

Health and Social Care (Wales) Bill

Bill Summary

May 2024



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1. Introduction

The Health and Social Care (Wales) Bill (the “Bill”) was introduced on 20 May 2024.

The Bill contains provisions to:

- restrict the making of profit by providers of children’s homes services, secure accommodation services and fostering services for looked after children;
- require local authorities to submit a sufficiency plan to Welsh Ministers in respect of accommodation for looked after children, and to take all reasonable steps to secure sufficient accommodation provided by not-for-profit entities, either within or near to its areas to meet their needs;
- enable the introduction of Direct Payments for NHS Continuing Healthcare (CHC); and
- make amendments to ensure that the Regulation and Inspection of Social Care (Wales) Act 2016 (‘the 2016 Act’) and Social Services and Well-being (Wales) Act 2014 (‘the 2014 Act’) are able to operate fully and effectively.

The Minister for Social Care, Dawn Bowden MS, is the Member in Charge of the Bill.

Purpose and aims of the provisions in the Bill

The Bill’s **Explanatory Memorandum (EM)** states “Through the Updated Programme for Government and Co-operation Agreement, Welsh Ministers are seeking to further improve social care, and the health and social care interface, in Wales”.

The EM says the commitment to ‘put in place a **framework to remove profit from the care of looked after children**’ is a clear part of the Welsh Government’s wider vision for whole system change. The aim is to ensure that public money invested in the care of looked after children (starting with care home services and fostering services) does not profit individuals or corporate entities, but instead is spent on children’s services, to deliver better experiences and outcomes for young people.

The Programme for Government contains the commitment to ‘**improve the interface between continuing health care and Direct Payments**’. According to the EM, the demand for a policy change in this area has been growing “to address concerns of unfairness and lack of voice and control faced by disabled and seriously ill people”. The proposed changes are intended to ensure individuals have a strong voice and control over their care, whether that care is provided by local authority

or local health board. The EM says the changes should potentially lead to more individuals agreeing to undergo NHS Continuing Healthcare (CHC) assessments, without fear of losing an entitlement to direct payments, and therefore having their complex health needs better managed.

The Bill will also make a number of amendments to the **regulation of service providers, responsible individuals and the social care workforce**, “in order to help regulation and support for the workforce operate more effectively”. The EM says the proposed amendments aim to address specific issues and discrepancies within the 2016 Act to bolster the functionality of the regulatory framework and assist Care Inspectorate Wales (CIW) and Social Care Wales (SCW) in fulfilling their regulatory responsibilities.

These amendments cover a number of areas, including giving CIW new powers to require information from unregistered providers, and providing Welsh Ministers with the power to extend the legal definition of social care workers to include childcare workers.

A written statement by the Minister was published on 20 May 2024.

The Bill is currently making its way through the **Senedd’s legislative process**. The **Health and Social Care Committee** will be consulting on the Bill and holding further evidence sessions over the coming months.

The Explanatory Memorandum includes a summary of powers to make subordinate legislation in the Bill, and the Senedd scrutiny procedures they will be subject to. The Explanatory Memorandum also includes a Regulatory Impact Assessment (RIA) which provides a summary of estimated costs and benefits of the Bill.

How to use this Bill Summary

This document isn’t an exhaustive summary of every aspect and sub-section of the Bill. It’s designed to highlight key provisions and signpost to further detail.

Further commentary on each section of the Bill is provided in the **Explanatory Notes in Annex 1 of the EM**.

2. The Bill at a glance

The Bill has 30 sections, arranged into three parts, and has two schedules.

Part 1 – Social care:

Chapter 1: Restrictions on profit in the provision of children’s care services

- Regulation of social care services provided to children (sections 2 – 9)
- Local Authority functions in respect of accommodation for looked after children (sections 10 – 13)

Chapter 2: Amendments relating to social care services, social care workers and local authority social care functions

- Regulation of social care services: registration etc. of social care services providers (sections 14 – 16)
- Regulation of social care services: information and inspection (section 17)
- Social care workers: registration and fitness to practise (section 18 – 19)
- Local authority social services functions (sections 20 – 21)
- Social care: minor and consequential amendments (sections 22)

This part of the Bill also introduces Schedule 1 which the Explanatory Notes say “makes minor and consequential amendments” in relation to this part.

Part 2 – Health care

- Overview of Part 2 (section 23)
- Direct payments for health care (introducing direct payments within CHC) (sections 24 – 25)
- Provision of health services by local authorities (section 26)

This part of the Bill also introduces Schedule 2 which the Explanatory Notes say “makes minor and consequential amendments” in relation to the provisions of Part 2.

Part 3 – General

- General interpretation (section 27)
- Consequential and transitional provision etc. (section 28)
- Coming into force (section 29)
- Short title (section 30)

3. Summary of provisions

Part 1 – Social care

Chapter 1: Restrictions on profit in the provision of social care services to children

Section 1 provides an overview of Chapter 1:

- **Regulation of social care services to children:** to amend Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 (“the 2016 Act”) and Part 6 of the Social Services and Well-being (Wales) Act 2014 (“the 2014 Act”) to restrict the making of profit in the provision of care home services provided wholly or mainly to children, secure accommodation services and fostering services (referred to as “restricted children’s services”).
- **Local authority functions in respect of accommodation for looked after children:** duties to secure sufficient accommodation; duty to prepare and publish an annual sufficiency plan; applications to the Welsh Ministers for the approval of a ‘supplementary placement’ where there is no alternative placement.

Regulation of social care services provided to children

Section 2 **amends the 2016 Act to insert a new provision that defines the meaning of “restricted children’s services”** for the purposes of restricting profit by providers of children’s homes services, secure accommodation services and fostering services.

Section 3 amends the 2016 Act to set out **new requirements for applications for registration in respect of restricted children’s services**. This includes a two-part test that the provider’s “objects or purposes primarily relate to the welfare of children, or to such other public good as the Welsh Ministers may prescribe”; and that a provider must be one of the categories of “not-for-profit” entities as set out on the face of the Bill.

Section 4 inserts a new Schedule into the 2016 Act to set out **transitional arrangements** for existing providers of a restricted children’s service (who were registered prior to the new ‘not-for-profit’ requirements).

Section 5 amends the 2016 Act in respect of **granting or refusing registration**, to reflect the new ‘not for profit’ requirements.

Section 6 amends section 9 of the 2016 Act by inserting a new consideration into the ‘fit and proper persons test’ for service providers of restricted children’s services. This new consideration relates to **‘financial arrangements relating to restricted children’s services’**. The Bill provides that Welsh Ministers must now have regard to ‘unreasonable or disproportionate financial arrangements’ entered into by a service provider registered in respect of a restricted children’s service; and whether that financial arrangement undermines the service provider’s ‘pursuit of its objects or primary purposes relating to the welfare of children or such other public good’ as Welsh Ministers may prescribe.

Section 7 amends the 2016 Act to impose new requirements about what must be included in a service provider’s **annual return**. These requirements include information, as prescribed by Welsh Ministers, about evidence relevant to the ‘fit and proper person test.’ The requirements do not apply to providers referred to in the EM as ‘legacy providers’, to whom ‘transitional arrangements’ apply.

Section 8 amends the 2016 Act to include new provisions regarding the variation or cancellation of registration as a provider of a restricted children’s service.

Section 9 introduces a new requirement that entries in the register of service providers must show that the provider meets the ‘fit and proper persons’ test or that they are exempt during the transitional period defined in Schedule 1A.

Local Authority functions in respect of accommodation for looked after children

Section 10 amends section 75 of the 2014 Act to specify that the local authority must take **“all reasonable steps to secure” accommodation** for looked after children rather than “steps to secure, so far as reasonably practicable” as is currently the case under the 2014 Act. Subsection 1 requires that this accommodation is “within, or near to, the authority’s area” rather than the current requirement that it “is within the authority’s area”. The Explanatory Notes (EN) set out that “this enables local authorities to make arrangements with other local authorities to develop new children’s homes and foster care placements”. The EN go on to say that this amendment “acknowledges that there will be circumstances in which

a child placed outside of the local authority's area may be nearer to their home community than if they were placed in a different part of the local authority's area."

Section 11 amends the 2014 Act to insert a new duty on local authorities to **prepare and publish an annual sufficiency plan** before the beginning of each financial year. The plan must detail the steps the local authority will take in that year to fulfil its duty to take all reasonable steps to secure accommodation for looked after children under section 75(1) of the 2014 Act (as amended by section 10 of the Bill). It must also estimate the number of children the local authority will be looking after who it will be unable to place under section 81(2) of the 2014 Act; an assessment of the available accommodation and the extent to which that meets the relevant requirements; and the extent to which that accommodation is within, or near to, the local authority's area. The plan will be in a form prescribed by regulations. Before publishing the plan, a local authority must prepare a draft and submit it to the Welsh Ministers for approval. Section 11 also sets out the procedure to be followed if the plan is not approved.

Section 12 amends an existing duty in the 2014 Act to require **local authorities to report to the Welsh Ministers annually** to reflect the duty to secure accommodation. The annual report prepared by a local authority must include information on how the steps taken by the local authority have increased, or are expected to increase, the amount of secure accommodation available. It must also include the number of applications made by the local authority for the approval of 'supplementary placements' under section 13 of the Bill.

Section 13 **sets out the ways in which looked after children are to be accommodated in "the most appropriate placement"**. The Explanatory Note says a placement can be in "unregistered accommodation (on a temporary basis or in cases of urgency)", a reference not in the 2014 Act nor in the Bill. Local authorities must make an application to the Welsh Ministers for approval to place a looked-after child somewhere other than a 'not-for-profit' entity - referred to as a **"supplementary placement"**. The Bill sets out the steps that local authorities must take if an application for a "supplementary placement" is rejected by Welsh Ministers. The local authority can resubmit the application, with specified grounds of explanation, if they still consider that placing the child with a 'not-for-profit' entity would be inconsistent with the local authority's principal duty in relation to looked after children under section 78 of the 2014 Act.

Chapter 2: Amendments relating to social care services, social care workers and local authority social care functions

Regulation of social care services: registration etc. of social care services providers

Section 14 amends the 2016 Act to change the duty on Welsh Ministers (Care Inspectorate Wales) to submit and publish annual returns, and instead **places the duty onto service providers themselves**. It also makes failure to publish an annual return within a prescribed time limit an offence.

Section 15 amends the 2016 Act to give Welsh Ministers a power to make regulations to prescribe the information that must be provided with an application to cancel a service provider's registration.

Section 16 amends the 2016 Act regarding the powers of the Welsh Ministers (CIW) to cancel a service provider's registration without application, by **changing the procedure that must be followed**. It provides that the notice of proposal procedure (rather than the improvement notice procedure) must be followed, in certain circumstances where no improvement is possible.

Section 17 amends the 2016 Act give Welsh Ministers a power to require those providing an unregistered regulated service to provide information.

Social care workers: registration and fitness to practise

Section 18 amends the 2016 Act to provide Welsh Ministers with the power by regulation to **add childcare workers to, or except them from, the list of workers included in the definition of social care worker** for the purpose of Parts 3-8 of the 2016 Act.

Section 19 amends the 2016 Act in respect of interim orders and reviews in fitness to practise proceedings. Interim orders enable temporary restrictions to be applied to a registered person while investigations are undertaken into fitness to practise allegations. This section gives a panel the power to extend an interim order for up to a maximum of 18 months, removing the need for applications to be made to the First-tier Tribunal for such extensions.

Local authority social services functions

Section 20 amends the 2014 Act to supplement the ways in which a local authority can provide Direct Payments for meeting a person's needs for care and support, or in respect of after-care services under the Mental Health Act 1983. The amendments **enable direct payments to be made to a suitable third party nominated by an individual** (adult, child or carer), regardless of whether that individual lacks capacity (within the meaning of the Mental Capacity Act 2005) to receive and manage the direct payments themselves.

Section 21 amends the 2014 Act to clarify the scope of references in those sections to "child arrangement orders". The amendments clarify that reference to child arrangements orders only relate to those orders which specify the person with whom a child should live.

Section 22 introduces Schedule 1 which the EM says makes minor and consequential amendments.

Part 2: Health care

Section 23 **provides an overview of Part 2**. This Part makes amendments to the National Health Service (Wales) Act 2006 ("the 2006 Act") and the Mental Health Act 1983 to allow the Welsh Ministers to make direct payments to individuals in lieu of the provision of services by or on behalf of the NHS to meet their needs

Section 24 **makes provision to allow Direct Payments in health care** (to secure services or goods provided under the 2006 Act or after-care services under section 117 of the Mental Health Act 1983). The amendments also allow Welsh Ministers to make regulations about whether, when and how direct payments may be made, and the information, advice or support provided in connections with direct payments.

Section 25 introduces Schedule 2, which the EM says makes a number of minor and consequential amendments.

Section 26 amends the 2014 Act to incorporate the full statutory test to determine the limit of the powers of a local authority to provide health care services.

Part 3: General

Section 27 sets out the general interpretation for the Acts mentioned in the Bill.

Section 28 covers consequential and transitional provisions that can be made by regulations.

Section 29 sets out when different provisions in the Bill will come into force.

Section 30 lists the short title of the Bill (the Health and Social Care (Wales) Bill).