

Explanatory Memorandum to the Care Homes (Wales) (Miscellaneous Amendments) Regulations 2011

This Explanatory Memorandum has been prepared by the Adult Social Services Policy Division of the Health and Social Services Directorate General and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 24.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Care Homes (Wales) (Miscellaneous Amendments) Regulations 2011. I am satisfied that the benefits outweigh any costs.

Gwenda Thomas AM,
Deputy Minister for Social Services
29 March 2011

Description

1. The Care Homes (Wales) (Miscellaneous Amendments) Regulations 2011 will come into force on 1st June 2011. They will require all managers of care homes providing services to adults to be registered with the Care Council for Wales in order to practise in that role; both homes providing accommodation with personal care and those providing accommodation with nursing and personal care.

Matters of special interest to the Constitutional Affairs Committee

2. None.

Legislative Background

3. The Care Council for Wales was established by the Care Standards Act 2000. Section 56 specifies that the Council - *shall maintain a register of (a) social workers; and (b) social care workers of any other description specified by the appropriate Minister by order.* By virtue of section 121 of the Act and schedule 11, paragraph 30 to the Government of Wales Act 2006, the appropriate Minister is the Welsh Ministers. The power to make such an order must be exercised by statutory instrument.

4. To make the registration of managers of care homes for adults mandatory, the Care Homes (Wales) Regulations 2002 and the Registration of Social Care and Independent Care (Wales) Regulations 2002 will need to be amended to require that care providers only employ managers who are registered with the Care Council for Wales. The Welsh Ministers have power to make and amend regulations in relation to establishments and agencies registered under Part II of the Care Standards Act 2000 by virtue of section 22 of the Act.

5. This Statutory Instrument follows the negative resolution procedure.

Purpose and Intended Effect of the Legislation

Policy Objective

6. To develop the social care workforce in terms of its professional recognition, and it working to a consistent set of standards and conduct, Ministers have pursued the mandatory registration of workers with the Care Council for Wales. This is in a similar way to which healthcare workers are required to register with the regulatory body applicable to their particular profession. At present registration with the Care Council is a mandatory requirement for social workers, social work students and managers and care workers in registered care homes for children.

7. The Deputy Minister for Social Services announced that having implemented these requirements successfully, registration would now be extended to managers of care homes providing services for adults. To achieve this the regulations governing the operation of care homes, the Care Homes (Wales) Regulations 2002, will need to be amended to require that such persons are registered with the Care Council to operate in this role. In addition, to register with the Care Council individuals will need to possess a minimum level of qualifications to undertake a manager's role.

8. Registration with the Care Council will be required by all care home managers irrespective of any other registration with a professional regulatory body they may hold. For example, nurses in homes providing nursing care will be registered with the Nursing and Midwifery Council to undertake their clinical duties and will be regulated by that body in performing such clinical duties. Registration with the Care Council will ensure individuals managing a care home for adults are regulated in that role by one body consistently and equitably, irrespective of any other role they may perform in a home. This is to avoid a situation where managers are regulated in differing ways by differing regulatory bodies depending upon what clinical role they may also be performing in a home and which professional regulatory body regulates that clinical role. In the case of nurses registered with the Nursing and Midwifery Council to provide nursing in homes providing nursing care for adults but who also manage that home, the Care Council will develop a regulation protocol with the Nursing and Midwifery Council to be used in instances where an issue of concern or conduct arises involving an individual performing a dual manager/nurse role in home providing nursing care.

Effects

9. The new legislation will implement regulations to make it a legal requirement for all managers of care homes for adults to register with the Care Council for Wales in order to perform that role. Registration will:

- ensure a consistent approach, irrespective of any other role they might fulfil in a home. This provides clarity for managers in terms of which model of care, codes of practice and conduct, and qualifications they require in order to practise in that role;
- ensure equality of treatment in respect of professional regulation of that role irrespective of any other role they may be undertaking. This removes the potential for managers to be treated differently in professional regulatory terms by different bodies, and hence the potential for legal challenge, purely because of the body with which they are registered;
- support the Assembly Government's recognition and commitment to the social care profession and provide part of the mechanism to develop this in relation to residential care;
- provide a clear, consistent, regulatory position in relation to managers of care homes for adults which allows the Care and Social Services Inspectorate for Wales the ability to use its full range of enforcement powers should any such issues arise.

10. This new legislation will become effective on 1st June 2011. After this date it will be an offence for a registered provider to employ a manager who is not registered with the Care Council for Wales and an offence for an individual to hold the position of manager without such registration. There is a transitional arrangement for those managers appointed before 1st June who do not hold the required qualifications necessary for registration. For those individuals only there will be a period of grace until 1st October 2011 (or such later date as the Welsh Minister) to attain the required qualifications and to register.

Consultation

11. Details of the consultation undertaken are included in the RIA.

Regulatory Impact Assessment – Options, Costs and Benefits

Impact of the Proposed Changes

12. Implementing legislation will make it a legal requirement that all managers of care homes for adults register with the Care Council for Wales in order to undertake that role.

Option 1: Do Nothing

13. It would not be possible to implement the Assembly Government's policy intentions to continue to raise standards of practice and recognise professionalism in the social care workforce and further enhance the protection and safeguarding of vulnerable adults.

Cost

14. There would be no new cost implications from this option.

Benefits

15. There would be no benefits from this option.

Option 2: Make the Legislation

16. Implementing the regulations will make mandatory the Assembly Government's policy intention to continue to raise standards of practice to help promote and recognise professionalism in the social care workforce and further enhance the protection and safeguarding of vulnerable adults.

Costs

17. There are no known additional costs for local government or providers as a result of introducing legislation. A cost will apply to the individual applying for registration in the form of an annual membership fee.

Benefits

18. Registration will support the Assembly Government's recognition and commitment to the social care profession. It will ensure that all managers have attained the relevant qualifications needed to manage a care home for adults and will provide managers with clarity in terms of which model of care, codes of practice and conduct they require to practise in that role. It will aid consistency and clarity in the regulation of managers. Ultimately registration will aid the protection of vulnerable adults in care settings.

Consultation

19. A public consultation was held on a draft of the regulations to be made. In addition, all registered care homes for adults were consulted on the content of the SI together with key stakeholders and representative bodies within the health and social care sector. This included organisations representing care providers, individuals working in the sector and those commissioning services in the sector. The consultation was published on the Assembly Government's website. As the regulations are limited, of a technical nature and focus on a

specific group of the social care workforce, the Deputy Minister for Social Services agreed to a shorter consultation period than usual of 4 weeks.

20. 79 responses were received to the consultation. 63 of these confirmed they understood the requirements set out in the draft regulations and had no comments to offer upon them. The remaining 16 respondents either commented on the policy intentions behind the draft regulations (eg why was registration required?) or expressed concerns over the ability to comply with the requirements relating to registration with the Care Council within the timeframe stipulated within the draft regulations.

21. As an outcome of an evaluation of the responses, the Deputy Minister agreed to a slight amendment to the final regulations in respect of the timeframe to comply with the requirement to register with the Care Council to allow a slightly longer period of time to meet this requirement.

Competition Assessment

23. Not applicable.

Summary

24. The regulations will extend the Assembly Government's commitment to and recognition of the social care workforce in Wales by ensuring all managers for care homes providing services to adults are registered with the same professional body that ensures that a person is suitably qualified to manage a care home and against which they can be regulated. Registration will provide a clear regulatory framework which individuals should work within and against which they can be regulated. In turn this will help enhance further the protection of vulnerable adults in all residential care settings.