

**National Assembly for Wales**  
Bill Summary

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

March 2015

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Enquiry no: 15/0115

Paper number: 15/014

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Amy Clifton, Helen Jones, Stephen Boyce

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

## Introduction

The [Regulation and Inspection of Social Care \(Wales\) Bill](#) is a Welsh Government Bill. It was introduced on 23 February 2015 by Mark Drakeford AM, Minister for Health and Social Services.

Mark Drakeford AM made an [oral statement](#) in Plenary on 24 February 2015 (further details below).

The scrutiny of the Regulation and Inspection of Social Care (Wales) Bill is remitted to the Health and Social Care Committee. On 3 February 2015 the Business Committee agreed the deadline for the Stage 1 Committee to report as 3 July 2015 and the deadline for the completion of Stage 2 Committee proceedings as 16 October 2015.

The Health and Social Care Committee is holding a [consultation](#) on the general principles of the Bill, which closes on 24 April 2015. The Committee is considering the Bill at Stage 1 and will begin taking evidence on 25 March 2015.

The Bill seeks to provide a revised and streamlined legislative framework for the regulation and inspection of care and support in Wales. The accompanying Explanatory Memorandum states that this will support the transformation of the social care sector and build on the provisions in the *Social Services and Well-being (Wales) Act 2014*.

## 1. Background

### 1.1. *Legislative competence*

The Explanatory Memorandum states (in section 2) that the subject of the Bill falls within the list of subjects in Part 1 of Schedule 7 of the *Government of Wales Act 2006* and is therefore within the competence of the Assembly.

Paragraph 15 of Schedule 7, Part 1 includes:

#### **15. Social Welfare**

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

The Explanatory Memorandum also sets out other relevant areas of competence in Part 1, Schedule 7, including:

#### **12. Local Government**

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

#### **14. Public Administration**

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

#### **5. Education and Training**

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

### 1.2. *Development of the Bill*

The Welsh Government published [\*Sustainable Social Services for Wales: a Framework for Action\*](#) in 2011, setting out its programme to reform the provision of care and support in Wales.

This was informed by the earlier social services strategy [\*Fulfilled Lives Supportive Communities\*](#) (2007) and the work of the [\*Independent Commission on Social Services in Wales\*](#) (2010) which helped to clarify the Welsh Government's policy priorities for social services in a changing social and political landscape.

Some of the proposals in *Sustainable Social Services* required legislative change and a Social Services and Well-being (Wales) Bill was introduced in the Assembly in January 2013. The resulting [\*Social Services and Well-being \(Wales\) Act 2014\*](#) sets a new legislative framework for social services in Wales.

The Welsh Government had originally planned to include reforms to the inspection and regulation of social care in the *Social Services and Well-being (Wales) Act 2014*, but [\*decided in June 2012\*](#) to make these the subject of a separate Bill.

In January 2014 the Welsh Government published its White Paper – [\*The future of Regulation and Inspection of care and support in Wales\*](#). The consultation on the



White Paper closed in April 2014, and the Welsh Government published a [summary of the consultation responses](#).

[In drafting the Bill the Welsh Government has taken account of the recommendations of the work of the Law Commission \(2014\) on the regulation of health and social care professionals](#).

In his statement in Plenary on 24 February 2015 the Minister said:

The existing legislative basis for the regulation and inspection of social care is fragmented. It needs reforming and updating. The delivery of social care has changed significantly over the past 15 years with far greater numbers of people being cared for in the community and an increase in acuity for those in residential care. The Social Services and Well-being Act (Wales) 2014, under the leadership of Mrs Gwenda Thomas, of course, was a landmark legislative step taken in Wales to respond to these changes. This companion Bill provides an effective legal framework for the regulation of the new approach established in the 2014 Act.

### *1.3. Purpose and intended effect of the Bill*

The stated aims of the Bill are to secure well-being for citizens and to improve the quality of care and support in Wales. In the Explanatory Memorandum, the Welsh Government notes that lessons need to be learned from serious incidents such as Southern Cross, Mid Staffordshire and Winterbourne, some of which involved the criminal abuse and neglect of vulnerable adults in England, and Operation Jasmine which is currently the subject of an independent review commissioned by the Welsh Government into abuse and neglect at care homes in South Wales. Such lessons include the importance of market stability and minimising the risks of provider failure, and the recognition that culpability for abuse or neglect should not be solely held by those on the front line.

The EM also states that duplicative and unnecessary minimum standards, regulations and rules have been created that are in need of review and streamlining.

The Bill makes provision for the registration and regulation of providers of care home services, secure accommodation services, residential family centre services, adoption services, fostering services, adult placement services and domiciliary support services. It also makes provision for the regulation of local authority social services, reconstitutes the Care Council for Wales as Social Care Wales, and provides for the registration, regulation and training of social care workers.

The Bill proposes to introduce changes to:

- **reform the regulatory regime for care and support services** – which includes a new service based model of regulation, provisions to monitor the operation of the care market, provisions to improve public engagement, and powers to introduce inspection quality ratings and to charge fees.
- **reform the inspection regime and regulation of local authority social services functions** by amending the *Social Services and Well-being (Wales) Act 2014* – which includes the consideration of outcomes for service users in reviews of social services performance, increased public involvement, and a new duty on local authorities to report on local markets for social care services.
- **reconstitute and re-name the Care Council for Wales as Social Care Wales** and broaden its remit in relation to service improvement; to include giving advice and assistance (including grants) to care and support service providers, and undertaking research studies.
- **reform regulation of the social care workforce** – which includes the removal of voluntary registration, and the introduction of prohibition orders. It does not extend registration to new categories of staff but provides powers to do so.

## 2. The Regulation and Inspection of Social Care (Wales) Bill: Summary of provisions

The Explanatory Notes, at pages 75-76 of the Explanatory Memorandum, provide an explanation of the provisions of the Bill.

### *2.1. Powers to make subordinate legislation*

There is a considerable number of provisions included in the Bill for subordinate legislation, including regulations, guidance and code of practice making powers for Welsh Ministers. There are also rule, guidance and code of practice making powers for Social Care Wales’.

These are set out in section 5 (pp86-111) of the Explanatory Memorandum.

The Welsh Government has also published a document setting out the policy intent for regulations to be made under the Bill.

### *2.2. Parts of the Bill*

The Bill is divided into eleven parts.

#### *2.2.1. Regulation of social care services*

##### ***Chapter 1 - introduction***

Chapter 1 (sections 1 – 4) **defines some key terms** including what is a “regulated service” (section 2), and **sets out the general objectives of the Welsh Ministers** in relation to the regulation of services (section 4) - these are:

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

##### ***Chapter 2 – service registration***

Chapter 2 (sections 5 – 30) focuses on **registration** of regulated service providers, including **the requirement to register and processes associated with application, variation and cancellation of registration, and appeals.**

Service providers will no longer have to register separately for each service and at each location where the service is provided. A provider will instead make one application for registration which can be varied so as to authorise changes such as the provision of further services at further locations.

NB: The existing exception that local authority fostering and adoption agencies do not need to register will be retained, as local authorities have a statutory obligation to provide these services.

Section 8 requires **service providers to submit annual returns** to the Welsh Ministers within a prescribed time limit. It also states that regulations may prescribe the content and format of the annual returns, and the Welsh Ministers must publish them.

The Bill provides the Welsh Ministers with the additional powers to address the problem of **non-compliance** by service providers. The first statutory step is the issuing of an **improvement notice** by the service regulator. The rest of the process remains unchanged from existing arrangements except that after improvements have been made, the regulator can require the provider to demonstrate the sustainability of those improvements within a set timeframe.

The Bill also establishes the concept of the '**Responsible Individual**' (RI) in primary legislation. This individual will be required to be a senior representative of the service provider. The Welsh Ministers will have the power, through regulations, to place duties on the RI, such as the appointment of a suitable and fit manager, supervision of the management, and the requirement to undertake regular visits to services or report to the Board.

Section 21 gives Welsh Ministers **the power to apply to a justice of the peace for an order authorising them to urgently cancel the registration** of a service provider or vary the registration of a service (on rare occasions when **urgent action** is required to prevent harm).

Section 26 states that the Welsh Ministers **may impose requirements on regulated service providers through regulations, such as specifying the standard of care and support** that must be provided. It states that when making such regulations, the Welsh Ministers must have regard to the quality standards included in any code issued under section 9 of the *Social Services and Well-being Wales Act 2014* (codes to help achieve the **well-being outcomes**).

### ***Chapter 3 – information and inspections***

Chapter 3 (sections 31 – 35) sets out the Welsh Ministers' powers to require information, and the powers and functions of authorised 'inspectors' carrying out **service inspections**, such as allowing inspectors to obtain information, inspect services, interview staff in private, and seize documents.

Section 35 states that the Welsh Ministers **may, by regulations, make provision about inspection ratings** in relation to the quality of care and support provided by a service provider. The Explanatory Memorandum (EM) states that the proposal for **quality ratings** is the most significant change to inspections, and that prior to this power being utilised there will need to be significant consultation with stakeholders and the public in order to establish the right approach.

## ***Chapter 4 – general functions***

Chapter 4 (sections 36 – 40) confers some general functions on the Welsh Ministers in relation to regulated services, including **maintaining registers, providing information to local authorities, engaging the public, annual reports and powers to charge fees.**

The Bill provides a **general and broad power for the Welsh Ministers to charge fees for regulatory activities.** Section 38 sets out that the Welsh Ministers may, by regulations, make provision requiring a fee to be paid by a person for various provisions including applying for registration, and receiving a copy of an inspection report. However it also states that **before making such regulations, the Welsh Ministers must take reasonable steps to consult people** likely to be affected and any others they deem appropriate. The EM states that the introduction of a fee system would bring Wales into line with the rest of the UK.

Section 39 focuses on **engagement with the public**, and states that Welsh Ministers must **make information available to the public about the regulation system, and prepare and publish a statement of their policy on involving the public** in the exercise of their regulatory functions.

Section 40 requires **the Welsh Ministers to prepare and publish an annual report** about progress on the exercise of their regulatory functions, which must be laid before the National Assembly for Wales.

## ***Chapter 5 – offences and penalties***

Chapter 5 (sections 41 – 54) sets out **offences and penalties.**

Offences include a failure to comply with a condition or requirements in regulations; false descriptions (such as pretending to be service provider); false statements (providing false or misleading information); failure to provide information, and offences related to inspections (obstruction or failure to comply).

Section 50 sets out the penalties upon conviction; in most cases on summary conviction, it will be a fine, or imprisonment for a term not exceeding 6 months, or both; and on conviction on indictment, it will be a fine, or imprisonment for a term not exceeding 2 years, or both. Either way offences in the Bill are capable of attracting an unlimited fine or imprisonment for up to 2 years. These are in line with offences established in Health and Safety legislation and other comparable regulatory regimes.

Section 51 gives the option of a **penalty notice** - a notice offering the person the opportunity to discharge any liability to conviction for certain offences with a payment to the Welsh Ministers.

Section 52 refers to offences committed by bodies corporate, and section 53 refers to offences by unincorporated bodies.

Section 54 gives **time limits for proceedings for offences**; proceedings must be brought within 12 months of coming to the prosecutor's knowledge, and cannot be brought more than three years after the offence is committed.

### ***Chapter 6 - local authority social services***

Chapter 6 (sections 55 - 57) **amends the *Social Services and Well-being (Wales) Act 2014* (the "2014 Act") regarding the social services functions of local authorities** (Schedule 2 to the 2014 Act), and includes:

- Requirements on local authorities to prepare and publish **annual reports** and new **local market stability reports** (section 55) which must include an assessment of the sufficiency of the provision of care and support in the area (added to section 144 of the 2014 Act). The annual reports must include details of the extent to which the authority has acted in accordance with any codes issued under section 9 of the 2014 Act (codes to help achieve **outcomes in relation to well-being**).
- Powers for the Welsh Ministers to conduct **reviews** of local authority social services functions (section 56) and reviews of relevant studies and research. When conducting reviews, the Welsh Ministers must have regard to a number of factors including the **effectiveness of measures taken by a local authority to achieve outcomes** specified in a statement issued by the Welsh Ministers under section 8 (statement of outcomes relating to well-being) of the 2014 Act in so far as they are relevant to the services.
- Powers to **authorise entry and inspection of premises** (section 56); powers for the Welsh Ministers to **require information** (relating to the exercise of social services functions); and offences in connection with inspections or requirements to provide information (replacing section 161 of the 2014 Act, *powers of entry and inspection*). The Welsh Ministers must also prepare and publish a code of practice about inspections, including the frequency of inspections.
- Powers for the Welsh Ministers to **regulate the exercise of local authority functions relating to looked after and accommodated children** (section 56) (adding to section 94 of the 2014 Act, *regulations about agency arrangements*). For example, the Welsh Ministers may make regulations to specify who is fit to carry out this work.

## ***Chapter 7 - Market oversight***

Chapter 7 (sections 58 - 62) makes provision for the Welsh Ministers to **monitor and review the financial sustainability of certain service providers**. They must inform local authorities where service provider failure is likely in their area (section 61); and are required to prepare and **publish national reports about the stability of the market** for social care services in Wales (section 62).

### ***2.2.2. Overview and interpretation of parts 3 to 8***

Part 2 (sections 64 – 65) provides an overview of the main provisions of Parts 3 to 8 of the Bill, and some definitions which relate to these Parts.

### ***2.2.3. Social Care Wales***

Part 3 (sections 66 – 77) focuses on **reconstituting the workforce regulator**.

Section 66 **renames the Care Council for Wales as Social Care Wales (SCW)**.

Section 67 **sets out Social Care Wales' objectives**. It states that the main objective is to protect, promote and maintain the safety and well-being of the public in Wales. In pursuing that objective SCW must exercise its functions with a view to **promoting and maintaining** -

- (a) **high standards in the provision of care and support services (\*new objective)**,
- (b) high standards of conduct and practice among social care workers,
- (c) high standards in the training of social care workers, and
- (d) **public confidence in social care workers (\*new objective)**.

Section 68 states that SCW may give **advice and assistance (including grants)** to care and support service providers for the purpose of encouraging improvement in service provision. Section 69 allows SCW to **undertake research studies** to enable it to make recommendations for improving economy, efficiency and effectiveness of services.

Section 70 focuses on **engagement with the public and social care workers**. It states that SCW **must make information available** to the public, and social care workers about SCW and the exercise of its functions. **SCW must also prepare and publish a statement of its policy on involving the public and social care workers** in the exercise of its functions.

Section 71 states that SCW must **prepare and publish a statement of policy with respect to it bringing criminal proceedings**.

**SCW has broad powers to make new rules under the Bill.** Section 72 refers to new rules made by SCW, and states that SCW must publish any rules it makes and ensure the rules are publicly available. Section 73 allows SCW to make provision for the **payment of fees to SCW through rules** in certain circumstances, including for registration, and the provision of copies of codes of practice or the register.

Section 74 sets out **consultation requirements** that SCW must adhere to before making rules, publishing a code of practice, or issuing guidance - SCW must publish a draft, along with an explanation of the purpose, a summary of the intended effect, and a notice period for comments on the proposal. It must 'take reasonable steps' to notify social care workers SCW thinks may be affected by the proposal, the Welsh Ministers, and any other appropriate persons.

NB: Subsection 3 states that SCW would not have to consult if it is satisfied that consultation would be inappropriate or disproportionate and if it has obtained the agreement of the Welsh Ministers to proceed without consultation.

Section 77 allows default powers of the Welsh Ministers to be exercised if SCW fails to discharge any of its functions without reasonable excuse or fails to comply with directions from the Welsh Ministers in relation to its functions.

#### *2.2.4. Social care workers*

Part 4 (sections 78 - 110) focuses on the social care workforce. Section 78 gives the definition of a 'social care worker'.

Section 79 states that **SCW must maintain a register** of relevant social workers, social care workers of any other description specified by the Welsh Ministers by regulations, and visiting social workers from relevant European States. SCW has a **duty to appoint a registrar** (under section 80) to process applications for registration. Sections 81 and 82 set out how to apply for registration and the circumstances in which an application should be granted, such as if the registrar is satisfied that the person is 'appropriately qualified' (section 83 provides a definition). Section 84 details the process for social care workers with qualifications gained outside Wales.

**Renewal of registration** is not currently required, but section 85 states that SCW may make new rules to provide that entry in the register only has effect for a specified period (thereby requiring renewal applications) and set renewal requirements.

Section 87 states that **SCW must make rules about how the registrar is to determine whether to grant registration and the procedure** for dealing with applications.



Section 89 sets out the registration process for visiting social workers from relevant European States.

Sections 91-98 set out the **processes for removing and restoring entries to the register**, and sections 100 – 104 set out the **appeals process** for various decisions.

Section 109 states that **SCW must keep a list of persons who have been removed from the register**.

Section 110 refers to the **protection of the title of ‘social worker’**– it is an **offence** for a non-registered person to take or use the title. A person guilty of this offence is liable on summary conviction to a fine. It also gives the power through regulations to protect the title of a defined ‘social care worker’.

### *2.2.5. Standards for social care workers*

Part 5 (section 111 – 115) focuses on standards of conduct, professional development and education for social care workers.

Section 111 states that SCW must prepare, publish, and keep under review, **codes of practice on standards of conduct and practice** expected of social care workers, and of employers of social care workers.

NB: The Bill states that Social Care Wales will also be able to produce codes of practice for approved mental health professionals (AMHP). AMHPs exercise functions under the *Mental Health Act 1983*. Those functions relate to decisions made about individuals with mental disorders, including the decision to apply for compulsory admission to hospital.

Section 112 states that SCW **may make rules requiring registered persons (‘social care workers’) to undertake further training and continued professional development**. SCW may approve and inspect relevant courses (section 113-114) and must maintain and publish a list of the courses it has approved. SCW may also provide or secure the provision of a new course if required and make grants available to secure and provide training (section 115).

### *2.2.6. Fitness to practise for social care workers*

#### ***Chapter 1 – grounds for impairment***

Section 116 in Chapter 1 of Part 6 sets out the grounds of potential impairment of a person’s fitness to practise for the purposes of being, and remaining, registered; including deficient performance as a social care worker and serious misconduct in any capacity.

## ***Chapter 2 – preliminary consideration of allegations***

Chapter 2 (sections 117 – 132) sets out a system of preliminary consideration and investigation into whether a registered social care worker’s fitness to practise may be impaired, and for the referral of certain cases to a “fitness to practise” panel.

Section 124 places a **duty on SCW to investigate** (or make arrangements for the investigation of) a matter referred in respect of a registered person’s fitness to practise.

## ***Chapter 3 – disposal of fitness to practise cases***

Chapter 3 (sections 133 – 143) sets out options and processes to proceed after a matter has been referred to a fitness to practise panel and considered. It sets out the options which may be undertaken in different circumstances such as when an impairment in fitness to practise is identified (section 137). **Options include conditional or immediate registration orders or suspension orders** (sections 138/139). Registration orders impose conditions on the person’s registration, whereas suspension orders suspend the person’s registration.

Immediate orders take immediate effect and can only be made by a panel if it is satisfied that the order is necessary for the protection of the public, is otherwise in the public interest or is in the interests of the registered person.

## ***Chapter 4 – interim orders***

Chapter 4 (sections 142 – 148) refers to **interim orders and reviews of them**. Interim orders are immediate, temporary measures which can be ordered by a panel. The two options are an **interim suspension order or an interim conditional registration order**. Like immediate orders in chapter 3, they can only be made if the panel is satisfied that it is necessary to protect the public etc. An interim order may not last longer than 18 months (although SCW can apply to the tribunal for an extension).

Section 144 sets out the appeals process for interim orders. Section 145 sets out the timings for reviews of interim orders, and section 146 sets out the possible decisions and next steps following the review of an interim order.

## ***Chapter 5 – review proceedings***

Chapter 5 (sections 149 – 155) sets out the reviews that must be undertaken by fitness to practise panels, and the possible disposal options for cases by the panel (such as revoking or extending an order).

## ***Chapter 6 – appeals and referrals to the tribunal***

Chapter 6 (section 156) sets out the process and circumstances in which a person can appeal to the tribunal against a decision of a fitness to practise panel.

## ***Chapter 7 – general and supplementary***

Chapter 7 (sections 157 – 159) gives SCW powers to require that information is provided to them (section 158), and to publish or disclose information relating to a registered person’s fitness to practise if it thinks it is in the public interest to do so (section 157). It also sets out the circumstances in which it must publish a decision of a fitness to practise panel (section 159).

### **Part 7: Orders prohibiting work in social care – unregistered persons**

Part 7 (sections 163 – 171) focuses on **prohibition orders to ban certain people from carrying out a regulated activity** (social care work).

Section 164 states that **regulations must prescribe the circumstances in which a fitness to practise panel may make a prohibition order**. Section 165 states that regulations must authorise the making of interim (immediate, temporary) prohibition orders by a fitness to practise panel to prohibit a person while a decision is pending on whether to make a (full) prohibition order.

This part also details reviews of interim prohibition orders (section 167), and offences for failing to comply with the orders (section 169). It also states that the Welsh Ministers must make regulations to provide for a right of appeal (section 168).

Section 170 states that **SCW must establish and maintain a list of persons who are under a prohibition or interim prohibition order**.

Section 171 states that the Welsh Ministers may by regulations require SCW to determine the standards of conduct expected of a person carrying out a regulated activity.

### **Part 8: Duty on SCW to establish panels**

Part 8 (sections 172 – 173) requires SCW to make rules to establish panels which will determine whether a person should be admitted to, or removed from, the register; “registration appeals panels”, “fitness to practise panels” and “interim order panels”.

### **Part 9: Co-operation and joint working**

Part 9 (sections 174 – 180) focuses on co-operation and joint working between regulatory bodies (the Welsh Ministers (CSSIW) and SCW) and relevant authorities (including local authorities and Local Health Boards).

Section 176 states that the regulatory bodies must co-operate with each other and seek to co-operate with relevant authorities **if** the regulatory body thinks that it will have a positive effect on the manner in which it exercises its functions or that it will assist them in achieving their general objectives. It also lists the circumstances in which a regulatory body can refuse to comply with a request for co-operation with a relevant authority.

Section 177 states that regulatory bodies may arrange to exercise any of their relevant functions jointly. Section 178 sets out the circumstances in which a regulatory body may delegate relevant functions to the other regulatory body. It states that SCW may not delegate its functions on rule making or fitness to practise proceedings.

Section 179 refers to **sharing information** between regulatory bodies and relevant authorities. Section 180 states that **a regulatory body must disclose information if it thinks that such disclosure is necessary or expedient to protect the well-being of an individual** in Wales (unless prohibited by law).

#### **Part 10: Miscellaneous and general**

Part 10 (sections 181 -182) covers inquiries and the procedure for providing documentation to notify individuals (section 182).

Section 181 states that the Welsh Ministers may cause an inquiry to be held into any matter connected with the provision of care and support.

#### **Part 11: Final provisions**

Part 11 (sections 183 – 188) sets out the final provisions to the Bill, for example section 183 states that schedule 3 sets out minor and consequential amendments to existing legislation. Section 185 states that before making certain regulations under the Act, a draft must be laid before and approved by resolution of the National Assembly for Wales – the ‘affirmative procedure’.

### 3. Regulatory Impact Assessment

#### *3.1. Financial implications of the Bill*

A detailed Regulatory Impact Assessment (RIA) is contained within the Explanatory Memorandum (EM). The RIA presents the costs and benefits of the options considered under each section structured around the **five main elements of the Bill; registration, inspection, enforcement, social care market and workforce.**

The RIA presents a range of options under each section of the Bill along with the costs and benefits of each option and an assessment of how far they meet the Bill's aims. The RIA also breaks the costs down by the following groups who are affected by each option in the Bill:

- Welsh Government
- Service regulator (CSSIW)
- Service providers
- Workforce regulator (currently Care Council for Wales to become Social Care Wales)
- Social care workers
- Criminal justice system
- Service users

#### *3.1.1. Additional costs and benefits of the preferred options*

The RIA states that the costs of the Bill are a **best estimate based on information that is currently available.** Table 1 provides a summary of the **additional costs** that will result from implementing the preferred options detailed in the EM. The RIA calculates the **total additional cost over the first five years of the Bill to be around £9 million, this includes transitional costs of £3.3 million.** Further details of the main estimated costs are set out below the table.

**Table 1: Additional costs and benefits of the preferred options by group affected; 2016-17 to 2020-21**

	2016-17	2017-18	2018-19	2019-20	2020-21	Total
Service regulator (CSSIW)	2,126,200	1,765,868	1,765,868	1,765,868	1,765,868	9,189,672
Service providers	1,074,000	45,880	45,880	45,880	45,880	1,257,520
Welsh Government	113,412	115	115	115	115	113,872
Criminal justice system	0	8,475	8,475	8,475	8,475	33,900
Social care workers	0	-128,370	-128,370	-128,370	-128,370	-513,480
Workforce regulator (CCW)	3,800	-64,700	-64,700	-64,700	-64,700	-255,000
Service users	0	-184,600	-184,600	-184,600	-184,600	-738,400
<b>Total</b>	<b>3,317,412</b>	<b>1,442,668</b>	<b>1,442,668</b>	<b>1,442,668</b>	<b>1,442,668</b>	<b>9,088,084</b>

Source: Research Service calculations from National Assembly for Wales, [Explanatory Memorandum – Regulation and Inspection of Social Care \(Wales\) Bill](#)

The RIA explains it includes two provisions that give Welsh Ministers powers to make secondary legislation that have not been costed; protection of title and prohibition orders. However, the RIA provides an estimate for the Welsh Government cost of developing the secondary legislation **it explains it has not been possible to provide costs for implementing the provisions** due to the number of approaches that could be taken at this point in time. The RIA states that if these powers are used they will be subject to a statutory consultation and a cost benefit analysis will be produced.

The EM also explains that it has **not been possible to estimate the costs to local authorities of producing local authority annual statements** of the social care market.

The RIA is unusual in that it provides detailed cost estimates for one policy option that is not the preferred option at the present time but could be invoked in the future. This relates to **extending mandatory registration of the social care workforce** where options are considered in detail but the RIA concludes that it is a finely balanced debate and the preferred option is to retain the status quo. However, in the future **further cost benefit analysis will be undertaken if and when the powers are used**.

### *3.1.2. Benefits*

The RIA states as with most Bills that it has **not been possible to quantify all the identified benefits and a qualitative description is provided alongside many of the benefits**. Benefits are quantified in the registration section including; service based model of registration, removal of voluntary registration and removal of dual registration for managers. Under the due diligence of key providers section benefits to service users have also been quantified when a care home provider suddenly exits the market. The RIA concedes that this means it is **difficult to compare the costs and benefits in an objective and meaningful way**.

### *3.1.3. Additional costs falling on the service regulator (CSSIW)*

The majority of the additional costs associated with the Bill fall on CSSIW **and total £9.2 million between 2016-17 and 2020-21**. Of these **£2.1 million are transitional costs** which comprise £1.5 million for introducing a service based model of registration which includes an enhanced role for the responsible individual and £655,200 for making it an offence to provide false or misleading information and time limited registration.

In terms of additional **on-going costs** to CSSIW the provision of a **quality judgement framework is estimated to cost £1,443,486 per annum**. As the **quality judgement framework is the preferred option with the most significant additional on-going cost**, the RIA states that a further cost benefit analysis will be undertaken if these powers are used. A further £40,000 per annum is attributed to producing publicly available standardised annual reports of local authority statutory functions.

### *3.1.4. Additional costs falling on service providers*

The bulk of the additional costs falling on **service providers are transitional costs of £1.1 million that comprise £726,300 for integrating a performance-based model of registration** with the existing approach to regulation and £240,100 for introducing publicly available standardised service provider annual reporting. A further £107,600 is for introducing the service based model of registration which includes an enhanced role for the responsible individual.

Additional on-going costs are estimated to be £45,880 per annum and are made up of additional costs for the quality judgement framework along with estimated savings from introducing the service based model of registration. The RIA states that this equates to an estimated additional on-going cost to each service provider of £40 per annum.

### *3.1.5. Additional costs falling on the Welsh Government*

**The Welsh Government will incur estimated additional costs of £113,900 between 2016-17 and 2020-21 as a result of the Bill.** The majority of these costs are transitional occurring in 2016-17 and comprise £100,000 for the transition costs associated with the introduction of Social Care Wales such as administrative processes, functions and governance, along with communications and marketing activity. Staff costs for developing the secondary legislation in relation to protection of title and prohibition orders, £13,412, are also included.

### *3.1.6. Benefits for social care workers, service users and the Care Council for Wales (to become Social Care Wales)*

The RIA states that service users are expected to benefit the most from the preferred options by £738,400 between 2016-17 and 2020-21. However, the only benefits to service users that have been quantified are when a care home provider suddenly exits the market. The RIA bases these cost savings on the assumption that due diligence will prevent the closure of one large residential care home every 10 years.

The preferred options in the RIA indicate that social care workers will benefit from a reduction in costs of £513,480 in this five year period. This is due to the removal of voluntary registration and removal of dual registration for managers.

Due to the removal of voluntary registration benefits for the Care Council for Wales are expected to total £255,000 in this five year period.

## *3.2. Impact assessments*

Section 8 of the EM provides information on assessments of the impact of the Bill in specific areas, including:

- Competition assessment
- Equality impact assessment
- Children's rights impact assessment
- The United Nations Convention of the Rights of Older Persons and the Welsh Government's Declaration on the Rights of Older People
- Welsh language impact assessment
- Equality impact assessment
- Sustainable development
- Rural proofing
- Health and well-being
- Impact on privacy
- Impact on the voluntary sector



## 4. Response to the Bill

### 4.1. *Plenary statement on the Regulation and Inspection of Social Care (Wales) Bill, 24 February 2015*

The Minister for Health and Social Services Mark Drakeford AM made an [oral statement](#) in plenary on 24 February 2015. Other Members made the following points in the meeting.

**Andrew R.T. Davies AM**, Leader of the Welsh Conservatives asked whether the Minister has looked at the possibility of the inspectorate being able to appoint interim managers into failing care homes as an alternative to closure. He also noted that the Bill would require a responsible person from service providers at board level to be accountable for service provision, in addition to the registered manager of a service or care home. He asked whether the Minister has considered the implications that this might have on larger care home groups and how this accountability would work in practice.

He was concerned that the proposal to include a power in the Bill to introduce a rating system for care homes could exacerbate delayed transfers of care if people in hospital awaiting a care home place waited for a vacancy in a high rated care home. He wished to know whether the rating system is likely to be forthcoming in the short to medium term, or whether it is a long-term aspiration.

**The Minister** said the Welsh Government intended to work with the sector to make sure that the new system is workable for them and that he didn't anticipate the rating system being introduced in the short term although it may be introduced in the medium term, subject to the necessary discussions with the sector.

**Lynne Neagle AM**, Welsh Labour, welcomed the new requirement for a national market stability report, and the measures around the social care workforce. She wished to know how the Bill will actually secure quality-of-life improvements for people living in the residential care sector.

The Minister said that the Bill aims to shift the focus of regulation to include the quality of care and its impact on those receiving it, using the outcomes framework being developed for the *Social Services and Well-being (Wales) Act 2014*.

**Elin Jones AM**, Plaid Cymru Shadow Minister for Health and Well-being, was concerned about standards in integrated care settings and care provided in the person's own home. She asked how the Bill will ensure that services provided jointly by health and social care organisations are inspected and how the need to regulate and inspect newer models of service provision such as Extra care will be addressed. She also wished to know how domiciliary care will be inspected.

She expressed concern about domiciliary care workers not being paid for travelling time and thus being paid below the minimum wage and wished to know why the Bill does not address these issues.

**The Minister** said that, following Ruth Marks' report into Healthcare Inspectorate Wales, he intends to publish a Green Paper which will include consideration of whether two regulators, one of health and one of social care, are needed.

He stated that early advice is being sought from CSSIW on extra care as a possible addition to the scope of the Bill. The Bill will abolish some of the distinctions between types of social care setting.

The Minister said that this is not a Bill about terms and conditions of employment but the Minister for Public Services has commissioned research into the impact and the use of zero-hours contracts across the public services and this will help to inform Welsh Government thinking on this issue. He said the Bill will allow the Welsh Government to establish, through regulations under section 28, clear standards for providers which, he believed, can include the way that staff are employed.

**Gwenda Thomas AM**, Welsh Labour, urged the Minister to ensure that Bill secures the continued involvement of lay inspectors.

The Minister said that the involvement of lay people in inspecting care is fundamental to the Bill; there will be a duty on the regulator to report annually on the extent to which they have been able to involve citizens in their work.

**Kirsty Williams AM**, Leader of the Welsh Liberal Democrats believed that the responsibility for quality of care has tended to fall on individuals who have little control over the circumstances in which they must work. She therefore welcomed the provision in the Bill for greater corporate accountability and legal responsibility at boardroom level.

She wished to know about the circumstances in which the Minister would introduce the rating system for care services. She also asked whether domiciliary care providers would be included in the national market stability reports and what mechanisms would be available in the event of such a report identifying issues of financial instability.

She urged the Minister to address in standards and regulations the issue of high staff turnover in the social care sector caused by poor working conditions. She also wished the Minister to consider how subcontractors are treated. She urged the Minister to take the opportunity to use the Bill to address the issue of 15 minute home care calls.

**The Minister** said that any new rating system would need to be reliable and consistent before it was introduced. The national market stability report will cover domiciliary care agencies.

The Minister said he is attracted to the idea that care providers should have to report on staff turnover figures which would reflect their treatment of staff.

He said the issue of 15-minute care calls will be debated during the passage of the Bill and agreed that 15-minute time slots are unacceptable in certain circumstances although some care tasks can be discharged within that time.