

Regulation and Inspection of Social Care (Wales) Bill

Summary of
changes at Stage 2

October 2015

Introduction

This document sets out some of the key changes made to the *Regulation and Inspection of Social Care (Wales) Bill* (“the Bill”) during Stage 2 proceedings. It also lists some amendments that were withdrawn or not moved but which may otherwise be of interest.

Background

The Bill was introduced on 23 February 2015 by Mark Drakeford AM, Minister for Health and Social Services (“the Minister”). The Stage 1 and 2 scrutiny of the Regulation and Inspection of Social Care (Wales) Bill was remitted to the Health and Social Care Committee (“the Committee”). The Committee published its **Stage 1 report** in July 2015. The Finance Committee published its findings in June 2015, and the Constitutional and Legislative Affairs Committee published a report in July 2015.

The Bill was approved at Stage 1 by the Assembly following a debate on its general principles in Plenary on 14 July 2015. A financial resolution was agreed on the same date.

Stage 2 commenced on 15 July 2015 and the Committee met to consider and dispose of amendments on 7 October and 15 October 2015.

Further information about the Bill (as introduced) is available in a **Bill Summary** prepared by the Research Service.

Amendments agreed at Stage 2

Government amendments unless otherwise stated.

Meaning of “regulated services”

- Amendment 126 (Lindsay Whittle) amended section 2 to add advocacy services to the list of regulated services. This reflects recommendation 15 of the Committee’s Stage 1 report. Amendment 156 defining advocacy services was not moved following an undertaking by the Minister to agree a new definition to be brought forward by amendment at Stage 3.

Definition and standards of care and support

- Amendments 1 and 2 clarified the definition of care and support in section 3 of the Bill and provide examples of what is meant by care and support in the context of the Bill. The Minister stated this was in response to recommendation 19 of the Committee’s Stage 1 report.
- Amendment 43 made it a requirement that regulations about requirements on service providers made under section 26 of the Bill ‘must’—instead of ‘may’—include the standard of care and support to be provided by a service provider. This was a recommendation (20) of the Committee’s Stage 1 report.
- Amendment 45 gave effect to the Committee’s recommendation (21) that the Welsh Ministers be required to publish a statement on the impact of the consultation on regulations made under sections 26(1) and (3).

Fit and proper persons in relation to regulated services

- Amendment 7 inserted a new section after section 7 which placed a test of fitness for individuals providing social care services on the face of the Bill. The test was formerly to be left to regulations. This was in response to the 2015 **Flynn review** into the neglect of older people living in care homes, and recommendation 12 in the



Committee's Stage 1 report.

Undertaking in relation to the duration of domiciliary care visits

- Amendment 132 (Lindsay Whittle) amended section 7. It requires applicants for registration as domiciliary care service providers to make an undertaking that they will provide domiciliary care visits of at least 30 minutes duration except under specified circumstances.
- In the debate the Minister undertook to use the regulation-making powers in the Bill to set out specific standards in relation to length of care visits.

Certificates and registers of registration

- Amendment 67 amended section 36 of the Bill to provide that the register of service providers must be available for public inspection free of charge. In addition, section 25, which required service providers to display a separate certificate of registration, has been removed.

Annual returns

- Amendment 8 amended section 8 to specify on the face of the Bill the basic information to be included in providers' annual returns. This was in response to Stage 1 recommendations by the Constitutional and Legislative Affairs Committee.
- Amendment 8A (Lindsay Whittle) added workforce planning to this list of basic information.
- Amendment 8 also required the annual return to include a statement about how the service provider has complied with any regulations made under section 26 of the Bill. These regulations will place requirements as to the standard of care and support that must be provided.
- Amendment 9 required the first set of regulations made under section 8 to be subject to the affirmative procedure, as recommended (10) in the Committee's Stage 1 report (see also amendment 77).

Grounds for cancellation without application

- Amendment 15, and related amendments debated in group 10, amended section 13 to provide that, in cancelling the registration of service providers and designation of responsible individuals, the Welsh Ministers may take into account instances where a formal caution has been imposed on an individual, in addition to the 'relevant offences' defined in the Bill. Such transgressions must be connected with a regulated service.
- Offences that are not connected to a regulated service will instead relate to whether a person continues to be a 'fit or proper person'. Amendment 14 amended section 13 to provide this as a separate ground for cancellation.
- Further amendments to section 13 sought to ensure consistency in relation to offences committed both inside and outside England and Wales; and that failure to comply with the requirements in regulations under section 27(1) can be grounds for the cancellation of registration of both a responsible individual and a regulated service.

Time limits for notices of decisions issued by the Care and Social Services Inspectorate Wales (CSSIW)

- Amendment 20 amended section 14 to require improvement notices to set out that a service provider may make representations about improvement notices within a specified time limit, while amendment 21 amended section 16 to clarify that urgent action taken by the regulator is excluded from the notice-of-proposal procedure.
- Amendment 22 amended section 17 to allow decision notices to be issued beyond the previous 28 day time limit under certain circumstances. Amendment 23 inserted into section 17 a regulation-making power to amend the time limit set out. Such regulations will be subject to the negative procedure.



Powers of the tribunal

- Amendment 32 amended section 22 to clarify that a tribunal may suspend an order for urgent cancellation or variation of registration made by a magistrate.
- Amendment 41 amended section 24 to clarify that the tribunal may substitute its own decision for a decision of the Welsh Ministers being appealed against, and provide the tribunal with a power to make interim orders, including the power to suspend the effect of a decision made by Welsh Ministers.

Variance, Imposition or Removal of Urgent Conditions

- Amendments 33-39 amended section 23 to lower the threshold for the circumstances in which the Welsh Ministers (CSSIW) impose conditions on a service provider's registration by removing the word 'serious' from the "risk to a person's life or physical or mental health, or of a person suffering abuse or neglect."
- Amendment 40 amended section 24 to give service providers a further right to appeal immediately to the first-tier tribunal.

Inspections of Regulated Service Providers

- Amendments 50 and 64 amended sections 32 and 34 respectively to provide that: inspections will focus on service providers rather than regulated services, and that inspections will assess both the impact of care on the wellbeing of recipients, and the co-ordination and organisation of those services.

Powers of Inspectors

- Amendment 51 and related amendments debated in group 18 amended section 33 to allow inspectors to inspect: service activity that may not be undertaken in premises, or related premises from which services are not actually provided.
- Amendment 63 inserted a new section after section 33 which sets out the inspectors' powers to interview people in private, including a right to

insist that carers and relatives be interviewed in private as well. This reflects recommendation 23 in the Committee's Stage 1 report.

- The amendment also makes provision concerning medical examination.
- Amendments 80 to 83 amended section 56 (which itself amends section 161 of the *Social Services and Wellbeing (Wales) Act 2014*) to provide parallel powers of inspection to local authorities.

Regulations About Inspection Ratings

- Amendment 65 amended section 35 to include a regulation-making power to require a service provider to display an inspection rating, should an inspection rating regime be introduced under this section. Under amendment 66 any regulations establishing a quality ratings system would now also be subject to a requirement to consult with stakeholders, reflecting recommendation 25 in the Committee's Stage 1 report. An amendment (70) to the regulation-making power in section 43 allows the Welsh Ministers to establish an offence in relation to the display of an inspection rating.
- Amendment 79 amended section 56 (which amends the 2014 Act) to provide the same duty to consult on regulations relating to the rating of local authority social services functions.

Compliance with United Nations Principles and Conventions

- Amendment 69 amended section 40 to require the service regulator to reflect in its annual report the duties of Welsh Ministers under the UN principles for older people. This reflects recommendation 5 in the Committee's Stage 1 report.

Local authority annual reports

- Amendment 149 (Lindsay Whittle) amended section 55 (which amends the 2014 Act) to require local authority annual reports to state how they have satisfied any requirements in a code relating to: assessing the needs of an individual in accordance with Part 3; and meeting needs under

Part 4 of the Bill.

- Amendment 77 amended section 55 (which itself amends the 2014 Act) so that the first set of regulations made under section 144A(2)(b), regarding the form of a local authority's annual report, are subject to the affirmative procedure. This reflects recommendation 10 of the Committee's Stage 1 report (see also amendment 9).

Commissioning of social care services

- Amendment 74 amended section 55 to require a local authority market stability report to include an assessment of the effect of its commissioning activities on the exercise of its social services functions. Regulations will set out the period to be covered by such an assessment.
- Amendment 78 amended section 56 (which amends the 2014 Act) to make clear that the power of review by CSSIW in relation to social services functions of local authorities includes reviewing the commissioning of services.
- The amendments were the Welsh Government's response to recommendations 28 and 29 of the Committee's report.

Local Market Stability Reports

- Amendment 75 amended section 55 to require local authorities to take into account their most recently published population needs assessments and the plan they are required to produce under the 2014 Act, when drawing up market stability reports. It also requires them to consult with relevant health boards, which responds to recommendation 31 of the Committee's Stage 1 report.
- Amendment 76 amended section 55 to require the Welsh Ministers to consult before the introduction of substantial regulations relating to market stability reports. This reflects recommendation 30 of the Committee's Stage 1 report.

Market Oversight Provisions

- Amendment 84 amended section 58 to require Welsh Ministers to consult before making any significant regulations concerning market oversight. This is in response to recommendation 33 of the Committee's Stage 1 report.
- Amendment 87 amended section 62 to place the same requirement in relation to national market stability reports.
- Amendments 85 and 88 amended sections 62 and 63 respectively to provide that the meaning of care and support within national market stability reports is the wider one contained within the *Social Services and Well-being (Wales) Act 2014*. This is in response to recommendation 19 of the Committee's Stage 1 report.
- Amendment 86 amended section 62 to require CSSIW to assess the effect of commissioning on the exercise of local authority social services.

Registration of Social Care Workers with Social Care Wales

- Amendments 116 and 117 (Altaf Hussain) to require the registration of domiciliary and adult care staff were, respectively, withdrawn and not moved following confirmation by the Minister that he intends to make such provisions in regulations.
- The Minister also made a commitment to providing further information before Stage 3 on the possible criteria and timescales for registration.
- These issues relate to recommendation 38 of the Committee's Stage 1 report.

Fitness to Practise

- Amendments 89-97 and 103-104 made a number of amendments to the provisions in the Bill around fitness to practise, including the following.
- The addition, by amendment 90, of the Nursing and Midwifery Council to the list of relevant bodies in section 116(4) which can determine impaired fitness to practise, and by amendment 91, of a



power to prescribe further relevant bodies in regulations. Following amendment 103, any such regulations will be subject to the affirmative procedure.

- Amendment 104 provided that regulations made under section 135(2)(d), about persons to whom undertakings may be disclosed by Social Care Wales, are subject to the affirmative procedure. This reflects a recommendation in the Stage 1 report of the CLA Committee
- Amendment 92 amended section 131 to require notification of the cancellation of an onward referral of a matter that involves fitness-to-practise panels.

Orders Prohibiting Work in Social Care: Unregistered Persons

- Amendment 98 amended section 163 to require Welsh Ministers to consult on any regulations introducing prohibition orders.
- Amendment 99 amended section 167 of the Bill by inserting a new provision in relation to the timing of reviews of interim prohibition orders.
- Amendment 100 amended section 168 of the Bill to provide that regulations about appeals against prohibition orders do not need to be made until regulations introduce a prohibition order scheme.

Relevant Authorities

- Amendment 101 amended section 175 to add the Education Workforce Council to the list of relevant authorities that must co-operate with the regulatory bodies, CSSIW and Social Care Wales.
- Amendments 153 and 154 (Lindsay Whittle) amended section 175 to add community health councils to the list of relevant authorities.

Next steps

An amended version of the Bill has been prepared by clerks in the Policy and Legislation Committee Service.

Stage 3 commenced on 16 October 2015 (the day after Stage 2 proceedings were completed). Stage 3 proceedings will take place on Tuesday 17 November 2015.

The deadline for tabling Stage 3 amendments is 18.00 on Tuesday 10 November.

Further Information

For further information on the Bill please contact the lead responsible clerk, Helen Finlayson (SeneddHealth@assembly.wales).



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