of the Social Services and Well-being (Wales) Act 2014 (“the 2014 Act”). The 2015 Regulations also contain parallel provisions setting out requirements which apply where a local authority makes direct payments to meet a person’s need for care and support.

These Regulations amend Part 2 of the 2015 Regulations (charging under Part 5 of the Act) as follows:

- the amount of the maximum weekly charge for non-residential care and support is increased from £90 to £100, and
- the weekly minimum income amount where a person is provided with accommodation in a care home is increased from £29.50 to £32.

These Regulations amend Part 4 of the 2015 Regulations (contributions and reimbursements for direct payments) as follows:

- the amount of the maximum weekly contribution or reimbursement for non-residential care and support is increased from £90 to £100, and
- the weekly minimum income amount where a person is provided with accommodation in a care home and receives direct payments under the Act is increased from £29.50 to £32.

These Regulations amend the Rules to correct an error made in the Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) (Secondary Legislation) Regulations 2016. These Regulations insert the correct reference to the relevant provision of the 2014 Act into Part 8 and Schedule 4 of the Rules.

Procedure

Negative.

Technical Scrutiny

The following point is identified for reporting under Standing Order 21.2 in respect of this instrument:

Standing Order 21.2 (vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements



1. Regulation 2(c) amends regulation 22(1) of the 2015 Regulations, however the wording 'in paragraph (1)' (which should be included to provide a clear and complete reference to the provision that is being amended) is omitted. Whilst the intention to amend paragraph (1) could arguably be inferred, the approach would be inconsistent with corresponding provisions which have previously amended regulation 22(1), namely –

- a. Regulation 2(d) of the Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2019,
- b. Regulation 2(d) of the Care and Support (Charging) (Wales) (Amendment) Regulations 2018, and
- c. Regulation 3(h) of the Care and Support (Choice of Accommodation, Charging and Financial Assessment) (Miscellaneous Amendments) (Wales) Regulations 2017.

Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3 in respect of this instrument:

Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly

2. Regulation 3(b) amends the 'Form MM' entry in Schedule 4 to the Rules. It is unclear why it is amended in the order prescribed by regulation 3(b) – 3(b)(i) amends paragraph (2), 3(b)(ii) amends the heading and 3(b)(iii) amends paragraph (1). This seems an illogical way to amend as it does not follow a discernible order, thus resulting in a lack of clarity for the reader.

3. We note the uplift from £90 to £100 regarding the maximum weekly charge applicable to non-residential care and support, and the maximum weekly contribution or reimbursement for receiving direct payments to secure this. As described in the Explanatory Memorandum to these Regulations, this provision ensures that where a local authority applies its discretion to charge a person for the non-residential care and support they receive, or the non-residential support a carer receives, there is a consistent maximum amount the local authority can charge. Equally, where a local authority applies its discretion to set a contribution or reimbursement for the receipt of direct payments to secure non-residential care and support, there is a consistent maximum amount the local authority can make for these.

Implications arising from exiting the European Union

No implications are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

A government response is required to reporting points 1 and 2.

Legal Advisers

Legislation, Justice and Constitution Committee

20 February 2020



Cynulliad Cenedlaethol Cymru
Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—
National Assembly for Wales
Legislation, Justice and Constitution Committee

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 131 (W. 24)

**SOCIAL CARE, ENGLAND
AND WALES**

**The Care and Support (Charging)
(Wales) and Land Registration
Rules (Miscellaneous Amendments)
Regulations 2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Care and Support (Charging) (Wales) Regulations 2015 (“the 2015 Regulations”) and the Land Registration Rules 2003 (“the Rules”).

The 2015 Regulations set out the requirements which local authorities must follow when making a determination of the amount of the charges which apply in relation to care and support, which they are providing or arranging or propose to provide or arrange in the course of carrying out their functions under Part 4 of the Social Services and Well-being (Wales) Act 2014 (“the Act”). The 2015 Regulations also contain parallel provisions setting out requirements which apply where a local authority makes direct payments to meet a person’s need for care and support.

These Regulations amend Part 2 of the 2015 Regulations (charging under Part 5 of the Act) as follows:

—the amount of the maximum weekly charge for non-residential care and support is increased from £90 to £100.

—the weekly minimum income amount where a person is provided with accommodation in a care home is increased from £29.50 to £32.

These Regulations amend Part 4 of the 2015 Regulations (contributions and reimbursements for direct payments) as follows:

—the amount of the maximum weekly contribution or reimbursement for non-residential care and support is increased from £90 to £100.

—the net weekly minimum income amount where a person is provided with accommodation in a care home and receives direct payments under the Act increased from £29.50 to £32.

These Regulations amend the Rules to correct an error made in the Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) (Secondary Legislation) Regulations 2016, and insert the correct provision of the Act in Part 8 and Schedule 4 to the Rules. Part 8 and Schedule 4 deal with restrictions within the meaning of section 40 of the Land Registration Act 2002.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained by contacting the Health and Social Services Group, Welsh Government, Cathays Park, Cardiff CF10 3NQ.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 131 (W. 24)

**SOCIAL CARE, ENGLAND
AND WALES**

**The Care and Support (Charging)
(Wales) and Land Registration
Rules (Miscellaneous Amendments)
Regulations 2020**

Made 10 February 2020

Laid before the National Assembly for Wales
12 February 2020

Coming into force 6 April 2020

The Welsh Ministers in exercise of the powers conferred by sections 50, 52, 53(3), 61, 196(2) and 198(1) of the Social Services and Well-being (Wales) Act 2014(1), make the following Regulations.

Title, commencement and application

1.—(1) The title of these Regulations is the Care and Support (Charging) (Wales) and Land Registration Rules (Miscellaneous Amendments) Regulations 2020.

(2) These Regulations come into force on 6 April 2020.

Amendment of the Care and Support (Charging) (Wales) Regulations 2015

2. The Care and Support (Charging) (Wales) Regulations 2015(2) are amended as follows—

- (a) in regulation 7 (maximum weekly charge for non-residential care and support), in paragraph (1) for “£90” substitute “£100”;
- (b) in regulation 13 (minimum income amount where a person is provided with

(1) 2014 anaw 4.

(2) S.I. 2015/1843(W. 271); as amended by S.I. 2017/214 (W. 58), S.I. 2018/123 (W. 29), and S.I. 2019/234 (W. 53).

- accommodation in a care home) for “£29.50” substitute “£32”;
- (c) in regulation 22 (maximum weekly contribution or reimbursement for non-residential care and support) for “£90” substitute “£100”;
 - (d) in regulation 28 (minimum income amount where a person is provided with accommodation in a care home) for “£29.50” substitute “£32”.

Amendment of the Land Registration Rules 2003

3. The Land Registration Rules 2003⁽¹⁾ are amended as follows—

- (a) in Part 8, rule 93(x) (persons regarded as having a sufficient interest to apply for a restriction) for “under the terms of a deferred payment agreement within the meaning of section 68(2)” substitute “section 71”;
- (b) in Schedule 4 (standard forms of restrictions) in the entry relating to Form MM—
 - (i) in paragraph (2) for “under the terms of a deferred payment within the meaning of section 68(2)” substitute “section 71(1) or (5)”;
 - (ii) in the heading for “under the terms of a deferred payment agreement within the meaning of section 68(2)” substitute “section 71”;
 - (iii) in the words before paragraph (1) for “under the terms of a deferred payment agreement within the meaning of section 68(2)” substitute “section 71”.

Julie Morgan

Deputy Minister for Health and Social Services under the authority of the Minister for Health and Social Services, one of the Welsh Ministers
10 February 2020

⁽¹⁾ S.I. 2003/1417; as amended by S.I. 2008/1919 and S.I. 2016/211 (W. 84). There are other amending instruments but none are relevant.

Explanatory Memorandum to the Care and Support (Charging) (Wales) and Land Registration Rules (Miscellaneous Amendments) Regulations 2020

This Explanatory Memorandum has been prepared by the Health and Social Services Group 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 Care and Support (Charging) (Wales) and Land Registration Rules (Miscellaneous Amendments) Regulations 2020 in relation to charging for social care and support under Parts 4 and 5 of the Social Services and Well-being (Wales) Act 2014 and in respect of the registration of land charges in connection with this under the Land Registration Rules 2003. I am satisfied that the benefits justify the likely costs.

Julie Morgan
Deputy Minister for Health and Social Services
12 February 2020

PART 1 - OVERVIEW

1. Description

The Social Services and Well-being (Wales) Act 2014 (the “Act”) brings together local authorities’ duties and functions in relation to improving the wellbeing of people who need social care and support, and carers who need support. The Act provides the foundation, along with regulations and codes of practice made under it, to a statutory framework for the delivery of social care in Wales to support people of all ages as part of their families and communities.

Under the Act, local authorities have discretion to charge for the care and support they provide or arrange for a person, or the support they provide or arrange for a carer. They also have discretion to set a contribution or reimbursement for direct payments they provide to a person to enable them to arrange their care and support themselves. This applies to care and support in a person’s own home, within the community, or in residential care. Where an authority wishes to apply this discretion to set a charge, contribution or reimbursement, regulations made under the Act govern the arrangements applicable to this.

The Care and Support (Charging) (Wales) Regulations 2015 (“the Charging Regulations”) govern local authorities in discharging their discretion to set a charge, contribution or reimbursement under Part 4 (meeting needs) and Part 5 (charging and financial assessment) of the Act. These came into force on 6 April 2016.

Since then a number of policy changes have been agreed which required amendments to the Charging Regulations. Amending regulations to effect those changes are: the Care and Support (Choice of Accommodation, Charging and Financial Assessment) (Amendment) (Wales) Regulations 2017 that came into force on 10 April 2017; the Care and Support (Charging) (Wales) (Amendment) Regulations 2018 that came into force on 9 April 2018, and; the Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2019 that came into force on 8 April 2019.

The Act, under section 71, enables local authorities to create a charge in its favour over a person’s interest in land to recover costs for care and support where a debt has occurred and the person declines the option of a deferred payment agreement (“DPA”) or does not meet the eligibility criteria for a DPA. To do so local authorities must register such a charge with HM Land Registry under the Land Registration Rules 2003 (“the Rules”).

The regulations subject to this Explanatory Memorandum are required to introduce further updates to the Charging Regulations to reflect uplifted sums of money that apply to specific areas of charging for social care and support. The regulations also introduce an amendment to the Rules to correct an error where local authorities seek to register a charge in the circumstances mentioned above.

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

There are no specific matters of special interest.

3. Legislative background

The powers enabling the making of regulations in relation to setting a contribution or reimbursement for direct payments are contained in Part 4 (sections 50, 52 and 53(3)) of the Act. Powers enabling charging for care and support, and support to a carer, are contained in Part 5 (section 61) of the Act.

The power enabling the amendment to the Rules to correct an error made in the Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) (Secondary Legislation) Regulations 2016 is section 198 of the Act. Section 198 provides for consequential amendments to be made for the purpose of giving full effect to any provision of the Act.

These amending regulations are subject to the negative procedure. They will come into force on 6 April 2020.

4. Purpose and intended effect of the legislation

The overall purpose of the amending regulations is to effect several changes to the existing regulations as a result of certain policy decisions. These existing regulations govern local authorities' determination of a charge for providing or arranging care and support, or support to a carer, where they use their discretion to charge. They also govern authorities' determination of a contribution or reimbursement for a person receiving direct payments to secure their own care and support, or a carer securing their own support, where authorities use their discretion to set these. In addition, the amending regulations will effect a technical correction to the Rules.

The changes the amending regulations make are:

The Care and Support (Charging) (Wales) Regulations 2015

Regulation 2(a) to 2(d) of the amending regulations amend the Charging Regulations as follows:

- uplift from £90 to £100 - the maximum weekly charge applicable to non-residential care and support, and the maximum weekly contribution or reimbursement for receiving direct payments to secure this, by amending regulations 7(1) and 22(1) of the Charging Regulations. This provision ensures that, where a local authority applies its discretion to charge a person for the non-residential care and support they receive, or the non-residential support a carer receives, there is a consistent maximum amount the local authority can charge. Equally, where a local authority applies its discretion to set a contribution or reimbursement for the receipt of direct payments to secure non-residential care and support, there is a consistent maximum amount the local authority can make for these;
- uplift from £29.50 a week to £32.00 a week - the level of the minimum income amount applied in charging for residential care, or in setting a contribution or reimbursement for direct payments to secure residential care, by amending regulations 13 and 28 of the Charging Regulations. The minimum income amount is the sum of money a person in residential care, and who is supported financially by their local authority, is able to retain from their weekly income to spend on personal items as they choose. The sum is reviewed annually in the light of the weekly uplifts applied to UK state pension and welfare benefits.

Land Registration Rules 2003

Regulation 3(a) to 3(b) of the amending regulations amend the Rules as follows:

- in part 8, rule 93(x), section 68(2) is replaced with section 71 of the Act to reflect the correct provision in relation to persons regarded as having sufficient interest to apply for a restriction.
- in Schedule 4, standard forms of restrictions, under the heading “Form MM”, section 68(2) is replaced with section 71(1) or (5).

5. Consultation

A five week consultation on the principle of the changes being made by the amending regulations to the Charging Regulations was originally held between 21 December 2016 and 25 January 2017. In total 24 responses were received from a range of stakeholders covering individuals, representative groups, local authorities and professional organisations. Overall respondents were supportive of the policy behind these changes, seeing them as rebalancing the impact of charging upon those who are required to pay for their care and support. They did, however, raise a number of questions, such as the level of the eventual increase planned for the maximum weekly charge and how the changes would be communicated to care recipients. These have been addressed in the implementation of the amendments being made since that time.

Consultation on the amendment to the Rules has not been necessary. Welsh Government lawyers and HM Land Registry lawyers have worked together to agree the amendments to resolve the issue identified by the HM Land Registry.

PART 2 – REGULATORY IMPACT ASSESSMENT

Introduction

The changes being introduced by the amending regulations are considered in this Regulatory Impact Assessment. Introducing these changes will ensure the Charging Regulations operate in accordance with the policy intention. They also ensure local authorities can place a charge on a property or land in order to recover costs for care and support through the correct process and at a slightly lower cost than at present.

Options and Benefits

This Regulatory Impact Assessment considers two options in relation to the three changes identified above:

- Option 1 – “do nothing” and not make the amending regulations;
- Option 2 – “make the amending regulations” to introduce several changes to the Charging Regulations in relation to charging for care and support, and to amend the Rules to enable a standard, less complex process to be followed in circumstances where a charge is to be placed on a person’s property or land to recover charges due. This is the preferred option.

Maximum Weekly Charge

Under the Charging Regulations a person assessed as in need of care and support in their own home, or within the community, can be charged by their local authority where the authority provides or arranges this. Those receiving direct payments to secure such care and support for themselves can also have a contribution or reimbursement set by their local authority for receipt of these. Where authorities apply a charge, a contribution or a reimbursement in these circumstances, the Charging Regulations set a limit and provide a maximum amount. This is currently set at £90 per week. This provision was originally introduced in 2011 to address the wide variation which existed then in the charges, contributions and reimbursements authorities applied for non-residential care and support of a similar nature.

Ministers committed to increase the maximum charge to £100 per week by the end of this Assembly. In order to achieve this at a steady pace, and in view of the increases received by care and support recipients through annual uplifts applied to UK state pensions and welfare benefits, Ministers have applied annual uplifts over recent years. To complete this process Ministers have agreed to uplift the level of the maximum by £10 a week to £100 a week from 6 April 2020. The additional income this will secure for local authorities will help meet increasing cost pressures associated with maintaining the level and quality of the care and support they provide or arrange.

Option 1 – do nothing

This option retains the maximum charge at its current level and halts completion of Ministers’ intentions to apply a £100 a week maximum charge by the end of the term of this Assembly. In addition, local authorities would have no ability to apply a higher charge, contribution or reimbursement for non-residential care and support or for direct payments, where a person had the financial means to pay a higher amount.

- Costs

There would be no new cost implication for care recipients or local government from this option. It would, however, limit local authorities' ability to collect increased income from charging for care and support to meet the increased costs of maintaining the level and quality of this. This is at a time when recipients' income would have increased as a result of uplifts to state pension and welfare benefits.

- Benefits

This option benefits care and support recipients who, despite their higher level of personal income, would continue to pay no more than £90 a week for the non-residential care and support they receive. It does, however, increase the financial pressures for local authorities in terms of being able to afford to maintain the level and quality of care provided.

Option 2 – make the amending regulations

This option would increase the level of the maximum charge by £10, from £90 to £100 per week. This would take account of increases applied from April 2020 to state pensions and welfare benefits and help fund increasing costs local authorities face in maintaining the level and quality of care provided.

- Costs

Under this option there could be an additional cost to some of the 9,165 care recipients local authorities reported as at October 2019 as paying the current maximum charge of £90 a week. This option could generate up to an estimated £4.8 million per annum for local authorities in increased income from charging for care and support through the higher maximum. This increased income would only come from care recipients whose care and support costs more than the current maximum of £90 per week and who have been financially assessed as being able to afford a charge above this up to the higher maximum. Those not in this position would see no change in their charge, contribution or reimbursement as a direct result of this change.

- Benefits

Based on data from local authorities on the number who currently pay the maximum, this option could raise up to £4.8 million per annum in increased income to help address the financial pressure in maintaining the level and quality of care provided. The financial protections in place under the Charging Regulations ensure a person is not required to pay an amount that is unaffordable to them in meeting their daily living costs. The increase in the maximum under this option would not impact on these financial protections so that only those financially assessed as being able to afford the higher maximum would pay this.

Minimum Income Amount (MIA)

Where a person is in residential care, and is in receipt of financial support from their local authority towards the cost of their care, they are required to contribute towards this cost from the majority of their weekly income. However, under the Charging Regulations a person must be able to retain an amount of their income to spend on personal items as they wish. This is known as the MIA. The level of the MIA is reviewed annually to take account of annual uplifts to UK state pensions and welfare benefit payments, which form the basis of care home residents' weekly income. Taking these uplifts into account, Ministers propose to increase the MIA from 6 April 2020 from its current level of £29.50

per week to £32.00 a week. This will allow residents to retain a slightly higher amount of their income to spend as they wish on personal items.

Option 1 – do nothing

This option maintains the level of the MIA at £29.50 per week. As a result all of the increase in a resident's weekly income from April 2020 as a result of uplifted state pension and welfare benefit payments would go to their local authority to pay for their care.

- Costs

There are no new cost implications for local government from this option. Instead authorities would receive up to an estimated £4.2 million per annum in increased contributions from the 16,144 care home residents over state pension age as recorded in data published by Welsh Government in October 2019. This would be due to the increased income residents would have resulting from the uplifts in state pensions and welfare benefits. Residents in this position would not retain any of the uplifts applied.

- Benefits

Care home residents supported by their local authority would be unable to retain any of the increase applied to their state pensions and welfare benefits and therefore see no benefit. Instead these funds would increase their contributions to local authorities for the cost of their care, so as to benefit the income stream authorities receive from supported care home residents.

Option 2 – make the amending regulations

This option would make the amending regulations so as to increase the MIA from its current level of £29.50 to £32.00 per week. This would allow local authority supported residents to retain a proportion of the uplifts to their state pensions and welfare benefits to spend on personal items as they wish.

- Costs

This option results in local authorities receiving a smaller increase in charge income than if the regulations were not made, of up to an estimated £2.1 million per annum through contributions from the 16,144 residents over state pension age. This would be due to the increased income residents would have resulting from the uplifts in state pensions and welfare benefits. Residents would retain a proportion of these uplifts to spend on personal items as they wish.

- Benefits

This option shares the increased income which local authority supported residents would have from April 2020 as a result of uplifts to their state pensions and welfare benefits. Residents in this position would be able to retain a £2.50 a week of these uplifts to spend on personal items as they wish, while authorities would receive the balance in increased contributions from residents towards the cost of their resident care.

Registration of Land Charges

Under section 71 of the 2014 Act, local authorities are able to register a charge to be placed on an interest in land in order to recover costs for care and support where a debt has occurred and the person declines the option of a DPA, or does not meet the eligibility criteria for a DPA. However, HM Land Registry has identified that due to the current inaccuracy in the Rules, local authorities are currently required to follow the process for

a non-standard restriction which incurs a slightly higher than standard fee. To enable a more standard process to be followed in such situations requires an amendment to be made to the Rules. Section 198 of the Act provides for consequential amendments to be made for the purposes of giving full effect to any provisions of the Act. Hence the amending regulations that are the subject to this EM seek to correct the Rules and reference the relevant section of the Act by which a charge can be placed over an interest in land.

Option 1 – do nothing

No changes will be applied to the Rules and therefore local authorities who wish to place a charge on a person's land or property in order to recover costs for social care and support will need to continue to follow a non-standard restriction process which is more complex and more expensive.

- **Costs**

This option maintains the current position and process local authorities must follow in order to register a charge on land or a property in order to recover costs for care and support. This option incurs no new or additional costs, although local authorities will continue to pay HM Land Registry a higher than necessary fee each time they wish to register a charge, owing to the more complex process that needs to be followed.

- **Benefits**

There are no benefits to this option.

Option 2 – make the amending regulations

This option ensure changes are applied to the Rules that will enable local authorities, who wish to place a charge on a person land or property in order to recover costs for social care and support, to do so through a standard process that is clearer, less complex and attracts a lower fee.

- **Cost**

The options incurs no new or additional costs. Instead it will likely reduce the level of the fee local authorities are required to pay HM Land Registry each time a charge is registered.

- **Benefits**

The option provides for an easier registration process and will attract a lower fee for local authorities on registering a charge.

Conclusion

Due to the financial benefit for local authorities in increasing the maximum weekly charge, the financial benefit for care home residents in increasing the minimum income amount, and the process and financial benefits of making an amendment to the Rules, "Option 2 – make the amending regulations" is recommended in each case. A summary table showing the annual financial impact of the amending regulations is below:

	Welsh Government £m p.a.	Local Authorities £m p.a.	Care Recipients £m p.a.
Maximum Weekly Charge	0	4.8	(-4.8)
Minimum Income Amount	0	2.1	2.1
Registration of Land Charges	0	0.1	0
Total	0	7.0	(-2.7)

Consultation

A five week public consultation on the principle of the changes planned was held between 21 December 2016 and 25 January 2017.

Competition Assessment

Competition Filter Test	
Question	Answer: yes/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 regulations 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 businesses/organisations?	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 characterised 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

Post Implementation Review

The Act contains provisions to allow Welsh Ministers to monitor functions of it carried out by local authorities and other bodies. The Welsh Ministers may require these bodies to report on their duties in implementing these amending regulations.

The Welsh Government will continue to monitor the impact of the amending regulations on areas such as the Welsh language, the UN Convention on the Rights of the Child, Older People and Equality.

SL(5)501 – The Social Care Wales (Specification of Social Care Workers) (Registration) (Amendment) Regulations 2020

Background and Purpose

Section 80(1)(a) and (b) of the Regulation and Inspection of Social Care (Wales) Act 2016 require Social Care Wales to keep a register of social workers and social care workers of a description specified by the Welsh Ministers in Regulations.

The Social Care Wales (Specification of Social Care Workers) (Registration) Regulations 2016 (the “2016 Regulations”) specify descriptions of social care workers for whom a register must be kept.

These Regulations amend the 2016 Regulations. The amendments provide that a register must be kept by Social Care Wales of individuals who are employed or engaged under a contract for services to provide care and support in connection with:

- (i) A care home service provided wholly or mainly to adults;
- (ii) A care home service provided wholly or mainly for children;
- (iii) A secure accommodation service
- (iv) A domiciliary support service; or
- (v) A residential family centre service.

Currently, Social Care Wales is required to keep a register of individuals in connection with a care home service provided wholly or mainly for children, and a secure accommodation service. This is being extended by the Regulations to require the registration of persons engaged under a contract of services, in addition to individuals who are employed by the service provider.

The requirement for Social Care Wales to keep a register of individuals employed or engaged under a contract for services in connection with a care home service provided wholly or mainly to adults, and a residential family service, is added by these Regulations.

Procedure

Affirmative.

Technical Scrutiny

The following point is identified for reporting under Standing Order 21.2 (vii) (that there appear to be inconsistencies between the meaning of its English and Welsh texts) in respect of this instrument.

The Welsh text of the Regulations is missing the text in italics, at the top of the first page of the Regulations, and the Explanatory Notes, which explains that the draft regulations are laid before the Assembly, for the approval by resolution of the Assembly. In the heading beneath where we would ordinarily see the text in italics, the word “DRAFFT” is also missing. The English text includes this wording.



The preamble to both the Welsh and English text does state that a draft has been laid before, and approved by a resolution of the Assembly. However, at first glance at the Welsh text a reader may think that the Regulations have been made subject to the negative procedure.

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Implications arising from exiting the European Union

No implications are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

A government response is required.

Legal Advisers

Legislation, Justice and Constitution Committee

February 2020



Draft Regulations laid before the National Assembly for Wales under section 187(2)(n) of the Regulation and Inspection of Social Care (Wales) Act 2016, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2020 No. (W.)

SOCIAL CARE, WALES

**The Social Care Wales
(Specification of Social Care
Workers) (Registration)
(Amendment) Regulations 2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 80(1)(a) and (b) of the Regulation and Inspection of Social Care (Wales) Act 2016 (“the Act”) require Social Care Wales to keep a register of social workers and social care workers of any other description specified by the Welsh Ministers in regulations.

The Social Care Wales (Specification of Social Care Workers) (Registration) Regulations 2016 (“the 2016 Regulations”) specify the descriptions of social care workers for whom a register must be kept.

These Regulations amend regulation 3 of the 2016 Regulations by substituting paragraph (2)(b) and inserting a new paragraph (2)(bb) to provide that a register must be kept by Social Care Wales of individuals who are employed (whether as an employee or a worker), or engaged under a contract for services to provide care and support in connection with a care home service provided wholly or mainly to adults, a care home service provided wholly or mainly for children, a secure accommodation service, a domiciliary support service or a residential family centre service.

The requirement for Social Care Wales to keep a register of individuals employed or engaged under a contract for services in connection with a care home service provided wholly or mainly to adults and a

residential family centre services is added by these Regulations.

The requirement for Social Care Wales to keep a register of individuals in connection with a care home service provided wholly or mainly for children and a secure accommodation service, is extended by these Regulations to require the registration of individuals engaged under a contract of services (including agency workers) in addition to individuals who are employed by the service provider.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Department of Health and Social Services, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

Draft Regulations laid before the National Assembly for Wales under section 187(2)(n) of the Regulation and Inspection of Social Care (Wales) Act 2016, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2020 No. (W.)

SOCIAL CARE, WALES

**The Social Care Wales
(Specification of Social Care
Workers) (Registration)
(Amendment) Regulations 2020**

Made

Coming into force

1 April 2020

The Welsh Ministers, in exercise of the powers conferred upon them by section 80(1)(b) of the Regulation and Inspection of Social Care (Wales) Act 2016(1), make the following Regulations.

In accordance with section 187(2)(n) of that Act, a draft of this instrument has been laid before, and approved by a resolution, of the National Assembly for Wales.

Title, commencement and interpretation

1.—(1) The title of these Regulations is the Social Care Wales (Specification of Social Care Workers) (Registration) (Amendment) Regulations 2020.

(2) These Regulations come into force on 1 April 2020.

(3) In these Regulations, “the 2016 Regulations” means the Social Care Wales (Specification of Social Care Workers) (Registration) Regulations 2016(2).

(1) 2016 anaw 2.

(2) S.I. 2016/1235 (W. 293), amended by S.I. 2018/192 (W. 43).

Amendment of the 2016 Regulations

2.—(1) The 2016 Regulations are amended as follows.

(2) In regulation 2 (interpretation), in the appropriate place insert—

““care home service” (*“gwasanaeth cartref gofal”*) has the same meaning as that given in section 2(1)(a) of, and paragraph 1 of Schedule 1 to, the Act, subject to regulation 2 of the 2017 Regulations;”;

““employment” (*“cyflogaeth”*) has the same meaning as in section 230(5) of the Employment Rights Act 1996(1) and includes individuals employed whether as an employee or worker;”;

““residential family centre service” (*“gwasanaeth canolfan breswyl i deuluoedd”*) has the same meaning as that given in section 2(1)(c) of, and paragraph 3 of Schedule 1 to, the Act, subject to regulation 4 of the 2017 Regulations;”.

(3) In regulation 3 (specification of social care workers)—

(a) in paragraph (2)—

(i) for sub-paragraph (b) substitute—

“(b) who in the course of their employment with a service provider, provide care and support to any person in Wales in connection with—

(i) a care home service provided wholly or mainly for adults,

(ii) a care home service provided wholly or mainly for children,

(iii) a secure accommodation service within the meaning of paragraph 2 of Schedule 1 to the Act,

(iv) a domiciliary support service in order to provide care and support to a person referred to in paragraph 8(1) of Schedule 1 to the Act, or

(v) a residential family centre service, provided by that provider;”;

(ii) after sub-paragraph (b) as substituted by these Regulations insert—

“(bb) who under a contract for services, provide care and support to any person in Wales in connection with—

(i) a care home service provided wholly or mainly for adults,

(1) 1996 c. 18.

- (ii) a care home service provided wholly or mainly for children,
 - (iii) a secure accommodation service within the meaning of paragraph 2 of Schedule 1 to the Act,
 - (iv) a domiciliary support service in order to provide care and support to a person referred to in paragraph 8(1) of Schedule 1 to the Act, or
 - (v) a residential family centre service, provided by a service provider;”;
- (iii) omit sub-paragraph (d);
 - (b) omit paragraph (3).

Name

Deputy Minister for Health and Social Services under authority of the Minister for Health and Social Services, one of the Welsh Ministers

Date

The Social Care Wales (Specification of Social Care Workers) (Registration) (Amendment) Regulations 2020

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 Social Care Wales (Specification of Social Care Workers) (Registration) (Amendment) Regulations 2020.

I am satisfied that the benefits justify the likely costs.

Julie Morgan
Deputy Minister for Health and Social Services
11 February 2020

Part 1 – OVERVIEW

1. Description

- 1.1 These Regulations make amendments to The Social Care Wales (Specification of Social Care Workers) (Registration) Regulations 2016, made under Section 80 (1) (b) of the Regulation and Inspection of Social Care (Wales) Act 2016 (“the 2016 Act”).
- 1.2 These Regulations provide that a register must be kept by Social Care Wales (SCW) of individuals employed (whether as an employee or a worker) or who are engaged under a contract for services to provide care and support in connection with a care home service provided wholly or mainly for adults, a care home service provided wholly or mainly for children, a secure accommodation service, a domiciliary support service or a residential family centre service.
- 1.3 The amendment will enable 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.
- 1.4 It will also open up the workforce register to individual ‘engaged under a contract for service’ in connection with a care home service provided wholly or mainly for children or a secure accommodation service. This will align the registration requirements in respect of each specification of social care worker.

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. These Regulations amend the Social Care Wales (Specification of Social Care Workers) (Registration) 2016, and are made under section 80(1) (b) of the Act.
- 3.2 These Regulations are made under the affirmative procedure.
- 3.3 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.

4. Purpose & 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, proposed as part of the Phase II implementation process of the Regulation and Inspection of Social Care (Wales) Act 2016 (“the 2016 Act”), will allow for the opening of the register held by SCW to this latest group on a voluntary basis in advance of a proposed deadline of 2022 for mandatory registration.
- 4.3 The intention is to afford the workforce regulator, SCW, ample lead-in time to engage and work with the workforce prior to a proposed deadline of 2022 for mandatory registration. This is consistent with the approach taken to the registration of domiciliary care workers in 2018, and would allow time for this new group to understand the process and comply with the respective requirements and qualifications needed as part of registration.

5. Consultation

- 5.1 A formal 12 week consultation on the proposed regulations was undertaken between 26 July and 14 October 2019 and received 55 responses from various stakeholders ranging from representative bodies, local authorities, health boards, service providers and individuals.
- 5.2 The consultation focused on asking a series of questions relating to mandating the registration of all domiciliary care workers from April 2020 and the opening of the workforce register to permit the voluntary registration of individuals employed or engaged under a contract of services within a care home provided wholly or mainly for adults and in residential family centre services from April 2020 in advance of their mandatory registration in 2022.
- 5.3 An analysis of the responses received has shown 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.
 - Our consultation asked whether individuals employed under contract in domiciliary support services, residential family centre services, care homes provided wholly or mainly for adults, homes provided wholly or mainly for children and in secure accommodation should be required to register with the workforce regulator. The question sought stakeholder views regarding the need for consistency across the social care workforce, as although we have placed regulatory requirements

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>

on those in connection with domiciliary care and propose to do the same for those in adult residential care and residential family centre service; agency workers in homes provided wholly or mainly for children and in secure accommodation are currently exempt from registration due to an anomaly in earlier legislation. The responses felt that all workers, whether employees or engaged under a contract for services (e.g. “agency workers”), should be treated equally.

- b. That greater clarity was needed about whether volunteers should be required to register, with some respondents suggesting they should, but a small majority tending to disagree with this.
- We have not included volunteers in the scope of our draft regulations, despite some respondents suggesting that they should be. The primary rationale for this is that it could put unnecessary barriers in the way of those that wish to volunteer. Additionally, many volunteers provide a type of support that falls outside of the definition of care and support outlined in the 2016 Act, in addition Regulation 35 of the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 already place clear requirements on providers of regulated services with regard to not to allow a volunteer to work at the service unless that person is fit to do so.
- c. The majority of respondents agreed that guidance should be provided to support domiciliary support services in complying with the regulations. Responses indicated that any guidance 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.
- We will give careful consideration as to what type of guidance might be helpful, and that we will work with Social Care Wales and Care Inspectorate Wales to consider how we might take this suggestion forward. This will include considering how any such guidance would fit alongside the information already available on the Social Care Wales and Care Inspectorate Wales websites.
- d. The majority of respondents agreed that a two year lead-in time for voluntary registration for individuals employed or engaged under a contract for services in connection with a care home service provided wholly or mainly for adults and residential family centre services from 2020 allowed sufficient time for the sector to begin the process ahead of mandatory 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*”.
- We have acknowledged that there is a fine balance to be found between providing individuals sufficient time to engage with the

process of registration before it becomes mandatory, and one which avoids introducing complacency into the system. However, there has not been a strong case made for a lead-in period that is either shorter, or of longer than, two years.

- 5.4 Officials propose that the draft Social Care Wales (Specification of Social Care Workers) (Registration) (Amendment) Regulations 2020 are further amended to require SCW to keep a register of individuals engaged under a contract for services (i.e. agency staff) in connection with a residential care service provided wholly or mainly for children or a secure accommodation service, and thus close the current anomaly about these workers aligning the registration requirements with those already in place relating to domiciliary support workers.
- 5.5 This will present a consistent requirement to all employers to employ social care workers who meet the registration requirements and ensure that these aspects of the workforce are regulated and have similar standards and Codes of Practice. This will both hold them accountable for failings and ensure that they are suitably skilled to deliver care and support to a high quality.
- 5.6 The consultation document also asked questions on proposals to allow the service regulator, Care Inspectorate Wales to require information from the directors, trustees and members of boards or committees of any applicant organisation (that is not a local authority or Local Health Board) about any previous applications to register and registrations of a regulated service in the UK as well as relevant identifying information when determining whether the organisation is fit to deliver a service. A separate Regulatory Impact Assessment (RIA) covering this aspect of the consultation will be provided and this aspect will not be included in this RIA.

PART 2 – REGULATORY IMPACT ASSESSMENT

Background

The registration of the social care workforce began with the Care Standards Act 2000 (the 2000 Act), which mandated the professional registration of social workers, managers of adult residential care homes and managers and workers of children’s residential care homes with the then workforce regulator, Care Council for Wales. In 2013, the Welsh Government also legislated for the mandatory registration of managers of domiciliary support services, to bring these into line with other managers in the sector.

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.

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 and professionalisation of other groups within the social care workforce to nurture the profile of the sector and improve standards and quality of care. 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.

In April 2018 regulations came into effect requiring Social Care Wales (SCW), to keep a register of individuals who are employed or engaged under a contract of services in connection with a domiciliary support service. The effect of this was to allow voluntary registration of domiciliary support workers. This was done in order to provide a two year period for SCW to work with the sector to understand and prepare for registration requirements, ahead of mandatory registration from 2020. These Regulations deliver a similar approach for both employees (whether as an employee or worker) and individuals engaged under a contract for services, who provide care and support in connection with a care home service provided wholly or mainly for adults from 2020 ahead of their proposed mandatory registration from 2022.

The regulations also open the register on a voluntary basis to individuals engaged under a contract for services (e.g. agency workers), who provide care and support in connection with a care home service provided wholly or mainly for children or a secure accommodation service. Including these categories of workers in these regulations represents a proportionate approach that will allow these workers sufficient time to understand the implications of registration and provide consistency across the workforce and minimise the uncertainty whether these individuals are required to register with SCW.

This Regulatory Impact Assessment examines the proposal to change regulations in order to open the workforce register voluntarily to adult residential care workers and agency workers contracted to deliver services in children’s residential care and secure accommodation services.

The Regulations

The Social Care Wales (Specification of Social Care Workers) (Registration) (Amendment) Regulations 2020 amend the Social Care Wales (Specification of Social Care Workers) (Registration) Regulations 2016, to require SCW to keep a register of individuals employed (whether as an employee or worker) or engaged under a contract for services in connection with a care home service provided wholly or mainly for adults, or a residential family centre service. It also specifies that SCW are required to keep a register of individuals engaged under a contract for services in connection with a care home provided wholly or mainly for children or a secure accommodation service. Previously the workforce register was only open to employees, which left uncertainty around whether these individuals were required to register.

Registration fees

Under sections 74 and 83 of the Regulation and Inspection of Social Care (Wales) Act 2016, Social Care Wales has the power to make provision of the payment of fees in connection with registration to the register. These fees must be specified in rules made by Social Care Wales.

The responsibility for setting these fees rests with Social Care Wales and not with the Welsh Government. The proposed regulations do not change the powers for Social Care Wales to charge a fee, or the level of those fees. However as these are costs which are associated with the implementation of the regulations, they are considered as part of this Regulatory Impact Assessment.

Background to the current level of fee charged

The current registration fees were set in 2018, following a consultation by Social Care Wales. 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 had become the lowest of all comparable UK social care workforce regulators. According to Social Care Wales, the new fees were aimed at bringing the registration fee regime in Wales in line with other social care regimes across the UK.

Following the consultation Social Care Wales determined to raise the fees on a sliding scale over four years from 2018-2019 and ending in 2021-2022. This scale increases 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. Students of social work studying towards a career in social care would pay a set fee of £15 over the same period.

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.

OPTIONS CONSIDERED

The two options are:

- **Option one:** Do nothing - retain the status quo;
- **Option two:** Open the workforce register for adult residential care workers and residential family care service workers to join on a voluntary basis.

Option one: Do nothing - retain the status quo

In this scenario, Individuals employed or engaged under a contract for services in connection with a care home provided wholly or mainly for adults and residential family care services in Wales would not need to register in order to be able to continue to work in care home settings.

Option two: Open the workforce register for adult residential care workers to join on a voluntary basis.

Social Care Wales are required to keep a register of individuals employed or engaged under a contract for services in connection with a care home provided wholly or mainly for adults or residential family centre services. The effect of the Regulations allows the workforce to register with SCW on a voluntary basis prior to proposed mandatory registration.

Social Care Wales are responsible for maintain the workforce register and would be tasked with promoting registration to this section of the workforce.

Registration of the workforce will incur a fee, which may be paid either by the individual registrant or by their employer.

Costs associated with each option

Option one: Do nothing - retain the status quo

Workforce / Employers

If the status quo is maintained, individuals employed or engaged under a contract for services in connection with a care home provided wholly or mainly for adults or residential family centre services will not incur any additional costs relating to registration. Employers do not currently incur the cost of registration fees but if we retained the status quo, but are responsible for costs associated with mandatory training for their employees.

The status quo would also mean that individuals employed or engaged under a contract for services in connection with a care home provided wholly or mainly for children or secure accommodation services would also be unable to register which would result in neither the workforce nor their employers having to meet any associated costs of registration or mandatory training.

The costs associated with registration are outlined below under the workforce costs included in option two.

Workforce regulator (Social Care Wales (SCW))

Under option one the regulator would not occur any additional costs. Any costs already incurred in making changes in anticipation of changes to the workforce register would be sunk costs.

However, should mandatory registration be introduced in 2022, the cost pressures on the regulator will be focussed on a much shorter period of time and this could increase the risk of failing to register the workforce. This is because the workforce, which is estimated to consist of around 20,000 workers, would be required to register within the six month grace period and the associated costs of promotion, additional staff and office space would be concentrated around the period of registration.

Welsh Government

There will be no additional costs under this scenario.

Option two: Open the workforce register for adult residential care workers and residential family care service workers to join on a voluntary basis.

Workforce

When individuals employed or engaged under a contract for services in connection with a care home provided wholly or mainly for adults or residential family centre services enter the register in 2020, they will fall within the category of social care workers and be subject to an increased registration fee of £25 in 2020-2021 and £30 in 2021-2022. The workforce regulator, Social Care Wales (SCW) has estimated that approximately 40% of the workforce will register in the first year, with the remaining 60% of workers following suit in the second year. If we take this assumption as following this pattern by 2021/22, it has been estimated that this would equate to a total maximum cost to the workforce and generation of income for SCW to the tune of:

- 2020/21: estimated 8,000³ workers at £25 per worker = £200,000
- 2021/22: estimated 20,000 workers at £30 per worker = £600,000

Social Care Wales (SCW) has confirmed that there will be a number of payment options available to registrants to help spread the cost of the registration fee, including direct debits for either a single payment or monthly instalments over the course of the respective annual registration period.

³ Social Care Wales estimates of the likely numbers of registrants would see 40% in the first year and the remaining 60% in year two.

As with domiciliary support workers voluntarily registering currently, new registrants can also apply to HMRC to reclaim a proportion of this fee back as a tax deduction⁴. The guidance provided by the UK Government's "Gov.UK" 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. an 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 is to be phased in over two years, we envisage this to be negligible.

Social Care Wales has confirmed that there will be a number of payment options available 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. 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.

In respect to the potential impacts on agency staff in the children's residential care and secure accommodation services, it is not possible to identify exact costs as we do not have accurate data on the numbers of these staff currently working in the sector. For illustrative purposes we have therefore estimated the number of agency workers as being 25% (723) of the current employed workforce of 2,894 as reported by Social Care Wales⁵ (SCW) in 2019. This would provide SCW with a further revenue stream of £18,075 of funding from fees in 2020/21 and £21,690 in 2021/22.

Social Care Providers (employers)

Cost of Registration

There may be a potential financial cost for employers, 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 is unable to breakdown the split due to the variety of payment methods used. 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

Time to complete registration

Based on an estimate of approximately two hours to complete the registration process and using the Low Pay Commission's predicted national living wage for people aged 25

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

⁵ https://socialcare.wales/cms_assets/file-uploads/RCCW-factsheet-ENG.pdf

and over of £8.67 per hour in 2020 as a baseline (plus £2.60 on-costs for NI contributions, pensions etc.), we can calculate that cost to complete one individuals employed or engaged under a contract for services in connection with a care home provided wholly or mainly for adults or residential family centre services registration would be approximately £22.54 (£8.67 + £2.60 x 2) per worker.

This reflects that the majority of individuals employed or engaged under a contract for services in connection with a care home provided wholly or mainly for adults or residential family centre service workers are likely to be on the minimum wage but in the over 25 bracket⁶. Therefore the cost for completing the registration process for these categories of the workforce (estimated to be 20,000 workers) would equate to a sum of £450,800, if it is assumed that employers are meeting these costs themselves.

Applying this methodology for agencies employing staff under contract to deliver care and support in connection with a care home provided wholly or mainly for children or a secure accommodation service the costs would be similar for individual costs but for the whole workforce the registration process would equate to a cost of £16,296. However, it could be that these costs would be passed on by their agency employers to those service providers requiring agency staff to back-fill for staff either completing their own training, who are off sick or on maternity leave, etc.

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. However in order 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. SCW have confirmed that it will employ a similar engagement process of briefings and visits to help employers, and employees, understand the process and take them through it. This will also include learning from the process that was undertaken during the registration of domiciliary care workers to help make this process as easy as possible.

Training Costs

Linked to the registration of staff is the cost of meeting the required qualification requirements. 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 a notional 475 hours to complete this training, which includes “on-the-job training” and “off-site⁷” learning. The amount of “off-site” learning needed will vary greatly depending on the individual. For example, employers are already likely to have invested heavily in more experienced workers who are then unlikely to require as much “off-site” learning (which could include, for example, first aid training). Workers employed straight from school however are likely to require a greater investment in learning that cannot be undertaken “on-the-job”.

⁶ Accurate data is not available on the average age of the workforce, therefore we are reliant on parallels drawn from evidence collected on other areas of the workforce in similar roles i.e. residential child care workers – where the average age is 38 – see SCW factsheet on Residential child care workers on the Register (1 April 2018) https://socialcare.wales/cms_assets/file-uploads/RCCW-factsheet.pdf

⁷ While described as ‘off-site’, this learning may take place in the workplace but not on-the-job.

The cost to employers of paying salaries for time spent learning “off-site” is difficult to estimate given the individualised nature of the learning.

However, if we take a standardised notion of 1 day training off-site per week of the total notional 475 hours of training, we can estimate that the cost would equate to 95 hours at a cost of approximately £1,071 (i.e. 95 hours of training at the national minimum wage of £8.67 and on-costs (at 30% of salary costs)). This does not reflect what may actually be happening on the ground, where in fact the likely cost is expected to be much lower for the reasons outlined above.

Based on current figures for registration of domiciliary care staff, this assumes that 22% of the workforce will require the qualification⁸ and to bring this number of the workforce up to the required qualifications would equate to a cost of £4.7 million for the sector in salary costs⁹.

In answer to some concerns from the domiciliary support sector that there were some employees who would not be interested in acquiring a qualification and could therefore leave the sector, SCW worked with that sector to find a solution to help retain these staff but allow them to register. SCW will use a 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. It is expected that this process will also be utilised with the individuals employed or engaged under a contract for services in connection with a care home provided wholly or mainly for adults or residential family centre service so that, as well as the qualification route. This would help ease the immediate pressure on employers around the cost of training to ensure staff are registered by the mandatory deadline, but there will still be costs relating to continued professional development for staff going forward. It is difficult to quantify the savings that these options would give employers.

It is not possible to identify the number of Individuals engaged under a contract for services in children’s residential care and secure accommodation services who might require the necessary qualifications, as we do not currently have any accurate data on these workers. Applying the same methodology as above and assuming that 25% of the estimated number are working towards more permanent employment, the cost of training 181 workers to meet the registration requirements would equate to a sum of £149,081 in staff time and a further £44,724 (30% on-costs (i.e. NI contributions,

⁸ Adult residential care workers have yet to register therefore we are drawing parallels from the SCW figures for domiciliary care workers. These show that as at January 2020, of around 12,500 registrants 76% of the domiciliary workforce has registered with a qualification, with 13% of these registering through the confirmed competence route and 11% of these using the Principles and Values route (or 8% of the total). Based on an assumption that the remaining workers left to register will not be qualified, that approx. half of these may come through on the confirmed competence route, this gives us a calculation of a total 22% of the workforce registering that need to be trained (i.e. 8% already registered through confirmed competence and 14% potentially to register through confirmed competence)

⁹ This figure is based upon the current National Living Wage of £8.67 + £2.60 employer on-costs x 95 hours to complete a Level 2 qualification x 3,800 workers needing to attain this qualification.

Pensions, etc.) equating to a total cost of £193,805.

However, these costs are not a consequence of this regulation alone. Even without mandatory registration, there is a cost to employers for training staff and ensuring that they have the right skills to do the job. Employers already have a legal obligation placed upon them under the Regulation and Inspection of Social Care (Wales) Act 2016 to ensure that their staff receive “appropriate training to understand behaviours and adopt strategies to support individuals with their behaviours to achieve positive well-being and outcomes.” In addition to this, the voluntary registration of domiciliary support workers which preceded this proposal means that many of these costs will already have been met. However we do not have access to data on the current (pre-registration) cost to employers of training staff.

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

Workforce regulator (Social Care Wales (SCW))

The costs associated with maintaining the register and regulating adult residential care workers and residential family care service (and domiciliary care workers) include:

- Direct staffing costs arising from the demands of managing the registration process
- Direct staffing costs arising from additional staff needed to oversee an anticipated increased number of conduct and fitness to practice processes,
- Indirect costs such as for venue hire for conduct committees, and conduct committee expenses.

SCW estimate that the costs associated with maintaining the register and regulating adult residential care workers and residential family care service (and domiciliary care workers) would increase year on year as more of the workforce enter the register and the increase would rise from £1,130,738 in 2018-2019 to 2,995,000 in 2021-2022. Some of these costs would be offset by the collection of registration fees. The following table estimates the income anticipated to SCW from registration, under option 2.

Group	2018/19	2019/20	2020/21	2021/22
Current registrants 11,000	£455,755 (a)	£550,015 (b)	£644,275	738,535
Domiciliary support workers	£120,000	£400,000 (c)	£500,000	£600,000 (d)
Care Home workers etc.	n/a	n/a	£200,000 (e)	£600,000 (f)

Agency workers¹⁰	n/a	n/a	£18,075	£21,690
Total Income	£575,755	£950,015	£1,362,350	£1,960,225

Registration fees are collected from the approximately 11,000 registrants currently registered with SCW; up to 2017/18 this provided the regulator with a total of £271,970 worth of income. The figure shown at (a) represents the increased revenue stream when registration fees across all categories were increased in 2018/19.

(b) reflects the first of a series of incremental increases in fee levels for all categories of registered workers.

With the registration of the domiciliary support workforce, it is estimated that a further £400,000 (c) will be added to the regulator's revenue stream by the time that exercise is completed in 2020 (based on 16,000 workers charged a fee of £25). This will be in addition to a further incremental increase on the registration fees of the initial 11,000 registrants. The figure shown at (d) represents the final planned incremental increase in registration fees across all categories.

With the registration of Individuals engaged under a contract for services, SCW estimate that 8,000 adult residential care workers to register in the first year of the register being opened in 2020-2021 with the majority following up throughout 2021-2022. This would equate to revenue totalling £200,000 in 2020-2021 (e) and £600,000 (f) by 2021-2022 and also includes the incremental fees for those periods.

Fitness to Practice

On the regulatory side of its work, SCW have estimated that it would expect the number of fitness to practise investigations to increase as more groups of workers are added to the register. SCW has provided an estimated cost for the increase in fitness to practise investigations based on the numbers associated with the 11,000 current registrants currently on its workforce register.

Currently, 25 cases per annum go to a full Fitness to Practice hearing at a cost of £13,000 per case (a total of £325,000 per annum). Social Care Wales estimates that, with the inclusion of the full domiciliary care, adult residential care and residential family care service workforce (approximately 36,000 workers) this number could increase by a further 84 cases going to full hearing by 2022. Whilst it is difficult to accurately estimate the numbers that may be involved, if we take this estimate as a starting point it would mean that the regulator could incur 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 have estimated increase in its conduct panel activity costs to increase to £1,741,000 by 2021-2022.

In order to provide additional staff resources to cover the expected increase in activity, SCW estimate that 27 whole time equivalent (WTE) members of staff would need to be

¹⁰ This includes those employed under contract to provide care and support in residential services wholly or mainly for children and secure accommodation services.

employed 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). This 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.

Care Inspectorate Wales (CIW)

Care Inspectorate Wales has confirmed that questions have been developed and incorporated into their existing procedures for service inspections to check on staff and confirm that they have registered with SCW and therefore do not foresee any additional costs as part of these Regulations. The existing Memorandum of Understanding between the regulators already provides for the exchange of information to allow for the verification of data and sharing of intelligence.

Welsh Government

Sponsorship funding to Social Care Wales

The ability for the workforce regulator to set the level of fees and collect these costs has a direct impact on the amount of funding provided to SCW by Welsh Government through our grant-in-aid sponsorship funding. In order to facilitate the opening of the workforce register for domiciliary care workers (and in preparation for the registration of adult residential care workers) the Welsh Government has already provided the regulator with almost £1 million to meet the direct costs associated with this exercise to cover additional staffing and IT costs. There are therefore no additional costs required to cover the administration of extending the workforce register.

This sum was on top of its grant-in-aid sum of £18,008 million to deliver a robust regulation system for the social care workforce and supporting the professionalisation of the social care workforce through effective training and development.

Further funding may be required to offset the additional costs of option two to Social Care Wales as set out above if numbers are significantly higher than expected for either registration or fitness to practice cases. The costs set out above are, however, estimated costs and are for illustrative purposes only as it is not possible to accurately predict the numbers of new cases that may be brought forward. The Welsh Government will continue to work with the regulator to monitor the potential impacts as the process of increasing the workforce register unfolds and any additional fitness to practise costs arise.

Increased training costs

The Welsh Government currently also funds apprenticeships for Level 2 in Health and Social Care and Child Care and it is estimated that growth in the take up of apprenticeships is likely to be seen mostly in the private and voluntary sectors but that it is difficult to predict what that growth will look like. However, for illustrative purposes we have taken the current estimate that around 54% of those registering are trained, and that a further 23% of the workforce are being registered through the confirmed

competency route. This would leave a potential 22% increase in those seeking to access the apprenticeship programme due to registration. The current cost of an individual apprenticeship through the programme is £5,449 per individual, so the estimated cost of the 22% increase would equate to 4,400 workers being added to the programme at a cost of £23,975,600 over the 5 year period assuming mandatory registration in 2022 and a further three years before registration renewal is required.

Benefits associated with each option

Option one: Do nothing - retain the status quo

The most significant benefit to option one is a reduction in costs to the workforce, employers and the workforce regulator.

Option two: Open the workforce register for adult residential care workers and residential family care service workers to join on a voluntary basis.

The registration of the Individuals engaged under a contract for services will further build on steps taken to professionalise the sector, which is the overall objective of the work. Although difficult to quantify, the anticipated benefits of registration include:

- Improved trust and confidence in social care workers among both users and the general public;
- Workers in social care feel they are valued which can lead to improved job satisfaction;
- A happier and more supported workforce could lead to improvements in the quality of care;
- Showing that, as the work force professionalise, a career in social care can be attractive which helps to build capacity to meet future demand;
- Highlighting to service users, their families and friends that a professional workforce has the proper skills to do the job and reassure them that they are overseen by a regulator if things fail or fall below expectations.

Additionally, should mandatory registration be implemented in 2022, opening the register early will mitigate the potential risks of registering a large number of workers overnight. It will also allow for the development of a robust communications strategy around registration, and greater engagement with the sector to help workers and employers understand the process and its benefits.

The opening of the register on a voluntary basis will also afford greater opportunity to identify any potential resource issues and utilise any best practice learned during the registration of domiciliary care workers.

As outlined above, the proposal will also afford Individuals engaged under a contract for services greater time to understand what it means for them and prepare for the process. The preparations can help to explain all aspects of the registration process, including the need for registration fees and certain qualifications, which might be new to

many in the sector. This preparatory work could also clarify how having a specific set of skills or qualifications will help reassure potential employers or service users that the worker has attained required standard to deliver care and support.

Employers may choose to use the early registration of its workforce as a demonstration of commitment to quality, or to provide a degree of reassurance to users that workers are registered with SCW and as such will be held accountable if their conduct is called into question.

The workforce can also be assured that, should their conduct be questioned, they would be afforded a fair opportunity to defend themselves before a panel of their peers. Registration should also empower workers to take charge of their own personal development and pursue opportunities with SCW to further their skills or qualifications through the SCW's various training and development programmes and drive continued improvement in the quality of service.

Risks associated with each option

Option one: Do nothing - retain the status quo

The primary risk relating to option one is connected with the proposal to introduce mandatory registration in 2022.

If voluntary registration is not introduced and mandatory registration comes in to force in 2020, SCW would have to register all 20,000 estimated adult residential care workers overnight and additional resources may be required to cope with a potentially overwhelming temporary burden that would be placed upon it in 2022. This could lead to undue stress on staff and risks introducing errors in data recording which could have serious implications for both the regulator and adult residential care workers.

Even where a great deal of attention is directed at planning and communications, a further risk of not having a long lead-in period to mandatory registration is that workers or their employers will delay registration and that greater numbers may miss the deadline.

This could lead to a risk of confusion about the status of those workers not yet added to the register, for example, whether they could continue to deliver services if they are not registered. In the longer term this could require further investment to correct or mitigate the potential damage that might have been caused by any errors or oversights.

Whilst SCW has planned for managing the application process by recruiting more staff and office space and equipment, it might still have to redirect additional staff to help process a mass influx of applications, which could draw staff away from other tasks to meet the demand. This could place strains on other aspects of its workload that again could have potential reputational impacts.

If mandatory registration does not proceed then the risks outlined above are reduced significantly. However, in this scenario the key risk is that there will be an inconsistent approach to different parts of the social care workforce, which could lead to a devaluing

of the work undertaken in the care home sector compared to that undertaken in domiciliary care.

Option two: Open the workforce register for adult residential care workers and residential family care service workers to join on a voluntary basis.

The risk remains that Individuals will delay registration until a mandatory deadline is introduced, although it is felt that this is significantly mitigated by opening the register for voluntary registration.

Failure to meet the requirements and qualifications when registering mean that some of the workforce decide that the procedure is too cumbersome or costly and opt to leave the sector, placing greater pressure on those that remain to deliver services or undermining services to the point of collapse.

A large portion of individuals consider that the requirement for qualifications are not something they wish to undertake and/or that registration fees are too costly and decide to leave the sector. The loss of a significant portion of the workforce because they believe that the required qualifications are not for them or are something they do not wish to acquire could have devastating consequences for the adult residential care sector.

SCW is currently undertaking a number of actions to mitigate these risks in respect of domiciliary support services where a similar approach to registration of the workforce has been introduced. This includes employer and employee engagement events to help clarify the process, and several routes to registration that reflect that while some workers may be able to demonstrate the skills they have, they may not already hold the appropriate qualifications. This also includes extending the amount of time that workers have to obtain those qualifications.

Although the sector is aware of the proposals, there is still likely to be some in the sector who will have not given this any further consideration or put off engaging with the regulator as 2022 is still a few years off. As time goes on, there is the potential for this to be forgotten so SCW are preparing plans to implement a further information exercise for the adult residential care and residential family care service sectors along similar lines to those used for the domiciliary care sector. Even with the mitigating actions, careful consideration will need to be given to the potential risks around failing to secure the workforce “buy in” to the benefits of registration. The loss of any significant numbers of the workforce will have substantial impacts on the delivery of services and the sector as a whole. The Welsh Government has provided additional funding to SCW to help with this process and in the previous financial year to cover preparatory work including funding to help employ additional staff and resources to meet the costs of registration. However, any significant influx of registration applications or delays in processing these applications could have knock on effects for those that seek to register closer to the deadline. The Welsh Government will continue to work with the workforce regulator, SCW, to monitor and manage the process to mitigate these possible impacts and risks.

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 until the mandatory date in 2022. This option has significant implications if all 20,000 estimated workers decide to leave registration to the last minute, or fail to register in time for mandatory registration, which could have serious consequences for the sector, the regulator and the Welsh Government. Not entering into any form of registration of the workforce could also lead to a two-tier system where higher expectations are placed on domiciliary care workers compared to care home staff which could also impact on workers' ability to move between the two sectors.

Option two demonstrates a clear commitment to moving towards mandatory registration, with the benefits as outlined. While there remain some associated risks in terms of the rate of registration these can be better managed with a longer lead in time prior to the proposed mandatory registration requirement in 2022.

Therefore 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 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.

SL(5)502 – The Regulation and Inspection of Social Care (Wales) Act 2016 and Regulated Services (Miscellaneous Amendments) Regulations 2020

Background and Purpose

These Regulations are made under the Regulation and Inspection of Social Care (Wales) Act 2016 (“the Act”) and make a number of amendments in relation to the oversight of regulated service provider organisations, and registration of the domiciliary support workforce.

The amendment in Part 2 allows the Welsh Ministers to take into account evidence that any person associated or formerly associated with a relevant person has been responsible for, contributed to or facilitated misconduct or mismanagement in the provision of a regulated service in Wales or of the equivalent outside Wales, when assessing whether a relevant person is a fit and proper person to be a service provider or regulated individual.

Part 3 makes amendments to the Regulated Services (Registration) (Wales) Regulations 2017 to specify additional information that is to be provided by an applicant for registration as a service provider of a regulated service.

Part 4 amends a suite of regulated services regulations to add to the list of events of which the service provider must notify the service regulator.

Part 5 requires that persons employed or contracted to provide domiciliary support services must be registered as a social care worker with Social Care Wales within 6 months of commencing their employment/engagement.

Procedure

Draft affirmative.

Due to the different enabling powers used in making these Regulations, some of the provisions would, if made in a separate instrument, be subject to the negative procedure, whilst others would be subject to the draft affirmative procedure.

By virtue of section 40 of the Legislation (Wales) Act 2019, provisions that attract the negative procedure and provisions that attract the draft affirmative procedure can be combined in a single instrument, provided that whole instrument is subject to the draft affirmative procedure.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

One point is identified for reporting under Standing Order 21.3 in respect of this instrument:



Standing Order 21.3 (ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be interest to the Assembly.

1. Whilst the name of the Regulations is consistent throughout the Regulations themselves, there are a couple of references to the Regulations in the explanatory memorandum (“EM”) that do not appear to be correct, one of which is the title on the front page. The EM includes reference to “The Regulation and Inspection of Social Care (Wales) Act 2016 and Regulated Services (Miscellaneous Amendments) (Wales) Regulations 2020” (emphasis added) whilst the underlined ‘Wales’ does not appear in the title in the Regulations.

Implications arising from exiting the European Union

No implications are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

The merits scrutiny point is noted. Welsh Government has re-laid the explanatory memorandum with the error corrected.

Legal Advisers

Legislation, Justice and Constitution Committee

26 February 2020



Draft Regulations laid before the National Assembly for Wales under section 187(2)(d) and (f) of the Regulation and Inspection of Social Care (Wales) Act 2016, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2020 No. (W.)

SOCIAL CARE, WALES

**The Regulation and Inspection of
Social Care (Wales) Act 2016 and
Regulated Services (Miscellaneous
Amendments) Regulations 2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under the Regulation and Inspection of Social Care (Wales) Act 2016 (“the Act”).

Part 2 contains an amendment to section 9 of the Act. Section 9 of the Act concerns any decision the Welsh Ministers make about whether a service provider, a person applying to be a service provider, a responsible individual or a person to be designated as a responsible individual (hereafter collectively referred to as “a relevant person”) is a fit and proper person to be a service provider or, as the case may be, a responsible individual.

Regulation 4 amends section 9 to extend the application of subsection (6) to include any other person associated or formerly associated with a relevant person.

The effect of this amendment is to allow the Welsh Ministers to take into account evidence that any person associated or formerly associated with a relevant person has been responsible for, contributed to or facilitated misconduct or mismanagement in the provision of a regulated service in Wales or of the equivalent outside Wales.

Part 3 contains amendments to the Regulated Services (Registration) (Wales) Regulations 2017 (“the Registration Regulations”). The Registration

Regulations are made under sections 6 and 11 of the Act.

Section 6(1) of the Act sets out the information that must be contained in an application for registration as a service provider of a regulated service and enables the Welsh Ministers to prescribe additional information that must be contained in an application for registration.

Regulation 3 of the Registration Regulations specifies the additional information that is to be provided by an applicant for registration. This includes the information listed in Schedule 1 to the Registration Regulations.

Regulation 6 inserts regulation 3A into the Registration Regulations.

Regulation 3A sets out the additional information that must be provided by, in the case of a body corporate, each director, trustee, or member of the managing committee; in the case of a partnership, each partner; and in the case of an unincorporated body, each person concerned in the management and control of the body.

Regulation 8 contains a transitional provision relevant to the inserted regulation 3A.

Part 4 amends each of the following sets of Regulations (hereafter collectively referred to as “the Regulated Services Regulations”) which are made under sections 27 and 28 of the Act:

- (a) the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017,
- (b) the Adult Placement Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019,
- (c) the Regulated Advocacy Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019,
- (d) the Regulated Fostering Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019, and
- (e) the Regulated Adoption Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019.

The Regulated Services Regulations set out the regulatory requirements which apply to providers of services regulated under the Act. These are care home services, secure accommodation services, residential family centre services, domiciliary support services, adult placement services, advocacy services, fostering services and adoption services.

In each set of the Regulated Services Regulations, Schedule 3 lists the events of which the service provider must notify the service regulator, the Welsh Ministers.

Regulation 10 substitutes for paragraph 3 of Schedule 3 to each set of the Regulated Services Regulations, new paragraphs 3 and 3A.

The event listed in new paragraph 3 is any change to the persons who form part of the body constituted (formally or informally) as the decision-making body of the organisation, such as the directors, trustees or members of the managing committee of the service provider where the service provider is a body corporate.

The event listed in new paragraph 3A is any change in the persons who are concerned in the management and control of the body of the service provider where the service provider is an unincorporated body.

Part 5 amends the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 (“the 2017 Regulations”).

The 2017 Regulations set out the regulatory requirements which apply to providers of care home services, secure accommodation services, residential family centre services and domiciliary support services.

Part 10 of the 2017 Regulations contains specific requirements as to the fitness of individuals working at the service.

Regulation 13 amends regulation 35 of the 2017 Regulations.

Paragraph (a) substitutes paragraph 2(f) of regulation 35 of the 2017 Regulations which provides that where a service provider employs a person, other than as a manager to provide care and support in connection with a care home provided wholly or mainly for children, a secure accommodation service or a domiciliary support service the person must be registered as a social care worker with Social Care Wales within 6 months of commencing their employment.

Paragraph (b) inserts a new paragraph 2(g) of regulation 35 of the 2017 Regulations which provides that where a person is engaged under a contract for services (which includes agency workers), other than as manager, to provide care and support to any person in connection with a care home service provided wholly or mainly for children, a secure accommodation service or a domiciliary support service that person must be registered with Social Care Wales within 6 months of the date the person is first

engaged under a contract for services to provide such care and support.

Paragraph (d) inserts a new paragraph 11 to provide that the requirement that a person is registered with Social Care Wales in accordance with regulation 35(2)(f) and (g), does not apply where that person is employed or engaged under a contract for services to work as a nurse, or registered professional who is registered with the Health and Care Professions Council.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Department of Health and Social Services, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

Draft Regulations laid before the National Assembly for Wales under section 187(2)(d) and (f) of the Regulation and Inspection of Social Care (Wales) Act 2016, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2020 No. (W.)

SOCIAL CARE, WALES

**The Regulation and Inspection of
Social Care (Wales) Act 2016 and
Regulated Services (Miscellaneous
Amendments) Regulations 2020**

Made

Coming into force

1 April 2020

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 6(1)(d), 9(9), 27(1) and 187(1)(b) of the Regulation and Inspection of Social Care (Wales) Act 2016 (“the Act”)(1).

The Welsh Ministers have consulted such persons as they think appropriate, as required by section 27(4)(a) of the Act and published a statement about the consultation as required by section 27(4)(b) of that Act. The Welsh Ministers have laid a copy of the statement before the National Assembly for Wales as required by section 27(5) of that Act.

A draft of these Regulations was laid before the National Assembly for Wales under section 187(2)(d) and (f) of the Act and has been approved by a resolution of the National Assembly for Wales.

(1) 2016 anaw 2; *see* the definition of “prescribed” in section 189. *See* also section 40 of the Legislation (Wales) Act 2019 (anaw 4) for provision about the procedure that applies to this instrument.

PART 1

General

Title, commencement and interpretation

2.—(1) The title of these Regulations is the Regulation and Inspection of Social Care (Wales) Act 2016 and Regulated Services (Miscellaneous Amendments) Regulations 2020.

(2) These Regulations come into force on 1 April 2020.

(3) In these Regulations—

“the Act” (“*y Ddeddf*”) means the Regulation and Inspection of Social Care (Wales) Act 2016,

“the 2017 Regulations” (“*Rheoliadau 2017*”) means the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017(1),

“the Registration Regulations” (“*y Rheoliadau Cofrestru*”) means the Regulated Services (Registration) (Wales) Regulations 2017(2),

“the Regulated Services Regulations” (“*y Rheoliadau Gwasanaethau Rheoleiddiedig*”) means—

- (a) the 2017 Regulations,
- (b) the Adult Placement Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019(3),
- (c) the Regulated Advocacy Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019(4),
- (d) the Regulated Fostering Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019(5),
- (e) the Regulated Adoption Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019(6).

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- (1) S.I. 2017/1264 (W. 295) as amended by S.I. 2019/757 (W. 142).
 - (2) S.I. 2017/1098 (W. 278) to which there are amendments not relevant to these Regulations.
 - (3) S.I. 2019/163 (W. 40).
 - (4) S.I. 2019/165 (W. 41) to which there are amendments not relevant to these Regulations.
 - (5) S.I. 2019/169 (W. 42).
 - (6) S.I. 2019/762 (W. 145).

PART 2

Amendment to the Act

Amendment to the Act

3. The Act is amended in accordance with regulation 4.

Fit and proper person: relevant considerations

4. In section 9(5)(a) after “subsection (4)” insert “or (6)”.

PART 3

Amendments to the Registration Regulations

Amendments to the Registration Regulations

5. The Registration Regulations are amended in accordance with regulations 6 and 7 and regulation 8 introduces a transitional provision.

Information to be provided by an applicant

6. After regulation 3 insert—

“**3A.**—(1) This regulation applies where the applicant, within the meaning of paragraph (a) of the definition of “applicant” in regulation 2, is an organisation.

(2) An applicant to whom this regulation applies must, in addition to the information specified in regulation 3, provide the Welsh Ministers with the information in paragraph (3).

(3) The applicant must provide, in relation to the persons listed in paragraph (4)—

(a) their full name, date of birth, home address, electronic mail address and telephone number, and

(b) the information listed in paragraphs 13 to 22 of Schedule 1.

(4) The persons in relation to whom the information in paragraph (3) must be provided are—

(a) where the organisation is a body corporate other than a local authority or Local Health Board—

(i) each person who has been appointed as a director of the body corporate,

- (ii) each person who has been appointed as a trustee of the body corporate,
- (iii) each member of the managing committee of the body corporate,
- (b) where the organisation is an unincorporated body, each person who is concerned in the management and control of the body,
- (c) where the organisation is a partnership, each partner.”

7. In Schedule 1—

- (a) in paragraph 45—
 - (i) at the end of subparagraph (b) for “.” substitute “;”,
 - (ii) after subparagraph (b) insert—
 - “(c) any person who is a member of the managing committee of the body corporate.”, and
- (b) in paragraph 48 for “application” substitute “declaration”.

Transitional provision

8. An application for registration which has been submitted in accordance with the Registration Regulations prior to the coming into force of these Regulations, is to be determined as if these Regulations had not been made.

PART 4

Amendments to the Regulated Services Regulations

Amendments to the Regulated Services Regulations

9. The Regulated Services Regulations are each amended in accordance with regulation 10.

10. In Schedule 3—

- (a) for paragraph 3 substitute—
 - “**3.** Where, on or after 1 April 2020, the service provider is a body corporate, any change in the—
 - (a) directors,
 - (b) trustees, or
 - (c) members of the managing committee, of the body corporate.

3A. Where, on or after 1 April 2020, the service provider is an unincorporated body, any change in the persons who are concerned in the management and control of the body.”

(b) in paragraph 5 for “company” substitute “body corporate”.

PART 5

Amendments to the 2017 Regulations

Amendments to the 2017 Regulations

11. The 2017 Regulations are amended in accordance with regulations 12 and 13.

Interpretation

12. In regulation 1(3), insert the following in the appropriate place—

““nurse” (*nyrs*) means a qualified nurse or qualified midwife registered with the Nursing and Midwifery Council in accordance with article 5 of the Nursing and Midwifery Order 2001(1);”;

““registered professional” (*proffesiynolyn cofrestredig*) has the meaning given in paragraph 1 of Schedule 3 to the Health Professions Order 2001(2);”.

Fitness of staff

13. In regulation 35—

(a) for paragraph (2)(f) substitute—

“(f) subject to paragraph (11) of this regulation, where the person is employed by the service provider (whether as an employee or worker) other than as a manager in order to provide care and support to any person in connection with—

(i) a care home service provided wholly or mainly for children,

(ii) a secure accommodation service, or

(iii) a domiciliary support service in order to provide care and support to a person referred to in

(1) S.I. 2002/253, amended by S.I. 2018/838 and S.I. 2009/1182; there are other amending instruments but none is relevant.

(2) S.I. 2002/254, to which there are amending instruments.

paragraph 8(1) of Schedule 1 to the Act,

the person is registered as a social care worker with Social Care Wales no later than the relevant date (see paragraph (8) for meaning of “the relevant date”).”

- (b) after subparagraph (f) as substituted by these Regulations insert—

“(g) subject to paragraph (11) of this regulation, where the person is engaged under a contract for services, other than as manager, to provide care and support to any person in connection with—

- (i) a care home service provided wholly or mainly to children,
- (ii) a secure accommodation service, or
- (iii) a domiciliary support service in order to provide care and support to a person referred to in paragraph 8(1) of Schedule 1 to the Act,

the person is registered as a social care worker with Social Care Wales no later than the relevant date (see paragraph (8A) for meaning of “the relevant date”).”

- (c) after paragraph (8) insert—

“(8A) In paragraph (2)(g) of this regulation, “the relevant date” is either—

- (a) 6 months from the date a person is first engaged under a contract for services to provide care and support in connection with—
 - (i) a care home service provided wholly or mainly to children,
 - (ii) a secure accommodation service,
 - (iii) a domiciliary support service in order to provide care and support to a person referred to in paragraph 8(1) of Schedule 1 to the Act, or
- (b) such later date as the service regulator may in exceptional circumstances agree.”

- (d) after paragraph (10) insert—

“(11) The requirement that a person is registered as a social care worker with Social Care Wales in accordance with paragraph (2)(f) and (g), does not apply where the person is employed (whether as an employee or worker)

or engaged under a contract for services to work
as a—

- (a) nurse, or
- (b) registered professional.”

Name

Deputy Minister for Health and Social Services under
authority of the Minister for Health and Social
Services, one of the Welsh Ministers

Date

The Regulation and Inspection of Social Care (Wales) Act 2016 and Regulated Services (Miscellaneous Amendments) (Wales) Regulations 2020

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 Regulation and Inspection of Social Care (Wales) Act 2016 and Regulated Services (Miscellaneous Amendments) Regulations 2020*

I am satisfied that the benefits justify the likely costs.

Julie Morgan
Deputy Minister for Health and Social Services
11 February 2020

Part 1 – OVERVIEW

1. Description

This Explanatory Memorandum relates to the *Regulation and Inspection of Social Care (Wales) Act 2016 and Regulated Services (Miscellaneous Amendments) Regulations 2020* (“The 2020 Regulations”). Due to the range of areas covered in the 2020 Regulations, this Explanatory Memorandum has been grouped into two parts – ensuring adequate oversight of service provider organisations, and registration of the domiciliary support workforce.

Ensuring adequate oversight of service provider organisations

The Regulation and Inspection of Social Care (Wales) Act 2016 (“the 2016 Act”) reforms the regulation and inspection regime for social care in Wales. It also provides the statutory framework for the regulation and inspection of social care services and the social care workforce, enabling 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.

The 2016 Act establishes a more streamlined and flexible model of registering service providers. Providers are required to register with the service regulator, Care Inspectorate Wales (CIW), if they intend to deliver regulated services in Wales. Whilst providers are still required to identify the place(s) at, from or in relation to which a service is being provided, the new system only requires individuals or organisations to register once with CIW. This registration will cover a provider’s entire portfolio of services.

Under the 2016 Act the following types of providers can submit an application to be registered to provide regulated services:

- Individuals,
- Partnerships,
- Corporate bodies (including limited companies, incorporated charities, local authorities, co-operative societies and community benefit societies), and
- Unincorporated bodies, such as unincorporated charities or committees.

In the case of an individual provider the application must be made by the individual. In the case of a partnership it must be made by one of the partners. For corporate bodies or unincorporated bodies the application must be submitted by someone authorised to do so by the organisation.

The process of registering service providers is one of the mechanisms through which CIW can assure themselves that people running care services are fit and proper to do so. The information provided at registration enables CIW to monitor the ongoing activity of regulated services to ensure standards are being upheld. Organisations wishing to provide a regulated service in Wales must provide a range of information to CIW which is set out on the face of the 2016 Act and within the *Regulated Services (Registration) (Wales) Regulations 2017* (“The Registration Regulations”), as amended. This

information is taken into account when CIW determines the fitness of the service provider, in line with the requirements set out under section 9 of the 2016 Act.

The Registration Regulations apply to all regulated services under the 2016 Act. Schedule 1 of the 2016 Act lists these services, as follows:

- Care home services
- Domiciliary support services
- Advocacy services
- Adoption services
- Fostering services
- Residential family centre services
- Secure accommodation services
- Adult placement services

The suite of service regulations created under sections 27 and 28 of the 2016 Act¹ place requirements on service providers and responsible individuals in relation to the standards of care and support to be provided. The 2020 Regulations include a range of notifications that service providers must make to CIW including when there is a change in the directors of a company or partners of a partnership organisation. These notifications are an additional mechanism by which CIW can monitor the activity of a regulated service.

Registration of the domiciliary support workforce

The proposed Regulations will bring into force a mandatory requirement on all domiciliary support service providers to employ only domiciliary care workers (both employees (whether as an employee or worker) and individuals engaged under a contract for services) who are registered with the social care workforce regulator, Social Care Wales (SCW) from 1 April 2020.

A further amendment has been added to the draft Regulations to include the requirement to register with SCW any person who is engaged under a contract for services to provide care and support to any person in connection with a care home service provided wholly or mainly for children, a secure accommodation service or a

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- ^{1 1} These are:
 - The Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017;
 - The Regulated Adoption Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019;
 - The Regulated Fostering Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019;
 - The Adult Placement Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019; and
 - The Regulated Advocacy Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019.

domiciliary support service within six months of the date the person is first engaged under a contract for services to provide such care and support. This amendment seeks to close the current legislative anomaly where these workers are not required to register with SCW. This will present a consistent requirement to all employers to employ social care workers who meet the registration requirements and ensure that these aspects of the workforce are regulated and have similar standards and Codes of Practice that will both hold them accountable for failings and ensure that they are suitably skilled to deliver care and support to a high quality.

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

The 2020 Regulations are being made under the affirmative procedure and while they include provisions which are subject to the negative procedure, section 40 of the Legislation (Wales) Act 2019 enables subordinate legislation subject to different Assembly procedures to be combined.

3. Legislative background

The 2020 Regulations are being made under the powers within the following sections of the 2016 Act:

- Section 6(1)(d) which allows the Welsh Ministers to prescribe further information required in an application for registration to provide a regulated service. Regulations made under this section are subject to the negative procedure;
- Section 9(9) which allows the Welsh Ministers to make regulations which amend section 9 of the 2016 Act to vary the evidence to which Welsh Ministers (in practice CIW) must have regard when determining whether a service provider, a person applying to be a service provider, a responsible individual or a person designated to be a responsible individual, is a fit and proper person to be a service provider or, as the case may be, a responsible individual. Regulations made under this section are subject to the affirmative procedure;
- Section 27(1) which allows Welsh Ministers to, by regulations, impose requirements on a service provider in relation to a regulated service. Regulations made under this section are subject to the affirmative procedure; and
- Section 187(1)(b) allows Welsh Ministers to make different provision for different purposes, for different cases and for different areas.

As mentioned above the Regulations are to be made under the Assembly's affirmative procedure.

Ensuring adequate oversight of service provider organisations

The Registration Regulations provide the detail about how individuals and organisations must register to provide a regulated service. The 2020 Regulations set out:

- i. the additional information that must be contained in an application for registration;
- ii. the form the application for registration must take;
- iii. the additional information that must be contained in an application to vary a registration;
- iv. the form the application to vary a registration must take; and
- v. the time limit within which an application for variation must be made in circumstances where there is no Responsible Individual designated.

The information required by the Registration Regulations is used by CIW to determine whether the applicant is a fit and proper person to be a service provider, the relevant considerations of which are set out under section 9 of the 2016 Act. Section 9 states that, in determining the fitness of:

- a service provider,
- a person applying to be a service provider,
- a responsible individual, or
- a person to be designated as a responsible individual,

Welsh Ministers must have regard to all matters they think appropriate and in particular to any evidence falling within subsections (4) to (8) of section 9².

This includes whether the person has committed a range of offences including fraud, violence, firearms, drugs or sexual offences. It also includes offences in relation to the 2016 Act or regulations made under it, as well as offences under the previously applicable legislation, the Care Standards Act 2000 or regulations made under it, as set out in subsection (4). Evidence of association or former association with a person who has done any of the things set out in subsection (4) is also considered relevant.

Subsection (6) requires Welsh Ministers to have regard to whether the person has been responsible for, contributed to or facilitated misconduct or mismanagement in the provision of a regulated service (or of service provided in England, Scotland or Northern Ireland, which if provided in Wales would be a regulated service, or of a service which would have been a regulated service had the regulatory system established under Part 2 of the 2016 Act been operating at the time the service was being provided). In doing so Welsh Ministers must take into account the seriousness and duration of the misconduct or mismanagement, any harm caused, any financial gain made by the person, and any action taken to remedy the misconduct or mismanagement (subsection (7)).

Schedule 3 of the suite of service provider regulations lists the notifications that service providers must make to CIW. These include:

² <http://www.legislation.gov.uk/anaw/2016/2/section/9/enacted>

- Where the service provider is a company, any change in the directors of the company.
- Where the service provider is a partnership, any change in the partners.

These notifications ensure CIW is made aware of any changes of the key decision makers of companies and partnership organisations. However there is currently no similar notification requirement in relation to persons concerned in the management and control of organisations of a different legal entity, such as unincorporated organisations and corporate bodies which are not companies.

Registration of the domiciliary support workforce

The amendments made to the *Social Care Wales (Specification of Social Care Workers) (Registration) Regulations 2016*, made under Section 80 of the 2016 Act changed the definition of a social care worker to include domiciliary care workers and allowed SCW to open up the workforce register to these workers on a voluntary basis from 1 April 2018.

This not only advanced the Welsh Government's commitment to further professionalise the workforce and raise the profile of domiciliary care workers but also afforded SCW the opportunity to engage with employers and their employees to help understand the registration process and the requirements that need to be met as part of this procedure in advance of the mandatory registration of this group from 2020.

Implementation of the registration of domiciliary care workers was 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.

The 2020 Regulations would amend the 2017 Regulations, placing a requirement on domiciliary care and support service providers to only employ workers (both employees (whether as an employee or worker) and individuals engaged under a contract for services) registered with the workforce regulator, Social Care Wales (SCW) from 2020. They also place a similar requirement on those they employ under contract (i.e. agency staff) who work in residential care services wholly or mainly for children (i.e. children's residential care workers) and those employed in secure accommodation and thus close the current anomaly about these workers.

4. Purpose & intended effect of the legislation

Ensuring adequate oversight of service provider organisations

The purpose of amending the Registration Regulations is to strengthen the legal basis on which CIW, acting on behalf of the Welsh Ministers, can obtain certain additional information from persons who form part of the body constituted (formally or informally) as the decision-making body of the organisation, such as the directors, trustees or any person concerned in the management and control of the organisation applying to be a service provider (other than a local authority or health board). Local authority and health board providers are not included as they are accountable via a different route.

For corporate or unincorporated bodies (other than a local authority or health board) seeking to register as a service provider, the person submitting the application may not be the sole decision maker for the service. Because of this shared governance role, CIW considers it important to take into account the fitness of all individuals who form part of the decision-making body of the organisation when determining a provider's application for registration. In the case of partnerships the fitness of each partner is relevant. Therefore the 2020 Regulations amend the Registration Regulations to require certain additional information from each of these individuals.

The information proposed to be sought from each these individuals via the 2020 Regulations is consistent with the information already requested of applicants, other than organisations, seeking registration, which is set out in paragraphs 13 to 22 of Schedule 1 of the Registration Regulations. This is set out as follows:

Information required about all applicants

- 13. Details of any previous applications for registration as a service provider under the Act.*
- 14. Details of any registrations as a service provider under the 2016 Act.*
- 15. Details of any previous application for registration under Part 2 of the Care Standards Act 2000.*
- 16. Details of any registrations under Part 2 of the Care Standards Act 2000.*
- 17. Details of any previous applications for registration as a service provider under the Health and Social Care Act 2008.*
- 18. Details of any registrations as a service provider under the Health and Social Care Act 2008.*
- 19. Details of any previous applications for registration as a person providing a care service under Part 5 of the Public Services Reform (Scotland) Act 2010(4).*
- 20. Details of any registrations as a person providing a care service under Part 5 of the Public Services Reform (Scotland) Act 2010.*
- 21. Details of any previous applications for registration under Part 3 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003(5).*
- 22. Details of any registrations under Part 3 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003.*

The 2020 Regulations will also require certain contact information from these individuals including their date of birth, telephone number, correspondence address and electronic mail address.

We also intend to use the regulation-making power under section 9(9) of the 2016 Act to amend part 9 of the 2016 Act to vary the evidence to which Welsh Ministers (in practice CIW) must have regard. This will enable CIW to take the information set out above into account when determining the fitness of a service provider which is an organisation.

In addition, the 2020 Regulations will amend the suite of service regulations to require service providers which are organisations to notify CIW when there are changes in the persons who form part of the body constituted (formally or informally) as the decision-making body of the organisation, not just the directors of companies or partners of partnership organisations. This is to ensure that CIW is made aware of any changes of an organisation's governing body, regardless of the type of organisation that is registered.

Registration of the domiciliary support workforce

The purpose of the proposed legislation is to deliver on the Welsh Government's commitment to raising the profile and to continue to professionalise the social care workforce. This includes proportionately registering additional categories of social care workers as outlined under the 2016 Act with the workforce regulator, Social Care Wales (SCW). This commitment was expressed in written statements in November 2015³ and November 2016⁴.

At present, registration with SCW is a mandatory requirement for social workers, social work students, managers and care workers in regulated care homes for children, managers of regulated care homes for adults and managers of domiciliary care services. The 2020 Regulations would extend mandatory registration to domiciliary care workers, both employees (whether as an employee or worker) and individuals engaged under a contract for services.

The aim of introducing mandatory registration for domiciliary care workers is that it will bring benefits both to users of domiciliary care services and to the workforce. These intended benefits include a consistent standard for training, and the introduction of governance around ensuring fitness to practice for the registered section of the workforce. SCW was granted the power to charge a fee for registration in the 2016 Act, and is responsible for setting the fee.

In order to enter on the register, a person must be appropriately qualified. This means that they must have successfully completed a course approved by SCW.

In advance of the proposed mandatory registration date, the Welsh Government implemented a voluntary registration process for domiciliary care workers. This was implemented through amendments made to the Social Care Wales (Specification of Social Care Workers) (Registration) Regulations 2016. The voluntary period of registration for the domiciliary care workforce opened on 1 April 2018 and SCW has been working with the sector to help disseminate information and guidance to employers and the workforce on how to register their current workforce ahead of the proposed deadline for mandatory registration. Despite a slow start, this process has begun to see a greater flow of registrations through the three routes that SCW has developed with the sector to help ease the transition to a registered workforce.

³ <http://www.senedd.assembly.wales/documents/s45151/15%20October%202015.pdf> (lines 125 and 126).

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

These latest regulations, proposed as part of the implementation process of the 2016 Act, will require social care providers delivering a domiciliary care service only to recruit those domiciliary care workers who are registered with SCW after that date. Workers who enter the sector for the first time after that date will have six months from their date of employment to register with SCW and will be required to complete the Level 2 Diploma (if they do not have any transferable qualifications) within a 3 year period at which point they are required to re-register within six months of commencing their employment.

5. Consultation

A formal twelve week consultation on proposals to amend the Registration regulations, create regulations under section 9(9) and proposals in relation to the registration of domiciliary support workers took place between 24 July and 16 October 2019. The consultation received 55 responses from various stakeholders ranging from representative bodies, local authorities, health boards, service providers and individuals.

The consultation summary of responses document was published on the Welsh Government website on 20 January and can be found here: <https://gov.wales/implementation-regulation-and-inspection-social-care-wales-act-2016>

Ensuring adequate oversight of service provider organisations

As part of the analysis of the impact of the proposals in relation to the oversight of service provider organisations, it became apparent that the requirement for service providers to notify CIW of changes to an organisation's governing body only applied to directors of companies and partners of partnership organisations, as set out in Schedule 3 of the suite of regulations which place requirements on providers and responsible individuals of all regulated services in Wales.

We considered it important for CIW to be notified about any changes in the persons who form part of the body constituted (formally or informally) as the decision-making body of the organisation, regardless of its legal entity. This would provide consistency across the range of organisation types and enable CIW to maintain sufficient oversight of all service providers.

As such we wrote directly to all regulated service providers that are unincorporated organisations using CIW's communication channels in December, allowing them a month to respond. We also published this proposal together with information on how to respond on CIW's website, accessible to all providers, and included this information in CIW's newsletter which is issued to all providers who are signed up to these communications. No responses to this consultation were received.

Registration of the domiciliary support workforce

In drafting our proposals to open the workforce register to more categories of worker, it was discovered that there was an anomaly in that, those employed under contract (i.e. agency workers) in children's residential care and secure accommodation services

were not included under current legislation. We therefore posed a question as part of the consultation as to whether “agency workers” employed under contract in these areas should be required to register with the workforce regulator. The majority of responses agreed that there should be consistency within the social care sector. However, in order to be proportionate we are proposing to close this legal loophole and to include those employed under contract in both these categories as part of regulations opening the register on a voluntary basis for adult residential care workers. This will therefore be subject to a separate set of draft regulations and not picked up in greater detail here.

Impact Assessments

The required Impact Assessments (Regulatory Impact Assessment (RIA)) and Integrated Impact Assessment (IIA)) have been completed alongside the drafting of the 2020 Regulations and the RIA and relevant sections of the IIA will be published alongside the draft 2020 Regulations when they are laid before the Senedd.

PART 2.1 – REGULATORY IMPACT ASSESSMENT

This Regulatory Impact Assessment (RIA) relates to the *Regulation and Inspection of Social Care (Wales) Act 2016 and Regulated Services (Miscellaneous Amendments) Regulations 2020*. Due to the range of areas covered in the 2020 Regulations, this RIA has been grouped into two parts – ensuring adequate oversight of service provider organisations, and registration of the domiciliary support workforce.

ENSURING ADEQUATE OVERSIGHT OF SERVICE PROVIDER ORGANISATIONS

The options considered by the Welsh Government are as follows:

- **Option one:** Do nothing: do not amend the Registration Regulations, create regulations under section 9(9) of the 2016 Act or amend the suite of service provider regulations.

- **Option two:**
 - Amend the Registration Regulations to enable CIW to obtain information from persons who form part of the body constituted (formally or informally) as the decision-making body of an organisation (other than a local authority or Local Health Board) when registering as providers of regulated services,
 - Use the regulation-making power under section 9(9) to vary the evidence which CIW may have regard to in deciding whether a person is fit and proper to be a service provider, and
 - amend the suite of service provider regulations to require service providers to notify CIW of any changes in the persons who form part of the body constituted (formally or informally) as the decision-making body of the organisation.

Costs

Option one: do nothing

This is the baseline option and as such there are no additional costs associated with this option.

Option two: create and amend regulations under the 2016 Act

CIW is already requesting information about “organisational officers” of organisations seeking registration via its online form, as follows:

- Has the organisation previously been registered to provide any other regulated care service(s) in Wales?

- Has the organisation ever been refused registration to provide a regulated service in Wales and the rest of the UK?
- Has the organisation previously had a registration cancelled by enforcement action in Wales and the rest of the UK?
- Has the organisation ever been prosecuted in relation to a regulated service in Wales and the rest of the UK?

Under this option CIW would continue to request this information. However, the Registration Regulations would be amended to reinforce this on a legal basis by requiring applicant organisations to submit the following information about persons who form part of the body constituted (formally or informally) as the decision-making body of the organisation:

- *Details of any previous applications for registration as a service provider under the 2016 Act.*
- *Details of any registrations as a service provider under the 2016 Act.*
- *Details of any previous application for registration under Part 2 of the Care Standards Act 2000*
- *Details of any registrations under Part 2 of the Care Standards Act 2000.*
- *Details of any previous applications for registration as a service provider under the Health and Social Care Act 2008.*
- *Details of any registrations as a service provider under the Health and Social Care Act 2008.*
- *Details of any previous applications for registration as a person providing a care service under Part 5 of the Public Services Reform (Scotland) Act 2010.*
- *Details of any registrations as a person providing a care service under Part 5 of the Public Services Reform (Scotland) Act 2010.*
- *Details of any previous applications for registration under Part 3 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003.*
- *Details of any registrations under Part 3 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003.*
- *Date of birth, telephone number, correspondence address and electronic mail address of each individual designated by the applicant to be a responsible individual.*

The regulation-making power under section 9(9) would be used to vary the evidence which CIW may have regard to in deciding whether a person is fit and proper to be a service provider. This would ensure CIW takes into account the information above when determining a provider's fitness.

The changes to the registration regulations and the creation of regulations under section 9(9) will not affect in practice how organisations register with CIW. CIW is

already requesting this information via its online form and there have been no challenges from organisations so far. Therefore there will not be any additional administrative costs for either organisations or CIW under option two.

Under this option all organisations would have to notify CIW when there is a change in the persons who form part of the body constituted (formally or informally) as the decision-making body of the organisation. This will create a very small additional burden on organisations that are not companies or partnerships, in terms of staff time to make the notification, quantified below.

According to data from CIW, as at 28 October 2019, there have been 80 notifications from a total of 47 providers about changes in their governing bodies since the registration of their services under the 2016 Act from April 2017. 32 of these providers have submitted just one notification and 15 providers have submitted between two and five. It is likely to take around 30 minutes to make a notification to CIW via their online system. Even for the provider with the most notifications (five), this would only equate to 2 1/2 hours over a period of up to 2 ½ years⁵.

According to data from the [Annual survey of Hours and earnings \(ASHE\)](#) the median hourly wage for managers in the health and social services sector in Wales in 2019 was £22.77. Uprating this by 30% to reflect on-costs gives an hourly cost of £29.60. As managers are most likely to be the ones making this notification, this equates to £14.80 per notification, based on a notification taking around half an hour to make. If a service provider makes between one and five notifications over a 2 ½ year period this would cost them between £14.80 and £74 over this period of time, or between £6 and £30 per year.

Based on a breakdown of service provider types in the table below, as of 31 January 2020, there are 23 additional organisations which would have to make a notification, as these organisations are not companies or partnerships. The additional cost for these providers in total would be between £138 and £690 per year.

Provider Type and Sub Type	No. of Providers
Body Corporate	846
Charitable Company	64
Charitable Incorporated Organisation	3
Charitable Trust	1
Limited Company	759
Limited Liability Partnership	4
Other	1
Other Corporate Body	14
Individual Provider	52
Individual Provider	52
Local Authority	28
Local Authority	28

⁵ Due to the phased approach to registration it is not possible to say exactly when this provider was registered under the 2016 Act.

Local Health Board	2
Local Health Board	2
Partnership	40
Partnership	40
Unincorporated Body	4
Charitable Trust	4
Grand Total	972

Risks

Option one: do nothing

Without a robust legal basis on which to request information about the persons who form part of the body constituted (formally or informally) as the decision-making body's background in running regulated services there is a risk that applicants may challenge CIW and refuse to provide this information. In these circumstances CIW would not contest the challenge and would have to determine the fitness of the provider based solely on information about the applicant and the person applying to be the designated responsible individual for the service.

This could lead to CIW approving a provider's application despite the fact there may be individuals who had previously operated a failed regulated service that caused harm to people. This, in turn, may lead to poor decisions being made about the operation of the new service which could lead to harm to people using the service.

By not requiring all providers to notify CIW of any changes to persons who form part of the body constituted (formally or informally) as the decision-making body of the organisation, it creates a disparity between providers because of their organisation's legal status, which is not the policy intention. It also means that CIW would not be made aware of when a member of an organisation's governing body changes, which could lead to an organisation recruiting someone that was unsuitable. This could lead to poor decisions being made about the running of the service and may pose a risk to the individuals at those services.

Option two: create and amend regulations

Under option two there is a small risk that, if the regulations are drafted in a way which enables CIW to request information from people within all tiers of governance within an organisation that the Welsh Government could be seen to be extending its reach too far into an organisation. This was a concern raised during the consultation. However, this issue has been considered whilst developing the regulations to ensure it is clear that the requirement for information is limited persons who form part of the body constituted (formally or informally) as the decision-making body of the organisation.

Providing the requirement for information is limited to the "top tier" of governance of an organisation there do not appear to be any risks in relation to this option, considering CIW is already asking for this information in practice.

Requiring providers to submit a notification to CIW when there is a change in persons who form part of the body constituted (formally or informally) as the decision-making body of the organisation will place a small additional burden on organisations which are not already within the scope of the current regulations, i.e organisations which are not companies or partnerships. There is a small risk that some providers will raise this as an issue and may be concerned about why this was not included in the initial proposals during the consultation. However, of the 80 notifications that CIW has received from service providers in relation to changes in organisational officers, three of them are in relation to trustees, which shows that some providers are interpreting the requirement in a broad way and are already making these notifications.

We have mitigated this risk by writing directly to all regulated service providers that are unincorporated organisations using CIW's communication channels in December, allowing them a month to respond. We also published this proposal together with information on how to respond on CIW's website, accessible to all providers, and included this information in CIW's newsletter which is issued to all providers who are signed up to these communications. No responses to this consultation were received.

Benefits

Option one: do nothing

There do not appear to be any benefits under this option.

Option two: create and amend regulations

Under this option there will be a firm legal basis on which CIW can require information from organisational officers. CIW will also be able to take this information into account when determining the fitness of the provider.

This will enable CIW to make a more informed decision about the fitness of people making key decisions about services for vulnerable people in Wales. This should prevent individuals with a poor track record of running regulated services – such as having registrations cancelled or being prosecuted – from being able to register as service providers in the future, if CIW determines it is not appropriate for them to do so. This will increase public confidence in the way in which care services are regulated and will provide a greater safeguard for individuals using regulated services.

Requiring providers to submit a notification to CIW when there is a change in persons who form part of the body constituted (formally or informally) as the decision-making body of the organisation ensures that the requirements are consistent across the range of regulated services, regardless of the legal entity of the organisation. It ensures that CIW maintains an overview of the key decision makers of all services, not just those run by companies, individuals or partnerships.

This change also provides additional clarity to providers as to the notifications required, considering some providers with trustees are already making these notifications.

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?	Yes
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	Yes
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	Yes
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

In relation to the questions answered “yes” above, the below table provides more supporting information. It shows that although five providers have more than 50% market share in Wales this is because the number of providers of these services is so low, necessarily giving them each a larger share of the market. The filter test therefore shows that the regulations will not have any detrimental effect on competition and a detailed assessment has not been conducted.

Data from CIW on services regulated under the 2016 Act, as of 17 January 2020

	Service Type	No. of Providers	Max Provider Market Share	No. of Providers with more than 10% market share	No. of Providers with more than 20% market share	Do the largest 3 firms have at least 50% market share?
Based on Capacity of Services	Care Home Services for Adults	623	2.64%	0	0	No
	Care Home Services for Children	71	7.54%	0	0	No
	Residential Family Centre	2	89.74%	2	1	Yes
	Secure Accommodation	1	100.00%	1	1	Yes
Based on Number of Services	Adoption Services	3	33.33%	3	3	Yes
	Adult Placement	6	16.67%	6	0	Yes
	Advocacy	1	100.00%	1	1	Yes

Domiciliary Support Services	339	1.38%	0	0	No
Fostering Services	15	6.67%	0	0	No

PART 2.2 REGULATORY IMPACT ASSESSMENT

REGISTRATION OF DOMICILIARY SUPPORT WORKERS

Background

The registration of the social care workforce began with the Care Standards Act 2000 (the 2000 Act), which mandated the professional registration of social workers, managers of adult residential care homes and managers and workers of children's residential care homes with the then workforce regulator, Care Council for Wales. In 2013 the Welsh Government also legislated for the mandatory registration of managers of domiciliary support services, to bring these into line with other managers in the sector.

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.

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 and professionalisation of other groups within the social care workforce to nurture the profile of the sector and improve standards and quality of care. 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.

In April 2018 regulations came into effect allowing the new workforce regulator, Social Care Wales (SCW), to open the workforce register on a voluntary basis to domiciliary care workers. This was done in order to provide a two year period for SCW to work with the sector to understand and prepare for registration requirements, ahead of the proposed deadline for mandatory registration from 2020.

The Regulation and Inspection of Social Care (Wales) Act 2016 and Regulated Services (Miscellaneous Amendments) (Wales) Regulations 2020 would amend the 2017 Regulations, placing a requirement on domiciliary care and support service providers only to employ workers registered with the workforce regulator, SCW, from 2020.

To implement this action, we have already amended the SCW 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). The Social Care Wales (Specification of Social Care Workers) (Registration) (Amendment) Regulations 2018 included domiciliary care workers as a category under the heading social care worker and included an RIA on the impact of that proposal.

This regulatory impact assessment focuses on the impacts of mandatory registration from 2020 onwards.

Registration fees

Under sections 74 and 83 of the 2016 Act 2016, SCW has the power to make provision of the payment of fees in connection with registration to the register. These fees must be specified in rules made by SCW.

The responsibility for setting these fees rests with SCW and not with the Welsh Government. The proposed regulations do not change the powers for SCW to charge a fee, or the level of those fees. However as these are costs which are associated with the implementation of the regulations, they are considered as part of this RIA.

Background to the current level of fee charged

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 had become the lowest of all comparable UK social care workforce regulators. According to SCW, the new fees were aimed at bringing the registration fee regime in Wales in line with the other social care regimes across the UK.

Following the consultation SCW determined to raise the fees on a sliding scale over four years from 2018-2019 and ending in 2021-2022. This scale increases 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. Students studying towards a career in social care would pay a set fee of £15 over the same period.

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.

OPTIONS CONSIDERED

The two options are:

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

Option two: Extend the social care register to require domiciliary care workers to be registered with SCW from 2020

Option one: Do nothing - retain the status quo

Under this scenario all domiciliary care workers in Wales would be able to continue to register voluntarily with the social care workforce regulator, Social Care Wales (SCW). However, this would remain a voluntary option only.

Option two: Extend the social care register to require domiciliary care workers to be registered with SCW from 2020.

This proposal places 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 a domiciliary support service, only to employ workers registered with Social Care Wales as a social care worker.

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).

The Care Inspectorate Wales (CIW) is the independent regulator of social care and childcare in Wales and is responsible for registering and inspecting domiciliary care 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 Regulation and Inspection of Social Care (Wales) Act 2016.

Costs associated with each option

Option one: Do nothing - retain the status quo

Workforce/Employers

If the status quo is maintained, domiciliary care workers will not incur any additional costs relating to mandatory registration. This also means that employers will not face any additional costs, relating to either a registration fee or any associated costs such as mandatory training.

The costs associated with registration are outlined below under option two.

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, it would be unlikely to incur any further additional costs associated with registration. If the scheme continues as a voluntary process, it is unlikely that any large numbers of social care workers in domiciliary care settings would continue to register.

Service Regulator (Care Inspectorate Wales)

Under this option, as registration of domiciliary care 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.

Option two: Extend the social care register to require domiciliary care workers to be registered with SCW from 2020.

Workforce

Social care workers employed in domiciliary care who opt to register voluntarily will be subject to paying an annual fee for registration. This is currently £20 but in 2020/21 this will increase to £25 and in 2021/22 to £30. This follows a consultation exercise undertaken by SCW.

Under mandatory registration, all domiciliary care workers will be required to pay the registration fee. With an estimated 17,000 workers in domiciliary care, the cost to the workforce will be (17,000 x £25) £425,000 in 2020/21 and (17,000 x £30) £510,000 in 2021/22.

As with domiciliary care workers voluntarily registering currently, new registrants can apply to HMRC⁶ to reclaim a proportion of this fee back as a tax deduction. The guidance provided by the UK Government 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. an 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.

SCW has confirmed that there will be a number of payment options available 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. 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 Providers (Employers)

Cost of Registration

There may be a potential financial cost for employers, 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 is unable to breakdown the split because of the variety of payment methods

⁶ Guidance on how and what can be claimed back can be found at <https://www.gov.uk/tax-relief-for-employees>

used. 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

Based on an estimate of approximately two hours to complete the registration process and using the Low Pay Commission's predicted national living wage for people aged 25 and over of £8.67 per hour in 2020 as a baseline, we can calculate that cost to complete one registration would be approximately £17.34 per worker. 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 £5.20) equating to a total cost of £22.54.

This reflects the evidence gathered as part of Care and Social Services Inspectorate Wales' (CSSIW) national review of domiciliary care in Wales⁷ in 2016 that the majority of workers are on the minimum wage but in the over 25 bracket⁸. Therefore, the cost of mandatory registration, which in this scenario is assumed to be an opportunity cost falling on employers, will be as follows: (£8.67 x 2 + £5.20 x 17,000) £383,000 (rounded to nearest £1,000) for completing the registration process.

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. However in order to mitigate any of these costs, 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. 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 a notional 475 hours to complete this training, which includes "on-the-job training" and "off-site" learning⁹. However the amount of time in "off-site" learning will vary greatly depending on the individual's learning needs. For example, employers are already likely to have invested in more experienced workers, who are less likely to need additional training off-site to meet the requirements of the qualification (for example, they may already have received first aid training). A worker that is new to the sector, and who may for example come straight from formal education may have greater needs in terms of learning that needs to be undertaken "off-site". It is worth noting that employers are already required to invest in training and that to some degree, this is not a new requirement. The qualification places a more formal structure around the training and allows workers to evidence their learning,

⁷ <https://careinspectorate.wales/sites/default/files/2018-03/161027aboveandbeyonden.pdf> - page 94

⁸ Accurate data is not available on the average age of the workforce, therefore we are reliant on parallels drawn from evidence collected on other areas of the workforce in similar roles i.e. residential child care workers – where the average age is 38 – see SCW factsheet on Residential child care workers on the Register (1 April 2018)

https://socialcare.wales/cms_assets/file-uploads/RCCW-factsheet.pdf

⁹ Although described here as "off-site" learning the learning may be undertaken on the premises.

Employers may be expected to pay employees for the time spent on training, including "off-site" training, but the cost of this is difficult to estimate given the individualised nature of the learning. However, if we take a standardised notion of 1 day training off-site per week of the total notional 475 hours of training, we can estimate that the cost would equate to 95 hours at a cost of approximately £1,071 (i.e. 95 hours of training at the current (2019) national minimum wage of £8.21 and on-costs (at 30% of salary costs)). However, for the reasons outlined above this does not reflect what may actually be happening on the ground, where in fact the likely cost is expected to be much lower.

Based on current figures for registration of domiciliary care staff, this assumes that 22% of the workforce will re the qualification.¹⁰ To bring this number of the workforce up to the required qualifications would equate to a cost of £3.9 million for the sector in salary costs¹¹.

In answer to some concerns from the sector that there were some employees who would not be interested in acquiring a qualification and could therefore leave the sector, SCW worked with the sector to find some solutions to help retain these staff but allow them to register. As well as the qualification route, SCW developed two other options to help the current workforce register which included a 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 employers around the cost of training to ensure staff are registered by the mandatory deadline, but there will still be costs relating to continued professional development for staff going forward. It is difficult to quantify the savings that these options would give employers.

However, these costs are not a consequence of this regulation alone. Employers already have a legal obligation placed upon them under the Regulation and Inspection of Social Care (Wales) Act 2016 to ensure that their staff receive "*appropriate training to understand behaviours and adopt strategies to support individuals with their behaviours to achieve positive well-being and outcomes.*" Even without mandatory registration, employers will meet the cost of training staff to ensure that they comply with this requirement and this will include training that cannot be undertaken "on-the-job". However we do not have data available on the current (pre-registration) cost to employers of training staff.

¹⁰ SCW figures show that as at January 2020, of around 12,500 registrants 76% of the domiciliary workforce has registered with a qualification, with 13% of these registering through the confirmed competence route and 11% of these using the Principles and Values route (or 8% of the total). Based on an assumption that the remaining workers left to register will not be qualified, that approx. half of these may come through on the confirmed competence route, this gives us a calculation of a total 22% of the workforce registering that need to be trained (i.e. 8% already registered through confirmed competence and a further 14% potentially to register through confirmed competence)

¹¹ This figure is based upon the current National Living Wage of £8.21 + £2.60 employer on-costs x 95 hours to complete a Level 2 qualification x 3,800 workers needing to attain this qualification.

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

Workforce Regulator (Social Care Wales (SCW))

The costs associated with maintaining the register and regulating domiciliary care workers include:

- Direct staffing costs arising from the demands of managing the registration process
- Direct staffing costs arising from additional staff needed to oversee an anticipated increased number of conduct and fitness to practice processes,
- Indirect costs such as for venue hire for conduct committees, and conduct committee expenses.

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 provided an in principle commitment to additional funding outside of SCW's revenue grant-in-aid funding to cover additional staffing costs to help with the registration process and 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.

SCW estimate that the costs associated with maintaining the register and regulating domiciliary care workers (and adult residential care workers) would increase year on year as more of the workforce enter the register and the increase would rise from £1,130,738 in 2018-2019 to 2,995,000 in 2021-2022. Some of these costs would be offset by the collection of registration fees. The following table estimates the income anticipated to SCW from registration, under option 2.

Group	2018/19	2019/20	2020/21	2021/22
Current registrants 11,000	£455,755 (a)	£550,015 (b)	£644,275	738,535
Domiciliary care workers	£120,000	£400,000 (c)	£500,000	£600,000 (d)
Care Home workers etc	n/a	n/a	£200,000 (e)	£600,000 (f)
Total Income	£575,755	£950,015	£1,344,275	£1,938,535

Registration fees are collected from the approximately 11,000 registrants currently registered with SCW; up to 2017/18 this provided the regulator with a total of £271,970 worth of income. The figure shown at (a) represents the increased revenue stream when registration fees across all categories were increased in 2018/19.

(b) reflects the first of a series of incremental increases in fee levels for all categories of registered workers.

With the registration of the domiciliary care workforce, it is estimated that a further £400,000 (c) will be added to the regulator's revenue stream by the time that exercise is completed in 2020 (based on 16,000 workers charged a fee of £25). This will be in addition to a further incremental increase on the registration fees of the initial 11,000 registrants. The figure shown at (d) represents the final planned incremental increase in registration fees across all categories.

With the registration of adult residential care workers, SCW estimate that 8,000 adult residential care workers to register in the first year of the register being opened in 2020-2021 with the majority following up throughout 2021-2022. This would equate to revenue totalling £200,000 in 2020-2021 (e) and £600,000 (f) by 2021-2022 and also includes the incremental fees for those periods.

Fitness to practice hearings

Fitness to practice proceedings are held when a failing of standards has occurred that has led to poor quality of care or malpractice. These investigations take up a significant amount of the regulator's resources and SCW estimate that the costs associated with maintaining the register and regulating domiciliary care workers (and adult residential care workers) will increase from £1,136,000 in 2019/2020 to £2,994,000 in 2021/2022¹². Whilst it is difficult to estimate the numbers that may be involved, or split them between domiciliary care workers and other care workers for this exercise, SCW predicts that, with the inclusion of both the full domiciliary care workers and adult residential care workers (approximately 36,000 workers) this number could increase by a further 84 cases going to full hearing by 2022. If we take this estimate as a starting point, this would mean that the regulator would incur 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 2021-2022.

In order to provide additional staff resources to cover the expected increase in activity, SCW have estimated that it would require the employment of 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). SCW estimate it would also require additional funding to cover the costs of running the three regulation departments; to cover accommodation costs to house the new staff and associated support costs. Some of these costs have been offset with additional funding from the Welsh Government and 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.

¹² Figures provided by Social Care Wales to aid the Regulatory Impact Assessment on costing the proposed regulation to open the register early in 2018.

Care Inspectorate Wales (CIW)

Care Inspectorate Wales has confirmed that questions have been developed and incorporated into their existing procedures for service inspections to check on staff and confirm that they have registered with SCW and therefore do not foresee any additional costs as part of the 2020 Regulations. The existing Memorandum of Understanding between the regulators already provides for the exchange of information to allow for the verification of data and sharing of intelligence.

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 £1 million 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, as sponsor body, the Welsh Government accepts that it will not meet all of the costs associated with registration and regulation of the workforce. The Welsh Government will continue 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. It is estimated that growth in the take up of apprenticeships is likely to be seen mostly in the private and voluntary sectors but that it is difficult to predict what that growth will look like. However, for illustrative purposes if we take current estimates that around 54% of those registering are trained, and that a further 23% of the workforce are being registered through the confirmed competency route, there could be a potential 22% increase in those seeking to access the apprenticeship programme due to registration. The current cost of an individual apprenticeship through the programme is £5,449 per individual, which would, taking 22% of the estimated domiciliary care workforce equates to 4,250 workers being added to the programme, equate to a cost of £6,910,494 per year of training over the three year period before registration renewal is required (or £20,731,483 over three years).

Benefits associated with each option

Option one: Do nothing - retain the status quo

It could be argued that the primary benefit of retaining the status quo is that there will be no obligation on workers or employers in the social care sector to register staff, and therefore no associated costs of doing so.

Option two: Extend the social care register to require domiciliary care workers to be registered with SCW from 2020.

The mandatory registration of the domiciliary care 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 trust and confidence in social care workers among both users and the general public;
- Workers in social care feel they are valued which can lead to improved job satisfaction;
- A happier and more supported workforce could lead to improvements in the quality of care;
- Ensuring that the workforce is trained and has the proper skills to do the job can provide additional protection and assurance for users.

Requiring workers to register will ensure a consistent approach to registration, which means that the above benefits are more likely to materialise.

'Fitness to Practice' governance surrounding registration means that workers will have recourse to a panel should they wish to defend themselves against allegations of malpractice, and users will be assured by the existence of formal recourse should they have serious concerns about the practice of an individual worker.

Mandatory registration is aimed at building trust in the skills and qualifications of the workforce, between workers, employers and individuals receiving support and care. Domiciliary care workers would also receive greater recognition from people receiving their care. By being subject to regulation, users will be reassured that greater safeguards are in place if conduct or actions could be investigated by an independent body.

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.

A benefit to employers of recruiting registered workers is that they would have clear evidence that the worker meets the necessary requirements to deliver that role, as this forms a basis of registration. This would also help employers to better understand the skills of their employees and focus their workforce planning around longer term aims and requirements. It would also afford them the opportunity of checking with the regulator to see whether a potential employee has been subject to any disciplinary action in the past, which they may not have disclosed and that would warrant concern.

Professionalisation of the workforce could help improve recruitment and retention as the sector is seen as one in which skills are developed, valued and can be evidence through the holding of a professional qualification and title.

Risks associated with each option

Option one: Do nothing - retain the status quo

The primary risk to option one is that workers 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 a risk of confusion about the status of workers 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.

Additionally if employers are not obliged to invest in workers' training there is a risk of an inconsistent approach to training in the sector and less investment in the workforce.

Option two: Extend the social care register to require domiciliary care workers to be registered with SCW from 2020.

Concerns have been raised in the consultation process about the risk that mandatory registration will cause an increase in the existing turnover level (currently estimated at 34% per annum). The risk is considered to be particularly acute in the first six months of employment for individuals if there is a perception that registration is too costly to either workers or employers, or if the benefits were not considered to be of sufficient value. This could have significant impacts upon the retention of staff as they could leave the sector or move to another area which are not registered (i.e. personal assistants); or that recruitment could become increasingly difficult and there may be fewer entrants to the market. 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. In addition to this, SCW will be working 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.

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

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 domiciliary care workforce, and would ensure that the benefits of registration are realised fully including the associated investment in workforce skills on the part of employers.

Therefore 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 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 the 2020 Regulations since they will not affect the business sector in any significant way.

02 March 2020

SL(5)505 – Code of practice on the exercise of social services functions in relation to Part 4 (direct payments and choice of accommodation) and Part 5 (charging and financial assessment) of the Social Services and Well-being (Wales) Act 2014

Background and Purpose

This code of practice is issued under section 145 of the Social Services and Well-being (Wales) Act 2014 (the "Act").

This code, and the regulations to which it refers, set out the requirements for local authorities in relation to:

- setting a contribution or reimbursement in connection with direct payments under sections 50-53 of the Act (Direct payments);
- the choice of accommodation for those in a care home, including payment of additional costs in certain circumstances, under section 57 of the Act (Cases where a person expresses preference for particular accommodation);
- charging and financial assessment under section 59 of the Act (Power to impose charges) on those who are to receive care and support, or in the case of carers support;
- the deferment of payments by those in a care home under section 68 of the Act (Deferred payment agreements);
- charging under 69 of the Act (Charging for preventative services and assistance) for the provision or arrangement of preventative services and assistance;
- the recovery of debts under section 70 of the Act (Recovery of charges, interest, etc) and the transfer of assets to avoid charges under section 72 of the Act (Transfer of assets to avoid charges); and
- reviews under section 73 (Reviews relating to charges) relating to charging determinations or charges made under the Act.

This code covers:

- designing a charging policy;
- common issues in relation to charging;
- charging for care and support in a care home;
- choice of accommodation when arranging care in a care home;
- making payments for additional costs for preferred accommodation;



- charging for care and support in the community;
- charging for support to carers.

Procedure

A draft of the code must be laid before the Assembly. If, within 40 days (excluding any time when the Assembly is dissolved or is in recess for more than 4 days) of the draft being laid, the Assembly resolves not to approve the draft code then the Welsh Ministers must not issue the code.

If no such resolution is made, the Welsh Ministers must issue the code (in the form of the draft) and the code comes into force on a day specified in an order made by the Welsh Ministers.

Parent Act: Social Services and Well-being (Wales) Act 2014

Date Made:

Date Laid: 12 February 2020

Coming into force date: 06 April 2020



SL(5)503 – Code of practice in relation to the performance and improvement of social services in Wales

Background and Purpose

This code of practice applies to the exercise of social services functions by local authorities in Wales, and sets out how improvement in services, and for individuals, will be supported, measured and sustained by local authorities.

The purposes of the code are:

- to set out quality standards,
- to set out a performance and improvement framework,
- to set out the data and evidence that local authorities must collect to evidence their progress towards achieving the quality standards,
- to ensure that local authorities use data and evidence effectively,
- to ensure that local authorities understand their responsibilities for improving the well-being outcomes of people who need care and support and carers who need support.

Procedure

A draft of the code must be laid before the Assembly. If, within 40 days (excluding any time when the Assembly is dissolved or is in recess for more than 4 days) of the draft being laid, the Assembly resolves not to approve the draft code then the Welsh Ministers must not issue the code.

If no such resolution is made, the Welsh Ministers must issue the code (in the form of the draft) and the code comes into force on a day specified in an order made by the Welsh Ministers.

Scrutiny under Standing Order 21.7

Two points are identified for reporting under Standing Order 21.7 in respect of the code.

1. The code places a heavy focus on the collection, use and sharing of data, in order to improve social services in Wales. However, there is no reference to any data protection impact assessment that has been carried out, or that will have to be carried out, as a result of the code.

It is our understanding that the General Data Protection Regulations impose stricter requirements in respect of data protection impact assessments, so that data protection risks can better be analysed, identified and minimised.

2. The Explanatory Memorandum states that the Social Services and Well-being (Wales) Act 2014 was made by the Welsh Government. While it was, of course, the Welsh Government that drafted, designed and introduced the legislation, it was made/passed by the National Assembly for Wales.



Implications arising from exiting the European Union

No points are identified for reporting under Standing Order 21.7 in respect of this code.

Government Response

A data protection impact assessment has not been carried out, as the Code of Practice does not require the collection, processing or sharing of any new personal data under Article 35(1), 35(3) and 35(4) of the GDPR. Any new information collected and shared in accordance with the Code of Practice is limited to numerical data and does not identify any individuals.

Consideration will be given to whether a Data Protection Impact Assessment is required when issuing or revising any future guidance setting out the data requirements under the performance and improvement framework.

Legal Advisers

Legislation, Justice and Constitution Committee

17 February 2020



Code of practice in relation to the performance and improvement of social services in Wales

FRONT COVER

Code of practice in relation to the performance and improvement of social services in Wales

This code revokes the Code of practice in relation to measuring social services performance issued in April 2016

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Code of practice in relation to the performance and improvement of social services in Wales

1. Introduction

1.1 This code of practice is issued under section 145 of the Social Services and Well-being (Wales) Act 2014.

1.2 The Social Services and Well-being (Wales) Act 2014 is available at:

<http://www.legislation.gov.uk/anaw/2014/4/enacted>

1.3 This code revokes the Code of practice in relation to measuring social services performance issued in April 2016.

1.4 This code should be read in conjunction with all relevant codes of practice issued under the Social Services and Well-being (Wales) Act 2014.

1.5 Local authorities, when exercising their social services functions, must act in accordance with the requirements contained in this code. Section 147 (Departure from requirements in codes) does not apply to any requirements contained in this code.

1.6 Local authorities must have regard to any guidelines set out here. In this code of practice a requirement is expressed as “must” or “must not”. Guidelines are expressed as “may/may not” or “should/should not”.

1.7 This code of practice applies only to local authorities in relation to their social services functions as set out in the Social Services and Well-being (Wales) Act 2014.

1.8 Partner bodies should also take account of and use this code of practice to understand how their work facilitates improvement in social care, specifically when working collaboratively with local authorities or contributing to the well-being outcomes of people who need care and support or carers who need support.

1.9 This revised code has been developed following formal consultation and through working co-productively with local authorities and other key stakeholders from across Wales. The new code sets out the performance and improvement requirements for local authorities in relation to the Social Services and Well-being (Wales) Act 2014 and establishes a revised set of quality standards that all local authorities must aspire to. The code has been strengthened to ensure that both performance *and* improvement have an equal weighting in relation to the support provided by local authorities to people in need of care and support and carers who need support. The performance and improvement framework has also been made more flexible by publishing all data requirements in separate guidance to enable local authorities to collect a wider range of data.

2. Vision

2.1 This code of practice sets out how improvement in services and for individuals will be supported, measured and sustained by local authorities. Through the effective implementation of this code of practice, and through utilising the wide range of approaches set out in the performance and improvement framework, Wales will develop as a data rich nation where data and evidence are used routinely to inform policy decisions and to improve outcomes.

2.2 Wales has a history of ambitious and innovative practice in supporting people who need care and support and carers who need support. All local authorities in Wales must continue to strive towards this continuous improvement.

2.3 The approaches and requirements set in this code of practice are equally relevant to both local authorities and to Welsh Government. This code of practice will be used to:

- require local authorities to focus on both performance **and** improvement
- set out the range of different types of data that local authorities must be collecting and accessing to inform their performance and improvement
- raise expectations in relation to the quality and consistency of data gathered by local authorities
- ensure local authorities are fulfilling their core functions as set out in the Social Services and Well-being (Wales) Act 2014, the associated legislation and codes of practice
- ensure there is a clear, nationally understood approach to inform performance and improvement that is shared between Welsh Government and local authorities
- ensure local authorities, Welsh Government and other partners within the social care sector can access consistent and comparable data that provides clear evidence of progress, identifies areas where further work is needed and accurately and reliably informs policy at a local and national level
- inform the structure and content of the Local Authority Social Services Annual Report¹ (commonly referred to as the Director's Report)
- provide an understanding of the delivery of the social services function to inform strategic governance and decision-making at an authority-wide level.

¹ As required by section 144A of Social Services and Well-being (Wales) Act 2014.

3. Purpose

3.1 This code of practice has a number of purposes which all local authorities must be aware of and comply with. The purposes of this code are as follows:

- To set out the quality standards
- To set out the performance and improvement framework
- To set out the data and evidence that local authorities must collect to evidence their progress towards achieving the quality standards
- To ensure that local authorities use data and evidence effectively
- To ensure that local authorities understand their responsibilities for improving the well-being outcomes of people who need care and support and carers who need support

3.2 The intention of this code of practice is to achieve the following aims:

For individuals:

- enable people to understand the quality of care and support that they are entitled to from their local authority
- enable people to understand how local authorities are measured in relation to their delivery of social services

For practitioners:

- enable practitioners to understand and use evidence effectively to support and improve their practice
- ensure that practitioners are fully aware of their role in collecting accurate data and evidence so that performance and improvement can be properly measured and the impact on the well-being outcomes of people in need of care and support and carers who need support can be captured
- understand that practitioners must be skilled, well qualified and supported with a clear focus on improvement

For local authorities:

- enable local authorities to understand the wider, strategic direction for social care that they must be working towards and their role in achieving this
- enable local authorities to focus on how they are performing – for people in need of care and support and carers who need support, and at an organisational level
- enable local authorities to understand the importance of data and evidence in informing their performance and improvement – specifically in their understanding and effective use of quantitative data, qualitative data and the use of research and evidence
- enable local authorities to understand how Welsh Government will hold them to account for their performance in relation to social services
- enable local authorities to understand what they do well, to recognise and share best practice within and between local authorities and recognise what they do less well, what they might do differently, and what needs to be put right
- enable local authorities to share evidence with a wide range of partners in order to facilitate collaborative working and support effective integration
- ensure that practitioners are skilled, well qualified and supported and are able to use data and evidence effectively to inform improvement
- inform the broader strategic understanding of how the local authority is operating as a whole, is using its resources and delivering for the people in its area.

For Welsh Government:

- ensure that all local authorities are working towards the same high standards
- ensure that quality is central to all care and support, that all local authorities are aspiring to the same high level of quality and that there is equity for people in relation to their experiences of care and support across Wales

- ensure that all local authorities are using comparable approaches and methodologies to monitor performance and inform improvement
- ensure that the evidence gathered from local authorities can be used to monitor performance at a local and national level, to inform improvement across the social care sector and to shape national policy

3.3 This code of practice is part of a wider ambition for local government. It is seeking to achieve a real and sustained change in how social services in Wales are measured and reported on and how the information gathered is used to inform the future of social services in Wales. Local authorities must understand the importance of data and evidence and understand the range of benefits that the effective, ongoing use of high quality and reliable data and evidence can have on understanding performance and informing improvement.

3.4 This code of practice, and the quality standards and performance and improvement framework that are set out within it, provide local authorities and Welsh Government with a clear direction as to how performance and improvement in social services must be approached at both a national level and at a local level.

3.5 There will also be the need for the collection of more locally specific data, and this will be determined by each local authority for themselves.

4. The Quality Standards

4.1 The quality standards set out the Welsh Government's expectations at a national level of the quality of support that local authorities must be providing. The standards are set out in the table below:

The Quality Standards			
People	Prevention	Partnerships and Integration	Well-Being
All people are equal partners who have voice, choice and control over their lives and are able to achieve what matters to them.	The need for care and support is minimised and the escalation of need is prevented, whilst ensuring that the best possible outcomes for people are achieved.	Effective partnerships are in place to commission and deliver fully integrated, high quality, sustainable outcomes for people.	People are protected and safeguarded from abuse and neglect, and any other types of harm.
Effective leadership is evident at all levels with a highly skilled, well qualified and supported workforce working towards a shared vision.	Resilience within our communities is promoted and people are supported to fulfil their potential by actively encouraging and supporting people who need care and support, including carers, to learn, develop and participate in society.	People are encouraged to be involved in the design and delivery of their care and support as equal partners.	People are supported to actively manage their well-being and make their own informed decisions so that they are able to achieve their full potential and live independently for as long as possible.

4.2 The quality standards are intended to be aspirational, and not a check list to be met. They are designed to challenge local authorities, to raise ambition and to encourage innovation.

4.3 The standards are linked to the seven well-being goals as set out in Section 4 of the Well-being of Future Generations (Wales) Act 2015 and linked to the

definition of well-being as set out in Section 2 of the Social Services and Well-being (Wales) Act 2014.

4.4 The standards aim to ensure that all people who need care and support and carers who need support are able to access the right support at the right time from the right place, and that there are appropriately experienced and / or qualified professionals in place to deliver this. Specifically, this includes:

- the support provided to people accessing information and advice;
- the support provided to people who need care and support and carers who need support; and
- the support provided to the social services workforce.

4.5 Local authorities will be expected to demonstrate their progress against the quality standards annually via the Local Authority Social Services Annual Report². This evidence must be a combination of the data and evidence gathered through the performance and improvement framework, alongside any local data or other approaches that the local authorities consider to be appropriate to them.

4.6 The quality standards have been designed so that they fully align to the four core principles of the Social Services and Well-being (Wales) Act 2014³ and to Care Inspectorate Wales' Code of practice for review of local authority social services⁴.

4.7 For each core principle, two quality standards have been developed. The quality standards have been designed to cover adults, children and carers, and the social care workforce where this is relevant.

Consistency with Care Inspectorate Wales

4.8 The four headings of the quality standards – people; prevention; partnerships and integration; and well-being - deliberately align to the headings used in Care Inspectorate Wales' Code of practice for review of local authority social services. This is to ensure that there is consistency in approach between Welsh Government and Care Inspectorate Wales and that local authorities understand how this code and the Code of practice for review of local authority social services align.

4.9 This is further developed through consistent descriptions of the four headings. These descriptions have been developed by Welsh Government and Care Inspectorate Wales to ensure that both codes of practice are using shared language.

4.10 The four headings for the quality standards and the shared descriptions are set out below:

² As required by section 144A of Social Services and Well-being (Wales) Act 2014.

³ i.e. people, prevention, partnerships and integration and well-being

⁴ <https://careinspectorate.wales/sites/default/files/2019-04/190401-code-of-practice-lass-en.pdf>

People

4.11 A rights-based approach places people at the centre of services and communities; providing clarity and transparency about rights and responsibilities. People have a strong voice and control over services they receive, underpinned by an agreement on whether advocacy⁵ is required. This supports a focus on what matters to them, the outcomes they want to achieve, and how they can use their own strengths and resources to promote their own wellbeing. The importance of positive risk taking in strengths-based practice is understood and well managed. Practitioners and managers ensure practice and supervision are grounded in the most up-to date knowledge, evidence-based practice and other relevant materials, including legislation, government guidance and learning from reviews.

Prevention

4.12 Proportionate and consistent leadership and governance ensures population needs drive organisational change, as both local authorities and local health boards focus on preventative approaches to locally identified care and support needs. The positive integrated approach to a culture of prevention is evidenced through joint working, supportive infrastructure and aligned delivery systems. A prudent approach to resource allocation ensures the right help is available at the right time and together with seamless services this prevents escalation of need and improves the quality of the individual's journey through the health and social care system. Services and outcomes are proportionate, targeted, sustainable and supported through promotion of social enterprises, co-operatives, user led services and the third sector, all of which build the local core economy of people exchanging their skills and interests. Preventative activity can be anything that helps meet an identified need and ranges from wide-scale measures aimed at the whole population to more targeted individual interventions.

Partnership and Integration

4.13 Through trust, shared commitment and collaboration, local authorities and local health boards contribute resources and work with local people to identify needs and develop integrated population assessment reports. These reports underpin the shaping, commissioning and provision of sustainable services. Value and sustainability are achieved through shared objectives and a focus on; continuous improvement through engagement with people who use services, self-evaluation, innovation and use of evidence-based practice. At an individual level, services are co-produced based on a relationship of equals between practitioners and people who need care and support and carers who need support. Success is measured by gathering information about whether support is achieving the things that matter to people and how organisations are driving improvement at population and individual levels.

⁵ Welsh Government has published a separate Code of Practice on Advocacy, this can be found at <https://gov.wales/sites/default/files/publications/2019-12/social-services-and-well-being-wales-act-2014-part-10-code-of-practice-advocacy.pdf>.

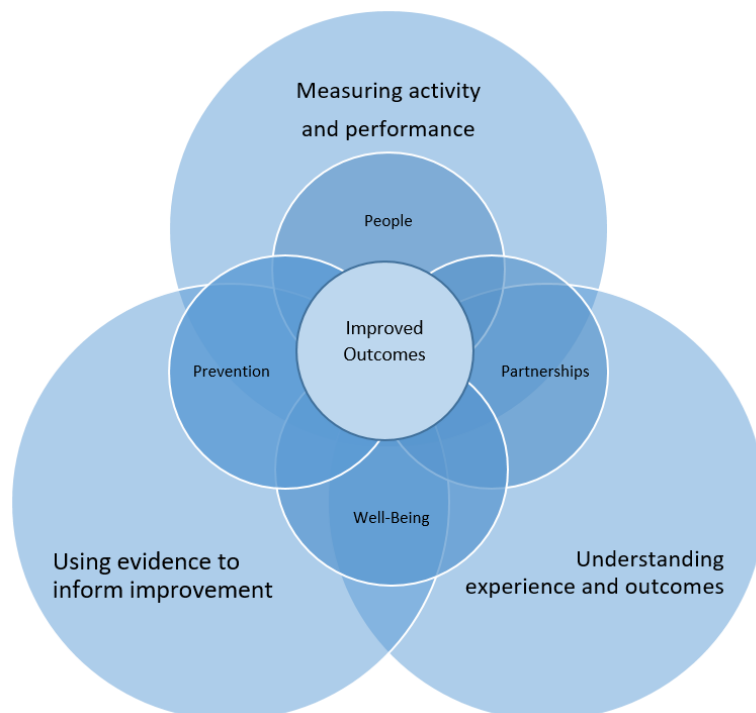
Well-being

4.14 Local authorities exercising functions under the Social Services and Well-being (Wales) Act 2014 ensure they make a positive contribution to the well-being of people who need care and support and carers who need support. At an individual level this includes seeking out the person's wishes and feelings, respecting their dignity, taking into account their culture, beliefs and other characteristics and building upon their circumstances, capabilities, networks and communities. Working in partnership with people to develop creative solutions is key to improving the quality of care, securing well-being and preventing the development of people's needs for care and support. We measure success in relation to outcomes for people rather than process.

5. Performance and Improvement Framework

5.1 The performance and improvement framework has been designed to support local authorities to evidence their progress against the quality standards, and to inform decisions both for social services and at a corporate, organisational level. The evidence gathered will enable local authorities to understand their performance in relation to the Social Services and Well-being (Wales) Act 2014, will inform their quality improvement activities and must also be used to inform the Local Authority Social Services Annual Report⁶.

5.2 The diagram below sets out the performance and improvement framework and shows how all of the components of the framework must align in order to achieve improved outcomes for people in need of care and support and carers who need support.



5.3 The performance and improvement framework contains three component parts. These are:

- Measuring activity and performance
- Understanding experience and outcomes
- Using evidence to inform improvement

⁶ As required by section 144A of Social Services and Well-being (Wales) Act 2014.

Measuring activity and performance

5.4 This provides the context in which local authorities are working by providing clear and accurate information on the numbers of people moving through the social care system and identifying the resulting demand on services.

5.5 This data will be gathered annually through a range of nationally prescribed metrics. Local authorities should also gather their own data to reflect their own locally defined priorities.

Understanding user experience and outcomes

5.6 This provides local authorities with information on the quality of people's experiences of social care, as well as how and if they are achieving their well-being outcomes.

5.7 This data will be gathered through a range of nationally prescribed approaches. Local authorities should also gather their own data to reflect their own locally defined priorities.

Using evidence to drive improvement

5.8 Evidence enables local authorities to understand the wider social care context and how their provision and practice can be improved.

5.9 Evidence should be used at all levels in the social care system in order to ensure that improvement is informed and is achieved consistently and sustainably. This will include:

- **Individual level** – Social care practitioners undertaking their own research or using evidence as part of a professional qualification or to inform their own practice.
- **Local level** – Local authorities using evidence to shape services, to inform improvement and understand best practice.
- **Regional level** – Regional partnership boards using this code of practice to shape their own work to inform improvement and commissioning and to understand how the routine use of data and evidence must complement both local and national priorities.
- **National level** – Welsh Government using evidence to understand the effectiveness of national policy, to inform future policy development and to ensure that improvement across Wales is being achieved

6. Well-being

6.1 Core to the Social Services and Well-being (Wales) Act 2014 is the requirement that all people in need of care and support and carers in need of support must be supported to achieve the well-being outcomes that matter most to them. The performance and improvement framework must be used by local authorities to contribute to the achievement of these well-being outcomes.

6.2 The meaning of well-being is set out in Section 2 of the Act and applies to all people who need care and support and carers who need support. In accordance with the Act wellbeing in relation to a person means wellbeing in relation to any of the following;

(a) physical and mental health and emotional well-being;

(b) protection from abuse and neglect;

(c) education, training and recreation;

(d) domestic, family and personal relationships;

(e) contribution made to society;

(f) securing rights and entitlements;

(g) social and economic well-being;

(h) suitability of living accommodation.

In relation to a child, “well-being” also includes—

(a) physical, intellectual, emotional, social and behavioural development;

(b) “welfare” as that word is interpreted for the purposes of the Children Act 1989.

In relation to an adult, “well-being” also includes—

(a) control over day to day life;

(b) participation in work.

6.3 Section 5 of the Act puts a duty on any person exercising functions under the Act to seek to promote the well-being of people who need care and support and carers who need support. This overarching duty applies to all persons and bodies exercising functions under this Act, including the Welsh Ministers, local authorities, local health boards and other statutory agencies.

6.4 Section 8 of the Act places a duty on Welsh Ministers to issue a statement relating to the well-being of people who need care and support and carers who need support. The well-being statement must specify the outcomes that are to be achieved in terms of the well-being of people who need care and support and

carers who need support, and the measures against which achievement of those outcomes is to be assessed.

7. Strategic Improvement

7.1 This code of practice forms part of Welsh Government's wider commitment to support strategic improvement across the whole of the social care sector in Wales. This code links explicitly to Care Inspectorate Wales' Code of practice for review of local authority social services functions⁷ and to Social Care Wales' statutory role to protect, promote and maintain the safety and wellbeing of the public in Wales, as set out in Section 68 of the Regulation and Inspection of Social Care (Wales) Act 2016. Local authorities should apply this code of practice within the knowledge of this wider context.

⁷ <https://careinspectorate.wales/sites/default/files/2019-04/190401-code-of-practice-lass-en.pdf>

8. Accountability

8.1 Welsh Government will use the evidence gathered through this code of practice to understand the impact local authorities are having, at a national, regional and local level, on the well-being outcomes of people who need care and support and carers who need support. Welsh Government will facilitate collaborative working between local authorities and their partners to ensure the evidence gathered through this code of practice is regularly and routinely shared, understood and used effectively to inform improvement across the social care sector.

8.2 Care Inspectorate Wales will use the evidence gathered through this code of practice to inform the review of local authority social services through statutory inspection regimes and performance evaluation activity as set out in the Regulation and Inspection of Social Care (Wales) Act 2016 and the Code of practice for review of local authority social services functions⁸.

8.3 In addition, Social Care Wales, through their statutory role to protect, promote and maintain the safety and wellbeing of the public in Wales, as set out in Section 68 of the Regulation and Inspection of Social Care (Wales) Act 2016, will have a key role in supporting practitioners, local authorities and the wider care sector to understand and use data and evidence effectively to ensure that improvement is achieved creatively and sustainably.

8.4 Local authorities must use the data and evidence gathered through this code of practice to inform the content of Local Authority Social Services Annual Reports⁹ as well as the wider corporate-level understanding of how the organisation is operating as a whole. The publication of this information will support transparency and help people to access the information they need to understand the effect that social services are having in their local area.

⁸ <https://careinspectorate.wales/sites/default/files/2019-04/190401-code-of-practice-lass-en.pdf>

⁹ As required by section 144A of Social Services and Well-being (Wales) Act 2014.

9. Associated Guidance

9.1 All local authorities must ensure that they fully comply with all guidance that is published in relation to this code of practice.

Explanatory Memorandum to the Code of practice in relation to the performance and improvement of social services in Wales

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

Minister/Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Code of practice in relation to the performance and improvement of social services in Wales.

Julie Morgan AM

Deputy Minister for Health and Social Services

11 February 2020

PART 1

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 a piece of primary legislation: the Social Services and Well-being (Wales) Act 2014 ('the Act').

The Act provides the legal framework for improving the well-being of people who need care and support, and carers who need support. It also enables the Welsh Ministers to put in place regulations, publish guidance and issue codes of practice.

This code of practice relating to the performance and improvement of social services in Wales, sets out the framework for measuring the progress that local authorities make in relation to the discharge of their duties under the Act as a whole and enables local authorities to continuously improve their services to ensure that all people in need of care and support and all carers who need support are able to improve their well-being outcomes.

This code replaces the Code of practice in relation to measuring social services performance issued in April 2016

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

None.

3. Legislative background

The powers enabling the making of this code are contained in Sections 145 and 146 of the Act.

Section 145 of the Act permits Welsh Ministers to issue, and from time to time revise, one or more codes of practice on the exercise of social services functions.

4. Purpose and intended effect of the legislation

The purpose of the code is to set out, through new quality standards, the vision for social services in Wales and how improvement in services for individuals will be supported, measured and sustained by local authorities.

The code has been drafted to move local authorities away from a very bureaucratic and process driven focus on data to a more holistic and collaborative approach where consistent collection of high quality data will become routine practice and local authorities understand how to collect and

use data and evidence to inform both performance and improvement. The code will be used to:

- require local authorities to focus on both performance and improvement
- set out the range of different types of data that local authorities must be collecting and accessing to inform their performance and improvement
- raise expectations in relation to the quality and consistency of data gathered by local authorities
- ensure local authorities are fulfilling their core functions as set out in the Act and the associated legislation and codes of practice
- ensure there is a clear, nationally understood approach to inform performance and improvement that is shared between Welsh Government and local authorities
- ensure local authorities, Welsh Government and other partners within the social care sector can access consistent and comparable data that provides clear evidence of progress, identifies areas where further work is needed and accurately and reliably informs policy at a local and national level

This code of practice replaces the Code of practice in relation to measuring social services performance issued in April 2016.

It is intended that this code of practice comes into effect on 1 April 2020.

5. Consultation

Section 146 (1) of the Act states that before issuing or revising a code under section 145 Welsh Ministers must consult on a draft code. The code of practice, together with the draft technical guidance that support the performance and improvement framework, were consulted upon in a 12 week consultation that ran from 13 May to 5 August. The consultation received 43 responses from local authorities, third sector organisations and individuals.

Prior to formal consultation the code of practice and supporting technical guidance were developed and tested in close collaboration with a wide range of stakeholder groups who met regularly from January 2018 – April 2019.

Following the consultation, the code was reviewed and amendments made where appropriate, to take into account the views of respondents. A consultation

summary report together with a list of respondents will be published on the Welsh Government's website in February 2020¹.

¹ Consultation Document relating to Code of Practice in relation to measuring Social Services performance: <https://gov.wales/measuring-social-services-performance-code-practice>

6. Regulatory Impact Assessment

The code is not subordinate legislation made by statutory instrument and for that reason a RIA is not required under section 4.2 of the Welsh Ministers Regulatory Impact Assessment Code.

However, consideration has nonetheless been given to whether the impact of the code is in any case sufficient to warrant completion of an RIA. Given that this code does not impose additional requirements on local authorities it has been decided that its impact is not such as to warrant completion of an RIA.

The code of practice has been subject to a full Integrated Impact Assessment (IIA). The IIA has shown that there are no significant negative impacts on any of the areas under consideration. Additionally, the code does not create any significant regulatory burden; therefore a full RIA has not been completed. A summary of the IIA will be available on the Welsh Government website.

Agenda Item 5.1

STATEMENT BY THE WELSH GOVERNMENT

TITLE **Legislation related to leaving the EU**
DATE **25 February 2020**
BY **Jeremy Miles AM, Counsel General and Brexit Minister**

I thought it would be helpful to update Members on both recent developments and prospects in relation to legislation arising from our exit from the EU.

I will, firstly, consider the matter of the Withdrawal Agreement Act and the implications for the Sewel Convention.

Members will recall that, on the 21st of last month, this Senedd followed the Welsh Government's recommendation in refusing consent for that legislation.

As has been rehearsed already in the Senedd, the reasons for this were principally constitutional – the threat this legislation poses to the Senedd's competence and the Welsh Government's capacity to influence the forthcoming negotiations which will have serious consequences for devolved policy areas. We did all we could to improve the Bill, both before its introduction and then working closely with Members of the House of Lords to put forward amendments which would have made it acceptable from a devolution perspective, but ultimately could not persuade the Government. Our decision here in the Senedd mirrored similar votes in the Northern Ireland Assembly and the Scottish Parliament, the first time that all three legislatures had refused consent for a single piece of UK parliamentary legislation. Notwithstanding this, the UK Government pushed the Bill to Royal Assent with Parliament over-riding the views of the three legislatures.

This could have developed into a major constitutional crisis, threatening the foundations of devolution. However, in correspondence the Secretary of State for DExEU described the circumstances as "singular, specific and exceptional" and the Chancellor of the Duchy of Lancaster described them as "unique". There were similar comments by Lord Callanan, Minister of State at DExEU, in third reading in the Lords and in a written statement issued by the Chancellor of the Duchy of Lancaster.

I subsequently wrote to both Stephen Barclay and Michael Gove recognising these encouraging signs that the UK Government recognised the graveness of this step and was interpreting the Sewel 'not normally' as 'only in the most exceptional circumstances'. On this basis, I reminded them that we had called, in 'Reforming our Union', for codification of the convention by setting out the circumstances and criteria under which the UK Government might in extremis proceed with its legislation, notwithstanding a lack of devolved legislative consent and called for the UK Government to engage in a further discussion of this.

So, while the UK Government's decision to proceed with the Withdrawal Agreement Bill without the consent of the devolved legislatures is of significant concern, it would appear that the UK Government and ourselves believe it should be ring-fenced as a special case. We now need to build on that.

Moving on, Members will be aware that almost all EU law continues to apply in the UK during the transition period, but the Welsh Government has been considering whether powers to keep pace with EU legislation beyond the transition period are practical and necessary. We do not at this point see an urgent need to bring forward a Senedd Bill containing powers to keep pace with EU legislation at this stage. There are a number of reasons for this.

Perhaps the principal one is that we have concerns as to whether providing Welsh Ministers with wide powers to keep pace with all EU legislation within devolved competence through a portmanteau Bill would be acceptable to this Senedd. It would not be consistent with the views expressed by members in the past therefore the bar for proposing such an approach would be set high.

There are also other available means of enabling Wales to keep pace where we consider it necessary.

First, Welsh Ministers already have powers to keep pace with technical modifications to EU tertiary legislation either through functions created in the EU Exit SIs as part of the corrections programme or through existing domestic powers. Analysis of the availability of existing powers will need to be undertaken in response to specific EU legislative proposals as they are being developed.

For more significant EU legislation, the legislative process in the EU would provide more than enough time to enable a Bill to be introduced and passed by the Senedd if that was considered necessary.

The context for this analysis is important. The Welsh Government remains committed to the Common Frameworks process which we believe should both allow and manage policy divergence between the UK and the Devolved Governments, or indeed between each of the Devolved Governments. We intend to follow the common frameworks process through to its end before concluding where we might need and be able to follow developments in future EU legislation.

Nevertheless, I want to assure Members we will keep the position under review.

Finally, –Members should be aware that a significant body of secondary legislation will be required during this year, although we cannot quantify it in advance of knowing how the negotiations with the EU, and indeed with other third countries, will proceed. In any event, there will be demands from the usual work to implement EU law that comes into force this year; the further correcting SIs which are needed to ensure that retained EU law ‘works’ in the context of the end of the transition period; and secondary legislation needed to implement the new regimes being established by UK Bills and the Withdrawal Agreement Act itself.

Work is already well underway to determine the amount of legislation which will be necessary to the extent that we can determine at this point in time, and I will, of course, keep Members updated.

Check against delivery

Embargoed until after Jeremy Miles AM, Counsel General and Brexit Minister, has delivered the statement.

Ken Skates AC/AM
Lesley Griffiths AC/AM
Kirsty Williams AC/AM

Agenda Item 5.2



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA/P/KS/0356/20

Mick Antoniw AM
Chair
Legislation, Justice and Constitution Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

25 February 2020

Dear Mick.

We wanted to provide you with an update on inter-governmental relations with the UK Government Department for Business, Energy and Industrial Strategy (BEIS) and with other Devolved Administrations.

A summary of recent inter-Ministerial meetings is attached.

Yours ever,
Ken

Ken Skates AC/AM
Gweinidog yr Economi a Thrafnidiaeth
Minister for Economy and Transport

Regards
Lesley

Lesley Griffiths AC/AM
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

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We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.



Kirsty Williams AC/AM
Y Gweinidog Addysg
Minister for Education

Annex A – Summary of inter-Ministerial meetings with BEIS Ministers, and Ministers from other Devolved Administrations

On 17 October 2019 we attended the first ever quadrilateral meeting with a Secretary of State in London. The introductory meeting provided an opportunity to press the need for more effective inter-governmental working at a Ministerial level.

On 24 October 2019 the Minister for Environment, Energy and Rural Affairs attended an Energy and Climate Change Quadrilateral meeting with Kwasi Kwarteng (Minister of State for Energy and Clean Growth). Ministers discussed the need for greater inter-governmental cooperation on energy and climate change.

On 30 October 2019, the Minister for Economy and Transport attended a Business and Industry Quadrilateral meeting with Nadhim Zahawi MP, (Parliamentary Under Secretary of State and Minister for Business and Industry). Ministers discussed business readiness and support.

The Minister for Education attended two quadrilateral meetings with Chris Skidmore MP, Minister of State for Universities, Science, Research and Innovation, on 23 September 2019 and 21 October 2019. The Ministers discussed the future of research and innovation programmes operating across the UK and Wales.

On 03 February, the Minister for Environment, Energy and Rural Affairs attended another Energy and Climate Change quadrilateral with Kwasi Kwarteng MP. The quadrilateral meeting focussed on the UK Emissions Trading Scheme implications.

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Agenda Item 8

By virtue of paragraph(s) vi of Standing Order 17.42

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Agenda Item 9

By virtue of paragraph(s) vi of Standing Order 17.42

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Agenda Item 10

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