

Y Pwyllgor Iechyd a Gofal Cymdeithasol

Lleoliad:
Ystafell Bwyllgora 1 – Y Senedd

Dyddiad:
Dydd Mercher, 29 Ebrill 2015

Amser:
09.10

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



I gael rhagor o wybodaeth, cysylltwch â:

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Clerc y Pwyllgor

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Agenda

1 Cyflwyniad, ymddiheuriadau a dirprwyon (09.10)

2 Ymchwiliad dilynol i farw-enedigaethau yng Nghymru: ystyried ymateb y Gweinidog (09.10 – 09.15) (Tudalennau 1 – 8)

3 Y Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru): sesiwn dystiolaeth 6 (09.15 – 10.05) (Tudalennau 9 – 53)

Ruth Crowder, Cynghrair Ail-alluogi Cymru

Jim Crowe, Grŵp Cyfeirio Anabledd

Kieron Rees, Cynghrair Cynhalwyr Cymru

Tim Ruscoe, Cynghrair Gofal a Lles Cymdeithasol Cymru

Alun Thomas, Cynghrair Iechyd Meddwl Cymru

4 Y Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru): sesiwn dystiolaeth 7 (10.05 – 10.55) (Tudalennau 54 – 69)

Melanie Minty, Fforwm Gofal Cymru

Colin Angel, Cymdeithas Gofal Cartref y DU

Mike Rose, Cymdeithas Gofal Cartref

Egwyl (10.55 – 11.05)

5 Y Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru): sesiwn dystiolaeth 8 (11.05 – 11.55) (Tudalennau 70 – 90)

Mike Payne, GMB

Kelly Andrews, GMB

Ruth Crowder, UNSAIN

6 Papurau i'w nodi (11.55)

Ymchwiliad i sylweddau seicoweithredol newydd: gohebiaeth gan y Swyddfa Gartref (Tudalennau 91 – 92)

5 P-04-601 Gwaharddiad Arfaethedig ar Ddefnyddio e-sigaréts Mewn Mannau Cyhoeddus: gohebiaeth gan y Pwyllgor Deisebau (Tudalen 93)

7 Cynnig o dan Reol Sefydlog 17.42(vi) i benderfynu gwahardd y cyhoedd o weddill y cyfarfod (11.55)

8 Y Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru): trafod y dystiolaeth (11.55 – 12.05)

Mae cyfyngiadau ar y ddogfen hon

Mark Drakeford AC / AM
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: SF/MD/0713/15

David Rees AC

Cadeirydd y Pwyllgor Iechyd a Gwasanaethau
Cymdeithasol

30 Mawrth 2015

Annwyl David,

Marw-enedigaethau yng Nghymru – Adroddiad Cynnydd

Mewn ymateb i'ch llythyr dyddiedig 26 Chwefror, amgaeaf adroddiad cynnydd ar weithredu'r naw argymhellid yn dilyn yr ymchwiliad undydd i farw-enedigaethau yng Nghymru ym mis Chwefror 2013.

Er bod rhagor o waith i'w wneud eto i weithredu'r argymhellion yn llawn, mae'n bleser gennyf adrodd ar y cynnydd sylweddol a wnaed hyd yn hyn a chyfraniad staff clinigol proffesiynol ar draws Cymru.

Best wishes
Mark Drakeford.

Mark Drakeford AC
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol

**Ymchwiliad Undydd y Pwyllgor Iechyd a Gwasanaethau Cymdeithasol i Farw-enedigaethau yng Nghymru
Diweddariad gan Llywodraeth Cymru ar yr ymateb i'r argymhellion, Mawrth 2015**

Tudalen y pecyn 3

Argymhellion	Sylwadau'r Pwyllgor ar y cynnydd	Ymateb Llywodraeth Cymru
<p>Argymhelliad 1: Mae ymwybyddiaeth gyhoeddus o farw-enedigaethau a'r ffactorau risg yn hanfodol er mwyn gostwng cyfraddau marw-enedigaethau Cymru. Rydym yn argymhell bod Llywodraeth Cymru'n rhoi arweiniad - drwy'r Gweithgor Cenedlaethol ar Farw-enedigaethau a sefydlwyd yn ddiweddar - i ddatblygu negeseuon iechyd cyhoeddus allweddol fel mater o flaenoriaeth. Bydd hyn yn codi ymwybyddiaeth darpar rieni a'r rhai sy'n bwriadu cychwyn teulu o'r risg o farw-enedigaeth, a bydd yn caniatáu iddynt wneud penderfyniadau ar sail gwybodaeth am eu hiechyd a'u beichiogrwydd.</p>	<p>Nododd y rhanddeiliaid fod diffyg eglurder ynglŷn â safbwynt Llywodraeth Cymru ar y ddogfen consensws sy'n cynnwys negeseuon allweddol am farw-enedigaethau. Mae'r Pwyllgor yn annog Llywodraeth Cymru i gydweithio â phartneriaid perthnasol i egluro'r sefyllfa.</p>	<p>Bydd y ddogfen ddrafft a ddatblygwyd gan SANDS ym Mhwyllgor y DU yn eitem ar yr agenda ar gyfer cyfarfod nesaf y Gweithgor Cenedlaethol ar Farw-enedigaethau ym mis Mawrth 2015. Prif Swyddog Nyrsio Cymru yw cadeirydd y Gweithgor hwnnw.</p> <p>Bydd Llywodraeth Cymru yn llwyr gefnogi barn a chynngor aelodau'r Gweithgor.</p> <p>Drwy'r Rhwydwaith Mamolaeth, gofynnir i'r byrddau iechyd gytuno ar y ffordd orau i gyflwyno'r negeseuon hyn i'r holl ferched beichiog yng Nghymru.</p>
<p>Argymhelliad 2: Rydym yn argymhell bod Llywodraeth Cymru'n gweithio gyda chyrff proffesiynol a byrddau iechyd yng Nghymru i sicrhau bod pob darpar riant yn cael gwybodaeth ddigonol gan glinigwyr a bydwagedd am farw-enedigaethau a'r risg gysylltiol. Dylai trafod marw-enedigaeth ffurfio rhan arferol o'r sgwrs a gynhelir rhwng gweithwyr iechyd proffesiynol a darpar rieni yn ystod y beichiogrwydd. Dylai Llywodraeth Cymru gydweithio â'r</p>	<p>Byddem yn croesawu mwy o fanylion am sut y mae Llywodraeth Cymru'n cydweithio â chyrff proffesiynol a rheolwyr byrddau iechyd i sicrhau bod trafod marw-enedigaethau'n ffurfio rhan arferol o'r sgwrs a gynhelir â darpar rieni.</p>	<p>Cyn gynted ag y bydd cytundeb yn y cyfarfod ym mis Mawrth ar ba negeseuon a fydd yn ffurfio rhan o'r "sgyrsiau arferol", mae'r Rhwydwaith Mamolaeth yn bwriadu lansio'r gwaith hwn ar gyfer bydwagedd ac obstetryddion yng Nghymru. Bydd canllawiau ar hyn yn cael eu hychwanegu at e-Lawlyfr Llywodraethu GIG Cymru.</p> <p>Fel rhan o Ddigwyddiad Dysgu Cenedlaethol 1000 o Fywydau ym mis Mehefin, cynhelir dosbarth meistr ynglŷn â hybu'r negeseuon hyn i ferched. Cyfrifoldeb y byrddau iechyd fydd hi wedyn, drwy</p>

<p>byrddau iechyd i fonitro anghenion hyfforddi a chymhwysedd gweithwyr iechyd proffesiynol mewn perthynas â marw-enedigaethau.</p>		<p>waith datblygu proffesiynol parhaus, i sicrhau fod y negeseuon yn ffurfio rhan arferol o'r sgysiau a gynhelir â darpar rieni.</p>
<p>Argymhelliad 3: Rydym yn argymhell bod Llywodraeth Cymru'n gweithio gyda chyrrff proffesiynol a chyrrff rheoleiddio, ynghyd â sefydliadau academaidd perthnasol, i sicrhau bod marw-enedigaethau, y ffactorau risg a'r ymyriadau cysylltiol, a hyfforddiant profedigaeth, yn cael lle amlycach yng nghwricwla bydwreigiaeth ac obstetreg Cymru.</p>	<p>Efallai y gallai Llywodraeth Cymru egluro sut y mae'n cydweithio â'r byrddau iechyd i adolygu anghenion hyfforddi gweithwyr iechyd proffesiynol sy'n ymwneud â marw-enedigaethau a'u cymhwysedd yn y maes.</p>	<p>Mae Llywodraeth Cymru wedi cael sicrwydd gan Goleg Brenhinol yr Obstetryddion a'r Gynaecolegwyr a Grŵp Cymru Gyfan ar Addysg Bydwreigiaeth fod cynnwys y cwricwlwm yn addas. Bellach, cyfrifoldeb y byrddau iechyd yw adolygu anghenion hyfforddi a chymhwysedd gweithwyr iechyd proffesiynol, gan gynnwys cydweithio â sefydliadau addysg uwch i adnewyddu cynnwys y cwricwlwm, er mwyn sicrhau bod y cymwyseddau'n cael eu cynnal.</p>
<p>Argymhelliad 4: Rydym yn argymhell bod Llywodraeth Cymru'n ymchwilio i ganfod a fyddai'n dichon sefydlu rhwydwaith mamolaeth i yrru'r gwaith o safoni gofal ar draws Cymru. Credwn y dylid, fan lleiaf, sefydlu rhithrwydwaith clinigol o fewn y 12 mis nesaf.</p>	<p>Byddai'r Pwyllgor yn croesawu rhagor o wybodaeth am y canlynol:</p> <ul style="list-style-type: none"> • Pryd y bydd y Gweithgor Cenedlaethol ar Farw-enedigaethau yn cyfarfod? • Sut y bydd cynnydd y Gweithgor yn cael ei fonitro? • A fydd cofnodion y Gweithgor yn cael eu cyhoeddi? • Ai un o'i swyddogaethau craidd fydd casglu data ar farw-enedigaethau? 	<p>Mae'r Gweithgor yn bwriadu cyfarfod ar 18 Mawrth, 15 Ebrill, 8 Gorffennaf, 14 Hydref.</p> <p>Caiff y cynnydd ei fonitro drwy Grŵp Llywio'r Rhwydwaith Mamolaeth, sy'n adrodd i Grŵp Llywio 1000 o Fywydau ac wedyn i Brif Weithredwr Iechyd Cyhoeddus Cymru.</p> <p>Yng nghyfarfod nesaf y Gweithgor ar 18 Mawrth, bydd y Rhwydwaith Mamolaeth yn trafod sut y gallai cofnodion y cyfarfodydd fod ar gael yn gyhoeddus.</p> <p>Mae Arolwg Amenedigol Cymru Gyfan yn aelod allweddol o'r Gweithgor, a bydd data ar farw-enedigaethau'n parhau i gael eu monitro a'u cyhoeddi drwy Arolwg Amenedigol Cymru Gyfan.</p>

<p>Argymhelliad 5: Rydym yn argymell bod Llywodraeth Cymru'n cynnal adolygiad o'r nifer o fenywod yng Nghymru sy'n esgor fwy na thri diwrnod ar ddeg ar ôl eu dyddiad geni penodedig. Dylid ystyried canlyniad pob beichiogrwydd yn y garfan hon a'r ffactorau a arweiniodd at y penderfyniad i beidio ag ysgogi esgor o fewn y cyfnod amser a roddir yn y canllawiau. Dylid ystyried ymhellach a ddylid ysgogi esgor yn nes at y dyddiad geni penodedig mewn menywod sydd â ffactorau risg uchel eraill, megis mamau hen, mamau sy'n ysmygu neu'r rhai â phroblem pwysau.</p>	<p>Mae'r Pwyllgor yn annog Llywodraeth Cymru i sicrhau bod y gwaith hwn yn cael ei fonitro'n agos er mwyn sicrhau ei fod yn mynd rhagddo cyn gynted ag y bo modd.</p>	<p>Prif Swyddog Nyrsio Cymru yw cadeirydd y Gweithgor Cenedlaethol ar Farw-enedigaethau, a bydd y rôl honno'n sicrhau bod y mater hwn yn aros ar yr agenda.</p> <p>Mae Arolwg Amenedigol Cymru Gyfan wedi dadansoddi'r niferoedd nad yw'n dangos cynnydd o ran y nifer o achosion o farw-enedigaethau yn y grŵp ôl 40+13. Bydd hynny'n cael ei fwydo'n ôl i'r Gweithgor ym mis Mawrth.</p>
<p>Argymhelliad 6: Rydym yn argymell bod Llywodraeth Cymru'n ymchwilio ac yn cyflwyno adroddiad ar y dystiolaeth a gyflwynwyd i'r Pwyllgor fod gorfod ceisio ymgynghoriadau arbenigol (meddygaeth y ffetws) y tu allan i Gymru yn ddrutach erbyn hyn na darparu'r gwasanaeth yng Nghymru. Dylai Llywodraeth Cymru hefyd edrych yn fanwl ar y cynnig y dylai gwasanaethau arbenigol meddygaeth y ffetws gael eu comisiynu ar lefel drydyddol yn hytrach nag eilaidd.</p>	<p>Byddem yn croesawu rhagor o wybodaeth am sut i fynd i'r afael ag anghenion merched yng ngogledd a chanolbarth Cymru.</p>	<p>Fel rhan o gynlluniau ad-drefnu'r byrddau iechyd, mae gwasanaethau mamolaeth a meddygaeth y ffetws yn cael/wedi cael eu darparu ochr yn ochr â gwasanaethau obstetreg risg uchel.</p> <p>Ym Mwrdd Iechyd Prifysgol Betsi Cadwaladr, mae Obstetreg risg uchel yn rhan o'r Adolygiad presennol o Wasanaethau Cynaliadwy. Bydd y rhwydwaith hwn o wasanaethau'n cefnogi'r Ganolfan Is-ranbarthol ar gyfer Gofal Newyddenedigol Dwys a fydd ar safle Ysbyty Glan Clwyd.</p> <p>Byddai merched yng Nghanolbarth Cymru sydd angen gwasanaethau arbenigol meddygaeth y ffetws dan ofal obstetregydd ymgynghorol, a byddent yn cael eu</p>

		<p>cyfeirio at y gwasanaethau priodol drwy'r Bwrdd Iechyd sy'n gyfrifol am eu gofal.</p> <p>Cydnabyddir hefyd fod gwasanaethau meddygaeth y ffetws yn parhau i gael eu cryfhau fel nad yw'r ganolfan arbenigol yn cael gormod o bwysau gwaith y gellir ei ddelio ag ef yn well gan arweinwyr ym maes meddygaeth y ffetws yn y gwasanaethau lleol. Bydd y cynlluniau'n cael eu hadolygu gan Bwyllgor Gwasanaethau Iechyd Arbenigol Cymru cyn pen chwe mis i sicrhau bod cynnydd yn cael ei wneud o hyd.</p>
<p>Argymhelliad 7: Rydym yn argymhell y dylid datblygu safon ofynnol genedlaethol ar adolygu marwolaethau amenedigol a'i chyflwyno ar draws Cymru. Argymhellwn hefyd y dylid mabwysiadu ffordd fwy eang a dychmygus o ddefnyddio'r arian a neilltuir gan Lywodraeth Cymru i ymchwil ac astudiaethau meddygol, a bod Llywodraeth Cymru'n ceisio costiau manwl am archwiliad amenedigol genedlaethol i Gymru gan Arolwg Amenedigol Cymru Gyfan. Credwn y gallai'r buddsoddiad cychwynnol yn yr archwiliad hwn ildio buddion sylweddol o ran canfod ac atal marw-enedigaethau yn y dyfodol.</p>	<p>Mae Llywodraeth Cymru yn ceisio costiau manwl am archwiliad amenedigol genedlaethol i Gymru.</p>	<p>Cytunwyd y bydd pedair llywodraeth y DU a GIG Lloegr yn gweithio ar y cyd i hwyluso cyflwyno adolygiadau safonol o farwolaethau amenedigol.</p> <p>Bydd yr adolygiadau hyn yn cael eu cyflwyno yn dilyn proses dri cham sy'n galluogi'r canlynol:</p> <ol style="list-style-type: none"> i. Timau clinigol unigol i ddeall beth sydd wedi mynd o'i le, a gallu cynnig gwybodaeth a fydd yn sail i drafodaethau â rhieni. ii. Yr ymddiriedolaethau i gymharu eu hunain yn erbyn unedau eraill. iii Adolygu ar lefel genedlaethol. Bydd y gwaith adolygu hwn yn barhaus a chaiff ei drafod drwy'r Gweithgor. <p>Bydd y Gweithgor yn monitro cynnydd datblygu a gweithredu adolygiad safonol yn y DU.</p>

<p>Argymhelliad 8: Rydym yn argymell bod Llywodraeth Cymru'n cyhoeddi cynllun manwl ar sut y mae'n bwriadu mynd i'r afael â'r broblem a achosir gan y gyfradd post-mortem isel i fabanod marw-anedig. Dylai'r cynllun gynnwys:</p> <ul style="list-style-type: none"> • manylion am sut y caiff hyfforddiant ei ddarparu i weithwyr iechyd proffesiynol fel eu bod yn fwy abl i godi'r mater hynod anodd hwn gyda rhieni sy'n galaru; • manylion am ba wybodaeth, a honno'n wybodaeth ragorach, fydd yn cael ei datblygu ar gyfer rhieni fel eu bod yn gallu gwneud penderfyniadau'n well ar sail gwybodaeth; • asesiad o'r gweithredu sy'n ofynnol i wella'r ddarpariaeth patholeg amenedigol. 	<p>Mae'r Pwyllgor yn annog Llywodraeth Cymru i gadw golwg manwl ar hwn. Os nad yw amserlenni gwell yn cael eu cyflawni dros y chwe mis nesaf, mae'r Pwyllgor o'r farn y dylai cylch gorchwyl yr Is-grŵp Patholeg Amenedigol gael ei ymestyn i gynnwys gwaith ar sut y mae adroddiadau post-mortem yn cael eu cyflwyno i rieni.</p>	<p>Bydd Diwrnod Hyfforddi'r Hyfforddwyr ar gael erbyn gwanwyn 2015.</p> <p>Bwriedir dechrau rhaeadru'r hyfforddiant mewn byrddau iechyd yn ystod chwe mis olaf 2015.</p> <p>Mae'r Is-grŵp Patholeg Amenedigol yn awyddus i weithio ar ddatblygu safon ar gyfer cyflwyno adroddiadau post-mortem i rieni, cyn gynted ag y byddant wedi cwblhau eu gwaith ar yr hyfforddiant ar gael caniatâd a'r daflen wybodaeth i gleifion.</p>
<p>Argymhelliad 9: Yn niffyg yr elusennau mawr a'r buddiannau diwydiant sy'n ariannu trwch yr ymchwil i gyflyrau iechyd eraill, rydym yn argymell bod Llywodraeth Cymru, drwy Ganolfan Ymchwil Glinigol y Sefydliad Cenedlaethol ar gyfer Ymchwil Gofal Cymdeithasol ac Iechyd, yn comisiynu darn cynhwysfawr o waith ar achosion gwaelodol marw- enedigaethau. Dylai'r</p>	<p>Mae'r Pwyllgor yn parhau i gredu bod angen gwaith ymchwil pellach i'r achosion sydd wrth wraidd i farw-enedigaethau o hyd.</p>	<p>Bydd Llywodraeth Cymru a'r Rhwydwaith Mamolaeth yn manteisio ar bob cyfle i gydweithredu â gweithwyr iechyd proffesiynol ac eraill, a'u hannog, i ddatblygu cynigion ar gyfer ymchwil yn y maes hwn, a thargedu cynlluniau sydd eisoes mewn bodolaeth, er enghraifft rhai'r Sefydliad Cenedlaethol ar gyfer Ymchwil Gofal Cymdeithasol ac Iechyd.</p>

<p>gwaith hwn gael ei wneud mewn cydweithrediad â gweithwyr iechyd proffesiynol ac academyddion yn y maes, a dylai adlewyrchu'r wybodaeth ryngwladol am farw-enedigaethau. Dylai'r gwaith gael ei gwblhau erbyn diwedd y Cynulliad hwn.</p>		
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Mae cyfyngiadau ar y ddogfen hon

National Assembly for Wales / Cynulliad Cenedlaethol Cymru
[Health and Social Care Committee / Y Pwyllgor Iechyd a Gofal Cymdeithasol](#)

[Regulation and Inspection of Social Care \(Wales\) Bill / Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol \(Cymru\)](#)

Evidence from Welsh Reablement Alliance and the Social Care and Wellbeing Alliance Wales – RISC 10 / Tystiolaeth gan Cynghrair Ail-alluogi Cymru a Cynghrair Gofal a Lles Cymdeithasol Cymru – RISC 10

Consultation on the Regulation and Inspection of Social Care (Wales) Bill: Stage 1

From the Social Care and Wellbeing Alliance Wales and Welsh Reablement Alliance

Introduction

The Social Care and Wellbeing Alliance Wales (SCWAW) and Welsh Reablement Alliance (WRA) are two separate alliances, referred to throughout the document as the alliances. SCWAW seeks to identify, and address, issues affecting social care and wellbeing and their impact on people in Wales. WRA campaigns to promote the benefits of consistent, effective, integrated services which enable people to maximise their ability to live as independently as possible.

Member organisations are drawn from the third sector, patient and service user representative groups, professional bodies and social care providers. Many member organisations are members of both alliances and so we have decided to submit this as a single response. We would like to note that some organisations within these alliances represent patient and service user interests whereas others will represent organisations or practitioners providing regulated services. For many, there will be overlap between the two. As such, this response summarises the main issues the alliances have identified. Individual organisations may also submit evidence detailing organisation-specific issues.

The alliances welcome the Bill as the missing element of development from the Social Services and Well-being (Wales) Act which needs to be connected and complementary. Further, the alliances recognise the opportunity to improve on current provisions to ensure cohesive and comprehensive regulation, registration and inspection of social care provisions in Wales. As such, the alliances support the aims of the Bill even if they might not be considered as comprehensive as they might be.

Headline issues

- A fundamental function of regulation and inspection is the reduction in both risk to, and breaches of, individuals' human rights. The alliances are concerned that a requirement of due regard to the United Nations Convention on the Rights of the Child, the United Nations Convention on the Rights of Disabled People and the United Nations Principles for Older Persons is not explicit on the face of the Bill as it is in Section 7 of the Social Services and Well-being (Wales) Act.

- Due to the number of provisions in relation to subordinate legislation, the alliances have some concern that we are not able to fully consider the Bill without some greater indication, beyond section 5 of the explanatory memorandum, of the subordinate legislation.
- The alliances have some concern that the Bill is not taking the opportunity to address the required symbiosis of different regulation and inspection regimes that exist within the wider provision of social care services.
- It is a perception of the alliances that there could be a more coherent use of language both within this Bill and across legislation but, in particular, with the Social Services and Well-being (Wales) Act.
- The alliances seek clarity around the potential regulation of care and support services that may be provided to individuals as part of a preventative service. Our concerns in particular are around the status of reablement services and whether these, as preventative services, will also be subject to regulation.

Response to questions

1. Do you think the Bill as drafted will deliver the stated aims (to secure well-being for citizens and to improve the quality of care and support in Wales) and objectives set out in Section 3 (paragraph 3.15) of the Explanatory Memorandum? Is there a need for legislation to achieve these aims?

- 1.1 The protection of vulnerable people reliant on health and social care services and practitioners is vitally important. This protection is not only vital at times of risk but where there is the potential of risk. The regulatory system in place to provide that protection needs to be robust. It appears from the Explanatory Memorandum that there is a need for the legislation. In particular, paragraph 3.9 identifies the growing potential for complexity and loopholes if new legislation is not provided.
- 1.2 The alliances note that the long title of the Bill says regulation of persons, not services, and lists certain specific service types, whereas the aims of the Bill in the explanatory notes (P298; policy background 4) are listed as objectives in Section 3 paragraph 3.15 Explanatory Memorandum.
- 1.3 The alliances welcome the aim as stated in section 3; however, it is not always explicit how the Bill will achieve the objectives. For example, it would appear that the person to be placed at the heart of the system will become clearer through regulations because the Bill, as drafted, focuses on the activities of organisations.
- 1.4 The objective to improve information sharing and co-operation would be best achieved by a more explicit expectation to work with all other relevant regulatory bodies in Wales and the UK. This includes regulators of members of the social care workforce already regulated by other, often UK-wide, regulators and to expect co-operation with existing health inspectorates and workforce and improvement bodies.
- 1.5 Achievement of the aim/objective of workforce development and regulation will require co-operation with a range of other bodies and clarity over how the

Bill relates to different groups of workforce in different ways. For example, section 1; paragraph 1.3 of the Explanatory Memorandum says the Bill proposes to introduce changes which will reform regulation of the social care workforce. In fact, this is social work and managers of services with a potential to add other groups at a future date.

- 1.6 The alliances remain resolute that the Bill will not achieve its aims unless human rights are a fundamental and explicit principle. The alliances are concerned that the government appears reluctant to accept its role and responsibility as described in the Vienna Declaration and programme of action; Article 1 - *'Human Rights and fundamental freedoms are the birth right of all human beings; their protection and promotion is the first responsibility of Governments'*.

2. What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill adequately take account of them?

- 2.1 At the risk of being repetitive, it is the opinion of the alliances that a significant barrier is the lack of reference to human rights. Additionally, the lack of due regard to international instruments is a potential barrier.
- 2.2 The alliances would welcome amendments that clarify the relationship between different regulatory and inspection regimes. Without this, we believe that inconsistency might occur within a provision where the possibility of multiple regulation exists. Situations where multiple regulations might occur could also lead to onerous regulation and inspection burdens for services and individuals. The Bill retains the current model of regulation of the service by one body and regulation of the workforce within that service by another body. There is potential for confusion between the separate accountabilities and a possible missed opportunity for streamlining.

3. Do you think there are any issues relating to equality in protection for different groups of service users with the current provisions in the Bill?

- 3.1 The alliances are concerned that the potential for some divergence of protection thresholds between regulated services and registered workforces for children or adults exists. Members of the alliances highlighted that the Equality and Human Rights Commission review of home care services in England found that people with sight loss were involved in some of the most disturbing examples of poor treatment.
- 3.2 This concern may be addressed through subordinate legislation (Codes of Practice) or developing codes of conduct and registration criteria. However, it does highlight the need to be active in reducing conditions that might increase vulnerability. The RNIB have also suggested that a greater reference to the Equality Act should be made. Perhaps the development of Equalities duties as a requirement of registration and regulation might be beneficial.
- 3.3 We also have concerns that the Bill does not extend to services purchased through Direct Payments.

- 3.4 The current model of inspection for social care is that of a single inspector. Other inspectorates, for example Healthcare Inspectorate Wales use small teams to validate and triangulate their findings. As more and more services integrate and may receive inspections from more than one regulator/inspector, this may result in inequality for some groups.
- 3.5 The alliances believe that the primary function of Social Care Wales must be the protection of service users and their experiences of receiving regulated services. Any function which relates to promotion of any professional group should be evidently secondary and separate. There is a potential conflict of interest between the role of regulator and that of promoting and encouraging improvement.
- 3.6 The alliances would repeat their assertion that demonstrable due regard to human rights instruments is required in relation to equality.

4. Do you think there are any major omissions from the Bill or are there any elements you believe should be strengthened?

- 4.1 The Social Services and Well-being (Wales) Act will transform services and drive greater integration. The alliances would question whether this Bill, as tabled, contributes to that direction. It would be helpful if the Bill explicitly spelt out the expectation and powers to co-operate, jointly act, or to delegate function for integrated infrastructure in, for example, inspections, workforce development, education and improvement agendas. This relates to our comments at question 11.
- 4.2 The alliances would also repeat our human rights concerns in relation to this question.
- 4.3 The alliances campaigned for the inclusion of a section on appeals for users of care and support in the Social Services and Well-being (Wales) Act. The alliances would suggest further consideration of an amendment to that Act through this Bill in relation to appeals on Local Authority decisions for individuals, which would contribute greatly to the protection of people using services, their active involvement in service provision and the promotion of effective and efficient services whether regulated or not. Amending the Act in this way should also create greater parity between individuals and social care workers, as workers have the right to appeal decisions about them under this Bill. The alliances would like to bring to your attention section 72 (Part 1) of the [Care Act 2014](#) which addresses appeals for individual users in England.

5. Do you think that any unintended consequences will arise from the Bill?

- 5.1 The alliances are concerned that the definition of care in Part1; Chapter1; 3(1)(a) solely references physical tasks. While 3(a)(ii) identifies the 'mental' processes related to those tasks; as it stands, it appears to push a focus on task and time rather than quality of the interaction. The definition appears to be very different to the expectation and thrust of the Social Services and Well-being (Wales) Act and does not support the intention to put the citizen at the centre of their services.

- 5.2 Relationships and the quality of human interaction is a vital element in safeguarding and providing high quality care services, as many recent reports and investigations, such as Southern Cross, Mid Staffs and Operation Jasmine, have shown. The definition appears to be very different to the clear expectation of the Social Services and Well-being (Wales) Act where care and support is required to meet a much wider range of well-being outcomes.
- 5.3 Part 3, section 68(3) defines a care and support service in a different manner from the Social Services and Well-being (Wales) Act which allows for a wide range and mix of services to provide care and support. The alliances are not clear whether different legal expectations of what constitutes care and support might cause any confusion or difficulties in delivering or providing services. Both legislative frameworks need to be strongly complementary and consistent with each other.

6. What are your views on the provisions in Part 1 of the Bill for the regulation of social care services? For example moving to a service based model of regulation, engaging with the public, and powers to introduce inspection quality ratings and to charge fees.

- 6.1 The alliances welcome the intention of the Bill to register and regulate persons providing the services listed in the long title, where they are not already registered, the inspection and regulation of service providers and the creation of a Responsible Individual.
- 6.2 It is not clear whether 'regulated activity', section 171, is the same as 'regulated services' (Chapter 2; s6). The definition of regulated services in schedule 1 of the Bill appears limited when compared to the apparent breadth of social care services within the Social Services and Well-being (Wales) Act. Terminology will need to be clearly defined and used consistently.
- 6.3 The meaning of well-being in section 2 of the Social Services and Well-being (Wales) Act offers the opportunity and promotes the need to develop very person centred and flexible provision to meet individual needs. This will create variable services and the need for a broad social care workforce. The intention of this Bill to prepare for that flexibility is welcome. It will be challenging to capture that variability and flexibility across the social care workforce beyond regulated services while maintaining and ensuring the safeguarding imperative.
- 6.4 It is not clear how the inspection regime will involve and engage with persons in receipt of care and support. It would be helpful to include a duty to report on how citizens, people and the public have been engaged in the inspection regime. Section 33(3) (i) gives power to the inspectorate to interview persons in receipt of care and support. However, there is no similar power to interview carers or people in need of care and support.

7 What are your views on the provisions in Part 1 of the Bill for the regulation of local authority social services? For example, the consideration of outcomes for service users in reviews of social services performance,

increased public involvement, and a new duty to report on local markets for social care services.

- 7.1 The alliances welcome the intention to consider outcomes for individuals in reviews of social services and increased public involvement.
- 7.2 Section 55: insertion to the Social Services and Well-being (Wales) Act, section 144B, presumes that services will be easily definable. It will be more challenging to summarise individualised and person-centred interventions than report on the number and location of residential places or domiciliary care agencies. It will be important that the reporting duty does not become so onerous that vital frontline activity is compromised.
- 7.3 One aim of the Bill is to clarify and reduce complexity; however, complex, dual regulation of practitioners or the loss of a multi professional workforce may not deliver the intended outcomes. For example, in section 57, the insertion to the Social Services and Well-being (Wales) Act relating to looked after children: Regulations under section 94A (3) can prevent a person working if they are not registered under section 79 of the Regulation and Inspection of Social Care (Wales) Act (registration of social care workers). This presumes any registered staff are registered with Social Care Wales rather than registered with other regulators.

8 What are your views on the provisions in Part 1 of the Bill for the development of market oversight of the social care sector? For example, assessment of the financial and corporate sustainability of service providers and provision of a national market stability report.

- 8.1 The alliances welcome the intention of this. It is important to recognise that the unforeseen can always arise; this activity needs to be proportionate to the other demands of activity for local authorities.

9 What are your views on the provisions in Part 3 of the Bill to rename and reconstitute the Care Council for Wales as Social Care Wales and extend its remit?

- 9.1 The objective, section 67 (1) for Social Care Wales, does not limit the protection, promotion and maintenance of the safety and well-being of the public to social care matters alone. This should be stated explicitly. This responsibility can only relate to the services and practitioners registered with and regulated by Social Care Wales: however, in section 67(2) the functions do not appear to directly relate to this objective: this section includes all social care workers and a responsibility to maintain high standards.
- 9.3 Practitioners registered with and regulated by other regulatory bodies, such as occupational therapists and nurses, will remain under the jurisdiction of those regulators. It is not clear how this covers staff who are not regulated at all as individuals, but who work in regulated services. Are the Responsible Individual and Registered Manager accountable for these staff? What is the balance of accountability between individuals and service quality and how will this work in practice?

- 9.3 The alliances suggest that the Bill should be very clear what references to social care workers means:
- Those who are registered/regulated and thus affected by parts of the Bill relating to the role of Social Care Wales as a protector of the public (social workers and managers) or,
 - The whole workforce when Social Care Wales is acting as an improvement, education and support agency (all social care workers).
- 9.4 The wider development roles of Social Care Wales, Part 5, for all registered social care workers are sometimes beyond the remit of public protection. In healthcare many of these are done through the Workforce Education Development Service or by other regulators. Clarity is needed on the groups that Social Care Wales will include in this work. For example, how will occupational therapists be supported in their practice in social care, even though they are not the responsibility of Social Care Wales in its regulatory role? How will the different responsibilities be separated? How will other professionals (such as physiotherapists, speech and language therapists and dietitians) working in integrated health and social care be supported within a social care context? Will Social Care Wales have responsibilities here? There is a missed opportunity here for improving integration in health and social care.
- 9.5 The alliances consider there is potential for conflict of interest in placing so many roles in one body. Specifically, we are concerned with the potential conflict of interest between regulating social care services and promoting and developing a service, with the possibility that this might inhibit honest and frank discussion of issues arising that could be prevented prior to the need for regulatory sanctions. The function of protecting the public should be paramount and separate to other roles.
- 9.6 Through the inclusion of a duty of due regard to human rights' instruments, the alliances would expect the functions of Social Care Wales described in Part 5 to reflect human rights' principles.
- 9.7 Protecting the public is a significantly different role from those of a sector skills council, professional body or education provider for example. 'Trust Assurance and Safety –The Regulation of Health Professionals in the 21st Century' (2007 <http://www.official-documents.gov.uk/document/cm70/7013/7013.pdf>) identifies a number of key principles that should underpin statutory professional regulation. The "overriding interest should be the safety and quality of the care that patients receive from [...] professionals" and that "**Regulators need to be independent of government, the professionals themselves, employers, educators and all the other interest groups involved**"(p2). This work came out of the Shipman Inquiry and the Foster review. The proposal for Social Care Wales should be examined against these principles for regulation.
- 9.8 The role of Social Care Wales needs to be enhanced and extended to fully realise its role as the sector skills council. This should involve responsibility for

upskilling and training all social care workers, as well as workers in health and more widely who contribute to care and support provision.

10 What are your views on the provisions in Parts 4 - 8 of the Bill for workforce regulation? For example, the proposals not to extend registration to new categories of staff, the removal of voluntary registration, and the introduction of prohibition orders.

- 10.1 The description of a social care worker, section 78, includes a far wider group than those considered registered groups. The Bill needs to acknowledge that there are groups of social care workers who are also registered and regulated by other regulators. Clarity is needed on how, or if, Social Care Wales is responsible for those.
- 10.2 Much of the wording in the Bill implies that all social care workers will be included in sections which specifically relate to regulation and the role of Social Care Wales as a regulator. For example, section 78(3)(b) would include occupational therapists. Any regulations made under section 78(2) will need to be clear of any overlap with existing regulator functions. The sections immediately after section 78 refer to the register and continue to refer to issues relating to registered groups, even though “social care workers” are not registered groups. This could usefully be made more explicit to help the Bill achieve its intent and ensure that implementation is effective.
- 10.3 Section 83(b) refers to an “applicant for registration as a social care worker of any other description”. Yet the only groups to be registered are social workers and registered managers. Section 83(b)(i) requires completion of a course approved by Social Care Wales under section 113 – which cross refers to section 79. Occupational therapists courses, as with other groups registered by other regulators, are not approved by Social Care Wales but by the relevant regulator for each profession and by the professional body, as well as being quality assured by the Higher Education Institution. Clearer wording will help ensure the objectives of the Bill can be achieved. This would helpfully include an expectation that qualifications required by other regulators or employers are recognised when staff move around the sector. It seems inefficient that public money pays for a qualification when working in one sector and then pays for another qualification with similar outcomes but a different title if they move to another part of the sector.
- 10.4 The alliances also suggest that Part 5 (Social Care workers: standards of conduct, education etc.) is also unclear as to which workforce groups are included and which are not. For example, section 111(1)(a) refers to standards of conduct and practice for “social care workers”. It is unclear if and how codes are to be applied to unregistered groups of staff or to staff registered with other regulators. Section 111(3) refers to codes for social workers when working as Approved Mental Health Practitioners. However three other professions can be Approved Mental Health Practitioners. The alliances would suggest that the same codes of conduct have to apply to every Approved Mental Health Practitioners regardless of their initial professional background or professional regulator.

- 10.5 The alliances support the general principle to improve the education and career opportunities for all social care workers and to improve standards more widely including through monitoring or approval of courses. However, greater clarity is needed in relation to what is the role of a regulator, and thus what are the requirements in order to work in the sector; what is good practice but not required; and what roles could be enhanced by opportunities for integration or joint working with other regulators, such as the Health and Care Professions Council or the Nursing and Midwifery Council, and other employers, such as NHS Wales (supported by Workforce Education Development Service), and the improvement functions of Public Health Wales.
- 10.6 It is unclear what remit over fitness to practice, Part 6, Social Care Wales has other than for registered groups (social workers and registered managers). Section 116(5) appears to acknowledge this is only for workers registered with Social Care Wales. The alliances suggest that this part should not be titled to imply it means all social care workers throughout the social care workforce. The reference to the Health and Care Professions Council in section 116(4) is assumed to refer to social workers registered in England and misses the opportunity to consider staff registered in Wales. Section 117 refers to a “registered person”: is this only a person registered with Social Care Wales? What about a person registered with another registering body?
- 10.7 Although we accept that it is not possible to comment on future developments, the alliances are aware that it is the Government’s intention to include advocacy as a regulated service at some time in the future. Consequently, we would recommend early consideration of integrated regulatory processes for advocacy required through different legislations, such as the Social Services and Well-being (Wales) Act and the Mental Health (Wales) Measure.

11 What are your views on the provisions in Part 9 of the Bill for co-operation and joint working by regulatory bodies?

- 11.1 The alliances are concerned that these refer only to co-operation in relation to social workers. There needs to be explicit reference to interaction in relation to the NHS and other parts of the sector. Section 174 identifies the regulatory bodies as Welsh Ministers and Social Care Wales. It is disappointing there is no reference to co-operation and joint working with the Health and Care Professions Council, the Nursing and Midwifery Council and other regulators. The alliances consider this might be a missed opportunity to deliver increases of efficiency in regulation.
- 11.2 The alliances are disappointed there is no reference to co-operation in relation to the wider roles of Social Care Wales given both the policy direction for, and reliance on, greater integration for the delivery of the change desired from the Social Services and Well-being (Wales) Act. For example, workforce development and education commissioning for occupational therapists, nurses and others is undertaken by the Workforce Education Development Service. There seems to be a missed opportunity to consider integrated workforce planning, joint course development and approval and integrated career frameworks for the whole social care workforce. The Bill offers an ideal

opportunity to co-operate in recognising qualifications across the sector to allow joint appointments; integrated working and movement of staff between local government and NHS employers and reduce the need for staff to 'redo' similar qualifications to named recognised qualifications by one part of the sector.

12 In your view does the Bill contain a reasonable balance between what is included on the face of the Bill and what is left to subordinate legislation and guidance?

- 12.1 The balance appears to be right given what is on the face of the Bill. However, without greater indications of what subordinate legislation might be, it is difficult to comment fully at this stage.

Financial implications

13 What are your views on the financial implications of the Bill as set out in parts 6 and 7 of the Explanatory Memorandum?

- 13.1 The alliances feel ill equipped to pass informed comment on this. However, we have some concerns with the frequency that it is suggested in these parts that there will be no cost incurred with these changes other than those associated with transitional arrangements.
- 13.2 The alliances recognise the effects of significant underfunding of the social care sector will not be solved by market oversight and annual reports.

14 Are there any other comments you wish to make about specific sections of the Bill?

- 14.1 The alliances have some concerns in relation to section 33(3): powers of the Inspector. For example, Inspectors have the power to talk to service users in private, but not carers.
- 14.2 The Inspector may ... "assess the well-being of any person accommodated or receiving care and support there" (section 33(3)(a)). Does this constitute a professional assessment which meets the requirements of the assessment regulations for the Social Services and Well-being (Wales) Act? If so, will this person be expected to hold the qualifications and registration of that professional such as a Nurse, Occupational Therapist or Social Worker and include consideration of the well-being outcomes? If not, and this is intended to mean a more general consideration of the situation of the person, it may be more useful to use different language given the meanings of well-being already present in two pieces of legislation.
- 14.3 Language: The alliances consider that the language used in this Bill is inconsistent, using different words for the same concepts or groups and is not always consistent with that of the Social Services and Well-being (Wales) Act.
- 14.5 The alliances suggest that the Bill will be clearer and achieve its aims more effectively if clarity is achieved in the use of language and definitions.

Conclusion

SCWAW and the WRA welcome the intention and aim of the Bill to protect the public and ensure a streamlined and effective regulatory system. Many sections appear to continue the Care Standards Act (2000) and the alliances feel the Bill could go further in driving improvements for people by enabling greater integration and more streamlined regulation for integrated services.

Ruth Crowder for the WRA [REDACTED]

Tim Ruscoe for the SCWAW [REDACTED]

April 2015

National Assembly for Wales / Cynulliad Cenedlaethol Cymru
[Health and Social Care Committee / Y Pwyllgor Iechyd a Gofal Cymdeithasol](#)

[Regulation and Inspection of Social Care \(Wales\) Bill / Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol \(Cymru\)](#)

Evidence from Wales Carers Alliance – RISC 09 / Tystiolaeth gan Cynghrair Cynhalwyr Cymru – RISC 09

Wales Carers Alliance Response to National Assembly for Wales’ call for evidence on Regulation and Inspection of Social Care (Wales) Bill

Overview

- (i) Wales Carers Alliance recognises the need for the Regulation and Inspection of Social Care (Wales) Bill
- (ii) We would welcome a greater recognition throughout the Bill and associated documents of carers, including a greater emphasis on carer involvement in the regulation and inspection of services, and a recognition that some social care will be provided as a result of a support plan for a carer.
- (iii) We welcome the duty on local authorities to produce reports on the provision of social care in their areas and hope these reports will be able to highlight and promote service provision/providers that meet the needs of carers
- (iv) We believe there is ambiguity over Social Care Wales’ proposed role in relation to the wider social care workforce beyond those who would be registered to and regulated by Social Care Wales
- (v) We are concerned about the way the Bill defines ‘care’ as being physical tasks and the mental processes associated with those physical tasks. We feel this downplays the importance of human interaction and relationships, including involvement of the carer, in delivering effective, quality care.
- (vi) We feel that the Bill could have been more ambitious and gone further in promoting integrated and joined up approach to inspections, workforce development and education
- (vii) In its current form, we feel it is not immediately clear how the Bill relates to the social care workforce as a whole. Similarly, at a number of points in the Bill it is not immediately clear which groups are being referred to when the Bill refers to the ‘social care workforce’.

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Members:

Age Cymru, All Wales Forum of Parents & Carers, Alzheimer's Society, Care & Repair Cymru, Carers Wales, Children in Wales, Kids Cancer Charity, Hafal, Learning Disability Wales, Macmillan Cancer Support, Marie Curie, Motor Neurone Disease Association, MS Society Wales, National Autistic Society Cymru, Parkinson's UK, SNAP Cymru, The Carers Trust, The Stroke Association

Wales Carers Alliance exists to represent the concerns and further the interests of carers in Wales. There are over 370,000 carers across Wales providing unpaid care to friends and family, together the 18 member organisations of Wales Carers Alliance work with and for carers to promote the well-being of all carers.

Response

1. Do you think the Bill as drafted will deliver the stated aims (to secure well-being for citizens and to improve the quality of care and support in Wales) and objectives set out in Section 3 (paragraph 3.15) of the Explanatory Memorandum? Is there a need for legislation to achieve these aims?

1.1 Wales Carers Alliance feels that there is a need for legislation to achieve these aims. We recognise the need to incorporate well-being in response to the Social Services and Well-being (Wales) Act 2014 and to promote the involvement of citizens to help improve and assure quality (p. 10). We also recognise the need to learn from the serious incidents that have taken place across the UK in respect to safeguarding vulnerable citizens.

1.2 Wales Carers Alliance believes that this Bill could help move social care in Wales towards the stated aims. We welcome the proposed duty on local authorities to produce local market stability reports, and we welcome that such reports would include assessment of 'sufficiency of provision of care and support'. Many of services across Wales that are focused on supporting carers are finding themselves under increasing market pressure with services being commissioned on cost rather than quality.

1.3 We believe that the local market stability reports could help promote and secure these services and in doing so protect carers' wellbeing. 96% of care in the community is delivered by carers, saving social services and the NHS in Wales a significant amount of expenditure, preventing hospitalisations and supporting faster transfers of care.

1.4 To support them in their caring responsibilities, carers require quality social care that includes longer visits. A '15-minute call' does not provide carers with a break, and evidence demonstrates how vital good care and support are in ensuring a carer is able to continue in their caring role. A 2011 report found that spending more on breaks, training, information and emotional support for carers could significantly reduce the overall spending on care by local authorities¹.

¹ Conochie, G (2011) *Supporting Carers: The Case for Change*; London: The Princess Royal Trust for Carers and Crossroads Care.

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1.5 As such, Wales Carers Alliance would want local market stability reports to take into account the type of social care being commissioned and at what cost the social care is being commissioned.

1.6 Wales Carers Alliance would also like to see the involvement of carers in the inspection of service providers strengthened. For example, one way to do this would be to amend section 33, subsection 3 (f) as follows:

- (i) interview in private any person accommodated or receiving care and support at the place who consents to be interviewed.
- (j) interview in private the carer of any person receiving care and support at the place who consents to be interviewed

2. What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill adequately take account of them?

2.1 Wales Carers Alliance believes that some of the potential barriers to implementing the Bill include:

- Ambiguity over the reach and remit of Social Care Wales in relation to the whole social care workforce, including those regulated by other bodies
- Potential conflicts of interest within Social Care Wales. Social Care Wales would have a number of different functions and roles. For example, as well as being responsible for protecting the public, Social Care Wales would also be responsible for the workforce development of social care workers.
- Difficulties in managing transition for service providers, including allowing enough time to raise awareness and support the implementation of changes to registration, regulation and reporting
- Difficulties in clearly and successfully communicating the changes, and what the changes mean in practical terms, to those with care and support needs and, where relevant, their carers

3. Do you think there are any issues relating to equality in protection for different groups of service users with the current provisions in the Bill?

3.1 There are different expectations for registration of adult and children's workforces which may cause different levels of protection for vulnerable people.

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4. Do you think there are any major omissions from the Bill or are there any elements you believe should be strengthened?

4.1 Wales Carers Alliance would welcome a greater recognition of the role social care plays in providing breaks to carers. Services, inspections and regulation are discussed across the Bill in relation to those in need of care and support but not their carers. Often, social care is safeguarding and promoting the well-being of both the person with care and support needs *and* the carer. Sections 39, 70 and 55 could all include additional reference to carers of those with care and support needs.

4.2 The Bill does not appear to encourage integration in inspections, workforce development and education, and in improvement agendas. Part 9 of the Bill does highlight co-operation between regulatory bodies stating that such bodies must 'co-operate with each other... if they think that such co-operation...will have a positive effect'. But the relevant bodies listed in part 9 do not include other professional regulatory bodies such as HCPC.

4.3 To fully involve people in the regulation and inspection of services, we continue to believe that the introduction of 'lay inspectors' would help improve regulated services in Wales as well as helping to protect and promote the well-being of people in Wales. We would welcome clarity on any intention to make provision for 'lay inspectors' in either the regulations or codes of practice associated with the Bill.

5. Do you think that any unintended consequences will arise from the Bill?

5.1 Wales Carers Alliance is concerned by the definition of 'care' in the Bill in section 3. This definition defines 'care' as relating to 'the day to day physical tasks and needs of the person cared for' and the 'mental processed related to those task'. We feel that this definition does not place a sufficient emphasis on the relationships and quality human interaction inherent to providing a good standard of social care.

5.2 Many service providers in Wales, particularly those with a carer-focus, are third sector organisations. As such, care should be taken that the new responsibilities on service providers to provide an annual return align wherever possible with their existing reporting responsibilities as charities to avoid unnecessary duplication of effort, particularly among smaller, less-resourced, third-sector organisations.

5.3 Wales Carers Alliance believes that an unintended consequence of the local market reports could be that initial market reports find that local markets are insufficient to meet the needs of citizens. In such a case, there would be a need for increased public sector investment in areas of the social care 'market'.

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Provisions in the Bill

The Committee is interested in your views on the provisions within the Bill, and whether they will deliver their stated purposes. For example:

6. What are your views on the provisions in Part 1 of the Bill for the regulation of social care services?

For example moving to a service based model of regulation, engaging with the public, and powers to introduce inspection quality ratings and to charge fees.

6.1 Wales Carers Alliance welcomes greater engagement with the public in Part 1 in relation to the regulation of social care services. However, we do not feel it is sufficiently clear in what ways or to what extent the public will be involved in the regulation of social care services in the Bill.

6.2 We would also want to see greater reference to involving carers specifically across the Bill. Carers are often experts in the care that those they care for require, but the involvement of carers directly in the current regulatory and inspection environment is inconsistent. Similarly, currently the involvement of carers in social care by service providers is not consistent across all service providers.

6.3 There are many opportunities to reference carers in the Bill including in section 33 (as outlined above). We welcome that the Statement of Policy Intent makes it clear that in regulations under Section 26 (1) carers will be involved in how providers work with service users to define and agree well-being outcomes that are personal to the service user. We feel that it is important that this involvement is clear and further emphasised. Social care may be arranged as a result of a support plan put in place by a local authority for the *carer*, the purpose of which is to enable the *carer* to meet their well-being outcomes. As such, it is important that the social care services in this context delivers for the carer's well-being outcomes also.

6.4 Wales Carers Alliance welcomes the power and intention to introduce quality judgement ratings although with the usual caveats that such a system must not produce a 'league table' and must be developed carefully and in partnership with stakeholders. Many carer-focused services across Wales already participate voluntarily in externally assessed quality awards, and as such would welcome an opportunity to gain national recognition for their commitment to quality.

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Members:

Age Cymru, All Wales Forum of Parents & Carers, Alzheimer's Society, Care & Repair Cymru, Carers Wales, Children in Wales, Kids Cancer Charity, Hafal, Learning Disability Wales, Macmillan Cancer Support, Marie Curie, Motor Neurone Disease Association, MS Society Wales, National Autistic Society Cymru, Parkinson's UK, SNAP Cymru, The Carers Trust, The Stroke Association

7. What are your views on the provisions in Part 1 of the Bill for the Regulation of local authority social services?

For example, the consideration of outcomes for service users in reviews of social services performance, increased public involvement, and a new duty to report on local markets for social care services.

7.1 To reiterate our earlier points – we feel it is important that the Bill makes reference to involving carers specifically. For example, in section 55 the annual reports produced by local authorities could include detail on how they involved carers in how their social services functions were exercised.

7.2 We welcome the introduction of the new duty to report on local markets for social care services for the reasons outlined in our response to question 1 – if executed correctly, such reports should help promote quality social care that delivers for carers, as well as shine a light on the increasingly difficult environment that carer-focused services are currently operating in.

8. What are your views on the provisions in Part 1 of the Bill for the development of market oversight of the social care sector?

For example, assessment of the financial and corporate sustainability of service providers and provision of a national market stability

8.1 Wales Carers Alliance welcomes the development of market oversight of the social care sector but feel it is important that great care be taken in developing the regulations that determine whether a provider falls under the regime.

9. What are your views on the provisions in Part 3 of the Bill to rename and reconstitute the Care Council for Wales as Social Care Wales and extend its remit?

9.1 Wales Carers Alliance has some concerns over the breadth of Social Care Wales objectives as laid out in section 67 and how they relate to its regulatory role. The definition in section 78 of a social care worker is broad and encompasses workers from a range of professions regulated by other professional bodies. We would welcome clarity over which aspects of Social Care Wales' responsibilities relate to only those staff that are regulated and/or registered with Social Care Wales and which responsibilities relate to the whole social care workforce.

9.1 As outlined earlier in this response, Wales Carers Alliance is concerned of potential conflicts of interest arising between Social Care Wales' functions – for example, Social Care Wales' regulatory functions in relation to fitness to practice and Social Care Wales' role in continuing professional development and the approval of courses.

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10. What are your views on the provisions in Parts 4 - 8 of the Bill for workforce regulation?

For example, the proposals not to extend registration to new categories of staff, the removal of voluntary registration, and the introduction of prohibition orders.

11. What are your views on the provisions in Part 9 of the Bill for cooperation and joint working by regulatory bodies?

As outlined in previous responses, we welcome the provisions in part 9. However, we are disappointed that Part 9 does not go further in encouraged and promoting co-operative working between Social Care Wales and other professional regulatory bodies such as HCPC.

16 April 2015

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**Wales Alliance for Mental Health
Cynghrair Iechyd Meddwl Cymru**

21 April 2015

Health and Social Care Committee

Consultation on the Regulation and Inspection of Social Care (Wales) Bill

The Wales Alliance for Mental Health (WAMH) welcomes the opportunity to provide written evidence on the Regulation and Inspection of Social Care (Wales) Bill to the Committee to assist in its scrutiny of the Bill. As a membership organisation, the Wales Alliance for Mental Health seeks to improve the lives of people experiencing mental ill health in Wales by:

- Setting the agenda for mental health debate
- Being a powerful and influential platform that articulates clearly, and with integrity, the views of our membership
- Promoting excellence
- Ensuring equity for all protected characteristics

The current membership consists of: Bipolar UK, Diverse Cymru, Gofal, Hafal, Mental Health Foundation, Mental Health Matters, Mind Cymru and Samaritans

We strongly believe that this piece of legislation provides an opportunity to further integrate the regulation and inspection of health and social care services in Wales, to ensure people with experience of using services, and carers, are fully involved in service inspections and delivery, and that any form of abuse is never tolerated. We are therefore limiting our comments to these 3 specific aspects where we think there is scope to significantly strengthen this piece of legislation:

Greater Health and Social Care Integration

Part 9 – Co-operation and Joint Working by the Regulatory Bodies, etc. (Sections 174 – 180)

There is an increasing focus on better integrating health and social care, and delivering flexible services that are designed to address people's needs and requirements as opposed to merely trying to fit people into very narrow and specific service models. People receiving health and social care and support do not necessarily distinguish between social care workers and health care workers, and want services that are flexible and more tailored to meeting their needs.

We believe that as part of this push towards greater health and social care integration it is essential for all of us to be fully assured that the care being provided is of the highest quality,

and would like to see the scope of this Bill broadened to include joint quality standards across health and social care, the registration and regulation of health care support workers, and the merging of the health and social care regulators, i.e. HIW and CSSIW.

Engagement and Involvement of Service Users in Service Inspections and Delivery, etc.

Part 1 Chapter 3 – Service Inspections (Sections 32-33)

We think it is important to ensure that people who have had experience of using services form a key part of the inspection team. This is particularly important when it comes to inspecting mental health services where we think it is essential that detailed and specialist knowledge from someone who has experience of having used the service is vital.

This would require these lay reviewers who have experience of having used services to receive training in inspection techniques and processes, but could also involve current or former service users training and briefing other inspection staff on key points to look at for, etc.

The annual return required (under Section 8) to be developed and submitted by service providers should include evidence showing how service users, carers and other citizens have been involved and made a difference to the design, planning, delivery and evaluation of services, as well as how service users and carers have been engaged and involved in the design of their own individual care and support plans to demonstrate that services have been designed around people achieving meaningful outcomes that have involved people having choices and control over the services they have received

Adopting a ‘Zero Tolerance approach’ to any form of neglect or verbal or physical abuse

Section 4 of the Bill sets out the general objectives of the Welsh Ministers in exercising their functions under Part 1 of the Bill (Regulation of Social Care Services). We believe that these objectives should be far more rigorous and should forcefully spell out that everybody who uses health and social services must be treated with dignity and respect. To drive home this message we think the Bill should state that the Welsh Ministers expect there to be ‘zero tolerance’ across all health and social care services of any form of neglect and verbal or physical abuse.

In addition we think that the general objectives of the Welsh Ministers should include the expectation that high standards includes promoting the provision of a positive and therapeutic environment and culture within all health and social care settings that ensures sufficient personal space, privacy in personal care and confidentiality of treatment and personal information, and that people will be listened to and their views positively valued.

Although much of this may be included within service standards and within subordinate legislation, we think it is important for this Bill to set the tone, and to highlight more forcefully these issues.



Rhys Morgan, Deputy Clerk
Health and Social Care Committee
National Assembly for Wales
By e-mail to: [REDACTED]

15th April 2015

Dear Mr Morgan,

Evidence on the Regulation and Inspection of Social Care (Wales) Bill

Thank you for the invitation from the Health and Social Care Committee to submit evidence to the consultation on the Regulation and Inspection of Social Care (Wales) Bill, which I have the pleasure to enclose with this letter.

You will be aware that United Kingdom Homecare Association (UKHCA) is the professional representative for homecare providers across the four nations of the United Kingdom. Comments in our response are based on our knowledge and experience of the development of social care regulation from all four administrations over the last 15 years.

Overall, we would like to recognise the considerable thought and drafting which have gone into the Assembly's Bill to create a streamlined legislative framework for the regulation and inspection of care and support in Wales.

We note that the Bill places many of the provisions of the legislative framework into regulations. For the convenience of the Committee we have generally confined our comments in this response to the draft Bill itself, rather than suggesting detailed points for consideration in future drafting the regulations. I would like to confirm that UKHCA is fully committed to working with Welsh Government to help shape the regulations required for the Bill once enacted.

We look forward to providing oral evidence to the Committee.



Yours sincerely,



Colin Angel

Policy and Campaigns Director

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Alternative formats: If you would prefer to receive this letter in another accessible format, including e-text, 'clear print', large print or audio cassette, please contact us on [REDACTED] or [REDACTED]

UKHCA's Consultation Response to Regulation and Inspection of Social Care (Wales) Bill

General

1. Do you think the Bill as drafted will deliver the stated aims (to secure well-being for citizens and to improve the quality of care and support in Wales) and objectives set out in Section 3 (paragraph 3.15) of the Explanatory Memorandum? Is there a need for legislation to achieve these aims?

Yes. We believe that the Bill presents an enabling framework which will enable the aims and objectives to be delivered, and specifies appropriately where regulations should be made (or rules made by Social Care Wales).

It is perhaps difficult for primary legislation to be written in a way which appears to deliver a person-centred approach. However, we can see that the wellbeing of individuals in Wales is an overriding consideration in the drafting.

2. What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill adequately take account of them?

We note that the Bill requires much of the legislative framework to be delivered through regulations, which are more likely to be the source of potential barriers than the draft primary legislation. It is therefore difficult to answer this question confidently at this stage.

We make a number of observations against the relevant sections, below.

The bill appears to have been drafted in logical order and with significant attention to detail and contains helpful annotations as to the intentions and format of the legislation. Clauses are generally concise and there is sufficient reiteration to avoid unnecessary cross-referencing. In our experience, social care providers generally do not need to refer to primary legislation too frequently (Regulations generally provide the level of

granular detail which they require), however, the language within the bill is likely to pose some challenges for readers less well acquainted with legislative drafting.

3. Do you think there are any issues relating to equality in protection for different groups of service users with the current provisions in the Bill?

No, we have not noted any specific equality issues within the legislation.

4. Do you think there are any major omissions from the Bill or are there any elements you believe should be strengthened?

No, other than the observations we make below on specific issues that should be considered when making regulations. It goes without saying that the drafting of such regulations will require considerable collaboration between Welsh Government and knowledgeable and experienced stakeholders and the citizens of Wales who will be affected by them.

5. Do you think that any unintended consequences will arise from the Bill?

We note in the relevant sections, below, possible unintended consequences of the Market Oversight Regime, Market Stability Reports and the rule-making powers of Social Care Wales.

Provisions in the Bill

6. What are your views on the provisions in Part 1 of the Bill for the regulation of social care services?

We are generally supportive of the regulation of social care services in Part 1.

We believe that moving to a service-based model of regulation (where organisations may hold a single registration which specifies one or more

regulated services and/or locations) is an economically effective solution for the service regulator and social care providers.

We note the number of references to consultation with the public over the framing of regulations (and rules to be made by Social Care Wales) and are pleased to see that such consultation has extended to the Codes of Practice which Social Care Wales will produce and maintain.

We strongly welcome the option for Ministers to introduce a quality ratings system, and believe that this:

- a.** Will assist people who use services to make better informed choices about homecare providers when arranging their own care (or where directing others to arrange care on their behalf);
- b.** Encourage providers to benchmark their services against their competitors and inspiring self-improvement.
- c.** Will be welcomed by social care providers as a way of recognising excellence with associated commercial benefits for so doing;

We are, however, disappointed that the definition of "Care" (Section 3) has focused on "physical tasks and needs", rather than a more holistic explanation, which in the case of community-based services may include social engagement, services which help people to remain at home (including assistance with domestic planning and finances and shopping) and assistance with health-related tasks (primarily assistance with taking medication).

We are concerned that the definition of a "domiciliary support service" is ambiguous (Schedule 1, Section 7):

- We were unable to reassure ourselves that this definition made the position of extra care housing services clear;
- We have assumed that the intention is that extra care schemes to be regulated under this definition, but question whether an organisation

which both provided accommodation and care in an extra care scheme might meet the definition of a care home service, which we do not believe would be prudent;

- We also note that the expression “vulnerability” does not appear to have been defined in the Bill.

We are disappointed to see that regulation has specifically excluded personal assistants (Schedule 1, section 7(2)(a)), as we are unable to reassure ourselves that the definition of a “social care worker” to be registered with Social Care Wales (Section 78(1)) will capture personal assistants. The position of this association is that both workers engaged by organisations and personal employers benefit from statutory registration with a workforce regulator.

We also note the intentional exclusion of “introduction-only” employment agencies regulation (Schedule 1, section 7(3)):

- Our experience elsewhere in the UK suggests that it is difficult to establish whether an “ongoing role in the direction or control of the service” is taking place or not (which could lead to some services inadvertently trading without the require registration), and
- In the majority of cases, employment agencies introducing individuals to assist with social care services generally desire registered status, for the additional assurance it provides for people who use the service and for the business itself.

As the exclusion of introduction-only services appears to be intentional, we strongly recommend Welsh Government to consider defining what “ongoing role in the direction or control of the service” in the legislation (We will happily share our views on this technical area at government’s request). This is important for ensuring that organisations are able to identify correctly whether they meet the requirements for registration and avoiding organisations trading unlawfully, with the consequent lack of protection for the public.

We note the requirement for providers to make an “annual return” to Welsh Ministers (Section 8). While this is a reasonable expectation, our

experience suggests that such returns can be onerous for small and medium enterprises to complete, and for larger organisations to coordinate. We urge Welsh Ministers to ensure that the prescribed format of these returns contains only essential information which will either be subject to systematic analysis, or assist with inspection. (The generation of data required for a poorly-designed return is disproportionate to the effort and costs involved for independent and voluntary sector businesses).

Section 25 specifies that providers must display a registration certificate conspicuously at each place where the service is provided, with the presumed intention that it is available for inspection by people who use services and those who support them. The provisions in the Bill are sensible for institutional settings, but less appropriate for community-based services, such as homecare. We suggest that:

- Welsh Government consider a requirement that the statutory regulator maintains a system where the public may inspect the registration certificate (or details of registration) in a format which can be reached on-line (for example, the provider can give people a link to copy of the certificate held on the regulator's website), or
- That providers are required to integrate this information to their websites, where they have one, (for example by using the CSSIW "widget");

We are generally pleased with the provisions of Chapter 3 (Information and Inspection). We note that Welsh Ministers may make regulations on the qualifications and other conditions to be met by individual inspectors (Section 32(2)) and hope that this will include reference to inspectors having occupational competence (or satisfactory understanding) of the different types of service they regulate.

We are pleased to see a requirement that inspection reports must be produced "as soon as reasonably practicable after an inspection has been carried out" (Section 34(1)). Our impression from providers (not just in Wales) is that delayed publication of inspection reports is a regular occurrence, and has an adverse impact on people who use services by delaying the development of action plans which could remedy failings promptly.

We note the option to introduce fees for applications, variation and maintenance of registration (Section 38). Inevitably this will be unpopular with providers, particularly small and medium enterprises. If, in the future, such fees are introduced, we urge Welsh Ministers to consider:

- a gradual introduction of such fees;
- a clear system of calculating the fees payable, which is proportionate to the organisation's size;
- to provide adequate notice of fee increases to enable organisations to budget for their costs during their planning cycle.

7. What are your views on the provisions in Part 1 of the Bill for the regulation of local authority services?

We are pleased to see a requirement on local councils to produce an annual report which includes the consideration of outcomes for service users included in the reviews of social service performance. We are unclear whether the Bill has clearly specified whether the authority is expected to report on its influence within the local market as a whole, or just within the areas from which it purchases (or directly provides). If this report is constrained to the former we are not sure that the market stability report along will be sufficient to achieve the policy objective.

We would particularly like to see a requirement for councils to analyse whether the fees that it pays for social care services (or the direct payments it makes to people who use services) produce a sustainable local market, where providers are able to meet their regulatory obligations, including payment of at least the National Minimum Wage, and other terms and conditions of employment, including for example the use of guaranteed-hours contracts for workers who may wish to have them. Our tentative assumption is that this could be facilitated through requirements issued under Section 145 of the Social Services and Well-being (Wales) Act 2014.

We note that Ministers *may* undertake reviews of local authority social service functions (through the 2014 Act as amended by Section 56 of the Bill). This is a positive position, but falls short of conducting a regular review of the services of councils on a programmed basis, which we believe

is advisable, given the dominant purchasing powers of councils in the local area. Again, we would like to see the local authority's impact on their local market specifically included within the criteria of these reviews.

8. What are your views on the provisions in Part 1 of the Bill for the development of market oversight of the social care sector?

We note that the effectiveness of a "market oversight" regime to monitor and provide early detection of provider failure in social care has not yet been demonstrated within the UK, and is an area about which a number of major providers in the sector have expressed a degree of scepticism to this association. That said, the author of this paper has been closely involved with the creation of the equivalent regime operated on behalf of the Department of Health by the Care Quality Commission in England, and is of the opinion that the proposed regime in the bill echoes the majority of considered thinking invested in that regime, and is probably a proportionate way to deliver the policy objective of Welsh Government.

We think that the specification of business volume, geography and specialism of providers are the right measures to determine whether a provider should enter the regime. However, we do not see an obligation for Welsh ministers to consult with experts and other interested persons in defining the regime or the entry criteria. While we hope that this will be the case in practice, it is disappointing not to see this in the legislation.

We note that while the Bill describes how organisations enter the regime (Section 58), it does not make provision for organisations exiting the regime (for example because the organisation reduces its volume, sells part of its business, etc).

Section 61 deals with matter of alerting local authorities that a service provider may be (or is) unable to provide services. This is a particularly sensitive area, where there is likely to be significant tension between local authorities (who will wish to have as much notice as possible) and providers (who will be worried that disclosing this information to naturally risk-averse authorities will become a self-fulfilling prophecy, precipitating the very failure the regime hopes to prevent). The legislation (Section 61(2))

appears to place the duty to inform councils at the point of failure, not before.

The issue of a national market stability report (Section 62) will also require careful handling. While it may have the desired effect of stimulating providers to enter the market (or to provide services differently), it may also have the opposite effect, particularly for corporate providers who provide the majority of their services in other UK administrations.

9. What are your views in the provisions in Part 3 of the Bill to rename and reconstitute the Care Council for Wales as Social Care Wales and extend its remit?

The expanded role of Care Council for Wales as Social Care Wales appears to have been well thought through, and considerable effort appears to have been made to providing fair, equitable and robust procedures for managing processes relating to the workforce.

We particularly note the high degree of autonomy which will be given to Social Care Wales. It appears to us that Welsh Ministers have largely retained powers to intervene in issues after the fact, rather than retaining a greater degree of final sign-off of proposals before they are implemented. We assume that this is a deliberate policy intention of Welsh Ministers. This is a decision which will have been based on Welsh Ministers' evaluation of relative risk.

We are particularly concerned about lack of ministerial oversight for the fee-raising powers given to Social Care Wales for a workforce who traditionally (and regrettably) are subject to relative low pay for the highly valuable services they provide.

10. What are your views in the provisions in Parts 4 – 8 of the Bill for workforce regulation?

UKHCA has a long-standing policy position supporting the compulsory registration of the social care workforce, because of the benefits it can bring to professionalising a workforce and promoting the status of social care

workers. We are, however, content to see the cessation of a voluntary register, as we do not believe is an effective tool and offers few benefits for public protection (and indeed risks a false sense of security for some).

We support the principle of prohibition orders to ensure that unsuitable practitioners are removed from the sector.

We note reference to rules made for the Registrar's determination for renewal of registration for those who are subject to the regime (Section 78(2)) and hope that such rules will be made in a way which does not prevent people from maintaining an active registration in areas they are temporarily not working in.

11. What are your views in the provisions in Part 9 of the Bill for co-operation and joint working by regulatory bodies?

We are content with the requirements of this section.

Delegated powers

12. In your view does the Bill contain a reasonable balance between what is included on the face of the Bill and what is left to subordinate legislation and guidance?

Yes. The balance is reasonable. Leaving much of the detail to regulation permits greater flexibility of keeping the legislative framework up-to-date.

We have noted in our comments to question 9, that the rule-making powers afforded to Social Care Wales provide a significant degree of autonomy from intervention by Welsh Ministers until the rules have been implemented.

Financial Implications

13. What are your views on the financial implications of the Bill as set out in parts 6 and 7 of the Explanatory Memorandum?

We express our appreciation for the considerable work undertaken in advance of the bill through 'technical groups' run by Welsh Government and involving a wide range of stakeholders, and in correspondence between Welsh Government and ourselves which is referenced in the Explanatory Memorandum.

Producing estimates of cost on primary legislation which leaves so much of the detail to regulations is an extremely challenging task. We believe that the processes undertaken have been suitably rigorous.

We note the recognition of the costs of workforce registration to providers and the workforce. We regret to say that we are not optimistic that such costs will be reflected in the fees paid by the statutory sector for the services purchased, and we urge Welsh Ministers to continue to give thought to how councils fund the services they purchase to a sustainable level.

Other comments

14. Are there any other comments you wish to make about specific sections of the Bill?

No.

1. Care Forum Wales would like to thank the Health and Social Care Committee for the opportunity to provide written evidence on the Regulation and Inspection of Social Care (Wales) Bill. In our evidence, we seek to respond to some of the general matters raised in the consultation and to those provisions within the bill that are relevant to our members.
2. Care Forum Wales is the main professional representative organisation for independent providers (both third and private sector) of health and social care services in Wales. Our 450 plus members provide services across the full range of ages and settings, including looked after children, domiciliary care, supported living, residential and nursing care homes and hospices.
3. In our original response to the bill, Care Forum Wales confirmed broad support for the direction of travel and the need to update legislation to reflect current circumstances – the increasing dependency needs of people receiving care services and the higher expectations of society for quality services against a background of financial austerity. As an organisation we are keen to promote three key principles that we believe are central to achieving the required outcomes for citizens:
 - commissioning for quality
 - regulating against commissioning
 - building a professional and qualified workforce fit for the future.

Translating these into action requires a focus on quality and a genuine commitment to partnership and co-production. All of this chimes with the findings of two recently published and respected reports, “A Place to Call Home” by the Older People’s Commissioner for Wales (OPC) and “John Kennedy’s Care Home Enquiry” for the Joseph Rowntree Foundation.

4. John Kennedy’s report supports what Care Forum has been saying for a long time that society has to agree what it expects of publically funded care. This is not just a question of money, but about identifying what good, sustainable service looks like and recognising good performance. Both the OPC and John Kennedy recognised that we have some excellent care homes. We want to be able to identify such “beacon” homes so that they can provide inspiration and pass on their knowledge. We support the need for a “scores on the doors”

approach. Citizens want a simple system that reflects choice and availability of local services, along the lines of the Food Hygiene Ratings System where a rating of 1 does not mean that the premises have to close. Interestingly we never receive complaints from members about Local Authority inspections on hygiene scores because they are conducted in a supportive way. This is also what we want to see in regulation of care. Overall we need a regulation system that is flexible and allows people to share best practice; a system that is based on support to develop rather than on compliance; a system that is fair and transparent with an effective right of reply; a system that reflects the rounded experience of people receiving services and their families; a system that adds value and is not just a tick box exercise. This approach underlines the findings in the OPC's review of residential care. The review found no regulatory failings amongst any providers, but found that the system does not support quality because it is too bound by paperwork. There will always be a minority of providers that fail, but this is never intentional, hence regulation and the threat of de-registration will never be enough alone. Quality has to be built in and can only be achieved through clarity and support. Where something does go genuinely wrong we need to be able to learn from it together.

5. Once we understand what good quality is, it needs to be reflected in clear commissioning guidance. There is a particular lack of statutory commissioning guidance within the NHS in Wales which was highlighted in the recent Judicial Review action by Forge Care Homes et al against the Local Health Boards, which demonstrated that there is misunderstanding and misinterpretation of such guidance as does exist on Funded Nursing Care. Where commissioning guidance exists for social care, commissioners are not currently policed or held to account. The majority of Local Authorities do not commission at a rate that supports quality outcomes or payment of a wage that will encourage a professional workforce. We understand one local authority pays a fixed rate of £35 for an 8 hour "sleep in" shift that does not enable the provider to pay even the minimum wage; we regularly hear of Local Authorities telling providers that they are spending too much on food or staff levels. Our colleagues in UKHCA have identified £15.74 per hour as being the lowest rate at which domiciliary care can be commissioned whilst enabling payment of the minimum wage: yet the lowest fee paid in Wales is just £9.16. Domiciliary care is increasingly being purchased on the basis of on-line auctions, such as the Matrix system in Cardiff, that drive the price to the bottom and do not adequately reflect a quality element. There is a major difference in the residential care commissioned by Local Authorities across Wales, ranging from £419 per week in Powys (average fee) to £524 in Vale of Glamorgan (minimum fee). There is also the long standing issue with Funded Nursing Care paid by Local Health Boards towards care packages for those residents in care homes who have a combination of health needs and social care needs (commissioned by the Local Authority).

6. For this reason, we are very keen to see regulation of commissioning placed on the same footing as regulation of service provision and, whilst this may eventually fall out of the bill as it progresses, we would want to see it clearly expressed now. Current regulation of

commissioning is not strong enough and does not hold statutory provision for funded care sufficiently to account under the law. Commissioners both in Local Authorities and Local Health Boards must clearly state what they are commissioning for and should be regulated against this. In the spirit of professionalism and accountability, we also see value in commissioners registering with the workforce regulator.

7. Provision of good care can only be achieved with a professional and motivated workforce, another theme strongly endorsed by John Kennedy. We believe that all social care practitioners should be registered – Registered Care Managers should manage registered staff. This would both professionalise the workforce and give assurance to people using care services. However, the threat of being removed from the register is not enough in itself and needs to be backed up by support and we fully endorse Welsh Government's plans for the new Social Care Wales as an opportunity for improving and supporting practice. Social Care Practitioners are undervalued, often under paid because of low fee levels and have no governing or support body in the same way as nurses, for instance, have the Nursing and Midwifery Council. Care Forum Wales has long argued for social care practitioners to have access to such a body and have set up the Academy of Care Practitioners. Although still in formative stage, our vision is to build a professional body that builds in quality and support in the same way we would like to see services supported by the regulator.

8. The success of regulation and quality of care is underpinned by the need for collaborative working and co-production. Gwenda Thomas, the previous Deputy Minister for Social Care, deserves much credit for developing the notion of national partnerships and collaborative working between Welsh Government, commissioners and providers through legally constituted organisations. Unfortunately this level of collaboration does not always exist below Welsh Government level. For instance, in handing down his decision on the Judicial Review on Funded Nursing Care, Mr Justice Hickinbottom was critical of the lack of engagement by the Local Health Boards with their colleagues in Local Authorities and providers. We would like to see more explicit instructions within the bill to emphasize partnership working and to ensure that the national partnership and leadership arrangements are replicated as Welsh Government intend at regional level.

9. The bill in its current form is not fully developed, which makes it difficult to comment upon in detail. This is a concern given that poor law making in the past has resulted in tensions e.g. between CRB and employment law when first introduced. We have already indicated on the key areas that we would like to see more explicitly addressed. We are broadly supportive of the general direction of travel, but would need to see more detail of what is proposed in relation, for example, to providers' annual statements. We also remain concerned about the potential to introduce registration fees. Given that the majority of care is funded by the statutory sector we see this as simply moving money around the

system without improving the quality of regulation and increasing public expenditure on collection.

10. However, we also recognise the need to maintain flexibility within the bill to ensure that it can register future services, encourage innovations and maintain choice such that people are not shoe-horned or constrained by regulated services. The bill needs to be fit for purpose beyond 2027. In general terms, as detail develops and the implications become clearer, we would stress the need to continue the progress made on partnership working, for continued consultation moving forward and for the National Assembly for Wales to continue scrutiny.

Melanie Minty

Policy Adviser

Eitem 5

National Assembly for Wales / Cynulliad Cenedlaethol Cymru
[Health and Social Care Committee / Y Pwyllgor Iechyd a Gofal Cymdeithasol](#)

[Regulation and Inspection of Social Care \(Wales\) Bill / Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol \(Cymru\)](#)

Evidence from GMB – RISC 17 / Tystiolaeth gan – RISC 17



GMB – Britain’s General Union Response to:

**Welsh Governments
Consultation Document on**

Regulation & Inspection of Social Care (Wales) Bill

Action Required: Responses by 20th April 2015

Date of Submission: 20th April 2015

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GMB response to Welsh Government:
Regulation & Inspection of Social Care (Wales) Bill.

GMB Trade Unions Response to the Consultation on the Regulation and Inspection of Social Care (Wales) Bill

General:

***1. Do you think the Bill as drafted will deliver the stated aims (to secure Well being for citizens and to improve the quality of care and support in Wales) and objectives set out in Section 3 (paragraph 3.15) of the Explanatory Memorandum?
Is there a need for legislation to achieve these aims?***

The GMB welcomes the broad aim and direction of the legislation with its focus on the provision of quality regulated services, and a system of workforce regulation that supports the workforce to practise effectively and safely.

The GMB has campaigned continually to highlight that the responsibility is on the social care providers to provide high quality services whilst also advocating the principle that regulation has a significant role in promoting and supporting high quality provision, as well as addressing areas of poor practice.

2. What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill adequately take account of them?

The main barriers to implementing the provisions of the bill are the wider pressures on the sector in terms of the increasing volumes required at a time of significant resource and financial pressures, The Bill seeks to address these issues through provision for improved planning and market analysis, a focus on high quality professional practice, and enhanced coordination of improvement activity to address agreed national priorities.

3. Do you think there are any issues relating to equality in protection for different groups of service users with the current provisions in the Bill?

The GMB believes that the legislation would support equality for all groups that are dependant on services within the Social care sector.

4. Do you think there are any major omissions from the Bill or are there any elements you believe should be strengthened?

This question will be addressed in our responses given below.

5. Do you think that any unintended consequences will arise from the Bill?

In relation to service regulation we do not believe that there should be any unintended consequences, although careful monitoring of the impact of implementing the legislation will be required to ensure that there are no negative consequences arising for a sector that is somewhat unstable at present.

For workforce regulation, we feel that the detail of the Bill may potentially restrict ability in the future to respond to new patterns of service and

workforce groups for whom other regulatory approaches may be more appropriate.

Provisions in the Bill

6. What are your views on the provisions in Part 1 of the Bill for the regulation of social care services? For example moving to a service based model of regulation, engaging with the public, and powers to introduce inspection quality ratings and to charge fees.

It is important that the public are able to understand the complexities of the Social care sector in a clear and transparent way, allowing the public to have confidence in the sector.

Central to this development will be improved public information on the care sector. Such approaches undertaken in collaboration with the sector should result in increased public protection, public accountability, and improved public understanding of the care sector, and these improvements should help to inform and enable individuals who use services, when having to make decisions about their care.

This should result in higher expectations of social care provision through wider ownership of matters of quality and safety of provision.

7. What are your views on the provisions in Part 1 of the Bill for the regulation of local authority social services? For example, the consideration of outcomes for service users in reviews of social services performance, increased public involvement, and a new duty to report on local markets for social care services.

I will expand upon this question at the committee.

8. What are your views on the provisions in Part 1 of the Bill for the development of market oversight of the social care sector? For example, assessment of the financial and corporate sustainability of service providers and provision of a national market stability report.

The GMB welcomes the market oversight at national and local level as is the assessment of the financial stability and sustainability of providers which will hopefully allow greater stability for the workforce. However achieving meaningful information at both the individual provider and national level will only be attained by close working with providers with recognition that transparency is critical in being a part of the social care sector.

10. What are your views on the provisions in Part 3 of the Bill to rename and reconstitute the Care Council for Wales as Social Care Wales and extend its remit?

The GMB is disappointed with the decision to re-brand The Care Council for Wales. The Care Council has developed its brand since its inception and is now the most recognisable establishment within the care sector. We are concerned that the significance of The Care Council may be lost with the change.

11. What are your views on the provisions in Parts 4 & 8 of the Bill for workforce regulation? For example, the proposals not to extend registration to new categories of staff, the removal of voluntary registration, and the introduction of prohibition orders.

The GMB is concerned that the Bill has chosen not to take the opportunity to regulate Domiciliary care workers and Care home workers; The GMB believes that this will simply cause confusion to the workforce and to the public. The GMB have campaigned for recognition within the sector to professionalize the workforce, and we believe that registration of these workers allows for this.

The GMB is aware that The Care Council has considered a model of some form of licensing for the workforce. This has been used successfully in a number of sectors over many years, with 2 of the GMB organised industries using effective licensing schemes. E.g. 'Gas Safe' and the Security Industry Authority are both examples of effective schemes which provide public assurance and raise standards.

We believe that it could be used as a model for social care workforce groups such as domiciliary care workers and care home workers.

The key feature of the model is its focus on supporting care workers to practice safely and effectively through provision of accredited training and guidance, while at the same time addressing areas of poor or dangerous practice by removing those workers from the workforce.

As stated above we consider that the proposal to not implement a standard register for workers who are currently required to register and those that are not currently not required to register with Social Care Wales, would lead to confusion between the two registers for the sector and the public.

The GMB agrees that a reliance on voluntary registration is not appropriate, due to the confusion that it can cause to the Workforce and public. As indicated above, we believe that alternative models of licensing regulation are available to replace voluntary approaches.

12. What are your views on the provisions in Part 9 of the Bill for cooperation and joint working by regulatory bodies?

The GMB believe that this is a natural progression and welcome closer cohesive working between the CSSIW and The Care Council

Delegated powers

13. In your view does the Bill contain a reasonable balance between what is included on the face of the Bill and what is left to subordinate legislation and guidance?

I will expand on this point at the committee.

Financial implications

14. What are your views on the financial implications of the Bill as set out in parts 6 and 7 of the Explanatory Memorandum?

I will expand on this point at the Committee.

Other comments

14. Are there any other comments you wish to make about specific sections of the Bill?

The GMB welcomes the majority of the legislation and considers that it provides an important opportunity to support the development of the social care sector and the social care workforce in facing the significant changes that will be required in the forthcoming decade.

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[Regulation and Inspection of Social Care \(Wales\) Bill / Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol \(Cymru\)](#)

Evidence from UNISON and College of Occupational Therapists – RISC 14 /
Tystiolaeth gan UNSAIN ac Coleg y Therapyddion Galwedigaethol – RISC 14

Regulation and Inspection of Social Care (Wales) Bill

Response from UNISON, including the College of Occupational Therapists.

Introduction

UNISON is pleased to respond to this consultation having taken part in the task group on worker regulation. UNISON is also the largest public sector union and has approximately 33,000 members working within the social care sector in Wales. We have a Social Services Forum, where members meet and exchange information, as well as communicating views via e-mail. Our members include Social Care Workers of all grades.

The College of Occupational Therapists is the professional body for occupational therapists and represents over 30,000 occupational therapists, support workers and students from across the United Kingdom and 1,600 in Wales. Occupational therapists work in the NHS, Local Authority housing and social services departments, schools, prisons, voluntary and independent sectors, and vocational and employment rehabilitation services.

Occupational therapists are regulated by the Health and Care Professions Council, and work with people of all ages with a wide range of occupational problems resulting from physical, mental, social or developmental difficulties. The philosophy of occupational therapy is founded on the concept that occupation is essential to human existence and good health and wellbeing. Occupation includes all the things that people do or participate in. For example, living independent lives in their own homes, caring for themselves and others, working, learning, playing and interacting with others. Being deprived of or having limited access to occupation can affect physical and psychological health.

Response to questions

- 1. Do you think the Bill as drafted will deliver the stated aims (to secure well-being for citizens and to improve the quality of care and support in Wales)**

and objectives set out in Section 3 (paragraph 3.15) of the Explanatory Memorandum? Is there a need for legislation to achieve these aims?

- 1.1 UNISON welcomes the intention of the Bill to register and regulate persons providing the services listed in the long title, where they are not already registered. The protection of vulnerable people reliant on health and social care services and practitioners is vitally important. Robust regulation is essential for protecting the public from poor practice and practitioners and to maintaining the safety and wellbeing of vulnerable people receiving services.
- 1.2 Both UNISON and the College of Occupational Therapists have taken part in the work groups relating to workforce regulation and inspection, committed to ensuring all our members views are considered.
- 1.3 There is a need for the legislation as a result of changes to the existing legislation in England and to ensure that services which cross borders are included. As services are no longer service led but person-led the old system will become unwieldy. It will be essential that this Bill offers sufficient flexibility to keep up with the changes that will occur as the Social Services and Wellbeing (Wales) Act 2014 is implemented. The long title of the Bill says regulation of persons not services and lists certain specific service types. This may not facilitate that flexibility.
- 1.4 We further believe that legislation is necessary if we are to safeguard ourselves from the situations reported in the Francis review et al. Standards need to be consistent, and it is our belief that by having this framework (of the Bill) we will be better placed to provide that consistency of care to the people of Wales.
- 1.5 Regulation of the providers and workforce are vital to provide the public with assurances that their well-being is being protected. Responsibilities fall on employers and the workforce alike, but the monitoring and inspection must be properly resourced, to ensure there is confidence in the measures suggested.

- 1.6 We understand the argument against not extending regulation to all social care workers, but we do remain of the view this is a necessary part in the increased professionalization of the workers within social care. The provision for regulations to follow in the future is better than outright blocking of this issue, but we are concerned that the resources issue is unlikely to improve (and that is one of the main reasons for the decision), whilst the increase in care work continues (as outlined in all the statistical commentary). Social Care workers are vital to any social care policy succeeding as the major provider of the care – we should recognise their responsibility, and registration would assist this. Responsibility without professional support only serves to abandon Care Workers to the lower paid – increased professionalization is often recognised with better pay. However, we are saying in this Bill that there are not the resources available to take this step, we may do so in the future but for now, they are not required to be registered. We would like to see this part of the bill reviewed annually with all interested parties so that we might react more quickly in the future.
- 1.7 UNISON welcomes the aim as stated in section 3. The objective to improve information sharing and co-operation would be best achieved by a more explicit expectation to work with all other regulatory bodies in Wales. This includes regulators of members of the social care workforce already regulated by other, often UK, regulators and to expect co-operation with existing health inspectorates and workforce and improvement bodies. Achievement of the aim/ objective of workforce development and regulation will require co-operation with a range of other bodies and clarity over how the Bill relates to different groups of workforce in different ways. For example, section 1; paragraph 1.3 of the explanatory memorandum says the Bill proposes to introduce changes which will reform regulation of the social care workforce. However, this Bill is only regulating social workers and managers. The remainder of the social care workforce are either not regulated or are regulated by other bodies.

2. What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill adequately take account of them?

- 2.1 Inevitably finance and the pressure on current services will be a potential barrier to implementing the provisions of the Bill.
- 2.2 There must be robust inspection and monitoring procedures in place – they are outlined within the bill but will not succeed if the resources are not provided. Staff and Service Users and their families must have confidence that any complaint will be quickly and thoroughly investigated. At the moment we find that families feel unsure how to complain and staff feel that their job will be in jeopardy if they ‘whistle blow’. We would like to see the Welsh Government ensuring that procurement criteria includes an organisation having an open and transparent ‘whistle blowing policy’. It would be useful too, that any inspection includes contact with the Trade Union, to ensure partnership working means what it says and that any collective issues and personal case trends can be reported professionally and be part of the investigation.

3. Do you think there are any issues relating to equality in protection for different groups of service users with the current provisions in the Bill?

- 3.1 There are different expectations for registration of adult and children’s workforces which may cause different levels of protection for vulnerable people.
- 3.2 The current model of inspection for social care is that of a single inspector. Other inspectorates, for example Healthcare Inspectorate Wales use small teams to validate and triangulate their findings. As more and more services integrate and may receive inspections from more than one regulator/ inspector this may result in inequality for some groups.
- 3.3 Whilst the Annual Report imposes a duty to include accessibility, it does not go further than that. This could lead to a ‘lip service’ response, in that the employing bodies just answer without actually consulting families and the Trade Unions. We would like to see a model consultation provided to the

employers which covers all aspects of equality – the report would then be more relevant, and equality would be at the heart of the service provided.

4. Do you think there are any major omissions from the Bill or are there any elements you believe should be strengthened?

- 4.1 One major omission is that the Bill does not explicitly acknowledge the fact that some social care workers are already regulated by UK regulators. The current system also experiences this and it has created a situation where such groups, because they are not regulated by the Care Council for Wales tend not to be included in the other work of the Care Council in its role as a sector skills council. So for example, workforce development and career opportunities for occupational therapists have not been given the same attention as those for the regulated social work workforce. The College of Occupational Therapists and UNISON would hope that this Bill will redress that and ensure that the roles undertaken by Social Care Wales beyond those of a regulator are clearly expected to be for the entire workforce.
- 4.2 The Social Services and Wellbeing (Wales) Act will transform services and drive greater integration with health and other partners. This Bill does not appear to explicitly drive that agenda further by at least explicitly allowing or encouraging integrated infrastructure in, for example, inspections, workforce development and education and in improvement agendas. That omission may lead to missed opportunities in practice to transform and improve services
- 4.3 We have already set out above our belief that regulating all social care workers should be undertaken, not least because the public will expect them to be.
- 4.4 In section C of the explanatory memoranda the Welsh Government states that we ‘recognise that the marker should not determine priorities in social care’ and goes on to say that we should all work collectively to meet the priorities as set by the Welsh Government. With 968 providers in Wales, how confident can we be that high standards will prevail in all providers – we repeat here our

view that monitoring and compliance must be robust if we are not to allow unelected employers to determine social care outputs (which is the main change in the focus of social care provision in this bill). Policy must unequivocally be set by our elected representatives, and any comparisons when Local authorities put out procurement criteria must be honestly compared to like for like comparisons with Care provision from within the public sector before any contracts are issued.

5. Do you think that any unintended consequences will arise from the Bill?

- 5.1 The omissions mentioned above may result in unintended consequences. The definition of care (Part1; Chapter1; 3(i) a) solely references physical tasks. While s3 (a) (ii) identifies the 'mental' processes related to those tasks, as it stands it appears to focus on task and time rather than quality of the interaction. Relationships and the quality of human interaction are a vital element in providing high quality care services, as many recent reports and investigations such as Southern Cross, Mid Staffs and Operation Jasmine, have shown. The definition appears to be different to the expectation of the Social Services and Wellbeing (Wales) Act where care and support seek to meet the wellbeing outcomes and explicitly include a wider range of outcomes. Would this definition tend to encourage a focus on tasks and providing services which only meet physical needs? How do emotional care and support, confidence building and other developmental elements fit this definition? This definition does not acknowledge that the person being cared for may need cognitive, mental and emotional elements of their wellbeing, as defined in the Social Services and Wellbeing (Wales) Act to be included in their care and support.
- 5.2 Part 3, section 68(3) defines a care and support service in a different manner from the Social Services and Wellbeing (Wales) Act which allows for a wide range of services to provide care and support. It is not clear whether different legal expectations of what constitutes care and support might cause any confusion or difficulties in delivering/ providing services.

5.3 Resources will be higher than expected as care requirements grow and the workforce becomes more trained and valued. This is an issue for all governments in the UK and we should be making plans now for providing the social care needed. Wales could lead this in the UK.

5.4 With so many providers, there will need to be robust monitoring as stated above to ensure compliance with Welsh Government Policy. The costs to Local Authorities could increase further as they are left with the more expensive care provision.

6. What are your views on the provisions in Part 1 of the Bill for the regulation of social care services? For example moving to a service based model of regulation, engaging with the public, and powers to introduce inspection quality ratings and to charge fees.

6.1 UNISON and the College of Occupational Therapist welcomes the move to regulate services rather than organisations. It is not clear whether 'regulated activity' (s171) is the same as 'regulated services'. The definition of regulated services in schedule 1 is limited compared to the Social Services and Wellbeing (Wales) Act. The meaning of wellbeing (s2) in that Act offers the opportunity to develop very person centred and flexible provision to meet individual needs. This will create variable services and the need for a broad social care workforce. The intention of this Bill to prepare for that flexibility is welcome. It will be challenging to capture that variability and flexibility in order to continue to protect vulnerable people. How will these be included if they don't fit a traditional model of care home or domiciliary care or the definitions in schedule1? We note that only care and support services will be regulated and understand this to mean there will be no regulation of preventative or other services.

6.2 As Welsh Government policy continues to promote the integration of services It is surprising that there is no reference to any potential to allow joint or integrated inspections, for example with Healthcare Inspectorate Wales. An explicit reference to allow, or even to promote such partnership working would

be very useful in Part 9. We are aware that members of UNISON experience separate inspections at present depending on their service registration. There is no reference in the Bill to the fact that each local authority as well as CSSIW and HIW may all inspect a single service, each requiring the same or similar information, usually in a different format. A prudent approach would be to streamline this system.

7. What are your views on the provisions in Part 1 of the Bill for the regulation of local authority social services? For example, the consideration of outcomes for service users in reviews of social services performance, increased public involvement, and a new duty to report on local markets for social care services.

7.1 We welcome the intention to consider outcomes for individuals in reviews of social services and increased public involvement. S55: insertion to Social Services and Wellbeing (Wales) Act (s144b) requires services which will be easily definable. If these do become more individualised and flexible to meet individual's goals it will be challenging to summarise these in a report for the whole authority. Such a report can count and comment on residential care places but may not be able to amalgamate very individual responses.

7.2 S57: insertion to the Social Services and Wellbeing (Wales) Act in relation to looked after children. Regulations under section 94A (3) can prevent a person working if they are not registered under s79 of the RISC Act (registration of social care workers). This presumes any registered staff are registered with SCW which may have an impact for staff already registered with other regulators. One aim of the Bill is to clarify and reduce complexity, if this resulted in dual regulation or the loss of a multi professional workforce this may not deliver the intended outcomes.

8. What are your views on the provisions in Part 1 of the Bill for the development of market oversight of the social care sector? For example, assessment of the financial and corporate sustainability of service providers and provision of a national market stability report.

- 8.1 Whilst we prefer that social care provision remain with the public sector, we understand that this Bill intends to ensure that the Welsh Government drive social care priorities and retain the variety of employers. We do welcome the provision to ensure that employers financial and corporate governance are investigated. It will be important to recognise that unforeseen situations will continue to arise and this activity needs to be proportionate to the other demands of activity for local authorities.
- 8.2 The development of market oversight, must only be an analysis of the provision within each area of the particular annual report and must be objective. It is easy for an employer to submit a bid undercutting the staffing costs, for instance, if the criteria for assessing against that in the public sector is different. There must be an open assessment of relative costs for comparison purposes.

9. What are your views on the provisions in Part 3 of the Bill to rename and reconstitute the Care Council for Wales as Social Care Wales and extend its remit?

- 9.1 The objective (s67) (1) for Social Care Wales (SCW) does not limit the protection, promotion and maintenance of the safety and wellbeing of the public in Wales to social care matters. UNISON expects this responsibility to relate only to the services and practitioners registered with and regulated by SCW. However, in s67 (2) the functions do not appear to relate to this objective: this section includes a responsibility to maintain high standards for all social care workers. UNISON is unclear how responsibility can apply beyond the services and practitioners registered with and regulated by SCW. Practitioners registered with and regulated by other practitioners, such as occupational therapists and nurses will remain under the jurisdiction of those regulators. It is not fully clear how this covers staff who are not regulated at all

as individuals, but who work in regulated services. Will the Responsible Individual and Registered Manager be accountable for these staff?

- 9.2 The Bill should be very clear what references to social care workers means
- a. Those who are registered/ regulated and thus parts of the Bill relating to the role of SCW as a protector (naming them as social workers and managers)
 - b. The whole workforce when SCW is acting as an improvement/ education and support agency (using the term social care workers)
- 9.3 There is potential for conflict of interest in placing so many roles in one body and so the function of protecting the public should be paramount and separate to other roles. Protecting the public is a significantly different role to those of a sector skills council, professional body or education provider for example. 'Trust Assurance and Safety –The Regulation of Health Professionals in the 21st Century' (2007 <http://www.official-documents.gov.uk/document/cm70/7013/7013.pdf>) identifies a number of key principles that should underpin statutory professional regulation. The “overriding interest should be the safety and quality of the care that patients receive from [...] professionals” and that “**Regulators need to be independent of government, the professionals themselves, employers, educators and all the other interest groups involved**”(p2).
- 9.4 The wider roles given to SCW (Part 5) in relation to all social care workers are undertaken via the Workforce Education Development Service (WEDS) in healthcare. Clarity is needed on the groups that SCW will include in this work. For example, how will occupational therapists be supported in their practice and professional development in social care, even though they are not the responsibility of SCW in its regulatory role? How will the different responsibilities be separated? There is a missed opportunity here for improving integration in health and social care.
- 9.5 The title Social Care Wales, is a good one – it will show immediately that there has been a change. We are not sure how the CSSIW and Social Care Wales will work together, particularly when setting standards.

9.6 Training and supervision: Every employer should have processes in place to ensure that staff have the appropriate skills to do their job and these skills are steadily enhanced through training and professional development. This should include providing access to competent professional supervision and appraisals carried out by trained staff. It is also good practice for an employer to set aside resources and protected time for training and development, including for part-time and shift workers. Staff who are supervising others or being supervised should fully engage in the process and be able to access guidance if they identify any difficulties or concerns. We are not clear how this will be provided by employers outside of the public sector and how SCW will monitor and assess training provision. We do welcome the inclusion of ensuring training is part of the SCW remit.

10. What are your views on the provisions in Parts 4 - 8 of the Bill for workforce regulation? For example, the proposals not to extend registration to new categories of staff, the removal of voluntary registration, and the introduction of prohibition orders.

10.1 Social Care workers (Part 4)

The definition of a social care worker (s78) includes a far wider group than the registered groups. The Bill needs to acknowledge that there are groups of social care workers who are also registered and regulated by other regulators. Much of the wording in the Bill implies that all social care workers will be included in sections which specifically relate to regulation and the role of SCW as a regulator. For example, s78 (3) (b) would include occupational therapists. Any regulations made under s78 (2) will need to be clear of any overlap with existing regulator functions. The sections immediately after s78 refer to the register and continue to refer to issues relating to registered groups: using the term “social care workers” who are not registered groups. For example, section 57 amends the Social Services and Wellbeing (Wales) Act and allows for s94 (A) (3) regulations to specify that a person not registered under S79 of the Regulation and Inspection of Social Care (Wales) Act cannot work for a

local authority in relation to Accommodated and Looked After Children. Care will be needed to ensure that occupational therapists, speech and language therapists and nurses are not excluded by such regulations.

10.2 S83 (b) refers to an “applicant for registration as a social care worker of any other description”. Yet the only groups to be registered are social workers and registered managers. S83 (b) (i) requires completion of a course approved by SCW under s113 – which cross refers to s79. Occupational therapists courses, as with other groups registered by other regulators, are not approved by SCW but by the relevant regulator for each profession and by the professional body, as well as being quality assured by the Higher Education Institution. Clearer wording will help ensure the objectives of the Bill can be achieved.

10.3 Social Care workers: standards of conduct, education etc. (Part 5)

This part is not always clear as to which workforce groups are included and which are not. For example, s111 (1) (a) refers to standards of conduct and practice for “social care workers”. We are unclear how codes are to be applied to unregistered groups of staff or to staff registered with other regulators. S111 (3) refers to codes for social workers when working as approved Mental Health Practitioners (AMHPs). However three other professions can be AMHPs and it would make sense for the same codes of conduct to have to apply to every AMHP regardless of their professional background. S111 (6) says a local authority making a decision about the conduct of any social care worker must (if directed to do so by Welsh Ministers) take into account any code published by SCW. However, the codes of other regulators may be more appropriate. How will this be accommodated?

10.4 We support the general principle to improve the education and career opportunities for all social care workers and to improve standards more widely including through monitoring or approval of courses. However, greater clarity is needed in relation to what is the role of a regulator, and thus are requirements in order to work in the sector; what is good practice but not required; and what roles could be enhanced by opportunities for integration or

joint working with other regulators, such as HCPC or NMC, and other employers, such as WEDS and the improvement functions of Public Health Wales.

10.5 Social Care Workers Fitness to Practise (Part 6)

UNISON is unclear what remit over fitness to practice SCW has over workforce groups other than social workers and registered managers. Fitness to practice for occupational therapists is under the remit of the HCPC. S116 (5) appears to acknowledge this is only for workers registered with SCW: changing the title of this part so it does not say all social care workers would help. UNISON notes the reference to HCPC in s116 (4) but reads this as referring to social workers registered in England. S117 refers to a “registered person” is this only a person registered with SCW? What about a person registered with another, UK, registering body working in Wales?

10.6 We have stated our disagreement with not extending regulation to other workers above.

11. What are your views on the provisions in Part 9 of the Bill for cooperation and joint working by regulatory bodies?

11.1 These refer only to co-operation in relation to social workers. There needs to be explicit reference to interaction in relation to the NHS and other parts of the sector. S174 identifies the regulatory bodies as Welsh Ministers and SCW. It is disappointing there is no reference to co-operation and joint working with HCPC and other regulators in relation to staff regulated by that other regulator.

11.2 There is also no reference to co-operation in relation to the wider roles of SCW, which is surprising given the policy direction of greater integration. For example, workforce development and education commissioning for occupational therapists is undertaken by WEDS, there seems to be a missed opportunity to consider integrated workforce planning, joint course development and approval, integrated career frameworks and continuing professional education and learning (CPEL). UNISON is aware of a lack of

cross recognition of qualifications between health and social care. The Bill offers an ideal opportunity to co-operate in recognising qualifications across the sector to allow joint appointments; integrated working and movement of staff between local government and NHS employers and reduce the need for staff to 'redo' similar qualifications to named recognised qualifications by one part of the sector.

12. In your view does the Bill contain a reasonable balance between what is included on the face of the Bill and what is left to subordinate legislation and guidance?

12.1 Mostly. We are concerned that the future of social care will become a private concern rather than public sector lead – this has been the direction of travel for some time, which has not been halted by this bill. We recognise the commitment to priority setting by the Welsh government, but this may not be sufficient.

12.2 Regulations are necessary because of the detail required, and in the main the balance is correct – however we remain nervous of how those regulations will read and would assume we will be equally consulted about those.

12.3 Not setting out clear plans of how to regulate Social Care Workers will be confusing to the public, who will assume they are regulated.

Financial implications

13. What are your views on the financial implications of the Bill as set out in parts 6 and 7 of the Explanatory Memorandum?

13.1 The cost of care is set to increase, the memorandum provides some useful information, but it is based on assumptions where specific information is unknown (actual staff and hours for instance). We are concerned that as resources reduce how the quality of care will be maintained and improved.

14. Are there any other comments you wish to make about specific sections of the Bill?



- 14.1 Section 33(3): powers of the Inspector. The Inspector may “assess the wellbeing of any person accommodated or receiving care and support there”. Does this constitute a professional assessment which will have to meet the requirements of the assessment regulations for the Social Services and Wellbeing (Wales) Act including consideration of the wellbeing outcomes? If not, and this is intended to mean a more general consideration of the situation of the person it may be more useful to use different language.
- 14.2 Language: throughout the Bill varying language is used. Consistent language will help make the Bill clearer and will achieve its aims more effectively. For example, more consistent use of registered service/ person; is a regulated service the same as a social care service? ‘Regulated activity’; ‘regulated services’ and ‘social care’ are all used to describe regulated services. The main one is using ‘social care workers’ when referring to both registered and non-registered groups without clarity.
- 14.3 We are also concerned about the increasing personalisation of care and how this will be largely excluded from the remit of this bill. We believe that personalised care providers, as individuals (often) need protection and support as well as the Service Users – this would in our view lead to different care for different providers, which this bill is hoping to avoid.
- 14.4 We would have like to see an attempt to work on optimum staffing models: which can assess the right staffing numbers and skill mix against local population numbers and needs. The staffing model should include all in social work teams including skilled administrators. Extra capacity in teams for support, mentoring and development activities and for staff to have enough time to work directly with service users. This may be provided for within the regulations.

15 Conclusion


We welcome the aim and intent of the Bill and consider that the legislation is needed. The main concerns are that the Bill:

- Is absolutely clear how relationships between regulators enhance public protection by acknowledging and providing for some staff to be regulated by SCW while others are regulated by UK regulators:
- Is clear about when SCW is acting as a regulator and the sections relating to the staff regulated by SCW; and when it undertakes other roles which include other staff. Those staff need to be treated equitably with staff registered/ regulated by SCW and a consistent term is used in those different roles.
- Promotes and encourages co-operation and integrated working to support the transformed, integrated services which will improve delivery for people reliant on them.
- Is properly resourced, and that
- The regulations are created by consultation.

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27 March 2015

Dear David

Thank you for providing a copy of your Committee's report into new psychoactive substances. I welcome the work the Committee and I support each of the report's fourteen recommendations. The Home Office and other Whitehall departments have a role to assist the Welsh Government deliver those commitments. While I can only speak for the Home Office, we stand ready to contribute as required.

The findings of your report are consistent with two other recent Expert Panel reports into NPS: the Panel appointed by the Home Office who reported last year and the recently published Scottish Government's Expert Panel. We now have a growing body of evidence to work from.

In relation to your three clear themes, we agree that the term "legal high" is unhelpful and we actively avoid using this phrase, using "new psychoactive substances" (NPS) across Government instead. Secondly, we accept that cooperation and coordination between national and devolved governments is crucial to tackle NPS and believe that good links are already in place which we can build upon. Thirdly, we also recognise that legislation alone will not fully address the problem of NPS which is why we are delivering a multi-faceted response incorporating prevention and education, treatment and information sharing under the three strands of our Drug Strategy: to reduce demand, restrict supply and build recovery.

A range of activity is underway to tackle NPS. On legislation, we have already banned more than 500 new drugs under the Misuse of Drugs Act 1971 and we have led international action with new UN resolutions against NPS, including successfully securing a vote to control mephedrone internationally which was passed on 13 March.

On enforcement, we have created the Forensic Early Warning System to identify NPS in the UK which in turn supports law enforcement action and updated guidance to local authorities on taking action against “head shops” selling NPS using existing legislation.

In relation to health, prevention and treatment, we have created awareness campaigns such as ‘Rise Above’, a new online resilience building resource aimed at 11-16 year-olds providing resources to help develop skills to make positive choices for their health, including avoiding drug use. We have developed evidence-based online tools for educators and commissioners including the Alcohol and Drug Education and Prevention Information Service (ADEPIS) which provides practical advice and tools based on the best international evidence. We have launched a NPS resource pack for informal educators and frontline practitioners to use to prevent drug taking amongst young people and with Central and North West London NHS Foundation Trust and Project NEPTUNE (Novel Psychoactive Treatment UK Network) we have developed evidence-based clinical guidelines covering assessment and treatment needs of NPS users, as well as information on clinical management of harms resulting from acute and chronic use of ‘club drugs’ and NPS including intoxication, withdrawal and dependence.

The Government fully supports your recommendation to create a general NPS ban across the UK similar to that introduced in Ireland. The Home Office is already developing this proposal with a view to introducing legislation at the earliest opportunity. Officials are in discussion with counterparts in the Welsh Government on this and will be sharing proposals shortly.

Thank you for your report and I look forward to our organisations working closely together to further tackle NPS in the future.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Lynne Featherstone', with a stylized flourish at the end.

Rt Hon Lynne Featherstone MP
Minister of State

David Rees AM
Chair of the Health and Social Care
Committee
Tŷ Hywel
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Our ref: P-04-601

March 2015

Dear *David*

Petition: P-04-601 Proposed Ban on the Use of e-cigarettes in Public Places

The Committee considered correspondence on the following petition and agreed to draw the matter to your attention as Chair of the Health and Social Care Committee for your consideration should the proposed Public Health Bill, which is currently expected to be published before the summer recess, be referred to you for scrutiny.

Further information on the Committee's correspondence can be found on the link below.

<http://www.senedd.assembly.wales/ielIssueDetails.aspx?IId=11204&Opt=3>

Please forward your response to the Clerking Team at
SeneddPetitions@Assembly.Wales

Yours sincerely

William

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Cadeirydd / Chair

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Croesewir gohebiaeth yn y Gymraeg a'r Saesneg/We welcome correspondence in both English and Welsh