

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:
- a. 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,
  - b. 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 21<sup>st</sup> 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**