

Agenda – Constitutional and Legislative Affairs Committee

Meeting Venue:	For further information contact:
Committee Room 1 – Senedd	Gareth Williams
Meeting date: Monday, 28 November 2016	Committee Clerk 0300 200 6565
Meeting time: 14.30	SeneddCLA@assembly.wales

1 Introduction, apologies, substitutions and declarations of interest
(14.30)

**2 Instruments that raise no reporting issues under Standing Order
21.2 or 21.3**

(14.30 – 14.35)

(Page 1)

CLA(5)–13–16 – Paper 1 – Statutory Instruments with clear reports

Affirmative Resolution Instruments

**SL(5)037 – The Non–Domestic Rating (Chargeable Amounts) (Wales) Regulations
2016**

**3 Instruments that raise issues to be reported to the Assembly
under Standing Order 21.2 or 21.3**

(14.35 – 14.40)



Negative Resolution Instruments

SL(5)030 – The Government of Wales Act 2006 (Budget Motions and Designated Bodies) Order 2016

(Pages 2 – 12)

CLA(5)–13–16 – Paper 2 – Report

CLA(5)–13–16 – Paper 3 – Order

CLA(5)–13–16 – Paper 4 – Explanatory Memorandum

SL(5)031 – The Social Care Wales (Proceedings before Panels) Regulations 2016

(Pages 13 – 62)

CLA(5)–13–16 – Paper 5 – Report

CLA(5)–13–16 – Paper 6 – Regulations

CLA(5)–13–16 – Paper 7 – Explanatory Memorandum

SL(5)032 – The Social Care Wales (Constitution of Panels Prescribed Persons) Regulations 2016

(Pages 63 – 72)

CLA(5)–13–16 – Paper 8 – Report

CLA(5)–13–16 – Paper 9 – Regulations

CLA(5)–13–16 – Paper 10 – Explanatory Memorandum (as Paper 7)

SL(5)033 – The Social Care Wales (List of Persons Removed from the Register) Regulations 2016

(Pages 73 – 77)

CLA(5)–13–16 – Paper 11 – Report

CLA(5)–13–16 – Paper 12 – Regulations

CLA(5)–13–16 – Paper 13 – Explanatory Memorandum (as Paper 7)

SL(5)034 – The Social Care Wales (Content of Register) Regulations 2016

(Pages 78 – 86)

CLA(5)–13–16 – Paper 14 – Report

CLA(5)–13–16 – Paper 15 – Regulations

CLA(5)–13–16 – Paper 16 – Explanatory Memorandum (as Paper 7)

Affirmative Resolution Instruments

**SL(5)035 – The Social Care Wales (Extension of Meaning of “Social Care Worker”)
Regulations 2016**

(Pages 87 – 92)

CLA(5)–13–16 – Paper 17 – Report

CLA(5)–13–16 – Paper 18 – Regulations

CLA(5)–13–16 – Paper 19 – Explanatory Memorandum (as Paper 7)

**SL(5)036 – The Social Care Wales (Specification of Social Care Workers)
(Registration) Regulations 2016**

(Pages 93 – 96)

CLA(5)–13–16 – Paper 20 – Report

CLA(5)–13–16 – Paper 21 – Regulations

CLA(5)–13–16 – Paper 22 – Explanatory Memorandum (as Paper 7)

4 Paper(s) to note

(14.40 – 14.45)

**Wales Bill: Correspondence from the First Minister to the Secretary of State for
Wales**

(Pages 97 – 98)

**CLA(5)–13–16 – Paper 23 – Correspondence from the First Minister to the
Secretary of State for Wales, 24 November 2016**

Written statement by the Counsel General for Wales: Grounds for the Counsel General's application to intervene in the appeal of the Article 50 litigation before the Supreme Court

(Pages 99 – 100)

CLA(5)–13–16 – Paper 24 – Written statement by the Counsel General for Wales, 21 November 2016

Welsh Language Standards Regulations: Correspondence from the Culture, Welsh Language and Communications Committee

(Pages 101 – 104)

CLA(5)–13–16 – Paper 25 – Correspondence from the Culture, Welsh Language and Communications Committee, 21 November 2016

CLA(5)–13–16 – Paper 26 – Correspondence from the Culture, Welsh Language and Communications Committee, Annex

5 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:

(14.45)

(vi) the committee is deliberating on the content, conclusions or recommendations of a report it proposes to publish; or is preparing itself to take evidence from any person.

6 Wales Bill: Legislative Consent Memorandum

(14.45 – 15.15)

(Pages 105 – 117)

[Legislative Consent Memorandum on the Wales Bill](#)
[Written Statement by the Welsh Government on the Wales Bill](#)

CLA(5)–13–16 – Paper 27 – Briefing paper

CLA(5)–13–16 – Paper 27, Annex 1 – Amendment table

CLA(5)-13-16 - Paper 27, Annex 2 - Draft letter

Date of the next meeting

Monday 5 December 2016

Statutory Instruments with Clear Reports Agenda Item 2

28 November 2016

SL(5)037 – The Non-Domestic Rating (Chargeable Amounts) (Wales) Regulations 2016

Procedure: Affirmative

These Regulations provide for a transitional relief scheme to assist ratepayers affected by the 2017 non-domestic rating revaluation.

They prescribe rules to be used to calculate the chargeable amount for hereditaments which have a reduction in their entitlement to Small Business Rates Relief as a result of an increase in their rateable value following the revaluation. The Regulations operate by reducing eligible ratepayers' increases in liability, allowing any increase to be phased in over a three-year period.

Parent Act: Local Government Finance Act 1988

Date Made: Not stated

Date Laid: 22 November 2016

Coming into force date: 31 December 2016



Agenda Item 3.1 The Government of Wales Act 2006 (Budget Motions and Designated Bodies) Order 2016

Background and Purpose

The Government of Wales Act 2006 (Budget Motions and Designated Bodies) Order 2016 designates specified bodies in relation to the Welsh Ministers for the purpose of including within a budget motion the resources expected to be used by those bodies. This Order designates three bodies: Local Health Boards, Career Choices Dewis Gyrfa Limited and Hybu Cig Cymru–Meat Promotion Wales.

Procedure

Negative

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

One point is identified for reporting under Standing Order 21.3 in respect of this instrument (SO 21.3 (ii): that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly).

Section 126A(9) and (10) of the Government of Wales Act 2006 provide for the Order to be subject to either the affirmative or the negative resolution procedure.

The explanatory memorandum states that the Cabinet Secretary for Finance and Local Government is of the view that the Order be subject to the negative resolution procedure as there are no factors indicating the use of the affirmative procedure as necessary. The Order designates bodies for the purposes of including within a Budget motion, information relating to the resources expected to be used by those bodies. Inclusion of the resources of the designated bodies within the Budget Motion will minimise alignment discrepancies between the Budget, Budget Motion and consolidated accounts, but will have no effect on the resource limits of those bodies. The subject matter of the Order can therefore be regarded as administrative as the effect on the Budget will be presentational.



Legal Advisers
Constitutional and Legislative Affairs Committee
28 November 2016



W E L S H S T A T U T O R Y
I N S T R U M E N T S

2016 No. 1096 (W. 260)

CONSTITUTIONAL LAW

The Government of Wales Act 2006
(Budget Motions and Designated
Bodies) Order 2016

EXPLANATORY NOTE

(This note is not part of the Order)

This Order designates specified bodies in relation to the Welsh Ministers for the purpose of including within a Budget motion the resources expected to be used by those bodies.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with this Order.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2016 No. 1096 (W. 260)

CONSTITUTIONAL LAW

**The Government of Wales Act 2006
(Budget Motions and Designated
Bodies) Order 2016**

Made 15 November 2016

*Laid before the National Assembly
for Wales* 18 November 2016

Coming into force 19 December 2016

The Welsh Ministers make the following Order in exercise of the powers conferred on them by section 126A(2) and (3) of the Government of Wales Act 2006(1).

In accordance with section 126A(4) and (6) of that Act the Welsh Ministers have consulted, where they think it appropriate, the Treasury and the Treasury has consented to the making of this Order.

Title and commencement

1.—(1) The title of this Order is the Government of Wales Act 2006 (Budget Motions and Designated Bodies) Order 2016.

(2) This Order comes into force on 19 December 2016.

Designations

2. A body which is listed in the Schedule to this Order is a designated body for the purposes of section 126A of the Government of Wales Act 2006 in relation to the Welsh Ministers(2).

(1) 2006 c. 32. Section 126A was added by section 44(2) of the Constitutional Reform and Governance Act 2010 (c. 25).

(2) By virtue of section 124(3) of the Government of Wales Act 2006 the Welsh Ministers are a “relevant person” for the purposes of section 126A of that Act.

Mark Drakeford

Cabinet Secretary for Finance and Local Government,
one of the Welsh Ministers
15 November 2016

SCHEDULE

Article 2

Designated Bodies

Local Health Boards (as established under section 11 of the National Health Service (Wales) Act 2006⁽¹⁾)

Career Choices Dewis Gyrfa Ltd

Hybu Cig Cymru-Meat Promotion Wales

⁽¹⁾ 2006 c. 42.

EXPLANATORY MEMORANDUM TO THE GOVERNMENT OF WALES ACT 2006 (BUDGET MOTIONS AND DESIGNATED BODIES) ORDER 2016

This Explanatory Memorandum has been prepared by the Office of the First Minister and Cabinet Office Group and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Government of Wales Act 2006 (Budget Motions and Designated Bodies) Order 2016.

Mark Drakeford
Cabinet Secretary for Finance and Local Government
18 November 2016

1. Description

1.1 The Government of Wales Act 2006 (Budget Motions and Designated Bodies) Order 2016 (“the Order”) designates bodies in relation to the Welsh Ministers. The purpose of such designation is so that information relating to the resources expected to be used by such bodies can be included within a Budget Motion.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

2.1 Section 126A(9) and (10) of the Government of Wales Act 2006 (“GOWA 2006”) provide for the Order to be subject to either the affirmative or the negative resolution procedure.

2.2 The Cabinet Secretary for Finance and Local Government is of the view that the Order be subject to the negative resolution procedure as there are no factors indicating the use of the affirmative procedure. The Order designates bodies for the purposes of including within a Budget motion, information relating to the resources expected to be used by those bodies. Inclusion of the resources of the designated bodies within the Budget Motion will minimise alignment discrepancies between the Budget, Budget Motion and consolidated accounts, but will have no effect on the resource limits of those bodies. The subject matter of the Order can therefore be regarded as administrative as the effect on the Budget will be presentational.

3. Legislative background

3.1 This Order is made by the Welsh Ministers in exercise of the powers conferred on them by section 126A(2) and (3) GOWA 2006. This is the first use of the power.

3.2 In accordance with section 126A(6) GOWA 2006, the Welsh Ministers have consulted where they think appropriate the Treasury. In accordance with section 126A(4) the Treasury have consented to the making of this Order. This Order is made using the negative resolution procedure.

4. Purpose and intended effect of the legislation

Background

4.1 In March 2015, the Finance Committee of the Fourth Assembly recommended as part of its inquiry into Best Practice Budget Processes, that “the Welsh Government work closely with the Wales Audit Office to help ensure that the alignment of the budget and the Welsh Government’s

accounts with the Treasury's budget boundary is completed timeously and successfully".

4.2 Under current arrangements, there are 3 main documents which set out the financial position of the bodies funded by the Welsh Consolidated Fund;

- the Budget to plan, monitor and control income and expenditure;
- the Annual Budget Motion (ABM) to gain Assembly approval for income and expenditure; and
- after the year end, the Consolidated Accounts to report and account for income and expenditure.

The boundaries of each of these documents i.e., the income and expenditure of the bodies which are included, differ for each causing misalignment and, accordingly can make it difficult to understand the links and inter-relationships between them. This can lead to a lack of transparency and understanding of the Welsh Government public expenditure.

4.3 The budget voted by the Welsh Assembly within the Budget Motion is aligned to the Welsh Government core account boundary. This is a different boundary to that used for the Welsh Government Consolidated Accounts and is subsequently different again to the boundary used for the Treasury budget.

4.4 Alignment is required to ensure that the Welsh Government's accounts use the same boundary for the budget presented to the Welsh Assembly, as that used by the Treasury for the control of public expenditure. Alignment will mean that the scope of the main control mechanisms is consistent. A key component of this is the consolidation into ambits of income and expenditure by all bodies within the Welsh Government boundary.

Purpose

4.5 The Order designates specified bodies in relation to the Welsh Ministers for the purpose of including within a Budget motion the resources expected to be used by those bodies.

Effect

4.6 The designation of the bodies in the Order will allow closer alignment of the ABM to the existing Welsh Government Consolidated Boundary. The resources expected to be used by the designated bodies can therefore be included within the ABM replacing the cash funding they receive.

4.7 The Order, therefore, aligns the Treasury budget boundary to the Budget Motion and the Welsh Government Consolidated Accounts, enabling

expenditure to be more easily tracked through the Budget Motion and Consolidated Accounts process. This will provide the benefits of increased transparency and understanding of Welsh public expenditure, making it easier for the Assembly, and the wider public, to understand and challenge spending plans and outturn. In turn, this should contribute to better involvement and awareness of public expenditure in Wales, therefore, indirectly contributing to well-being goals.

4.8 The Order leads to a more efficient approach to the impact on scrutiny of the ABM by the Finance Committee and the consolidated accounts by the Public Accounts Committee as variances between budget and outturn will be more consistent. In addition, the number of reconciliations required within the schedules supporting the ABM will be reduced.

4.9 There would be no impact on the MEG budgets and limited impact on preparation of the consolidated accounts.

4.10 The Order does not amend or consolidate any other piece of legislation.

5. Consultation

5.1 The Welsh Government undertook a targeted consultation with Welsh Government Groups sponsoring the bodies proposed to be included in the Order and the Wales Audit Office from 20th September 2016 to 27th October 2016.

5.2 Those responding to the consultation were generally supportive and proposals were modified to take account of the comments received, but there were no objections to the principle of designation and alignment.

5.3 As a result of the consultation, the Order contains bodies that are considered for consolidation within the WG Consolidated Accounts and are classified by ONS to the Central Government Sector.

5.4 Following receipt of responses from Welsh Government Groups and Wales Audit Office, HM Treasury were contacted to obtain consent to designate bodies that are in receipt of funding from a 'relevant Consolidated Fund', as required under section 126A(4) and (5) of the Government of Wales Act 2006.

5.5 HM Treasury were also consulted in accordance with section 126A(6), where a complete list of bodies to be designated was provided. Consent was subsequently provided by HM Treasury to the making of the Order.

5.6 A second phase of alignment is planned for 2018-19.

6. Regulatory Impact Assessment (RIA)

- 6.1 A Regulatory Impact Assessment has not been prepared to accompany this Order; it is not expected to impose any cost on business, local government or the voluntary sector. This is consistent with the Welsh Ministers' Regulatory Impact Assessment Code for Subordinate Legislation.
- 6.2 Bodies to be designated in the Order already form part of the Welsh Government budgetary controls and so Welsh Government Groups are already monitoring in-year spending. In addition the Whole of Government Accounts project requires the collection of similar outturn data from all public bodies, there should therefore be no material impact on the public sector.

SL(5)031 – The Social Care Wales (Proceedings) Regulations 2016

Agenda Item 3.2

Background and Purpose

Section 174(1) of the Regulation and Inspection of Social Care (Wales) Act 2016 (“the Act”) requires Social Care Wales (SCW) to make rules to establish registration appeals panels, fitness to practise panels and interim orders panels (“the panels”). Section 174(6) and (7) of the Act requires SCW to make rules about, for example, the appointment of persons as panel members and the declaration and registration of the private interests of such members. Section 174(8) of the Act gives SCW the power to make rules about the constitution and operation of the panels and provides that such rules are subject to any provision made by the Welsh Ministers under section 175 of the Act (which gives the Welsh Ministers power to make regulations for and in connection with proceedings brought under the Act before the panels).

Part 2 of these Regulations makes provision about proceedings before registration appeals panels.

Part 3 of these Regulations makes provision about proceedings before fitness to practise panels.

Part 4 of these Regulations makes provision about proceedings before interim orders panels.

Procedure

Negative

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

One point is identified for reporting under Standing Order 21.3 in respect of this instrument (Standing Order 21.3(ii): the instrument is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly).



These Regulations are made under sections of the 2016 Act that are not yet in force. The Welsh Government has confirmed that the relevant sections of the 2016 Act will be commenced before 3 April 2017 (i.e. the date these Regulations come into force). Although the relevant sections of the 2016 Act are not currently in force, the Welsh Ministers can make these Regulations by relying on section 13 of the Interpretation Act 1978 which allows certain powers to be exercised before the relevant sections of the 2016 Act are commenced.

Legal Advisers

Constitutional and Legislative Affairs Committee

28 November 2016



W E L S H S T A T U T O R Y
I N S T R U M E N T S

2016 No. 1100 (W. 264)

SOCIAL CARE, WALES

The Social Care Wales
(Proceedings before Panels)
Regulations 2016

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Care Council for Wales (“the Council”) was established by Part 4 of the Care Standards Act 2000 for the purposes of promoting high standards of conduct and practise among social care workers and promoting high standards in their training.

The Regulation and Inspection of Social Care (Wales) Act 2016 (“the Act”) renames the Council as Social Care Wales (“SCW”), restates and modifies SCW’s original functions and confers additional functions.

Section 174(1) of the Act requires SCW to make rules to establish registration appeals panels, fitness to practise panels and interim orders panels (“the panels”). Section 174(6) and (7) of the Act requires SCW to make rules about, for example, the appointment of persons as panel members and the declaration and registration of the private interests of such members. Section 174(8) of the Act gives SCW the power to make rules about the constitution and operation of the panels and provides that such rules are subject to any provision made by the Welsh Ministers under section 175 of the Act (which gives the Welsh Ministers power to make regulations for and in connection with proceedings brought under the Act before the panels).

Part 2 of these Regulations makes provision about proceedings before registration appeals panels.

Part 3 of these Regulations makes provision about proceedings before fitness to practise panels.

Part 4 of these Regulations makes provision about proceedings before interim orders panels.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Department of Health and Social Services, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2016 No. 1100 (W. 264)

SOCIAL CARE, WALES

**The Social Care Wales
(Proceedings before Panels)
Regulations 2016**

Made 15 November 2016

*Laid before the National Assembly
for Wales* 22 November 2016

Coming into force 3 April 2017

CONTENTS

PART 1

GENERAL

1. Title, commencement and application
2. Interpretation

PART 2

REGISTRATION APPEALS PANELS

3. Interpretation of Part 2
4. General objectives of registration appeals panels
5. Duty of parties in registration appeals proceedings
6. Registration appeals proceedings: when a hearing is not necessary
7. Case management in registration appeals proceedings
8. Evidence in registration appeals proceedings
9. Exclusion of the public from registration appeals hearings
10. Registration appeals proceedings: witness summons
11. Special measures for witnesses etc. in registration appeals hearings
12. Registration appeals hearings: procedure
13. Registration appeals hearings rules

PART 3

FITNESS TO PRACTISE PANELS

14. Interpretation of Part 3
15. General objectives of fitness to practise panels
16. Duty of parties in fitness to practise proceedings and in interim orders proceedings
17. Fitness to practise proceedings: when a hearing is not necessary
18. Interim orders proceedings: when a hearing is not necessary
19. Case management in fitness to practise proceedings and in interim orders proceedings
20. Evidence in fitness to practise proceedings and in interim orders proceedings
21. Exclusion of the public from fitness to practise hearings
22. Exclusion of the public from interim orders hearings
23. Fitness to practise proceedings and interim orders proceedings: witness summons
24. Special measures for witnesses etc. in fitness to practise hearings and in interim orders hearings
25. Fitness to practise hearings and interim orders hearings: procedure
26. Fitness to practise hearings and interim orders hearings rules

PART 4

INTERIM ORDERS PANELS

27. Interpretation of Part 4
28. General objectives of interim orders panels
29. Duty of parties in interim orders proceedings
30. Interim orders proceedings: when a hearing is not necessary
31. Case management in interim orders proceedings
32. Evidence in interim orders proceedings
33. Exclusion of the public from interim orders hearings
34. Interim orders proceedings: witness summons
35. Special measures for witnesses etc. in interim orders hearings

36. Interim orders hearings: procedure
37. Interim orders hearings rules

The Welsh Ministers, in exercise of the powers conferred by sections 175(1) and (2) and 187(1) of the Regulation and Inspection of Social Care (Wales) Act 2016(1), make the following Regulations:

PART 1

General

Title, commencement and application

1.—(1) The title of these Regulations is the Social Care Wales (Proceedings before Panels) Regulations 2016.

(2) These Regulations come into force on 3 April 2017.

(3) These Regulations apply in relation to Wales.

Interpretation

2. In these Regulations—

“the Act” (“*y Ddeddf*”) means the Regulation and Inspection of Social Care (Wales) Act 2016;

“extract conviction” (“*euogfarn gryno*”) has the meaning given in section 307 of the Criminal Procedure (Scotland) Act 1995(2);

“fitness to practise panels” (“*paneli addasrwydd i ymarfer*”) has the meaning given in section 174(1)(b) of the Act;

“interim orders panels” (“*paneli gorchmynion interim*”) has the meaning given in section 174(1)(c) of the Act;

“parental responsibility” (“*cyfrifoldeb rhiant*”) has the meaning given in section 105 of the Children Act 1989(3);

“registration appeals panels” (“*paneli apelau cofrestru*”) has the meaning given in section 174(1)(a) of the Act.

(1) 2016 anaw 2.

(2) 1995 c. 46.

(3) 1989 c. 41 (“the 1989 Act”). The definition in section 105 of the 1989 Act refers to the meaning of “parental responsibility” set out in section 3 of that Act.

PART 2

Registration Appeals Panels

Interpretation of Part 2

3. In this Part—

“appellant” (“*apelydd*”) means a person who brings a registration appeal;

“case” (“*achos*”) means proceedings relating to a registration appeal before a registration appeals panel;

“fitness to practise proceedings” (“*achos addasrwydd i ymarfer*”) means proceedings before a fitness to practise panel to which Chapter 3(1) or Chapter 5(2) of Part 6 of the Act applies;

“parties” (“*partiion*”) means the appellant and SCW(3) (or their representatives);

“registration appeal” (“*apêl gofrestru*”) means—

- (a) an appeal made in accordance with section 101 of the Act against a decision of the registrar;
- (b) an application made in accordance with section 97(5) of the Act for review of a direction under section 98(4) of the Act;
- (c) an application made in accordance with section 97(2) of the Act for restoration of a person’s entry in a part of the register following fitness to practise proceedings;

“registration appeals hearing” (“*gwrandawriad apelau cofrestru*”) means a hearing before a registration appeals panel in registration appeals proceedings;

-
- (1) See Chapter 3 of Part 6 of the Act (disposal of fitness to practise cases). Fitness to practise panels make decisions about whether a person’s fitness to practise is impaired and decide what sanctions are appropriate following consideration of a case.
 - (2) See Chapter 5 of Part 6 of the Act (review proceedings), in particular section 151 of the Act (review proceedings). The fitness to practise panel administers the system for the review of any conditions attached to a person’s ability to practise, suspension orders and undertakings which have been imposed or agreed (as the case may be) in respect of the person following fitness to practise proceedings.
 - (3) See section 67(3) of the Act for the definition of “SCW”.

“registration appeals proceedings” (“*achos apelau cofrestru*”) means proceedings before a registration appeals panel in respect of which section 98(1)(1), 99(2)(2) or 103(3) of the Act applies.

General objectives of registration appeals panels

4.—(1) The general objectives of a registration appeals panel in carrying out its functions in relation to registration appeals proceedings are—

- (a) to protect, promote and maintain the health, safety and well-being of the public;
- (b) to promote and maintain—
 - (i) public confidence in social care workers(4), and
 - (ii) a high standard of conduct and practice among social care workers; and
- (c) to deal fairly and justly with the case.

(2) Dealing with a case fairly and justly includes—

- (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;
- (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
- (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
- (d) using any special expertise of the panel or SCW effectively;

-
- (1) Restoration proceedings following fitness to practise proceedings which resulted in an order removing an entry relating to that person from the register (which is maintained under section 80 of the Act) under section 138(9) (disposal following a finding of impairment), section 152(8)(e) (decisions following review of undertakings), section 153(9)(d) (decisions on review of conditional registration orders) and section 154(8)(d) (decisions on review of suspension orders).
 - (2) *See* section 99 of the Act (review of the suspension of right to apply for restoration). Where, following fitness to practise proceedings, which resulted in an order removing an entry relating to a person from the register, and a direction under section 98(4) of the Act has been made by a registration appeals panel to suspend a person’s right to apply for restoration, a person may apply for a review of that suspension in the circumstances set out in section 99(1) of the Act.
 - (3) Consideration of appeals made under section 101 of the Act against a decision of the registrar (under section 83 (refusal of a person’s application for registration), section 86 (refusal of a person’s application for renewal of the person’s registration), section 94 (refusal to remove an entry in respect of a person from the register) and section 96 (refusal to grant a person’s application for restoration of the person’s entry to the register)).
 - (4) *See* section 79 of the Act for the meaning of “social care worker”.

- (e) avoiding delay, so far as that is compatible with a proper consideration of the issues.

Duty of parties in registration appeals proceedings

5.—(1) It is the duty of the parties—

- (a) to co-operate with the registration appeals panel, and
- (b) to assist it in achieving its objective under regulation 4(1)(c).

(2) If the registration appeals panel is satisfied that a person is in breach of the duty in paragraph (1), it may draw any inference that it considers appropriate.

Registration appeals proceedings: when a hearing is not necessary

6.—(1) A registration appeal before a registration appeals panel may be determined without a hearing if—

- (a) the parties agree in writing that the proceedings may be determined without a hearing, and
- (b) the registration appeals panel decides that it is not necessary to hold a hearing.

(2) Where in accordance with paragraph (1) proceedings are determined without a hearing—

- (a) the registration appeals panel's final decision may be made by the chair of the panel;
- (b) at any stage during the proceedings the registration appeals panel or the chair of the panel may require a registration appeals hearing to be held.

(3) SCW may by rules make provision about the steps which may or must be taken by the parties or a registration appeals panel to enable the panel to reach a decision as to whether it is necessary to hold a hearing.

Case management in registration appeals proceedings

7.—(1) SCW may by rules make provision about preliminary case management in relation to registration appeals proceedings.

(2) The rules may in particular make provision—

- (a) for preliminary case management to be carried out by a registration appeals panel or by a person appointed under the rules;
- (b) about qualifications for such an appointment;
- (c) about case reviews;
- (d) about directions that may be given;
- (e) about records of directions;

- (f) about consequences of failure to comply with directions (which may include the power of a registration appeals panel to draw such inference as it considers appropriate).

(3) Where the rules provide for preliminary case management to be carried out by a person other than the registration appeals panel, they must provide for that person—

- (a) to act independently of the parties, and
- (b) to exercise any power to give directions only for the purpose of securing the just, expeditious and effective running of the appeal.

(4) The general objective of a registration appeals panel under regulation 4(1)(c) (to deal fairly and justly with cases) also applies to such a person.

(5) Rules made under this regulation may not provide for the award of costs.

Evidence in registration appeals proceedings

8.—(1) A finding of fact by a registration appeals panel must be made on the balance of probabilities.

(2) In registration appeals proceedings evidence is not admissible unless—

- (a) it would be admissible in civil proceedings in England and Wales, or
- (b) the registration appeals panel considers that the evidence is relevant, and that it is fair to admit it.

(3) A certificate signed by a competent officer of a court of any jurisdiction that a person has been convicted of a criminal offence or, in Scotland, an extract conviction, is conclusive evidence of the offence.

(4) A certificate that a person is included in a barred list⁽¹⁾ (for the purposes of section 117(1)(c) of the Act), issued by the person responsible for maintaining the list, is conclusive evidence of that fact.

(5) A certificate issued by a relevant body⁽²⁾ (for the purposes of section 117(1)(d) of the Act) that it has determined that a person's fitness to practise is impaired is conclusive evidence of that determination.

Exclusion of the public from registration appeals hearings

9.—(1) A hearing before a registration appeals panel must be held in public, with the following exceptions.

(1) See section 117(3) for the definition of "barred list".

(2) See section 117(4) for the definition of "relevant body".

(2) The registration appeals panel must exclude the public from any part of a hearing involving consideration of the physical or mental health of the appellant, unless—

- (a) the appellant requests that part of the hearing to be held in public, and
- (b) the registration appeals panel considers that doing so would not be against the public interest.

(3) The registration appeals panel may exclude the public from all or part of a hearing if it considers that the circumstances of the case outweigh the public interest in holding the hearing in public.

(4) The registration appeals panel may exclude a person from a hearing if it considers that the person's conduct is likely to disrupt the hearing.

Registration appeals proceedings: witness summons

10.—(1) For the purposes of registration appeals proceedings—

- (a) a registration appeals panel may administer oaths,
- (b) SCW may of its own motion issue a witness summons requiring a person to attend a hearing to supply information or to produce any document, and any other party may request SCW to issue such a summons.

(2) No person is to be compelled by a summons issued under paragraph (1)(b) to produce any document which that person could not be compelled to produce in civil proceedings in England and Wales.

Special measures for witnesses etc. in registration appeals hearings

11.—(1) A person giving evidence in a registration appeals hearing, including the appellant, is entitled to special measures if—

- (a) the person is under 18, or
- (b) the registration appeals panel considers that the quality of evidence given by the person is likely to be diminished by reason of—
 - (i) physical disability, learning disability, mental health problems, an illness or health condition or a dependence on drugs or alcohol, or
 - (ii) fear or distress in connection with giving evidence.

(2) In deciding whether the quality of evidence given by a person is likely to be diminished by reason of a matter specified in paragraph (1)(b), the registration

appeals panel must take into account the views of the person concerned.

(3) A registration appeals panel may offer special measures to a person not entitled to them under paragraph (1) if it thinks that it would be in the public interest to do so.

(4) In this regulation “special measures” (“*mesurau arbennig*”) means such special measures as the registration appeals panel considers appropriate for the purpose of improving the quality of evidence given by a person at the hearing.

(5) In considering which particular special measure may be appropriate, the registration appeals panel must take into account the views of the person concerned.

(6) A person who is 18 or over and who has the capacity to do so may decline to accept special measures or any particular special measure.

(7) Whether a person has capacity for the purposes of paragraph (6) is determined in accordance with the Mental Capacity Act 2005(1).

(8) A person who is under 18 (a “child”) (“*plentyn*”) may decline to accept special measures only if the registration appeals panel is satisfied that the quality of the child’s evidence is not likely to be diminished by the absence of the special measure or measures which the child wishes to decline.

(9) In reaching a view as required by paragraph (8), the registration appeals panel must consider—

- (a) the child’s age and maturity,
- (b) the child’s ability to understand the consequences of giving evidence without the special measure or measures,
- (c) the child’s best interests,
- (d) the views of the child’s parents or any person with parental responsibility for the child,
- (e) the relationship (if any) between the child and any party to the proceedings,
- (f) the nature and alleged circumstances of the matter to which the proceedings relate, and
- (g) any other factor that the panel thinks is relevant.

(10) A registration appeals panel must give a direction requiring the implementation or provision of any special measure which it has offered, except where the person concerned is entitled to decline the special measure and has done so.

(1) 2005 c. 9.

Registration appeals hearings: procedure

12.—(1) An appellant is entitled to be represented in a registration appeals hearing by—

- (a) a solicitor or counsel,
- (b) a representative from any professional organisation, or
- (c) if the registration appeals panel agrees, any other person.

(2) The parties are entitled to give evidence.

(3) A person representing or advising the appellant may not give evidence.

(4) A registration appeals hearing may proceed even if the appellant is not present and not represented, if the registration appeals panel is satisfied that all reasonable efforts have been made to give notice of the hearing to the appellant.

Registration appeals hearings rules

13.—(1) SCW must make rules about the procedure to be followed in a registration appeals hearing (“registration appeals hearings rules”) (*“rheolau gwrandawiadau apelau cofrestru”*).

(2) The Welsh Ministers—

- (a) may give guidance to SCW about the contents of registration appeals hearings rules, including guidance in the form of model rules, and
- (b) must publish any guidance given under subparagraph (a).

(3) SCW must, when making registration appeals hearings rules, have regard to any guidance given by the Welsh Ministers under paragraph (2)(a).

(4) Where guidance has been given in the form of model rules SCW must, after making any registration appeals hearings rules, publish a document explaining any significant departures from or additions to the model rules.

(5) The power of SCW to make registration appeals hearings rules is subject to the provision made by these Regulations.

PART 3

Fitness to Practise Panels

Interpretation of Part 3

14. In this Part—

“case” (“*achos*”) means proceedings relating to fitness to practise proceedings or interim orders proceedings (as the case may be) before a fitness to practise panel;

“fitness to practise hearing” (“*gwrandawriad addasrwydd i ymarfer*”) means a hearing before a fitness to practise panel in fitness to practise proceedings;

“fitness to practise proceedings” (“*achos addasrwydd i ymarfer*”) means proceedings before a fitness to practise panel to which Chapter 3 or Chapter 5(1) of Part 6 of the Act applies;

“interim orders hearing” (“*gwrandawriad gorchmynion interim*”) means a hearing before a fitness to practise panel in interim orders proceedings;

“interim orders proceedings” (“*achos gorchmynion interim*”) means proceedings before a fitness to practise panel to which Chapter 4(2) of Part 6 of the Act applies;

“parties” (“*partion*”) means the registered person to whom the fitness to practise proceedings or interim orders proceedings relate and SCW (or their representatives);

“registered person” (“*person cofrestredig*”) means the registered person(3) in respect of whom the

-
- (1) See Chapter 5 of Part 6 of the Act (review proceedings), in particular section 151 of the Act (review proceedings). The fitness to practise panel administers the system for the review of any conditions attached to a person’s ability to practise, suspension orders and undertakings which have been imposed or agreed (as the case may be) in respect of the person following fitness to practise proceedings..
- (2) See Chapter 4 of Part 6 to the Act (interim orders and review of interim orders). Interim order proceedings are undertaken to enable temporary restrictions to be imposed in respect of a registered person while investigations are undertaken into allegations made against the person about their fitness to practise. If the making of an interim order is considered to be necessary, a matter may be referred either to a fitness to practise panel or to an interim orders panel (see Part 4 for provision about the procedure of interim orders panels). If a matter is referred to a fitness to practise panel, any interim order must be made before the matter is disposed of by the fitness to practise panel in accordance with any of sections 135 to 138 of the Act (see section 144(3) of the Act).
- (3) See section 164 of the Act for the meaning of “registered person” in Part 6 of the Act.

referral to the fitness to practise panel has been made.

General objectives of fitness to practise panels

15.—(1) The general objectives of a fitness to practise panel in carrying out its functions in relation to fitness to practise proceedings and interim orders proceedings are—

- (a) to protect, promote and maintain the health, safety and well-being of the public;
- (b) to promote and maintain—
 - (i) public confidence in social care workers, and
 - (ii) a high standard of conduct and practise among social care workers; and
- (c) to deal fairly and justly with the case.

(2) Dealing with a case fairly and justly includes—

- (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;
- (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
- (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
- (d) using any special expertise of the panel or SCW effectively;
- (e) avoiding delay, so far as that is compatible with a proper consideration of the issues.

Duty of parties in fitness to practise proceedings and in interim orders proceedings

16.—(1) It is the duty of the parties to—

- (a) co-operate with the fitness to practise panel, and
- (b) assist it in achieving its objective under regulation 15(1)(c).

(2) If the fitness to practise panel is satisfied that a person is in breach of the duty in paragraph (1), it may draw any inference that it considers appropriate.

Fitness to practise proceedings: when a hearing is not necessary

17.—(1) Fitness to practise proceedings, except proceedings under section 151 of the Act (“review proceedings”), may be determined by a fitness to practise panel without a hearing if—

- (a) the parties agree in writing that the proceedings may be determined without a hearing,
- (b) the parties agree in writing to the final decision which is to be made by the panel (including details of that decision such as the period for which an order is to have effect or any conditions to be imposed on the registered person's registration),
- (c) a statement of agreed facts is made in writing by—
 - (i) SCW,
 - (ii) the registered person, and
 - (iii) the panel, and
- (d) the panel decides that it is not necessary to hold a hearing.

(2) Review proceedings under section 151 of the Act may determined by a fitness to practise panel without a hearing if—

- (a) the parties agree in writing that the proceedings may be determined without a hearing,
- (b) the parties agree in writing to the final decision to be made by the panel, which must be one specified in paragraph (3), and
- (c) the panel decides that it is not necessary to hold hearing.

(3) The decisions referred to in paragraph (2)(b) are—

- (a) in the case of a review of the fitness to practise of a registered person who has agreed undertakings⁽¹⁾, a decision by the fitness to practise panel to agree with the person that the undertakings remain in effect with no variations,
- (b) in the case of a review of the fitness to practise of a registered person who is subject to a conditional registration order⁽²⁾, a decision by the panel to confirm the conditional registration order with no variations,
- (c) in the case of a review of the fitness to practise of a registered person who is subject to a suspension order⁽³⁾, a decision by the

(1) See section 151(1) of the Act. Undertakings may be agreed under section 136(1), 152(5) or (6), 153(4), 154(4) or 155(7) of the Act.

(2) See section 151(3) of the Act. Conditional registration orders may be made, confirmed or varied under section 138(7), 152(8)(c), 153(6) or (7), 154(8)(c) or 155(10)(c) of the Act.

(3) See section 151(5) of the Act.

panel to confirm the suspension order with no variations.

(4) Where in accordance with paragraph (1) or (2) proceedings are to be determined without a hearing—

- (a) the panel's final decision may be made by the chair of the panel;
- (b) at any stage during the proceedings the panel or the chair of the panel may require a hearing to be held.

(5) SCW may by rules make provision about the steps which may or must be taken by the parties or a fitness to practise panel to enable the panel to reach a decision as to whether it is necessary to hold a fitness to practise hearing.

Interim orders proceedings: when a hearing is not necessary

18.—(1) Interim orders proceedings may be determined by a fitness to practise panel without a hearing if—

- (a) the parties agree in writing that the proceedings may be determined without a hearing,
- (b) the parties agree in writing to the interim order which is to be made by the panel, or (in a case where the panel is considering the review of an interim order) to the decision specified in section 147(1)(b) to (e) of the Act which is to be made by the panel, including—
 - (i) the period for which the interim order is to have effect, and
 - (ii) in the case of an interim conditional registration order, the conditions to be imposed on the registered person's registration with SCW,
- (c) a statement of agreed facts is made in writing by—
 - (i) SCW,
 - (ii) the registered person, and
 - (iii) the panel, and
- (d) the panel decides that it is not necessary to hold a hearing.

(2) Where in accordance with paragraph (1) proceedings are to be determined without a hearing—

- (a) an interim order may be made or confirmed by the chair of the panel;
- (b) at any stage during the proceedings the panel or the chair of the panel may require a hearing to be held.

(3) SCW may by rules make provision about the steps which may or must be taken by the parties or a

fitness to practise panel to enable the panel to reach a decision as to whether it is necessary to hold an interim orders hearing.

Case management in fitness to practise proceedings and in interim orders proceedings

19.—(1) SCW may by rules make provision about preliminary case management in relation to fitness to practice proceedings and interim orders proceedings.

(2) The rules may in particular make provision—

- (a) for preliminary case management to be carried out by a fitness to practise panel or by a person appointed under the rules;
- (b) about qualifications for such an appointment;
- (c) about case reviews;
- (d) about directions that may be given;
- (e) about records of directions;
- (f) about consequences of failure to comply with directions (which may include the power of a fitness to practise panel to draw such inference as it considers appropriate).

(3) Where the rules provide for preliminary case management to be carried out by a person other than the fitness to practise panel, they must provide for that person—

- (a) to act independently of the parties, and
- (b) to exercise any power to give directions only for the purpose of securing the just, expeditious and effective running of the appeal.

(4) The general objective of a fitness to practise panel under regulation 15(1)(c) (to deal fairly and justly with cases) also applies to such a person.

(5) Rules made under this regulation may not provide for the award of costs.

Evidence in fitness to practise proceedings and in interim orders proceedings

20.—(1) A finding of fact by a fitness to practise panel in fitness to practise proceedings must be made on the balance of probabilities.

(2) In fitness to practice proceedings and interim orders proceedings evidence is not admissible unless—

- (a) it would be admissible in civil proceedings in England and Wales, or
- (b) the fitness to practise panel considers that the evidence is relevant, and that it is fair to admit it.

(3) A certificate signed by a competent officer of a court of any jurisdiction that a person has been

convicted of a criminal offence, or in Scotland, an extract conviction, is conclusive evidence of the offence.

(4) A certificate that a person is included in a barred list (for the purposes of section 117(1)(c) of the Act), issued by the person responsible for maintaining the list, is conclusive evidence of that fact.

(5) A certificate issued by a relevant body (for the purposes of section 117(1)(d) of the Act) that it has determined that a person's fitness to practise is impaired is conclusive evidence of that determination.

Exclusion of the public from fitness to practise hearings

21.—(1) A fitness to practise hearing must be held in public, with the following exceptions.

(2) The fitness to practise panel must exclude the public from any part of a hearing involving consideration of the physical or mental health of the registered person, unless—

- (a) the registered person requests that part of the hearing to be held in public, and
- (b) the fitness to practise panel considers that doing so would not be against the public interest.

(3) The fitness to practise panel may exclude the public from all or part of a hearing if it considers that the circumstances of the case outweigh the public interest in holding the hearing in public.

(4) The fitness to practise panel may exclude a person from a hearing if it considers that the person's conduct is likely to disrupt the hearing.

Exclusion of the public from interim orders hearings

22.—(1) The public must be excluded from an interim orders hearing unless—

- (a) the registered person requests that the hearing should be held in public, and
- (b) the fitness to practise panel considers that doing so would not be against the public interest.

(2) In the case of a hearing held in public, the fitness to practise panel may exclude a person from the hearing if it thinks that the person's conduct is likely to disrupt the hearing.

Fitness to practise proceedings and interim orders proceedings: witness summons

23.—(1) For the purposes of fitness to practise proceedings and interim orders proceedings—

- (a) a fitness to practise panel may administer oaths,
- (b) SCW may of its own motion issue a witness summons requiring a person to attend a hearing to supply information or to produce any document, and any other party may request SCW to issue such a summons.

(2) No person is to be compelled by a summons issued under paragraph (1)(b) to produce any document which that person could not be compelled to produce in civil proceedings in England and Wales.

Special measures for witnesses etc. in fitness to practise hearings and in interim orders hearings

24.—(1) A person giving evidence in a fitness to practise hearing or an interim orders hearing, including the registered person, is entitled to special measures if—

- (a) the person is under 18, or
- (b) the fitness to practise panel considers that the quality of evidence given by the person is likely to be diminished by reason of—
 - (i) physical disability, learning disability, mental health problems, an illness or health condition or a dependency on drugs or alcohol, or
 - (ii) fear or distress in connection with giving evidence.

(2) A person giving evidence in a fitness to practise hearing or in an interim orders hearing is also entitled to special measures if the matter to which the proceedings relate is of a sexual nature and the person is an alleged victim.

(3) In deciding whether the quality of evidence given by a person is likely to be diminished by reason of a matter specified in paragraph (1)(b), the fitness to practise panel must take into account the views of the person concerned.

(4) A fitness to practise panel may offer special measures to a person not entitled to them under paragraph (1) or (2), if it thinks that this is in the public interest.

(5) “Special measures” (“*mesurau arbennig*”) means such special measures as the fitness to practise panel considers appropriate for the purpose of improving the quality of evidence given by a person at the hearing.

(6) In considering which particular special measures may be appropriate, the fitness to practise panel must take into account the views of the person concerned.

(7) A person who is 18 or over and who has the capacity to do so may decline to accept special measures or any particular special measure.

(8) Whether a person has capacity for the purposes of paragraph (7) is determined in accordance with the Mental Capacity Act 2005.

(9) A person who is under 18 (a “child”) (“*plentyn*”) may decline to accept special measures or any particular special measure only if the fitness to practise panel is satisfied that the quality of the child’s evidence is not likely to be diminished by the absence of the special measure or measures which the child wishes to decline.

(10) In reaching a view as required by paragraph (9), the fitness to practise panel must consider—

- (a) the child’s age and maturity,
- (b) the child’s ability to understand the consequences of giving evidence without the special measure or measures,
- (c) the child’s best interests,
- (d) the views of the child’s parents or any person with parental responsibility for the child,
- (e) the relationship (if any) between the child and any party to the proceedings ,
- (f) the nature and alleged circumstances of the matter to which the proceedings relate, and
- (g) any other factor that the panel thinks is relevant.

(11) A fitness to practise panel must give a direction requiring the implementation or provision of any special measure which it has offered, except where the person concerned is entitled to decline the special measure and has done so.

(12) If the matter to which the proceedings relate is of a sexual nature, the registered person may not personally cross-examine an alleged victim, unless—

- (a) the alleged victim has consented to this, and
- (b) the fitness to practise panel does not consider that the alleged facts of the matter amount to, or are likely to amount to, a sexual offence under section 62 of the Youth Justice and Criminal Evidence Act 1999⁽¹⁾.

(13) If paragraph (12) means that the registered person is not permitted personally to cross-examine a person, the fitness to practise panel must give the registered person adequate opportunity to appoint a representative to do so.

(14) If the registered person does not appoint a representative under paragraph (13), but wishes an alleged victim to be cross-examined, SCW must appoint a representative to cross-examine the person on behalf of the registered person.

(1) 1999 c. 23.

Fitness to practise hearings and interim orders hearings: procedure

25.—(1) A registered person is entitled to be represented in a fitness to practise hearing or an interim orders hearing by—

- (a) a solicitor or counsel,
- (b) a representative from any professional organisation, or
- (c) if the fitness to practise panel agrees, any other person.

(2) The parties are entitled to give evidence.

(3) A person representing or advising the registered person may not give evidence.

(4) A fitness to practise hearing or an interim orders hearing may proceed even if the registered person is not present and not represented, if the fitness to practise panel is satisfied that all reasonable efforts have been made to give notice of the hearing to the person.

Fitness to practise hearings and interim orders hearings rules

26.—(1) SCW must make rules about the procedure to be followed in—

- (a) a fitness to practise hearing (“fitness to practise hearings rules”) (*“rheolau gwrandawiaidau addasrwydd i ymarfer”*), and
- (b) an interim orders hearing (“fitness to practise: interim orders hearings rules”) (*“addasrwydd i ymarfer: rheolau gwrandawiaidau gorchmynion interim”*).

(2) The Welsh Ministers—

- (a) may give guidance (including guidance in the form of model rules) to SCW about the contents of—
 - (i) fitness to practise hearings rules, and
 - (ii) fitness to practise: interim orders hearings rules, and
- (b) must publish any guidance given under sub-paragraph (a).

(3) SCW must, when making any rules in accordance with paragraph (1), have regard to any guidance given by the Welsh Ministers under paragraph (2)(a).

(4) Where guidance has been given in the form of model rules SCW must, after making any rules in accordance in paragraph (1), publish a document explaining any significant departures from or additions to the model rules.

(5) The power of SCW to make rules under paragraph (1) is subject to the provision made by these Regulations.

PART 4

Interim orders panels

Interpretation of Part 4

27. In this Part—

“case” (“*achos*”) means proceedings relating to interim proceedings before an interim orders panel;

“interim orders hearing” (“*gwrndawiad gorchmynion interim*”) means a hearing before an interim orders panel in interim orders proceedings;

“interim orders proceedings” (“*achos gorchmynion interim*”) means proceedings before an interim orders panel to which Chapter 4(1) of Part 6 of the Act applies;

“parties” (“*partion*”) means the registered person to whom interim orders proceedings relate and SCW (or their representatives);

“registered person” (“*person cofrestredig*”) means the registered person(2) in respect of whom the referral to the interim orders panel has been made.

General objectives of interim orders panels

28.—(1) The general objectives of an interim orders panel in carrying out its functions in relation to interim orders proceedings are—

- (a) to protect, promote and maintain the health, safety and well-being of the public;
- (b) to promote and maintain—
 - (i) public confidence in social care workers, and
 - (ii) a high standard of conduct and practise among social care workers; and
- (c) to deal fairly and justly with the case.

(2) Dealing with a case fairly and justly includes—

(1) See Chapter 4 of Part 6 to the Act (interim orders and review of interim orders). Interim order proceedings are undertaken to enable temporary restrictions to be imposed in respect of a registered person while investigations are undertaken into allegations made against the person about their fitness to practise. If the making of an interim order is considered to be necessary, a matter may be referred to a fitness to practise panel or an interim orders panel (see Part 3 for provision about the procedure of fitness to practise panels).

(2) See section 164 of the Act for the meaning of “registered person” in Part 6 of the Act.

- (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;
- (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
- (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
- (d) using any special expertise of the panel or SCW effectively;
- (e) avoiding delay, so far as that is compatible with a proper consideration of the issues.

Duty of parties in interim orders proceedings

29.—(1) It is the duty of the parties to—

- (a) co-operate with the interim orders panel, and
- (b) assist it in achieving its objective under regulation 28(1)(c).

(2) If the interim orders panel is satisfied that a person is in breach of the duty in paragraph (1), it may draw any inference that it considers appropriate.

Interim orders proceedings: when a hearing is not necessary

30.—(1) Interim orders proceedings may be determined by an interim orders panel without a hearing if—

- (a) the parties agree in writing that the proceedings may be determined without a hearing,
- (b) the parties agree in writing to the interim order which is to be made by the panel, or (in a case where the panel is considering the review of an interim order) to the decision specified in section 147(1)(b) to (e) of the Act which is to be made by the panel, including—
 - (i) the period for which the interim order is to have effect, and
 - (ii) in the case of an interim conditional registration order, the conditions to be imposed on the registered person's registration with SCW,
- (c) a statement of agreed facts is made in writing by—
 - (i) SCW,
 - (ii) the registered person, and
 - (iii) the panel, and
- (d) the panel decides that it is not necessary to hold a hearing.

(2) Where in accordance with paragraph (1) proceedings are to be determined without a hearing—

- (a) an interim order may be made or confirmed by the chair of the panel;
- (b) at any stage during the proceedings the panel or the chair of the panel may require a hearing to be held.

(3) SCW may by rules make provision about the steps which may or must be taken by the parties or an interim orders panel to enable the panel to reach a decision as to whether it is necessary to hold an interim orders hearing.

Case management in interim order proceedings

31.—(1) SCW may by rules make provision about preliminary case management in relation to interim orders proceedings.

(2) The rules may in particular make provision—

- (a) for preliminary case management to be carried out by an interim orders panel or by a person appointed under the rules;
- (b) about qualifications for such an appointment;
- (c) about case reviews;
- (d) about directions that may be given;
- (e) about records of directions,
- (f) about consequences of failure to comply with directions (which may include the power of an interim orders panel to draw such inference as it considers appropriate).

(3) Where the rules provide for preliminary case management to be carried out by a person other than the interim orders panel, they must provide for that person—

- (a) to act independently of the parties, and
- (b) to exercise any power to give directions only for the purpose of securing the just, expeditious and effective running of the appeal.

(4) The general objective of an interim orders panel under regulation 28(1)(c) (to deal fairly and justly with cases) also applies to such a person.

(5) Rules made under this regulation may not provide for the award of costs.

Evidence in interim orders proceedings

32.—(1) In interim orders proceedings evidence is not admissible unless—

- (a) it would be admissible in civil proceedings in England and Wales, or

- (b) the interim orders panel considers that the evidence is relevant, and that it is fair to admit it.

(2) A certificate signed by a competent officer of a court of any jurisdiction that a person has been convicted of a criminal offence, or in Scotland, an extract conviction, is conclusive evidence of the offence.

(3) A certificate that a person is included in a barred list (for the purposes of section 117(1)(c) of the Act), issued by the person responsible for maintaining the list, is conclusive evidence of that fact.

(4) A certificate issued by a relevant body (for the purposes of section 117(1)(d) of the Act) that it has determined that a person's fitness to practise is impaired is conclusive evidence of that determination.

Exclusion of the public from interim orders hearings

33.—(1) The public must be excluded from an interim orders hearing unless—

- (a) the registered person requests that the hearing should be held in public, and
- (b) the interim orders panel considers that doing so would not be against the public interest.

(2) In the case of a hearing held in public, the interim orders panel may exclude a person from the hearing if it thinks that the person's conduct is likely to disrupt the hearing.

Interim orders proceedings: witness summons

34.—(1) For the purposes of interim orders proceedings—

- (a) an interim orders panel may administer oaths,
- (b) SCW may of its own motion issue a witness summons requiring a person to attend a hearing to supply information or to produce any document, and any other party may request SCW to issue such a summons.

(2) No person is to be compelled by a summons issued under paragraph (1)(b) to produce any document which that person could not be compelled to produce in civil proceedings in England and Wales.

Special measures for witnesses etc. in interim orders hearings

35.—(1) A person giving evidence in an interim orders hearing, including the registered person, is entitled to special measures if—

- (a) the person is under 18, or

(b) the interim orders panel considers that the quality of evidence given by the person is likely to be diminished by reason of—

- (i) physical disability, learning disability, mental health problems, an illness or health condition or a dependency on drugs or alcohol, or
- (ii) fear or distress in connection with giving evidence.

(2) A person giving evidence in an interim orders hearing is also entitled to special measures if the matter to which the proceedings relate is of a sexual nature and the person is an alleged victim.

(3) In deciding whether the quality of evidence given by a person is likely to be diminished by reason of a matter specified in paragraph (1)(b), the interim orders panel must take into account the views of the person concerned.

(4) An interim orders panel may offer special measures to a person not entitled to them under paragraph (1) or (2), if it thinks that this is in the public interest.

(5) “Special measures” (*“mesurau arbennig”*) means such special measures as the interim orders panel considers appropriate for the purpose of improving the quality of evidence given by a person at the hearing.

(6) In considering which particular special measures may be appropriate, the interim orders panel must take into account the views of the person concerned.

(7) A person who is 18 or over and who has the capacity to do so may decline to accept special measures or any particular special measure.

(8) Whether a person has capacity for the purposes of paragraph (7) is determined in accordance with the Mental Capacity Act 2005.

(9) A person who is under 18 (a “child”) (*“plentyn”*) may decline to accept special measures or any particular special measure only if the interim orders panel is satisfied that the quality of the child’s evidence is not likely to be diminished by the absence of the special measure or measures which the child wishes to decline.

(10) In reaching a view as required by paragraph (9), the interim orders panel must consider—

- (a) the child’s age and maturity,
- (b) the child’s ability to understand the consequences of giving evidence without the special measure or measures,
- (c) the child’s best interests,
- (d) the views of the child’s parents or any person with parental responsibility for the child,

- (e) the relationship (if any) between the child and any party to the proceedings,
- (f) the nature and alleged circumstances of the matter to which the proceedings relate, and
- (g) any other factor that the panel thinks is relevant.

(11) An interim orders panel must give a direction requiring the implementation or provision of any special measure which it has offered, except where the person concerned is entitled to decline the special measure and has done so.

(12) If the matter to which the proceedings relate is of a sexual nature, the registered person may not personally cross-examine an alleged victim, unless—

- (a) the alleged victim has consented to this, and
- (b) the interim orders panel does not consider that the alleged facts of the matter amount to, or are likely to amount to, a sexual offence under section 62 of the Youth Justice and Criminal Evidence Act 1999.

(13) If paragraph (12) means that the registered person is not permitted personally to cross-examine a person, the interim orders panel must give the registered person adequate opportunity to appoint a representative to do so.

(14) If the registered person does not appoint a representative under paragraph (13), but wishes an alleged victim to be cross-examined, SCW must appoint a representative to cross-examine the person on behalf of the registered person.

Interim orders hearings: procedure

36.—(1) A registered person is entitled to be represented in an interim orders hearing by—

- (a) a solicitor or counsel,
- (b) a representative from any professional organisation, or
- (c) if the interim orders panel agrees, any other person.

(2) The parties are entitled to give evidence.

(3) A person representing or advising the registered person may not give evidence.

(4) An interim orders hearing may proceed even if the registered person is not present and not represented, if the interim orders panel is satisfied that all reasonable efforts have been made to give notice of the hearing to the person.

Interim orders hearings rules

37.—(1) SCW must make rules about the procedure to be followed in interim orders hearings (“interim

orders hearings rules”) (*“rheolau gwrandawiadau gorchmynion interim”*).

(2) The Welsh Ministers—

- (a) may give guidance (including guidance in the form of model rules) to SCW about the contents of interim orders hearings rules, and
- (b) must publish any guidance given under subparagraph (a).

(3) SCW must, when making interim orders hearings rules, have regard to any guidance given by the Welsh Ministers under paragraph (2)(a).

(4) Where guidance has been given in the form of model rules SCW must, after making any interim orders hearings rules, publish a document explaining any significant departures from or additions to the model rules.

(5) The power of SCW to make interim orders hearings rules is subject to the provision made by these Regulations.

Rebecca Evans

Minister for Social Services and Public Health, under
authority of the Cabinet Secretary for Health, Well-
being and Sport, one of the Welsh Ministers
15 November 2016

Explanatory Memorandum to:

- 1. The Social Care Wales (Extension of Meaning of “Social Care Worker”) Regulations 2016**
- 2. The Social Care Wales (Specification of Social Care Workers) (Registration) Regulations 2016**
- 3. The Social Care Wales (Content of Register) Regulations 2016**
- 4. The Social Care Wales (List of Persons Removed from the Register) Regulations 2016**
- 5. The Social Care Wales (Constitution of Panels: Prescribed Persons) Regulations 2016**
- 6. The Social Care Wales (Proceedings before panels) Regulations 2016**

This Explanatory Memorandum has been prepared by the Health and Social Services Department and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister’s Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of:

- 1. The Social Care Wales (Extension of Meaning of “Social Care Worker”) Regulations 2016**
- 2. The Social Care Wales (Specification of Social Care Workers) (Registration) Regulations 2016**
- 3. The Social Care Wales (Content of Register) Regulations 2016**
- 4. The Social Care Wales (List of Persons Removed from the Register) Regulations 2016**
- 5. The Social Care Wales (Constitution of Panels: Prescribed Persons) Regulations 2016**
- 6. The Social Care Wales (Proceedings before panels) Regulations 2016**

I am satisfied that the benefits justify the likely costs.

Rebecca Evans
Minister for Social Services & Public Health
22 November 2016

Part 1 – OVERVIEW

1. Description

The Regulation and Inspection of Social Care (Wales) Act 2016 (the 2016 Act) provides a revised and streamlined legislative framework for the regulation and inspection of care and support in Wales. The required transformation of social care in Wales was set out in *Sustainable Social Services: A Framework for Action*¹ published by the Welsh Government in February 2011. This in turn built upon *Fulfilled Lives, Supportive Communities: A Strategy for Social Services in Wales Over the Next Decade*², published four years earlier, and was also a direct response to the work of an independent commission established to review social services.

The Regulations elaborate essential matters of workforce regulation set out in the 2016 Act. The rules developed by Social Care Wales (SCW) work with the Act and the Regulations to complete the workforce regulatory framework.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

There are no specific matters that have been identified that are of interest to the Constitutional and Legislative Affairs Committee.

The Regulations to be laid will be considered under the following procedures:

• The Social Care Wales (Extension of Meaning of “Social Care Worker”) Regulations	Affirmative
• The Social Care Wales (Specification of Social Care Workers) (Registration) Regulations	Affirmative
• The Social Care Wales (Content of Register) Regulations	Negative
• The Social Care Wales (List of Persons Removed from the Register) Regulations	Negative
• The Social Care Wales (Constitution of the Panels: Prescribed Persons) Regulations	Negative
• The Social Care Wales (Proceedings before the Panels) Regulations	Negative

3. Legislative background

The following sections of the 2016 Act contain the powers to enable these regulations to be made:

¹ <http://gov.wales/topics/health/publications/socialcare/guidance1/services/?lang=en>

² <http://gov.wales/topics/health/publications/socialcare/strategies/lives/?lang=en>

- Section 79 - The Social Care Wales (Extension of Meaning of “Social Care Worker”) Regulations,
- Section 80 - The Social Care Wales (Specification of Social Care Workers) (Registration) Regulations,
- Section 91 - The Social Care Wales (Content of Register) Regulations,
- Section 110 - The Social Care Wales (List of Persons Removed from the Register) Regulations,
- Section 174 - The Social Care Wales (Constitution of the Panels: Prescribed Persons) Regulations, and
- Section 175 - The Social Care Wales (Proceedings before the Panels) Regulations.

4. Purpose & intended effect of the legislation

The Social Care Wales (Extension of Meaning of “Social Care Worker”) Regulations (Affirmative Procedure)

Section 79(1) sets out those persons who are “social care workers” for the purposes of the 2016 Act. Subsection (2) of section 79 enables the Welsh Ministers, by regulations, to treat other categories of persons as social care workers for the purposes of this Act, and subsection (3) lists those categories. These include persons such as responsible individuals designated by service providers, student social workers, inspectors of care services and persons who provide care and support in connection with care and support services which are not “regulated services”.

These Regulations set out the additional persons who are to be considered as social care workers for the purpose of SCW functions under sections 68(2), 112, 114 and 116 of the 2016 Act. This is important because it defines the scope of who SCW can support and help in its work and who is subject to the Code of Professional Practice for Social Care.

The definition of a social care worker for the purposes of section 79 of the Act is intentionally wider to the list of those social care workers for whom SCW must keep a register under section 80. The intended effect of these Regulations is to encompass the whole range of potential workers described within the Act within the definition of social care worker for the purposes of certain SCW functions. This will give SCW the freedom and powers to support the full breadth of the workforce. This has proved a successful approach under the Care Standards Act 2000 (the 2000 Act) and its regulations, and will be even more valuable for SCW, given its expanded role across workforce and service improvement.

The Social Care Wales (Specification of Social Care Workers) (Registration) Regulations (Affirmative Procedure)

Section 80 of the 2016 Act requires SCW to keep a register of relevant social workers, visiting social workers from relevant European States and social care workers of any other description specified by the Welsh Ministers in regulations. The requirement for

social care workers to register with a regulatory body does not arise by virtue of section 80. That requirement exists through service regulation. These Regulations set out a separate requirement for SCW to keep a register of certain social care workers.

The intended effect of these Regulations is to require SCW to maintain a register of those social care workers who manage a regulated service, provide care and support in connection with a children's home or secure accommodation, or who are undertaking a course approved by SCW in order to become registered as a social worker.

The Social Care Wales (Content of Register) Regulations (Negative Procedure)

Sections 91(1)(a) and (b) of the 2016 Act already set out certain information which must always appear on the register, namely:

- (a) the date on which the person was entered onto the register
- (b) the person's qualifications to practise work of the kind to which his or her registration relates.

These Regulations are made under sections 91(1) (c) and (d) of the Act and provide that the register must also show the following information:

- (c) such other qualifications, knowledge or experience relevant to the person's registration as may be prescribed; and
- (d) such information relating to the person's fitness to practise as may be prescribed.

SCW may also make rules requiring or authorising the registrar to include information in addition to that prescribed by the Welsh Ministers in an entry in the register (section 91(2)(a)).

The intended effect of these Regulations is to ensure the register contains sufficient information to provide effective public protection. The prescribed information has been kept to the essential minimum to avoid those examining the register being overwhelmed by excessive information, whilst also having regard to the rights of social care workers to privacy. Thus, the register will include information where a person has been approved to act as an approved mental health professional (section 91(1)(c)) and information about certain fitness to practise interventions, examples of which include advice, warnings, suspension, removal and agreed undertakings (section 91(1)(d)).

The Social Care Wales (List of Persons Removed from the Register) Regulations (Negative Procedure)

For reasons of public protection, the register will reflect sanctions imposed and certain decisions made by a fitness to practise panel in relation to a registered person (under regulations being made under section 91(1)(d)). However, the register will not reflect that a person's entry has been removed. Section 110 of the 2016 Act therefore provides that SCW is required to keep a list of persons whose entries in the register have been removed under section 110(1) of the 2016 Act. These Regulations, made under section

110(6) of the 2016 Act, make provision about the form and content of the list; the publication of the list or of specified information from the list, and the circumstances in which an entry relating to a person must be removed from the list.

The intended effect of these Regulations is to ensure that the list of persons removed from the register is constructed and presented in such a way as to enable straightforward access and understanding by those seeking such information, for example, employers and members of the public who wish to check whether a person has been removed from the register. In common with the approach to the register, this list needs to strike an appropriate balance between simplicity and comprehensiveness so that it effectively serves its function of providing public protection, whilst also balancing the rights of social care workers to privacy.

The Social Care Wales (Constitution of the Panels: Prescribed Persons) Regulations (Negative Procedure)

Section 174 provides that SCW must by rules make provision for there to be registration appeal panels, interim orders panels and fitness to practise panels. Section 174 and rules made under it set out how each of the panels are to be constituted. The provisions are intended to ensure that there are safeguards in place to ensure that panel members are impartial and can make decisions without being affected by conflicts of interest. Subsection (5) lists the types of person who are prohibited from being panel members

- (a) a person who is a member or a member of staff of—
 - (i) SCW,
 - (ii) the Health and Care Professions Council,
 - (iii) the Scottish Social Services Council, or
 - (iv) the Northern Ireland Social Care Council;
- (b) a prescribed person.

and paragraph (b) provides the Welsh Ministers with the power to make regulations prohibiting additional persons.

The intended effect of these Regulations is to ensure that the parties to panels and the general public at large are confident in the quality and impartiality of the panel processes that are at the heart of workforce regulation. There can then be confidence in the decisions made by panels and that the decisions and processes of panels support public protection and respect the rights of registrants. In particular the Regulations necessarily distinguish the functions of investigation and adjudication so that the parties to the panels can be assured that each of these processes has been carried out independently of the other.

The Social Care Wales (Proceedings before the Panels) Regulations (Negative Procedure)

These Regulations set out how the three panels, namely registration appeals panels, fitness to practise panels and interim order panels, established by SCW, will operate.

The Regulations make provision about the panels' procedure. The Regulations allow SCW to make rules about matters relating to such proceedings.

The intended effect of these Regulations is to enable the panels at the heart of the regulatory process to operate efficiently and effectively. The Regulations set out how the panels will operate in a range of crucial areas such as the duties of the parties involved, the standards of evidence, the summoning of witnesses. The Regulations also provide for SCW to make rules relating to how panels will operate. It is intended that this combined approach delivers clarity in regulations on the most significant areas of how panels will work with flexibility for the regulator to address matters of detail in rules that may need to be adapted over time.

5. Consultation

A 12 week consultation on these regulations ran between 28 June 2016 and 20 September 2016. Overall the Regulations were well received with respondents generally supporting the proposals. Where responses have resulted in material changes to the Regulations, these have been reflected in the final version of the Regulations being laid. Further details on the consultation process are set out in the Regulatory Impact Assessment in Part 2.

A summary report of the consultation responses is available on the Welsh Government website at:

<https://consultations.gov.wales/consultations/phase-1-implementation-regulation-and-inspection-social-care-wales-act-2016>

PART 2 – REGULATORY IMPACT ASSESSMENT

1. The Social Care Wales (Extension of Meaning of “Social Care Worker”) Regulations 2016 (Affirmative Procedure)

Section 79 (1) of the Regulation and Inspection of Social Care (Wales) Act 2016 (the 2016 Act) sets out a definition of those workers who are considered to be “social care workers” under that Act. These regulations made under section 79(2) provide the Welsh Ministers with the power to broaden the definition of who can be considered to be social care workers for the purposes of the provision of support by SCW and the Code of Professional Practice for Social Care.

Options

Option 1: Do nothing

In the event that these regulations are not made, the definition of “social care worker” would be limited to the definition outlined at section 79(1) of the 2016 Act. This would prevent SCW from supporting the broader workforce or from developing specific training programmes to focus on “specialisms” such as dementia care, as these would fall outside of its specified remit.

Option 2: Bring Regulations into force

These regulations will ensure that SCW has the power to support and work with the wider social care workforce to improve standards within the sector and to focus its efforts to meet specific issues as and when considered necessary. This will reinforce SCW’s general aim to maintain a broad and inclusive approach to the sector and respond positively to the multi-disciplinary nature of the workforce, the Welsh Government’s integration agenda between Health and Social Care and any future changes in the sector.

Costs & benefits / Risks

Costs, risks and benefits for Option 1:

There are no additional costs were these regulations not made, as the definition of social care worker would not be added to at all, and the role and remit of SCW would not be extended to any additional workers.

Costs, risks and benefits for Option 2:

These regulations are intended to preserve the existing scope of the definition of “social care worker” and also to expand it to include groups of workers not previously considered to be social care workers. These additional groups include responsible individuals, personal assistants, child minders and day care providers for children. This involves approximately 5,000 individuals. This may consequentially incur costs for the

Care Council for Wales (Care Council), and subsequently SCW, in response to the developmental needs of some of these added groups. The Care Council has recognised there will need to be careful consideration of the development needs for these new groups that will include activities such as:

- Ensuring the code of professional practice applies to these workers
- Developing induction materials
- Contributing to the design of training and qualifications
- Producing practice guidance

This activity will be carried out by SCW through its remit letter. This will be set through a process of negotiation between Welsh Government and SCW to ensure that SCW has the resources necessary to complete the activity within the remit letter for each financial year.

The benefit of implementing these regulations would be that more workers would be recognised as social care workers and therefore fall within the remit of SCW, which will be better able to ensure that high quality services are being delivered and better safeguard the public using them.

2. The Social Care Wales (Specification of Social Care Workers) (Registration) Regulations 2016 (Affirmative Procedure)

Section 80 of the 2016 Act requires SCW to keep a register of social workers, visiting social workers from relevant European States and social care workers of any other description specified by the Welsh Ministers in regulations. These regulations would require SCW to keep a register of those social care workers who manage a regulated service, provide care and support in connection with a children's home or secure accommodation, or who are undertaking a course approved by SCW in order to become registered as a social worker.

Options

Option 1: Do nothing

In the event that these regulations are not made, SCW would be limited to registering only those categories outlined in section 80(a) and (c) of the 2016 Act. This would mean that some groups that are currently required to register with the Care Council for Wales would no longer be subject to this requirement with SCW.

These regulations are therefore necessary to ensure that the requirements contained within the Care Standards Act 2000 and its supporting regulations are replicated fully under the 2016 Act, allowing SCW to continue to register all of the current categories of "social care worker".

Failure to do so would effectively strip back the register and be a step backwards in relation to public protection.

Option 2: Bring Regulations into force

Making these regulations maintains the key processes for regulating and registering the social care workforce in legislation.

In this instance, the Welsh Ministers are seeking to register managers of all regulated services and children's residential workers. The Act will also allow for a response in the future to any changes in the care and support sector, through the making of further regulations. This will effectively future proof the legislation, giving the Welsh Ministers sufficient powers to take account of service modernisation and new categories of workers within the definition of social care worker, and to keep pace with the emergence of new social care services and models of care.

The proposals do not continue the existing requirement for some categories of social care worker (e.g. day care managers, advocacy agency managers and fostering agency managers) to undertake dual registration with both the service and workforce regulators. In future, they will be required to register only with the workforce regulator

Costs & benefits / Risks

Costs and benefits for Option 1:

There are no additional financial costs to not implementing these regulations. However, the unintended consequences of not implementing them would be that the register would not be expanded to provide public assurance and wider scrutiny of the social care workforce. The public and care service providers will not be able to check the suitability or qualifications of large sections of the workforce (who are currently registered with the Care Council for Wales).

Costs and benefits for Option 2:

There are a number of benefits to including additional descriptions of social care workers (including those already required to register with the Care Council for Wales) onto the register, these include providing:

- the Welsh Ministers with the opportunity to react more quickly to emerging models and practices of service provision, because registering workers provides more leverage to setting qualification and other requirements;
- greater opportunity for service users and employers to better scrutinise a wider scope of the workforce to check the eligibility and qualifications of those they seek to employ to provide care;
- the workforce regulator with the focus to develop suitable training programmes to ensure that there continues to be a sustainable and achievable pace of quality and qualified care being delivered to the public in Wales; and
- greater opportunity for the workforce to take a proactive approach to working with the regulator to target its training programmes to meet specific areas of care.

Evidence provided by the Care Council for Wales indicates that there would be an increase in its workload and costs if these Regulations were made, as they would gain responsibility for registering some additional groups of managers (i.e. responsible individuals, day care managers, fostering agency managers, advocacy managers) who were previously registered by the service regulator, the Care and Social Services Inspectorate Wales (CSSIW). The Care Council also expects there to be a need for some developmental work in relation to the qualifications, as well as registration activity, for these groups. The Care Council believe that the numbers within in these groups are comparatively small (e.g. there are currently only 18 advocacy agency managers) and the intention is that careful analysis to determine the needs of each group and the costs of meeting these needs will be undertaken when negotiating the Care Council's remit letters for 2017-18 and 2018-19. Given that the numbers are so small, there will need to be careful consideration of whether it would be value for money to develop and deliver a specific training programme. However, the Care Council have estimated that based on an Associate developing the concept of a module would be approximately £500 a day and take approximately three weeks to complete, including the engagement with the sector. This would equate to an estimated cost of £7,500.

The Regulatory Impact Assessment (RIA) for the 2016 Act identified that the costs of removing the dual registration³ of managers would result in a cost saving to the service regulator (Care and Social Services Inspectorate Wales (CSSIW), estimated at £679,480⁴). It also indicated a potential annual saving of £63,800 a year for service managers who are currently required to be registered but who will no longer have to register with the service regulator.

The RIA for the 2016 Act indicated that, based upon registrations received by CSSIW in 2013/2014, there are an estimated 372 managers applying for registration each year. CSSIW received approximately £11,200 in annual registration fees for fresh applications to the workforce regulator and a further £72,500 in fees for remaining registered with SCW.

The RIA to the 2016 Act also identified a cost of extending registration to a mandatory group of an additional 55,199 workers⁵. That would increase the scope of workforce registration to cover the whole social care workforce. These regulations, however, provide for the extension of registration to some additional social care managers, which is a small proportion of this number, and therefore the additional costs will be much more limited. If we use the estimated number of managers applying to register each year, the estimated additional ongoing annual cost to the workforce regulator, SCW, for registering the increased manager numbers is estimated to be approximately £22,500.⁶ However, some of these additional costs would be offset by the collection of the

³ Para. 7.506 Pages 225 to 229 of the Explanatory Memorandum and RIA for the Bill, published on the National Assembly for Wales website: <http://www.assembly.wales/laid%20documents/pri-ld10429/pri-ld10429-e.pdf>

⁴ Para 7.506 Page 225 of Explanatory Memorandum and RIA for the Bill, published on the National Assembly for Wales website: <http://www.assembly.wales/laid%20documents/pri-ld10429/pri-ld10429-e.pdf>

⁵ Paras. 7.566 and 7.567 Page 238 Explanatory Memorandum and RIA for the Bill, published on the National Assembly for Wales website: <http://www.assembly.wales/laid%20documents/pri-ld10429/pri-ld10429-e.pdf>

⁶ Para 7.525 Page 229 of the Explanatory Memorandum and RIA for the Bill, published on the National Assembly for Wales website: <http://www.assembly.wales/laid%20documents/pri-ld10429/pri-ld10429-e.pdf>

approximate £11,200 (£30 each) in fees that each of the social care managers are required to pay towards their registration. The costs of workforce regulation will be taken into account when negotiating the Care Council's remit letters for 2017-18 and 2018-19.

The introduction of further categories of social care workers in due course would require more careful consideration of the costs incurred by the regulator and require new regulations (including a further RIA) to consider the benefits and to mitigate any potential impacts.

3. The Social Care Wales (Content of Register) Regulations 2016 (Negative Procedure)

Sections 91(1)(a) and (b) of the 2016 Act already set out certain information which must appear on the register, namely the date on which the person was entered onto the register; and the person's qualifications to practise work of the kind to which his or her registration relates.

Section 91(c) and (d) provide the ability to make regulations adding requirements for information about other qualifications and fitness to practise decisions to be included on the register

Section 91(2) allows SCW, by rules, to authorise the registrar to include other information on the register.

Options

Option 1: Do nothing

In the event that these regulations are not made, whilst SCW would be able to add other information it considered to be in the interest of public protection to the register in addition to that outlined in section 91 of the 2016 Act, this would not be fixed as a requirement in regulations. This additional information is fundamental to the regulatory regime and therefore should be set out in regulations.

Option 2: Bring Regulations into force

Making these regulations would maintain the key processes for the workforce regulation in legislation, reinforcing the importance of specific information being included on the register. It would not however, prevent SCW from instructing the registrar to add other information when necessary.

The proposals not only provide the regulator with the power to annotate their registers to include other qualifications or experience that a registrant could bring to their role, but also follows the recommendations on recording fitness to practice actions outlined by the Law Commission to help protect the public.

Costs & benefits / Risks

Costs and benefits for Option 1:

There are no additional financial costs to not implementing these regulations. However, the unintended consequences of not implementing them would be that the register would not include essential information that could provide public assurance about the workforce.

Costs and benefits for Option 2:

Whilst there is likely to be some minimal additional costs in implementing this regulation (i.e. some ICT costs to incorporating the changes to the presentation of the register), the Care Council estimate that the transition costs associated with amending this aspect of the workforce database and communicating the change to the relevant workforce would equate to approximately £1,800 and they expect that these costs can be absorbed by SCW. It is expected the workforce regulator will communicate the change to social care providers who, in turn, will inform social care workers about the proposed change. There is a wider programme of work to amend the workforce database, which Care Council are currently undertaking as part of the wider implementation of the 2016 Act and its transition to SCW. The Welsh Government is working with the Care Council to ensure that these costs are met as part of the existing funding streams and the identified transition costs outlined within the RIA for the 2016 Act.

We do not anticipate any additional costs to the individual by these regulations, as they will allow the workforce regulator to determine what information is published as part of the register. These regulations do not prescribe any additional information that is required as part of the individual's application.

4. The Social Care Wales (List of Persons Removed from the Register) Regulations 2016 (Negative Procedure)

Act, SCW will publish a list of persons whose entries in the register have been removed under section 110(1) of the 2016 Act. Regulations made under section 110(6) may make provision about the form and content of the list; the publication of the list or of specified information from the list, and the circumstances in which an entry relating to a person must be removed from the list.

These regulations mainly set out requirements to the way information which is already gathered by the Care Council must be published on the list; there is no requirement on the Care Council to collect any new information in addition to that which it already collates.

Options

Option 1: Do nothing

In the event that these regulations are not made, the workforce regulator (SCW) would be required to present a list of those removed from the register, but would not be provided with the method of doing this or the circumstances in which an entry must be removed from this list. This means that the regulations are required to complete the process (i.e. set out the way in which the content of the list is presented and the rules governing when a registrant is removed from the list).

Option 2: Bring Regulations into force

The information provided in the updated list of those removed from the register would provide a data set for both the public and potential employers on those care workers who have faced the sanction of removal from the register and who have been barred from working in the care sector.

Costs & benefits / Risks

Costs and benefits for Option 1:

Failure to implement these regulations would mean that SCW could not take a comprehensive approach to maintaining a list of the workforce who have been removed from the register. This would be a significant threat to public protection, as the public and employers would have limited ability to check on whether anyone working as a social care worker had been subject to removal from the register. This could raise the risk of someone who might have been involved in the delivery of poor or potentially harmful or negligent care being allowed to continue working with vulnerable people

Costs and benefits for Option 2:

The implementation of these regulations would help to mitigate the risk of someone continuing to be employed to provide care to vulnerable people, who might have been removed from the register. The additional information contained within the list that SCW would publish would also be useful for service users and their families or carers to check whether a potential care provider is suitable to deliver the care they require.

Whilst there is likely to be some minimal additional costs in implementing this regulation (i.e. some ICT costs to incorporating the changes to the presentation of the list of persons removed), the Care Council estimate that these will equate to approximately £1,800 and will be absorbed by SCW as part of the wider programme of work to amend the workforce database currently being undertaken as part of the implementation of the 2016 Act and its transition to SCW. The Welsh Government is working with the Care Council to ensure that these costs are met as part of the existing funding streams and the identified transition costs outlined within the RIA for the 2016 Act.

5. The Social Care Wales (Constitution of the Panels: Prescribed Persons) Regulations 2016 (Negative Procedure)

SCW are under a duty to make provisions to establish panels pursuant to section 174 of the Act. Section 174(5) sets out those persons who are prohibited from being members of those panels, these include:

- (a) a person who is a member or a member of staff of:
 - (i) Social Care Wales;
 - (ii) the Health and Care Professions Council;
 - (iii) the Scottish Social Services Council; or
 - (iv) the Northern Ireland Social Care Council;
- (b) a prescribed person.

The regulations under section 174(5)(b) prescribe additional persons who are prohibited from being members of a panel. The Care Council already has a series of rules around the setting up of panels and clear guidance on who can sit on which ones to avoid conflicts of interests, etc.

Options

Option 1: Do nothing

Without these regulations there is a clear potential for panel members to be chosen who may be involved in the investigation and adjudication processes, which could lead to the perception or reality of a biased judgement and an unfair hearing. There is a necessity for a clear separation of roles between those that investigate and those that pass judgement in relation to matters referred to SCW.

There is also a need for these regulations to ensure that the panels follow the approach recommended by the Law Commission to guaranteeing clarity, transparency and fairness whilst also ensuring that the public are safeguarded from inappropriate behaviour and poor care.

Option 2: Bring Regulations into force

Whilst making these regulations will continue the status quo in many respects (e.g. provide for panels, agreed through the rules developed by the SCW) they will ensure that there is a clear separation of roles between those that investigate and those that pass judgement in relation to matters referred to SCW. The regulations will ensure that are fair hearings and that the panels follow the approach recommended by the Law Commission to such panels.

Costs & benefits / Risks

Costs and benefits for Option 1:

The consequence of not implementing these regulations would be that the panels would not be in keeping with the recommendations of the Law Commission in guaranteeing clarity, transparency and fairness whilst also ensuring that the public are safeguarded from inappropriate behaviour and poor care.

There is considerable risk that, if SCW cannot set the rules that govern the population and governance of the various panels appropriately, there could be members appointed that could lead to conflicts of interest (i.e. who may have been involved in investigating possible issues to be considered by that panel), which could lead to the perception or reality of biased or unfair decisions, or the breach of human rights laws. This would leave the panels open to greater examples of challenge and increase the number of appeals or other court action that would be both costly to the public purse and damage the reputation of the regulator

Costs and benefits for Option 2:

Evidence provided by the Care Council for Wales indicates that there would be no additional costs incurred by these regulations, as this part of the 2016 Act reiterates the current situation and merely adds a number of other groups to the exclusion list of those who can sit on the panels.

The benefit of the regulations is that they will ensure that there is a fair tribunal hearing and that the panels follows the approach of the Law Commission to such panels and abides by human rights legislation.

6. The Social Care Wales (Proceedings before the Panels) Regulations 2016 (Negative Procedure)

The regulations set out under section 175 underline how the three panels (e.g. namely registration appeals panels, fitness to practise panels and interim order panels) will be established and operated by SCW. The regulations make provision about the panels' procedure and allow SCW to make rules about matters relating to such proceedings.

Options

Option 1: Do nothing

In the event that these regulations are not made, there would be nothing in regulations setting out how panels should operate. In addition, SCW would have no powers to set the rules that govern the way such panels operate, are appointed and conduct themselves other than what is set out on the face of the 2016 Act. Failure to enact these regulations would prevent SCW from ensuring that these panels are fair and objective thus opening the panels to greater challenge over any decision they make.

Option 2: Bring Regulations into force

Whilst making these regulations will continue the status quo in many respects (e.g. provide for panels, agreed through the rules developed by the SCW). These regulations will now allow for additional provisions to be introduced such as the creation of paper panels, which would permit panels to gather evidence and report on findings where registrants do not engage in the process or request such a hearing rather than take part in a formal hearing.

The regulations will also ensure that there is a fair tribunal hearing and that the panels follows the Law Commissions approach to such panels and abides by human rights legislation.

Costs & benefits / Risks

Costs and benefits for Option 1:

Without the regulations, SCW would be limited to setting up the panels in accordance with what is on the face of the 2016 Act. This would limit the ability of the panels to conduct their investigations, deliberate their findings and make a fair judgement and set back the good work that these panels have already achieved.

Costs and benefits for Option 2:

These regulations provide greater scope for the SCW to investigate concerns or complaints against the workforce, as it provides new powers to summon witnesses to give evidence or for those facing the panel to submit written evidence if they do not wish to engage with the process. It is not expected that there will be a significant increase in the number of investigations. Figures around the potential costs were included within the RIA for the 2016 Act at page 258⁷ All of this allows for a more inclusive approach and detailed investigation of any potential breach of regulations and the consideration and delivery of a more just and appropriate decision.

Evidence provided by the Care Council for Wales indicates that whilst the 2016 Act largely reiterates the current situation and will not incur any significant additional costs in respect of the implementation of these regulations. However, the Care Council feel that, as the next phase of regulations are brought forward, further analysis and consideration of the potential costs will be required to reflect the Welsh Government's commitment to regulate domiciliary care workers and care workers and this is felt will result in significant future cost.

In respect of issuing a witness summons, it was felt that these regulations would not incur any greater expense than already incurred through the court costs of obtaining such a summons as the use of these methods are limited.

⁷ Para 7.652, page 238 Explanatory Memorandum and RIA for the Bill, published on the National Assembly for Wales website: <http://www.assembly.wales/laid%20documents/pri-ld10429/pri-ld10429-e.pdf>

Competition Assessment

The competition filter test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of firms?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector categorised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

The filter test shows that it is not likely that the regulation will have any detrimental effect on competition; therefore a detailed assessment has not been conducted.

We do not consider it necessary to undertake a competition assessment for these Regulations since they will not affect the business sector in any significant way.

Post implementation review

The post implementation arrangements for regulations can be handled as part of a wider post implementation review of the overarching Regulation and Inspection of Social Care (Wales) Act 2016 ('the 2016 Act') as a whole.

The 2016 Act makes provisions for a number of key reporting mechanisms which will offer a set of clear evidence to inform the post implementation review, and establish how successful the Act has been in achieving its aims of:

- securing the well-being of citizens; and
- improving the quality of social care.

The reporting mechanisms that are being strengthened through regulations, such as those that are the subject of this explanatory memorandum, include:

- Annual reports from service providers

- Annual reports from local authorities and the review of those reports as undertaken in the Annual Review of Performance and Evaluation of Performance by the service regulator.
- The annual report from the Welsh Ministers in their role as service regulator.
- The annual report of the workforce regulator.

In addition, a performance measurement framework has been developed that local authorities will be required to report against under the Social Services and Well-being (Wales) Act 2014. It is anticipated that the information gathered from this additional reporting mechanisms will also contribute to the overall post implementation review of the 2016 Act and its subordinate legislation.

SL(5)032 – The Social Care Wales (Constitutional and Legislative Affairs Committee) Regulations 2016

Agenda Item 3.3 Prescribed Persons)

Background and Purpose

Section 174 of the Regulation and Inspection of Social Care (Wales) Act 2016 requires Social Care Wales to make rules to establish registration appeals panels, fitness to practise panels and interim order panels. Section 174(5)(a) of the Act contains a list of persons who may not be members of a panel.

These Regulations are made under section 174(5)(b) of the Act, which gives Welsh Ministers the power to prescribe additional persons who may not be members of a panel.

Procedure

Negative

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

One point is identified for reporting under Standing Order 21.3 in respect of this instrument (Standing Order 21.3(ii): the instrument is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly).

These Regulations are made under sections of the 2016 Act that are not yet in force. The Welsh Government has confirmed that the relevant sections of the 2016 Act will be commenced before 3 April 2017 (i.e. the date these Regulations come into force). Although the relevant sections of the 2016 Act are not currently in force, the Welsh Ministers can make these Regulations by relying on section 13 of the Interpretation Act 1978 which allows certain powers to be exercised before the relevant sections of the 2016 Act are commenced.

Legal Advisers

Constitutional and Legislative Affairs Committee

28 November 2016



W E L S H S T A T U T O R Y
I N S T R U M E N T S

2016 No. 1099 (W. 263)

SOCIAL CARE, WALES

**The Social Care Wales
(Constitution of Panels: Prescribed
Persons) Regulations 2016**

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Care Council for Wales (“the Council”) was established by Part 4 of the Care Standards Act 2000 for the purposes of promoting high standards of conduct and practise among social care workers and promoting high standards in their training.

The Regulation and Inspection of Social Care (Wales) Act 2016 (“the Act”) renames the Council as Social Care Wales (“SCW”), restates and modifies SCW’s original functions and confers additional functions.

Section 174 of the Act requires SCW to make rules to establish registration appeals panels, fitness to practise panels and interim order panels. Section 174(5)(a) of the Act contains a list of persons who may not be members of a panel.

These Regulations are made under section 174(5)(b) of the Act, which gives Welsh Ministers the power to prescribe additional persons who may not be members of a panel.

Regulation 3 and paragraph 1 of Schedule 1 prescribe, for the purposes of section 174(5)(b) of the Act, the persons who may not be members of any registration appeals panel; paragraph 2 of Schedule 1 prescribes additional persons who may not be members of a registration appeals panel to which a particular matter is referred. Regulations 4 and 5 and Schedules 2 and 3 respectively make similar provision in relation to fitness to practise panels and interim orders panels.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result,

a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Department of Health and Social Services, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2016 No. 1099 (W. 263)

SOCIAL CARE, WALES

**The Social Care Wales
(Constitution of Panels: Prescribed
Persons) Regulations 2016**

Made 15 November 2016

*Laid before the National Assembly
for Wales* 22 November 2016

Coming into force 3 April 2017

The Welsh Ministers, in exercise of the powers conferred by sections 174(5)(b) and 187(1)(b) of the Regulation and Inspection of Social Care (Wales) Act 2016(1), make the following Regulations:

Title, commencement and application

1.—(1) The title of these Regulations is the Social Care Wales (Constitution of Panels: Prescribed Persons) Regulations 2016.

(2) These Regulations come into force on 3 April 2017.

(3) These Regulations apply in relation to Wales.

Interpretation

2. In these Regulations—

“the Act” (“*y Ddeddf*”) means the Regulation and Inspection of Social Care (Wales) Act 2016;

“fitness to practise panels” (“*paneli addasrwydd i ymarfer*”) has the meaning given in section 174(1)(b) of the Act;

“interim orders panels” (“*paneli gorchmynion interim*”) has the meaning given in section 174(1)(c) of the Act;

(1) 2016 anaw 2.

“matter” (*“mater”*) means the subject or issue in respect of which a panel established under section 174(1) of the Act is exercising any function;

“registered person” (*“person cofrestredig”*) has the meaning given in section 164 of the Act;

“registration appeals panels” (*“paneli apelau cofrestru”*) has the meaning given in section 174(1)(a) of the Act;

“relevant body” (*“corff perthnasol”*) means—

- (a) the Education Workforce Council(1);
- (b) the Northern Ireland Social Care Council(2);
- (c) the Scottish Social Services Council(3);
- (d) the National College for Teaching and Leadership(4);
- (e) a body responsible for the regulation of a profession to which section 60 of the Health Act 1999(5) (regulation of health professions, social workers, other care workers etc.) applies(6);
- (f) a body outside the United Kingdom which is responsible for the regulation of activities which would, in Wales, be regulated by SCW(7).

Prescribed persons – registration appeals panels

3. A person specified in Schedule 1 is prescribed(8) for the purposes of section 174(5)(b) of the Act to the extent that in—

- (a) paragraph 1 of Schedule 1 the person may not be a member of a registration appeals panel;
- (b) paragraph 2 of Schedule 1 the person may not be a member of a registration appeals panel to

-
- (1) The Education Workforce Council is established in accordance with section 2 of the Education (Wales) Act 2014 (anaw 5).
 - (2) The Northern Ireland Social Care Council is established in accordance with section 1 of the Health and Personal Social Services Act (Northern Ireland) 2001 (c. 3).
 - (3) The Scottish Social Services Council is established in accordance with section 43 of the Regulation of Care (Scotland) Act 2001 (asp 8).
 - (4) The National College for Teaching and Leadership is an executive agency of the Department for Education.
 - (5) 1999 c. 8.
 - (6) These bodies are—
 - (i) the General Chiropractic Council,
 - (ii) the General Dental Council,
 - (iii) the General Medical Council,
 - (iv) the General Optical Council,
 - (v) the General Osteopathic Council,
 - (vi) the General Pharmaceutical Council,
 - (vii) the Health and Care Professions Council,
 - (viii) the Nursing and Midwifery Council.
 - (7) See section 67(3) of the Act for the definition of “SCW”.
 - (8) See section 189 of the Act for the definition of “prescribed”.

which an application or appeal relating to a particular matter is referred.

Prescribed persons – fitness to practise panels

4. A person specified in Schedule 2 is prescribed for the purposes of section 174(5)(b) of the Act to the extent that in—

- (a) paragraph 1 of Schedule 2 the person may not be a member of a fitness to practise panel;
- (b) paragraph 2 of Schedule 2 the person may not be a member of a fitness to practise panel to which a particular matter is referred.

Prescribed persons – interim orders panels

5. A person specified in Schedule 3 is prescribed for the purposes of section 174(5)(b) of the Act to the extent that in—

- (a) paragraph 1 of Schedule 3 the person may not be a member of an interim orders panel;
- (b) paragraph 2 of Schedule 3 the person may not be a member of an interim orders panel to which a particular matter is referred.

Rebecca Evans

Minister for Social Services and Public Health, under authority of the Cabinet Secretary for Health, Well-being and Sport, one of the Welsh Ministers
15 November 2016

SCHEDULE 1 Regulation 3

Prescribed persons – registration appeals panels

1.—(1) A person involved for the time being in an investigation under section 125 of the Act.

(2) A person appointed for the time being as—

- (a) an assessor or examiner, or
- (b) a legal or other adviser,

to the registration appeals panel.

2.—(1) Where a registration appeals panel is considering an application in accordance with section 98 or 99, or an appeal in accordance with section 101 of the Act, a person who—

- (a) has at any time been appointed to give preliminary consideration under section 119 of the Act to a matter may not be a member of the registration appeals panel to which an application relating to the matter is referred;
- (b) has at any time been involved in an investigation under section 125 of the Act in relation to a matter may not be a member of a registration appeals panel to which an application relating to the matter is referred;
- (c) is or has been a member of an interim orders panel whose proceedings related to a matter may not be a member of the registration appeals panel to which an application or appeal relating to the matter is referred;
- (d) is or has been appointed as—
 - (i) an assessor or examiner, or
 - (ii) a legal or other adviser,

to an interim orders panel whose proceedings related to a matter may not be a member of the registration appeals panel to which an application or appeal relating to the matter is referred;

- (e) is or has been a member of fitness to practise panel whose proceedings related to a matter may not be a member of the registration appeals panel to which an application relating to the matter is referred;
- (f) is or has been appointed as—
 - (i) an assessor or examiner, or
 - (ii) a legal or other adviser,

to a fitness to practise panel whose proceedings related to a matter may not be a

member of the registration appeals panel to which an application relating to the matter is referred.

(2) Where the circumstances in sub-paragraph (3) apply, a person who has at any time considered or adjudicated upon a question or issue on behalf of a relevant body may not be a member of the registration appeals panel to which an application or appeal relating to the matter is referred.

(3) The circumstances are—

- (a) the application or appeal is made by a registered person who is also registered with the relevant body; and
- (b) the relevant body has considered or adjudicated upon a question or issue which relates to the registered person's registration with that body and which also relates to the matter.

SCHEDULE 2 Regulation 4

Prescribed persons – fitness to practise panels

1.—(1) A person involved for the time being in an investigation under section 125 of the Act.

(2) A person appointed for the time being—

- (a) an assessor or examiner, or
- (b) a legal or other adviser,

to the fitness to practise panel.

2.—(1) A person who has at any time been appointed to give preliminary consideration under section 119 of the Act to a matter may not be a member of the fitness to practise panel to which the matter is referred.

(2) A person who has at any time been involved in an investigation under section 125 of the Act in relation to a matter may not be a member of the fitness to practise panel to which the matter is referred.

(3) A person who is or has been a member of an interim orders panel whose proceedings related to a matter may not be a member of the fitness to practise panel to which the matter is referred.

(4) A person who is or has been appointed as—

- (a) an assessor or examiner, or
- (b) a legal or other adviser,

to an interim orders panel whose proceedings related to a matter may not be a member of the fitness to practise panel to which the matter is referred.

(5) Where the circumstances in sub-paragraph (6) apply, a person who has at any time considered or adjudicated upon a question or issue on behalf of a relevant body may not be a member of the fitness to practise panel to which the matter is referred.

(6) The circumstances are—

- (a) the matter relates to a registered person who is also registered with a relevant body; and
- (b) the relevant body has considered or adjudicated upon a question or issue which relates to the registered person's registration with the that body and which also relates to the matter.

SCHEDULE 3 Regulation 5

**Prescribed persons – interim orders
panels**

1.—(1) A person involved for the time being in an investigation under section 125 of the Act.

(2) A person appointed for the time being—

- (a) an assessor or examiner, or
- (b) a legal or other adviser,

to the interim orders panel.

2.—(1) A person who has at any time been appointed to give preliminary consideration under section 119 of the Act to a matter may not be a member of the interim orders panel to which the matter is referred.

(2) A person who has at any time been involved in an investigation under section 125 of the Act in relation to a matter may not be a member of the interim orders panel to which the matter is referred.

(3) Where the circumstances in sub-paragraph (4) apply, a person who has at any time considered or adjudicated upon a question or issue on behalf of a relevant body may not be a member of the interim orders panel to which the matter is referred.

(4) The circumstances are—

- (a) the matter relates to a registered person who is also registered with a relevant body; and
- (b) the relevant body has considered or adjudicated upon a question or issue which relates to the registered person's registration with that body and which also relates to the matter.

SL(5)033 – The Social Care Wales (List of Persons Removed from the Register) Regulations 2016

Agenda Item 3.4

Background and Purpose

Under section 80(1) of the Regulation and Inspection of Social Care (Wales) Act 2016 (“the Act”), Social Care Wales (“SCW”) must keep a register of social workers, certain social care workers and visiting social workers from relevant European States. Section 110(1) of the Act provides that SCW must also keep a list of persons whose entries in the register have been removed in the circumstances specified in section 110(2) and (4) of the Act.

In these Regulations, the Welsh Ministers make provision about the content of the list of persons removed from the register and the publication of the list, or specified information from the list, pursuant to section 110(6) of the Act.

Procedure

Negative

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

One point is identified for reporting under Standing Order 21.3 in respect of this instrument (Standing Order 21.3(ii): the instrument is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly).

These Regulations are made under sections of the 2016 Act that are not yet in force. The Welsh Government has confirmed that the relevant sections of the 2016 Act will be commenced before 3 April 2017 (i.e. the date these Regulations come into force). Although the relevant sections of the 2016 Act are not currently in force, the Welsh Ministers can make these Regulations by relying on section 13 of the Interpretation Act 1978 which allows certain powers to be exercised before the relevant sections of the 2016 Act are commenced.



Legal Advisers

Constitutional and Legislative Affairs Committee

28 November 2016



W E L S H S T A T U T O R Y
I N S T R U M E N T S

2016 No. 1111 (W. 268)

SOCIAL CARE, WALES

**The Social Care Wales (List of
Persons Removed from the
Register) Regulations 2016**

EXPLANATORY NOTE

(This note is not part of the Regulations)

Under section 80(1) of the Regulation and Inspection of Social Care (Wales) Act 2016 (“the Act”), Social Care Wales (“SCW”) must keep a register of social workers, certain social care workers and visiting social workers from relevant European States. Section 110(1) of the Act provides that SCW must also keep a list of persons whose entries in the register have been removed in the circumstances specified in section 110(2) and (4) of the Act.

In these Regulations, the Welsh Ministers make provision about the content of the list of persons removed from the register and the publication of the list, or specified information from the list, pursuant to section 110(6) of the Act.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Department of Health and Social Services, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2016 No. 1111 (W. 268)

SOCIAL CARE, WALES

**The Social Care Wales (List of
Persons Removed from the
Register) Regulations 2016**

Made 15 November 2016

Laid before the National Assembly for Wales
22 November 2016

Coming into force 3 April 2017

The Welsh Ministers in exercise of the powers conferred upon them by sections 110(6) and 187(1)(b) of the Regulation and Inspection of Social Care (Wales) Act 2016⁽¹⁾ make the following Regulations.

Title, commencement and application

1.—(1) The title of these Regulations is the Social Care Wales (List of Persons Removed from the Register) Regulations 2016.

(2) These Regulations come into force on 3 April 2017.

(3) These Regulations apply in relation to Wales.

Interpretation

2. In these Regulations—

“the Act” (“*y Ddeddf*”) means the Regulation and Inspection of Social Care (Wales) Act 2016;

“SCW” (“*GCC*”) means Social Care Wales⁽²⁾.

Content of the list

3. An entry on the list of persons removed from the register which must be kept by SCW under section

(1) 2016 anaw 2.

(2) The Care Council for Wales was renamed Social Care Wales by section 67(3) of the Act.

110(1) of the Act must show in respect of each person—

- (a) the name of the person,
- (b) the date on which the person was removed from the register, and
- (c) which of the circumstances in section 110(2) or (4) of the Act caused their entry in the register to be removed.

Publication

4.—(1) SCW must publish on its website an up-to-date list of persons removed from the register, which must include the information specified at paragraphs (a) to (c) of regulation 3.

(2) SCW must comply with any reasonable request made by a person for a copy of, or specified information from, the list.

Rebecca Evans

Minister for Social Services and Public Health, under authority of the Cabinet Secretary for Health, Wellbeing and Sport, one of the Welsh Ministers
15 November 2016

Agenda Item 3.5 Social Care Wales (Content of Register)

Regulations 2016

Background and Purpose

These Regulations specify information which must be included on the register under section 91(1)(c) and (d) of the Regulation and Inspection of Social Care (Wales) Act 2016 (“the Act”).

Under section 80(1) of the Act, Social Care Wales (“SCW”) must keep a register of social workers, certain social care workers and visiting social workers from relevant European States. Section 91(1)(a) and (b) of the Act require that register to show specified information relating to each person on the register, and paragraphs (c) and (d) provide that the register must also show such other qualifications, knowledge or experience relevant to the person’s registration, and such information relating to the person’s fitness to practise, as may be specified by the Welsh Ministers by regulations.

Procedure

Negative

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

One point is identified for reporting under Standing Order 21.3 in respect of this instrument (Standing Order 21.3(ii): the instrument is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly).

These Regulations are made under sections of the 2016 Act that are not yet in force. The Welsh Government has confirmed that the relevant sections of the 2016 Act will be commenced before 3 April 2017 (i.e. the date these Regulations come into force). Although the relevant sections of the 2016 Act are not currently in force, the Welsh Ministers can make these Regulations by relying on section 13 of the Interpretation Act 1978 which allows certain powers to be exercised before the relevant sections of the 2016 Act are commenced.



Legal Advisers

Constitutional and Legislative Affairs Committee

28 November 2016



National Assembly for Wales

Constitutional and Legislative Affairs Committee

Back Page 79

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2016 No. 1097 (W. 261)

SOCIAL CARE, WALES

**The Social Care Wales (Content of
Register) Regulations 2016**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations specify information which must be included on the register under section 91(1)(c) and (d) of the Regulation and Inspection of Social Care (Wales) Act 2016 (“the Act”).

Under section 80(1) of the Act, Social Care Wales (“SCW”) must keep a register of social workers, certain social care workers and visiting social workers from relevant European States. Section 91(1)(a) and (b) of the Act require that register to show specified information relating to each person on the register, and paragraphs (c) and (d) provide that the register must also show such other qualifications, knowledge or experience relevant to the person’s registration, and such information relating to the person’s fitness to practise, as may be specified by the Welsh Ministers by regulations.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Department of Health and Social Services, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2016 No. 1097 (W. 261)

SOCIAL CARE, WALES

The Social Care Wales (Content of Register) Regulations 2016

Made 15 November 2016

*Laid before the National Assembly
for Wales* 22 November 2016

Coming into force 3 April 2017

The Welsh Ministers in exercise of the powers conferred upon them by sections 91(1)(c) and (d) and 187(1)(b) of the Regulation and Inspection of Social Care (Wales) Act 2016⁽¹⁾ make the following Regulations.

Title, commencement and application

1.—(1) The title of these Regulations is the Social Care Wales (Content of Register) Regulations 2016.

(2) These Regulations come into force on 3 April 2017.

(3) These Regulations apply in relation to Wales.

Interpretation

2.—(1) In these Regulations—

“the Act” (“*y Ddeddf*”) means the Regulation and Inspection of Social Care (Wales) Act 2016;

“SCW” (“*GCC*”) means Social Care Wales⁽²⁾.

(2) References to sections in these Regulations are references to sections of the Act.

Content of the register

3.—(1) An entry in the register in respect of a person must show—

(1) 2016 anaw 2.

(2) The Care Council for Wales was renamed Social Care Wales by section 67(3) of the Act.

- (a) such of the qualifications, knowledge or experience specified in the Schedule to these Regulations as are possessed by the person (if any), and
 - (b) where a relevant decision has been made in respect of the person's fitness to practise, the information specified in regulations 4 to 9.
- (2) In this regulation, "relevant decision" means—
- (a) subject to paragraph (3), a determination by a fitness to practise panel that a registered person's fitness to practise is impaired under the following sections—
 - (i) section 138 (disposals by fitness to practise panel: finding of impairment);
 - (ii) section 152 (review of undertakings: disposals by fitness to practise panel);
 - (iii) section 153 (review of conditional registration orders: disposals by fitness to practise panel);
 - (iv) section 154 (review of suspension orders: disposals by fitness to practise panel);
 - (v) section 155 (review of indefinite suspension orders);
 - (b) a decision by a fitness to practise panel or an interim orders panel to make an interim order under section 144 (interim orders) or to confirm or vary an interim order under section 147 (review of interim orders: possible decisions),
 - (c) a decision by a fitness to practise panel to agree undertakings under section 136(1), 152(5) or (6), 153(4), 154(4) or 155(7) following an admission by a registered person that his or her fitness to practise is impaired,
 - (d) a decision by a fitness to practise panel to give advice or a warning to a registered person under section 137 (disposals by fitness to practise panel: finding of no impairment), 152(3), 153(3), 154(3) or 155(6) following a finding that his or her fitness to practise is not impaired,
 - (e) a decision by SCW to issue a warning to a registered person under section 126(3)(c),
 - (f) a decision by SCW to agree undertakings with a registered person under section 126(3)(d), and
 - (g) a decision by a registration appeals panel to restore a person to the relevant part of the register under section 98(1)(a).
- (3) A determination by a fitness to practise panel that a registered person's fitness to practise is impaired is not a relevant decision if the disposal made is—

- (a) a removal order under section 138(9) (subject to subsection (10)), 152(8)(e), 153(9)(d) or 154(8)(d) (subject to subsection (9)), or
- (b) an order for removal by agreement under section 135(2), 152(2), 153(2), 154(2) or 155(5).

Relevant information: impaired fitness to practise

4.—(1) This regulation applies where a fitness to practise panel has made a relevant decision specified in regulation 3(2)(a).

(2) The entry in the register in respect of the registered person (the “relevant entry”) must—

- (a) state that the person’s fitness to practise has been found to be impaired, and
- (b) specify the way in which the fitness to practise panel disposed of the matter under section 138 or any of sections 152 to 155.

(3) Where the fitness to practise panel has agreed undertakings with the registered person, the relevant entry must specify the undertakings that have been agreed, except for any undertakings relating to the person’s physical or mental health.

(4) Where the fitness to practise panel has made a conditional registration order, the relevant entry must specify the conditions imposed on the registered person’s registration, except for any conditions relating to his or her physical or mental health.

(5) Where the fitness to practise panel has made a conditional registration order which has ceased to have effect, the relevant entry must continue to indicate that the person was previously subject to such an order and the dates for which the order had effect.

(6) Where the fitness to practise panel has made a suspension order which has ceased to have effect, the relevant entry must continue to indicate that the person had been subject to such an order and the dates for which the order had effect.

Relevant information: interim orders

5.—(1) This regulation applies where a fitness to practise panel or an interim orders panel has made a relevant decision specified in regulation 3(2)(b).

(2) The entry in the register in respect of the registered person must—

- (a) state the type of interim order that has been made or confirmed, or (in the case of a variation of an interim order under section 147) the variation that has been made, and
- (b) where the order is an interim conditional registration order, specify the conditions imposed on the person’s registration, except

for any conditions relating to his or her physical or mental health.

Relevant information: undertakings following admission of impairment

6.—(1) This regulation applies where a fitness to practise panel has made a relevant decision specified in regulation 3(2)(c).

(2) The entry in the register in respect of the registered person must—

- (a) state that the person admits that his or her fitness to practise is impaired, and
- (b) specify the undertakings that have been agreed, except for any undertakings relating to the person's physical or mental health.

Relevant information: finding of no impairment by a fitness to practise panel

7.—(1) This regulation applies where a fitness to practise panel has made a relevant decision specified in regulation 3(2)(d).

(2) The entry in the register in respect of the registered person must state—

- (a) that there has been a finding that the person's fitness to practise is not impaired, and
- (b) that the fitness to practise panel has given advice or a warning (as the case may be) to the person.

Relevant information: restoration

8. Where an entry in respect of a person has been restored to the relevant part of the register under section 98(1)(a), the entry must also state that the person had been removed from the register following a finding of impairment of fitness to practise.

Relevant information: decisions by SCW

9.—(1) Where SCW has issued a warning to a registered person under section 126(3)(c), the entry in the register in respect of the person must state—

- (a) that the question of impairment of the person's fitness to practise has not been referred to a fitness to practise panel, and
- (b) that a warning has been issued by SCW.

(2) Where SCW has agreed undertakings with a registered person under section 126(3)(d), the entry in the register in respect of the person must—

- (a) state that the question of impairment of the person's fitness to practise has not been referred to a fitness to practise panel, and

- (b) specify the undertakings that have been agreed, except for any undertakings relating to the person's physical or mental health.

Rebecca Evans

Minister for Social Services and Public Health, under
authority of the Cabinet Secretary for Health,
Wellbeing and Sport, one of the Welsh Ministers
15 November 2016

SCHEDULE Regulation 3(1)(a)

Content of the register – Relevant qualifications, knowledge or experience

1. Approval by any social services authority whose area is in Wales to act as an approved mental health professional pursuant to section 114(1) of the Mental Health Act 1983**(1)**.

(1) 1983 c. 20.

SL(5)035 – The Social Care Wales (Extension of the “Social Care Worker”) Regulations 2016

Agenda Item 3.6

Background and Purpose

Section 79(2)(b) of the Regulation and Inspection of Social Care (Wales) Act 2016 (“the Act”) empowers the Welsh Ministers to make regulations to provide that certain persons are to be treated as social care workers.

These Regulations provide that the persons who are to be treated as social care workers are those described in paragraphs (a) to (i) of section 79(3) of the 2016 Act. Those include persons designated as responsible individuals by service providers; persons engaged in work for the purposes of a local authority’s social services functions (or in the provision of services similar to those provided in the exercise of those functions); persons engaged in the provision of unregulated personal care and support for any person; persons registered as child minders or as providers of day care for children; persons who manage or are employed in an undertaking carrying on an employment business or employment agency in connection with the provision of personal care and support to any person in Wales; certain social work students and inspectors of specified social care services.

Procedure

Affirmative

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

One point is identified for reporting under Standing Order 21.3 in respect of this instrument (Standing Order 21.3(ii): the instrument is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly).

These Regulations are made under sections of the 2016 Act that are not yet in force. The Welsh Government has confirmed that the relevant sections of the 2016 Act will be commenced before 3 April 2017 (i.e. the date these Regulations come into force).



Although the relevant sections of the 2016 Act are not currently in force, the Welsh Ministers can make these Regulations by relying on section 13 of the Interpretation Act 1978 which allows certain powers to be exercised before the relevant sections of the 2016 Act are commenced.

Legal Advisers

Constitutional and Legislative Affairs Committee

28 November 2016



Draft Regulations laid before the National Assembly for Wales under section 187(2)(m) of the Regulation and Inspection of Social Care (Wales) Act 2016, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2016 No. (W.)

SOCIAL CARE, WALES

**The Social Care Wales (Extension
of Meaning of “Social Care
Worker”) Regulations 2016**

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 79(2)(b) of the Regulation and Inspection of Social Care (Wales) Act 2016 (“the Act”) empowers the Welsh Ministers to make regulations to provide that certain persons are to be treated as social care workers.

These Regulations provide that the persons who are to be treated as social care workers are those described in paragraphs (a) to (l) of section 79(3) of the Act. Those include persons designated as responsible individuals by service providers; persons engaged in work for the purposes of a local authority’s social services functions (or in the provision of services similar to those provided in the exercise of those functions); persons engaged in the provision of unregulated personal care and support for any person; persons registered as child minders or as providers of day care for children; persons who manage or are employed in an undertaking carrying on an employment business or employment agency in connection with the provision of personal care and support to any person in Wales; certain social work students and inspectors of specified social care services.

The persons mentioned above are specified as social care workers for the purposes of the functions of Social Care Wales (“SCW”) under sections 68(2), 112, 114 and 116 of the Act. Under section 68(2) of the Act, SCW must exercise its functions with a view to promoting and maintaining high standards in the

provision of care and support services, high standards of conduct and practice among social care workers, high standards in the training of social care workers and public confidence in social care workers. Section 112 of the Act provides that SCW must prepare and publish codes of practice setting standards of conduct and practice expected of both social care workers and of any persons employing or seeking to employ social care workers. Section 114 of the Act empowers SCW to make rules to approve certain courses and section 116 sets out other functions of SCW in respect of education and training.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Department of Health and Social Services, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

Draft Regulations laid before the National Assembly for Wales under section 187(2)(m) of the Regulation and Inspection of Social Care (Wales) Act 2016, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2016 No. (W.)

SOCIAL CARE, WALES

**The Social Care Wales (Extension
of Meaning of “Social Care
Worker”) Regulations 2016**

Made

Coming into force

3 April 2017

The Welsh Ministers, in exercise of the powers conferred upon them by sections 79(2)(b) and 187(1)(b) of the Regulation and Inspection of Social Care (Wales) Act 2016(1) make the following Regulations.

In accordance with section 187(2)(m) of that Act, a draft of this instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.

Title, commencement and application

1.—(1) The title of these Regulations is the Social Care Wales (Extension of Meaning of “Social Care Worker”) Regulations 2016.

(2) These Regulations come into force on 3 April 2017.

(3) These Regulations apply in relation to Wales.

Interpretation

2. In these Regulations—

(1) 2016 anaw 2.

“the Act” (“*y Ddeddf*”) means the Regulation and Inspection of Social Care (Wales) Act 2016;

“SCW” (“*GCC*”) means Social Care Wales⁽¹⁾.

Persons to be treated as social care workers

3. For the purposes only of the functions of SCW under sections 68(2), 112, 114 and 116 of the Act, persons of any of the descriptions in paragraphs (a) to (l) of section 79(3) of the Act are to be treated as social care workers.

Minister for Social Services and Public Health, under
authority of the Cabinet Secretary for Health,
Wellbeing and Sport, one of the Welsh Ministers
Date

(1) The Care Council for Wales was renamed Social Care Wales by section 67(3) of the Act.

SL(5)036 – The Social Care Wales (Specification of Social Care Workers) (Registration) Regulations 2016

Agenda Item 3.7

Background and Purpose

Section 80(1)(a) and (b) of the Regulation and Inspection of Social Care (Wales) Act 2016 (“the Act”) require Social Care Wales to keep a register of social workers and social care workers of any other description specified by the Welsh Ministers in regulations. These Regulations specify the descriptions of social care workers for whom a register must be kept.

Procedure

Affirmative

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

One point is identified for reporting under Standing Order 21.3 in respect of this instrument (Standing Order 21.3(ii): the instrument is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly).

These Regulations are made under sections of the 2016 Act that are not yet in force. The Welsh Government has confirmed that the relevant sections of the 2016 Act will be commenced before 3 April 2017 (i.e. the date these Regulations come into force). Although the relevant sections of the 2016 Act are not currently in force, the Welsh Ministers can make these Regulations by relying on section 13 of the Interpretation Act 1978 which allows certain powers to be exercised before the relevant sections of the 2016 Act are commenced.

Legal Advisers

Constitutional and Legislative Affairs Committee

28 November 2016



Draft Regulations laid before the National Assembly for Wales under section 187(2)(n) of the Regulation and Inspection of Social Care (Wales) Act 2016, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2016 No. (W.)

SOCIAL CARE, WALES

The Social Care Wales
(Specification of Social Care
Workers) (Registration) Regulations
2016

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 80(1)(a) and (b) of the Regulation and Inspection of Social Care (Wales) Act 2016 (“the Act”) require Social Care Wales to keep a register of social workers and social care workers of any other description specified by the Welsh Ministers in regulations. These Regulations specify the descriptions of social care workers for whom a register must be kept.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Department of Health and Social Services, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

Draft Regulations laid before the National Assembly for Wales under section 187(2)(n) of the Regulation and Inspection of Social Care (Wales) Act 2016, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2016 No. (W.)

SOCIAL CARE, WALES

The Social Care Wales
(Specification of Social Care
Workers) (Registration) Regulations
2016

Made

Coming into force

3 April 2017

The Welsh Ministers, in exercise of the powers conferred upon them by sections 80(1)(b) and 187(1)(b) of the Regulation and Inspection of Social Care (Wales) Act 2016(1), make the following Regulations.

In accordance with section 187(2)(n) of that Act, a draft of this instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.

Title, commencement and application

1.—(1) The title of these Regulations is the Social Care Wales (Specification of Social Care Workers) (Registration) Regulations 2016.

(2) These Regulations come into force on 3 April 2017.

(3) These Regulations apply in relation to Wales.

Interpretation

2. In these Regulations—

(1) 2016 anaw 2.

“the Act” (“*y Ddeddf*”) means the Regulation and Inspection of Social Care (Wales) Act 2016;
“SCW” (“*GCC*”) means Social Care Wales(1).

Specification of social care workers

3.—(1) The social care workers described in paragraph (2) are specified for the purposes of section 80(1)(b) of the Act (the register).

(2) The social care workers described are those persons—

- (a) who manage a place at or from which a regulated service(2) is provided;
- (b) who in the course of their employment with a service provider(3), provide care and support to any person in Wales in connection with—
 - (i) a care home service within the meaning of Part 1 of the Act which is provided wholly or mainly to children, or
 - (ii) a secure accommodation service within the meaning of paragraph 2 of Schedule 1 to the Act,
provided by that provider;
- (c) who are undertaking any course approved by SCW under section 114(1)(a) of the Act (approval of courses etc.) in order to become registered in the social worker part of the register.

Minister for Social Services and Public Health, under authority of the Cabinet Secretary for Health, Wellbeing and Sport, one of the Welsh Ministers
Date

(1) The Care Council for Wales was renamed Social Care Wales by section 67(3) of the Act.
(2) For the meaning of “regulated service”, see section 2 of the Act.
(3) For the meaning of “service provider”, see section 3(1)(c) of the Act.

Rt Hon Alun Cairns MP
Secretary of State for Wales
Wales Office
Gwydyr House
Whitehall
London
SW1A 2NP

24th November 2016

Dear Alun

Wales Bill: Justice in Wales Commission

During our earlier discussion I reaffirmed the importance I attach to establishing a statutory commission on justice in Wales, as underlined in my letter to you of 20 October.

Since you published your draft Wales Bill in October last year, it has been clear that the interaction of a legislative Assembly with a joint England and Wales jurisdiction will continue to be the source of fundamental instability in our devolution settlement. This must be addressed if the proposals in the Wales Bill are to stand a chance of working effectively in even the short to medium term.

In my supplementary evidence to the pre-legislative scrutiny of the draft Bill I proposed a distinct Welsh jurisdiction, supported by a joint courts service, as a pragmatic solution that would recognise the distinct and diverging law in England and in Wales, while maintaining existing administrative arrangements. The Government and Laws in Wales Bill provided for a longer term solution, deferred for ten years.

We have put forward the Commission proposal in a spirit of compromise, to enable serious and sustained consideration of the implications of this for the future of the joint jurisdiction issue. You will have seen the Lord Chief Justice's reported comment this week that this is a matter which must remain under active review.

In the long term there is no question that the issue of the joint jurisdiction must be addressed. It is simply not credible for the UK Government to argue that the joint jurisdiction has served Wales well, when legislative devolution has changed the context fundamentally. There will be increasing divergence of the law applicable in each of Wales and England.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
YP.PrifWeinidog@llyw.cymru • ps.firstminister@gov.wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

I regard this as an unresolved issue that is critical to the viability of the Wales Bill. I am disappointed that Lord Bourne's letter to Peers dated 11 November made only a passing reference to the Commission which suggested no real understanding of its purpose and instead chose to concentrate on the UK Government's officials working group on administrative arrangements for Justice in Wales. I remain of the view that the group is intended to be an internal UK Government (and not an inter-governmental) Working Group, with Terms of Reference intended to reflect UK Government perceptions of the priorities. It cannot therefore be contended that the Welsh Government should necessarily be engaged with the Group's work (and of course the Welsh Government cannot be bound by any recommendations that the Group choose to make).

I believe the Commission that is needed, will be a fundamentally different exercise. It will be made up of senior individuals, with the independence and legal expertise required to carry weight with both governments. It will be a standing commission, enabled to take a long term view and engage widely with stakeholders. It will be transparent and report to both Governments.

We intend to table our amendment again at Report Stage in the Lords, and would urge you to give it further consideration; if you have a non-statutory alternative to offer, it must be one capable of addressing the serious questions likely to arise over the next few years, and in which the UK Government is willing to play an active part.

I am copying this letter to the Presiding Officer; to Leanne Wood AM, Andrew RT Davies AM, Kirsty Williams AM and Neil Hamilton AM; and to Huw Irranca Davies AM (Chair, Constitutional and Legislative Affairs Committee) and Eluned Morgan AM. Also to Lord Bourne and the Peers who spoke on this matter during the first day of the Lords consideration in Committee on 31 October.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Carwyn Jones', written in a cursive style.

CARWYN JONES

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE *Grounds for the Counsel General's application to intervene in the appeal of the Article 50 litigation before the Supreme Court*

DATE *21 November 2016*

BY *Mick Antoniw AM, Counsel General for Wales*

In light of the Supreme Court's confirmation that my application to intervene in the appeal of the above matter before it has been granted, I am publishing the grounds on which that application was made.

Given that this matter is subject to ongoing litigation, I do not propose to give further details of my submissions at this time. Further details of my written submissions will be given nearer the date of the hearing.

The grounds were as follows:

The applicant is the Counsel General for Wales, who is appointed by Her Majesty and is a member of the Welsh Government (see section 49 of the Government of Wales Act 2006 ("GoWA 2006")). He considers that this appeal raises extremely important constitutional issues regarding the legal framework for devolution in Wales and the United Kingdom and will argue that the judgment of the Divisional Court should be upheld. The Counsel General instructed leading and junior counsel to attend the three-day hearing before the Divisional Court on an official watching brief. The Court acknowledged their presence in paragraph 7 of its judgment. Leading counsel for the Scottish Government also appeared before the Divisional Court in the same capacity.

The Counsel General is directly interested in the appeal because it raises questions about whether the Prerogative can be used to take steps which affect the legislative competence of the National Assembly for Wales, the powers of the Welsh Ministers, and more generally the constitutional relationships of the Assembly and the Welsh Government to the Westminster Parliament and the UK Government, respectively. The Divisional Court noted at paragraph 102 of its judgment that the Interested Parties had advanced arguments about the effect of giving notification under Article 50 TEU on the devolution statutes. However, the Court did not consider it necessary to consider these arguments in light of

its conclusion that the Prerogative could not be used to remove rights arising under section 2(1) of the European Communities Act 1972 (ibid).

The Counsel General therefore wishes to make written and oral submissions on the use of the Prerogative to give notice to withdraw from the European Union under Article 50 TEU, thereby overriding certain provisions of GoWA 2006 and altering the powers of the National Assembly and the Welsh Ministers. Further, the Counsel General wishes to make submissions on the limits of the Prerogative power to affect statutes which have “constitutional” status such as GoWA 2006 (as addressed by the Divisional Court at paragraphs 43-44, 82 and 88 of its judgment), as well as the use of Prerogative to override the constitutional principles underpinning devolution in the United Kingdom. The Divisional Court addressed the significance of constitutional principles in paragraphs 82-84 of its judgment.

The Counsel General also seeks permission to file a short witness statement of a leading constitutional academic, Dr Andrew Blick, providing an historic and constitutional perspective on the inappropriateness of using the Prerogative to bring about fundamental changes, particularly to the devolution framework.

*Finally, it is understood that a parallel Northern Ireland claim *Re McCord’s Application* [2016] NIQB 85 will be joined to this appeal. The Attorney General for Northern Ireland will appear before this Court because he is a party to that claim. In the circumstances, it is clearly appropriate that all of the devolved administrations should be represented before the Court, given that the appeal raises such important issues for the devolution framework in the United Kingdom as a whole.*

Huw Irranca Davies AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales
Tŷ Hywel
Cardiff Bay CF99 1NA

21 November 2016

Dear Huw

Welsh Language Standards Regulations

I recently received an e-mail from Manon Elin, the Chair of Cymdeithas yr Iaith Gymraeg's Language Rights Group about forthcoming regulations to give effect to new Welsh Language Standards. I attach the text of her e-mail and my reply.

As you may be aware regulations for a similar purpose to the ones now expected were laid toward the end of the last Assembly but were not subsequently approved by the Assembly.

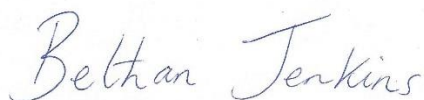
While the precise timing is a matter for the Welsh Government, I understand that the regulations, which are affirmative resolution and will require approval by the full Assembly, are expected to be laid soon. I also understand that they will then be scrutinised by your Committee under Standing Order 21 and 27.

Standing Orders provide for other Assembly Committees to scrutinise subordinate legislation if notice is given and within a specified timeframe. I would not want to pre-empt any decision by my Committee about whether it would want to scrutinise these particular regulations. However, given our other work, I think the timeframes involved may make scrutiny by CWLC an impractical proposition.



Your Committee will of course consider as a matter of course whether the Assembly should pay special attention to these regulations on 'technical' grounds under Standing Order 21.2. However, given the background and the views expressed by Cymdeithas yr Iaith, I would be grateful if you could also consider whether your Committee should also report under Standing Order 21.3 on the 'merits' of the regulations.

Yours sincerely

A handwritten signature in cursive script that reads "Bethan Jenkins". The ink is dark and the signature is centered on the page.

Bethan Jenkins AM
Chair



4 November 2016

Dear Bethan,

I am writing to you on behalf of Cymdeithas yr Iaith's Rights Group to request a meeting in the near future about the Welsh Language Standards Regulations.

We understand that the expectation is that the Welsh Government will shortly introduce further rounds of the Welsh language standards, as well as re-introducing the Standards for the education sector that were rejected in the last Assembly. You will be aware that concern was expressed during the last Assembly regarding the lack of opportunities for adequate scrutiny of the content of these regulations prior to their submission to Plenary. In addition, there have been a number of examples of diluting the draft regulations, which have been the subject of a Standards Inquiry by the Welsh Language Commissioner before they were submitted to the Assembly - denying the citizens of Wales their language rights.

In view of the above, we would like to arrange a meeting with you as Chair of the Culture, Welsh language and Communications Committee to discuss how the Committee can take full advantage of the opportunity to hold the Government to account on the issue of creating Welsh Language Standards Regulations and how they can be scrutinised in this Assembly term.

Could you also confirm that your Committee can call in the Welsh Language Standards Regulations for scrutiny - and that you will use this power on every occasion in the future?

We look forward to hearing from you.

Best wishes,

Manon Elin,

Chair, Welsh Language Rights Group, Cymdeithas yr Iaith

15 November 2016

Dear Manon

Thanks for your e-mail.

The Assembly's Standing Orders give the main responsibility for scrutinising subordinate legislation to the Constitutional and Legislative Affairs (CLA) Committee. CLA is required to consider all subordinate legislation and report to the Assembly on whether it should pay special attention to any such legislation laid before the Assembly. The timescales laid out in the Assembly's standing orders mean that the opportunity for other Assembly Committees to consider subordinate legislation is very limited. It is unlikely that it will be practical to do so on this occasion given our work on our inquiry into the Government's draft Welsh language strategy, which we have just launched.

I understand that the standards will be debated and voted on by the whole Assembly and that CLA will consider them before they are debated in Plenary. However, I will write to the Chair of CLA, Huw Irranca Davies AM, drawing your

concerns to his attention and asking that CLA gives particular attention to these regulations once they are laid before the Assembly. Can I also suggest that if you have any concerns you also bring them directly to the attention of the Committee, whose contact e-mail address is seneddmcd@cynulliad.cymru.

Best wishes

Bethan

Document is Restricted

By virtue of paragraph(s) vi of Standing Order 17.42

Document is Restricted

Document is Restricted