

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

26 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) 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 used. We have therefore simply noted that this practice might occur, as any assumption would risk double counting possible costs.

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

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,

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

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.

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.

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.

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.

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.

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

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.

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.

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

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

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.