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Llywodraeth Cymru
Welsh Government

Ein cyf /Our ref : LF/MD/0148/15

David Rees AM
Chair of the Health and Social Care Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

7 March 2015

Dear David,

Regulation and Inspection of Social Care (Wales) Bill

Following the introduction of the Regulation and Inspection of Social Care (Wales) Bill into the National Assembly for Wales on 23 February 2015, I am pleased to enclose the Statement of Policy Intent for the subordinate legislation and other delegated legislative powers contained in the Bill.

The statement provides further information on the policy intent for the subordinate legislation, rules, codes of practice, and guidance, which could be made under the Bill, if enacted.

I look forward to providing evidence before the Committee in due course.

A copy of this letter and the enclosed statement is also being sent to David Melding, Chair of the Constitutional and Legislative Affairs Committee.

Best wishes
Mark

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Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

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Wedi'i argraffu ar bapur wedi'i ailgylchu (100%)
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Llywodraeth Cymru
Welsh Government

REGULATION AND INSPECTION OF SOCIAL CARE (WALES) BILL

Policy intent for regulations
to be made under this Bill

March 2015

POLICY INTENTION FOR PROPOSED REGULATIONS UNDER THE REGULATION AND INSPECTION OF SOCIAL CARE (WALES) BILL

This document provides an indication of the current policy direction for regulations which the Welsh Ministers intend to make using the powers under the Regulation and Inspection of Social Care (Wales) Bill.

The Regulation and Inspection of Social Care (Wales) Bill will revise and streamline the legislative framework for the regulation and inspection of care and support in Wales. It will:

- reform the regulatory regime for care and support services;
- establish requirements for local authorities and Welsh Ministers to undertake assessments of the sector's future stability;
- reform the inspection regime for local authority social services functions;
- reconstitute and rename the Care Council for Wales as Social Care Wales and broaden its remit; and
- define the regulation of the social care workforce.

This document should be read in conjunction with:

The Regulation and Inspection of Social Care (Wales) Bill

<http://senedd.assembly.wales/mglIssueHistoryHome.aspx?IId=12110>

The Explanatory Memorandum for the Regulation and Inspection of Social Care (Wales) Bill

<http://senedd.assembly.wales/mglIssueHistoryHome.aspx?IId=12110>

The consultation and summary responses

<http://gov.wales/consultations/healthsocialcare/support/?status=closed&lang=en>

Service Regulation and Local Authorities

REGULATIONS RELATING TO:	Meaning of “regulated service”
BILL PART:	1 Chapter 1
SECTION:	2(1)(h) & 2(3)
DESCRIPTION OF THE POWER/REGULATION	
<p>2(1)(h) This power permits the Welsh Ministers to specify any other service comprising the provision of care and support as being a service requiring registration with the Welsh Ministers.</p> <p>2(3) This power permits the Welsh Ministers to prescribe which things are NOT to be treated as regulated services.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>The existing legislation defining establishments and agencies is the Care Standards Act 2000. The Bill introduces the concept of regulated services and each of the regulated services listed in Schedule 1 correspond with the existing social care establishments and agencies which are currently regulated (Section 2 and Schedule 1).</p> <p>The policy intention is that the Welsh Ministers are able to react to future changes in the social care sector. The social care sector is evolving and new models of service delivery are expected to emerge, particularly as a consequence of changes introduced by the Social Services and Well-being (Wales) Act 2014. It is not feasible, therefore, for the Bill to contain an exhaustive list of regulated services which will remain current.</p> <p>The regulations in sub-section 1(h) enable the Welsh Ministers to specify other services comprising the provision of care and support as being a service which must be registered with the Welsh Ministers. The regulations in subsection 3 enable the Welsh Ministers to prescribe services which, although they fall within the definition of a service which is required to be regulated, they do not intend to be regulated.</p> <p>This power may be used in future to bring other services within the regulatory regime. For example, regulations are being brought forward under the Social Services and Well-being (Wales) Act 2014 to require local authorities to arrange for advocacy services to be made available to people with needs for care and support (whether or not these needs are met by a local authority). It is the Welsh Government’s intention that this will be a regulated service in future. However, that service area needs time to become established and there needs to be a better understanding of it to ascertain precisely what aspect of advocacy requires regulation. It is the intention therefore of the Welsh Government to use this regulation making power to prescribe advocacy as a regulated service following detailed consultation with the sector. The Welsh Government also intends to establish processes to review regularly options for further regulation of services, led</p>	

by the service regulator. These processes will consider, in the first instance, the developing model of extra care in Wales.

Similarly, a new service may emerge which falls into the definition of a service that requires to be registered but where there are good reasons for it not to be. For example, the service may be subject to another regulatory regime such as housing or health. In these circumstances, the Welsh Ministers would have the power to determine that the service should not be treated as a regulated service for the purpose of regulation under this Bill. There is no current need to make such regulations.

Without these powers the Welsh Ministers would be unable to respond to future changes in the social care sector and important services would be left unregulated. Similarly, services could be subject to the regulatory regime when it would not be necessary or appropriate. The requirement for the Welsh Ministers to consult before making regulations under either of these subsections is stated in subsection (4). There will be full engagement with the regulator, the sector and citizens in the development of the regulations.

REGULATIONS RELATING TO:	Other key terms
BILL PART:	1 Chapter 1
SECTION:	3(3)
DESCRIPTION OF THE POWER/REGULATION	
This power will allow the Welsh Ministers to prescribe things which are not to be treated as care and support despite the definitions in section 3(1)(a) and (d).	
POLICY INTENTION OF THE REGULATIONS	
<p>The current overarching legislation relating to the regulation of social care is the Care Standards Act 2000. It does not include a definition of things to be treated as “care” and “support”. Those terms are very widely defined in section 4 of the Social Services and Well-being (Wales) Act 2014. The Bill contains definitions of care and support for the purposes of the Bill. These definitions are necessary because under a separate power in the Bill at section 2(1)(h), the services which may be required to register in the future may be expanded so that people who are not currently required to register may be obliged to do so. The purpose of the definition is to set a parameter around what services may be the subject of regulation in the future.</p> <p>The policy intention is that the regulations will allow the Welsh Ministers to respond appropriately to changes in the social care market.</p> <p>The regulations in subsection (3) may be used to allow the Welsh Ministers to prescribe which services should not be treated as care and support and will therefore fall outside the regulatory regime.</p> <p>As described previously, in the context of regulated services, a new service may emerge which falls into the broad definition of a care and support service but where there are good reasons for it not to be treated as such. For example, the service may be subject to another regulatory regime such as housing or health. In these circumstances, the Welsh Ministers would have the power to determine that the service should not be treated as a regulated service.</p> <p>This power will enable the Welsh Ministers to give certainty to service providers in terms of which regulatory regime they are subject to. It will also ensure that services are not brought within the regulatory regime where this is not appropriate.</p> <p>There is a precedent in the Public Services Reform (Scotland) Act 2010 which contains the power to modify, and thereby add or remove services from, the definition of care and support services.</p> <p>There is no current need to make such regulations.</p>	

REGULATIONS RELATING TO:	Application for registration as a service provider
BILL PART:	Chapter 2
SECTION:	6(1)(d) 6(2)
DESCRIPTION OF THE POWER/REGULATION	
<p>6(1)(d) This power will allow the Welsh Ministers to set out further information required in an application for registration to provide a care and support service.</p> <p>6(2) This power will allow the Welsh Ministers to prescribe the form of an application made under section 6.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>The current overarching legislation is the Care Standards Act 2000. It requires that applications for registration must include prescribed information on prescribed matters; and any other information reasonably required by the registration authority. The Registration of Social Care and Independent Health Care (Wales) Regulations 2002, made under the Care Standards Act 2000, sets out the prescribed information in detail. It also requires that any application is made in writing on a form approved by the National Assembly.</p> <p>The Bill sets out a new approach of service-based registration and the information to be included in an application to provide a care and support service is set out on the face of the Bill at section 6(1)(a) to (c). It includes details of the regulated service to be provided; the places at, from or in relation to which the service is provided; and, the name and address of the designated responsible individual(s).</p> <p>The regulations made under subsection (1)(d) will allow the Welsh Ministers to require additional information to be provided in an application for registration as a service provider. The policy intention is that the regulations established will enable the Welsh Ministers to ensure that the most relevant, useful and appropriate information is captured as part of the application process. The level of information required is likely to change over time, particularly as a new system of registration is established. It will also enable the Welsh Ministers to make a proportionate response to any best practice recommendations which emerge in the future.</p> <p>The power to prescribe the form of an application is a technical one and this level of detail would not be appropriate for the face of the Bill. This power will ensure that the form of application is consistent with the information which is required to be provided and that there is consistency between applications.</p> <p>Dr Flynn is considering this area in the context of her review of Operation Jasmine. These regulations could be used to make changes to the information required in an application in light of the recommendations of that review.</p>	

The Care Quality Commission (Registration) Regulations 2009 and the Social Care and Social Work Improvement Scotland (Applications) Order 2011 set out information requirements for registration as a new provider of regulated activity in England and Scotland respectively. They provide an indication of what might be included in regulations made under this Bill.

REGULATIONS RELATING TO:	Annual return
BILL PART:	Chapter 2
SECTION:	8(2); 8(3)
DESCRIPTION OF THE POWER/REGULATION	
<p>8(2) This power will allow the Welsh Ministers to prescribe the information contained within, and the form of, the annual return to be prepared by providers.</p> <p>8(3) This power will allow the Welsh Ministers to specify the time limit within which an annual return must be submitted by providers.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>The Care Standards Act 2000 states that regulations may require an annual return to be made to the registration authority. It also states that regulations may provide for the content and timing of the annual report. The setting specific regulations (for example the Domiciliary Care Agencies (Wales) Regulations 2004) require service providers to undertake a review of quality of care at least annually and to make the report available to service users, the local authority and Welsh Ministers . The current position is that independent care and support providers provide the service regulator with a Self-assessment of Service Statement and a Quality Report for each of their establishments or agencies. These are used to inform inspections but are not required to be published.</p> <p>The Bill requires that a service provider must submit an annual return to the Welsh Ministers following the end of each financial year during which the provider is registered. It also requires that the Welsh Ministers publish the return.</p> <p>The policy intention is to provide greater transparency and ensure that people have access to relevant information in order to determine the best services for their needs and to enable them to make comparisons between service providers. This is consistent with the principle of voice and control.</p> <p>The regulations made under subsection (2) will allow the Welsh Ministers to prescribe the content of and form of the annual return. The regulations made under subsection (3) will allow the Welsh Ministers to prescribe the time limit within which the annual return must be provided.</p> <p>The regulations will be used to ensure that the information contained in the annual return will be proportionate, factually-based, current and consistent across services and also that the return is produced within a specific timeframe. This will enable people to make a direct comparison between providers. The regulations will set out the information that is required to be provided in the annual return. It is the intention of the Welsh Government to include the following:</p> <p style="text-align: center;">An overview and evaluation of how the provider considers the service is</p>	

being delivered in a manner which is consistent with the well-being of service users;

Information about the rate of staff turnover in the preceding year;

Details of the training programme which the employer has in place for its employees together with confirmation of how many employees have taken part in that training programme in the preceding year;

The number of complaints received by the provider in the annual reporting period and details of the action taken by the provider to resolve them.

The aim of the regulations is to ensure that every service provider, no matter what their size or corporate structure is, is required to complete the annual return in a consistent way in order to assist current and potential service users in comparing like for like services.

The Minister for Health and Social Services has also received advice from Dr Flynn who has indicated her desire to contribute to the thinking on the development of regulations in this area. There will be full engagement with the regulators, the sector and citizens in the development of these regulations.

REGULATIONS RELATING TO:	Application for variation of registration as a service provider
BILL PART:	Chapter 2
SECTION:	9(3)(a)(ii) 9(3)(b)
DESCRIPTION OF THE POWER/REGULATION	
<p>9(3)(a)(ii) This power will allow the Welsh Ministers to prescribe the details required from a provider in an application to vary registration.</p> <p>9(3)(b) This power will allow the Welsh Ministers to prescribe the form of an application for variation.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>The Registration of Social Care and Independent Health Care (Wales) Regulations 2000 set out the process for registering as a regulated service and for varying or removing a condition of registration.</p> <p>The Bill sets out a revised set of processes in terms of service provider registration. This is based on a new service model rather than the existing establishment and agency model. It also sets out the related processes for the variation or cancellation of the registration which will apply to the new model. Section 9 requires that any application for variation must contain the details of the variation sought by the provider and such other information as may be prescribed.</p> <p>The policy intent is to provide a more flexible and streamlined version of the current broadly successful system of regulation. The intention is to provide greater flexibility to service providers; avoid unnecessary duplication in the information and documentation to be provided to the regulator; and to provide greater flexibility to the regulator in the way that it carries out its enforcement procedures.</p> <p>Regulations made under the powers in sections 9(3)(a)(ii) and 9(3)(b) will complement those in section 6 which deal with the registration of service providers. They will set out the process for varying a provider's registration should they wish to provide a new service for which they are not already registered; or to provide the service at a place not already specified; or to cease providing such a service. The power to prescribe the form of an application for variation is a technical matter and simply ensures that such applications are fit for purpose and include the necessary level of detail for the regulator to reach a decision.</p> <p>These regulations are pertinent given the greater flexibility which the new system provides and the need to avoid duplication of requirements on service providers who have previously satisfied the requirements for initial registration. The regulation making power will allow the Welsh Ministers to be able to respond appropriately to review findings and recommendations of best practice in this regard.</p>	

REGULATIONS RELATING TO:	Responsible individuals
BILL PART:	Chapter 2
SECTION:	9(2), 19(4), 19(6) and 27(1)
DESCRIPTION OF THE POWER/REGULATION	
<p>9(2) This power will allow the Welsh Ministers to prescribe a time limit within which an application to vary a provider's registration may be made in circumstances where there is no responsible individual at a place at, from or in relation to which the provider provides a regulated service.</p> <p>19(4) This power will allow the Welsh Ministers to prescribe the requirements to be satisfied as to an individual's fitness to be a responsible individual.</p> <p>19(6) This power will allow the Welsh Ministers to specify circumstances in which the Welsh Ministers may designate a responsible individual despite the individual not satisfying the requirements of subsection 4 and to make provisions for that Part to apply with prescribed modifications to such an individual.</p> <p>27(1) This power will allow the Welsh Ministers to prescribe the requirements imposed on a responsible individual.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>The concept of a provider nominating a responsible individual already exists in the sector specific regulations under the Care Standards Act 2000 (see for example regulation 6 of the Children's Homes (Wales) Regulations 2002). However, the requirement on service providers to designate a responsible individual who will be subject to fitness and suitability checking not only at the point of initial registration but subsequently is new and is not currently a condition of the service provider's registration.</p> <p>The Bill establishes the concept of a designated 'responsible individual' in primary legislation. Section 19 of the Bill sets out the broad requirements for an individual's eligibility to be a responsible individual. The Bill does not specify the duties of the responsible individual but states that they will be set out in regulations. This allows for sector specific regulations to be developed.</p> <p>The policy intention is to ensure that accountability for service quality and compliance is held by a nominated responsible individual at an appropriately senior level within an organisation. It will enable the regulator to take action against the responsible individual. This responds to the Francis Inquiry Report and will ensure that a clear chain of accountability is established which includes the corporate responsibility of the board, the responsible individual and the service manager.</p> <p>In relation to the power in section 9(2) it is recognised that there may be circumstances where a service is without a responsible individual either because the person appointed as responsible individual for a place is no longer able to perform their duties and so is removed or because the person has died. Pursuant to section</p>	

41 of the Bill it is an offence for a place at which a service is being provided to be without a responsible individual. However, sections 9(2) and 41(2) are in recognition of the fact that there needs to be a period of grace for a service to designate a new person to be a responsible individual and for the regulator to assess the fitness and suitability of that person. It is important that in setting the time limit under this provision the period set is not too short such that it proves to be an impossible goal and that it is not too long that there is insufficient oversight of a service and the management of a service which can then have a knock on effect on the regulatory compliance of that service

The regulations made under the power in section 19(4) will be used to set out the specific requirements for an individual's 'fitness' to be a responsible individual in more detail. Sector specific regulations made under the Care Standards Act 2000 currently establish a fitness test for providers and responsible individuals. The current test for fitness requires that a person:

- Is of suitable integrity and good character;
- Is physically and mentally fit to carry on the relevant establishment or agency;
- Has provided full and satisfactory information and documentation to the regulator.

In England, Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 sets out the test of fitness of directors for the purposes of health and adult social care regulation. More recently, as a consequence of the Francis Report, the UK Government amended these regulations to establish a new test of fitness for directors of health services.

It is anticipated that a similar test to those above will be the approach taken under this power.

The purpose of the power in section 19(6) is to make provision so as to ensure that an otherwise competently run service, or place where a service is being provided may continue without its registration being cancelled entirely where there is no one capable of being designated as responsible individual. It is recognised that there may be some circumstances where a responsible individual's designation is cancelled, perhaps under urgent circumstances such as those in section 20(5) but there is no one within a service provider's organisation who is capable of fulfilling the requirements of fitness, for example, in the case of a sole provider who is also the responsible individual. The power in section 19(6) may be used to set out the circumstances under which a person who does not strictly meet the requirements may nevertheless be designated by the Welsh Ministers as opposed to the provider designating such an individual.

The Bill requires that the Welsh Ministers consult any person they think appropriate in making these regulations. The intention is to work closely with the sector in developing these regulations to ensure that the requirements are relevant, valid and proportionate. These are new requirements and may need to be further refined and amended as the new regulatory system becomes established and matures.

The regulations made under the power in section 27 will specify the detailed requirements to be imposed upon a responsible individual. The duties that it is intended will be incorporated into regulations made under the power in section 27 are:

- To appoint a suitable and fit manager;

- To report the appointment of the manager to the board of directors (in the case of a company), the partners (in the case of a partnership) and to the Director of Social Services (in the case of a local authority);

- To report changes in management to both the workforce and service regulators;

- To supervise the management of each place for which a person is the responsible individual;

- To check the accuracy of record keeping at the place(s) at which a person is the responsible individual;

- To undertake regular inspections at the place(s) for which a person is the responsible individual;

- To complete that section of the annual report that relates to the place(s) for which a person is the responsible individual;

- To report, in a timely manner, any concerns about a place at which a service is being provided for which they are the responsible individual to the Board of Directors, the partnership or the Director of Social Services as the case may be.

Clarity is of the utmost importance here given the legal duties placed on that individual. Again, the Welsh Ministers need to be able to respond to future changes, review findings and evidence of best practice.

REGULATIONS RELATING TO:	Regulations about regulated services
BILL PART:	Chapter 2
SECTION:	26(1)
DESCRIPTION OF THE POWER/REGULATION	
This power will allow the Welsh Ministers to prescribe the requirements to be imposed on a service provider in relation to a regulated service.	
POLICY INTENTION OF THE REGULATIONS	
<p>The existing requirements which are placed on providers of establishments and agencies are imposed by virtue of Section 22 of the Care Standards Act 2000. There are nine sets of setting-specific regulations and eleven sets of statutory National Minimum Standards in place that set out the same requirements albeit with modifications and additions in relation to specific establishments or agencies.</p> <p>The policy intention is to move to a more streamlined model of regulation so that there will be two sets of regulations under this power which will apply to all of the regulated services which are listed in Schedule 1 of the Bill. There will be a set of regulations covering the regulatory requirements to be placed on service providers across all care and support services that are similar to those that are currently imposed under section 22. These are likely to encompass the following requirements:</p> <ul style="list-style-type: none"> the completion of standard documentation such as a statement of purpose, a service users guide, a staff handbook; the requirement to maintain and store records; the requirements of fitness of a service provider. <p>It is anticipated that in addition to the regulations which are common to all settings there may be different or additional requirements for certain settings, for example a care home service that is provided only to children may impose additional requirements such as a requirement to have child protection policies in place or specific requirements in relation to staffing.</p> <p>There will then be a further set of regulations setting out quality standards which will be linked to the well-being statement introduced under the Social Services and Well-being (Wales) Act 2014. The policy intention is that the regulation of social care should reflect what is, to some extent, already happening on the ground in moving from a tick box approach to regulation to focus on the extent to which the care being provided in any particular place is delivering person-centred care. The regulations developed under this Bill will ensure that there is a consistent approach across the social care sector in terms of how the quality of care being provided is regulated and assessed with reference to individual service users well-being outcomes. For example, it is intended that providers will be required to:</p>	

Collaborate with the service user to seek to define and agree the well-being outcomes that are personal to the service user;
Identify how care and support can be provided to the service user with reference to those outcomes.

In order to comply with the above it is intended that the regulations would then set out a non-exhaustive list of the types of things which a provider must do to comply with the requirement such as:

- undertaking a comprehensive assessment of a service user's needs prior to a person receiving care and support;
- taking into account the views of others such as the service user's family, any relevant professional and any person who has been involved as a carer for the service user;
- preparing a written plan which is consistent with the comprehensive assessment and the service user's personal well-being outcomes and keeping that plan under review;
- enabling the participation of the service user in decisions about their care;
- respecting the privacy of the service user;
- respecting the autonomy of the service user.

The regulation making powers may also be used in the future to allow the Welsh Ministers to respond to new services as well as to react to any review findings or recommendations of best practice.

The Bill requires the Welsh Ministers to consult any person they think appropriate in making these regulations. Given that the regulations made under this power will dictate how services will be regulated in the future the intention is to work closely with the sector and other stakeholders in developing these regulations (and associated guidance) to ensure that the requirements are relevant, proportionate and are capable of being enforced. These are new requirements and may need to be further refined and amended as the new regulatory system becomes established and matures.

The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 set out the requirements on service providers in regulated health and social care settings in England, including fitness of service providers and person-centred care.

REGULATIONS RELATING TO:	Regulations about service providers who are liquidated, etc.
BILL PART:	Chapter 2
SECTION:	29(1) and 30(1)
DESCRIPTION OF THE POWER/REGULATION	
<p>29 (1) This power allows Welsh Ministers to make provision that service providers who are liquidated must notify the Welsh Minister.</p> <p>30(1) This power allows Welsh Ministers to make provision about service providers who have died.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>Sections 34 and 35 of the Care Standards Act 2000 set out the regulatory powers relating to notification requirements should a receiver or liquidator be appointed; and, in the event that the registered person dies. The regulations that are made pursuant to those powers are repeated in each of the sector specific regulations referred to above e.g. see regulations 38 and 39 of the Children’s Homes (Wales) Regulations 2002.</p> <p>The policy intention is to replicate the existing regulations made under the Care Standards Act 2000. This will ensure that the Welsh Ministers can react appropriately and make necessary provision or adjustments in the event that a service provider is liquidated or dies.</p> <p>The regulations enable the Welsh Ministers to make provision for them to be notified in the event that a service provider is liquidated or dies. Where a service provider has been liquidated they will enable the Welsh Ministers to modify the requirements on service providers in relation to the appointed person. Where a service provider has died they also enable the Welsh Ministers to allow a prescribed person who is not a service provider to act in that capacity for a prescribed period.</p> <p>The regulations will be used to set out (i) the process to be followed in these circumstances and (ii) the requirements placed on those acting as service providers in these particular circumstances.</p> <p>The regulations will be used in this way to ensure that there is a continuity of service in these circumstances and clarity in terms of the requirements and responsibilities which are placed on those acting in that capacity.</p>	

REGULATIONS RELATING TO:	Service Inspections
BILL PART:	Chapter 3
SECTION:	32(3), 32(4)
DESCRIPTION OF THE POWER/REGULATION	
<p>32(3) This power will allow the Welsh Ministers to prescribe the qualifications and other conditions to be met by an individual who may be an inspector.</p> <p>32(4) This section requires the Welsh Ministers to publish a code of practice about the manner in which inspections are to be carried out (including the frequency of inspections).</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>The existing regulatory system is set out in the Care Standards Act 2000 which provides the Welsh Ministers with a wide set of inspection powers – including the rights of entry, search and seizure. The requirements in terms of the frequency and manner in which they are to be carried out and the qualifications and other conditions to be met by an inspector are not currently set out in the Care Standards Act 2000 or regulations.</p> <p>The policy intention is to ensure that inspectors are suitable and appropriately qualified and that the regulator has a clear set of powers to inspect services, and to report on their effectiveness, which is consistent with the new service-based model of regulation and which focuses on outcomes.</p> <p>In order to ensure compliance with the European Convention on Human Rights, it is considered necessary for the Bill to contain provision requiring the Welsh Ministers to prepare a code of practice which sets out the manner in which its powers of inspection are to be exercised.</p> <p>The regulations and code of practice will be used to provide clarity and legal certainty for both the regulator and the service provider. They will be used to ensure that inspectors are appropriately qualified and experienced. They will ensure a consistent approach both in terms of inspection cycles and the inspection process. .</p> <p>The regulations and the code of practice will be used in this way to ensure that there is continued provider and public confidence in the inspection process. There will be full engagement with the regulator, the sector and citizens in the development of the regulations and the code of practice.</p>	

REGULATIONS RELATING TO:	Inspection ratings
BILL PART:	Chapter 3
SECTION:	35(1)
DESCRIPTION OF THE POWER/REGULATION	
35(1) This power will allow the Welsh Ministers to make provision about ratings which an inspector may give in relation to the quality of care and support provided by a service provider who has been inspected.	
POLICY INTENTION OF THE REGULATIONS	
<p>The existing regulatory system is set out in the Care Standards Act 2000 which provides the Welsh Ministers with a wide set of inspection powers – including the rights of entry, search and seizure. The Bill re-states these powers. The power for the Welsh Ministers to introduce inspection ratings is new.</p> <p>The policy intention is to provide inspectors with the power to apply ratings to services following inspections. The intention is to drive up quality and to support and encourage improvement. It is not intended to create a ‘league table’.</p> <p>Publicly available and clearly expressed inspection ratings will assist those who have an interest in the quality of individual service settings (existing and potential service users, commissioners of services) to make comparisons between two or more providers of a similar size and description.</p> <p>It is anticipated that the service regulator will express these judgements in terms of expectations and outcomes for users of that service and their carers. They will be included in the inspection report and made public.</p> <p>There was support for the introduction of some form of quality judgement rating in the responses to the White Paper. However, it was noted that the framework would require careful development in order to ensure a reliable and consistent judgement of service delivery and quality. There is no intention to introduce regulations in the short term, and any such regulations will only be brought forward after thorough consultation with the regulator and the sector. It is essential that any such system is right for this sector.</p>	

REGULATIONS RELATING TO:	Register of service providers
BILL PART:	Chapter 4
SECTION:	36(2)(g) and 36(5)
DESCRIPTION OF THE POWER/REGULATION	
<p>36(2)(g) This power will allow the Welsh Ministers to prescribe additional information which may be placed in an entry on the register.</p> <p>36(5) This power will allow the Welsh Ministers to prescribe information which may be omitted from the register of service providers under prescribed circumstances or to prescribe circumstances under which the regulator may refuse to comply with a request for a copy of, or extract from the register of service providers.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>The Care Standards Act 2000 sets out the existing requirements in relation to the making available of copies of, or extracts from, registers of service providers and regulations made under that Act applying only to England set out the circumstances under which these requirements do not apply.</p> <p>The policy intention is to make as much information as possible publicly available and to have a single register of regulated service providers with consistent information on each provider. This will provide a reliable source of information which is readily available to anyone who wishes to check the status of a provider.</p> <p>The Bill continues the existing approach but also requires that the Welsh Ministers must publish the register. The Bill also sets out the information which will be included in an entry on the register:</p> <p>The regulation making power will enable the Welsh Ministers, should circumstances require it, to add to the information to be included on the register. It could also be used to exclude certain information from the published register in particular circumstances and to allow the Welsh Ministers to refuse to comply with a request for a copy of, or extract from, the register in prescribed circumstances.</p> <p>The regulation making power could be used in particular circumstances to allow the Welsh Ministers to restrict the publication of sensitive information, for example, medical information about providers or details about establishments relating to children.</p> <p>The regulation making power may be used to allow the Welsh Ministers to respond appropriately to any changes in the social care sector, review findings or recommendations of best practice. Dr Flynn has indicated that there are emerging lessons from her review of Operation Jasmine and she wishes to contribute to the development of these regulations.</p>	

REGULATIONS RELATING TO:	Notifying local authorities of certain action taken under this Part
BILL PART:	Chapter 4
SECTION:	37(1)(g) and 37(2)
DESCRIPTION OF THE POWER/REGULATION	
<p>37(1)(g) This power will allow the Welsh Ministers to provide for other events that may occur by virtue of Part 1, or regulations under it, which will trigger requirements to be placed on the Welsh Ministers to notify each local authority in England and Wales.</p> <p>37(2) This power will allow the Welsh Ministers to make provision about what information must be provided in notifications to local authorities under section 37.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>The Care Standards Act 2000 sets out the existing requirements for the Welsh Ministers to notify local authorities in England and Wales about action taken in relation to a service provider.</p> <p>Local authorities are commissioners of care. They also have statutory duties, under the Social Services and Well-being (Wales) Act 2014, to step in when service providers are failing. The policy intention is to ensure that local authorities are notified about relevant issues which may impact upon the safeguarding of service users, service provision and service delivery in their areas. The Bill continues this approach and specifies on its face the type of information which would be shared including the cancellation or variation of a service provider; an urgent cancellation or variation; the cancellation of the designation of a responsible individual; proceedings against a person in relation to the Part 1 of the Bill; and the issuing of penalty notices under section 51 of the Bill.</p> <p>The regulation making power enables the Welsh Ministers to prescribe other matters and information to be notified to local authorities.</p> <p>The regulation making power would be used to allow the Welsh Ministers to respond appropriately should it become clear in the future that there are other matters which should be shared with local authorities. However, the power would only be used to prescribe events which are consistent with both the notification requirements on the face of the Bill and the role of the Local Authority in relation to service provision. There is no current need to make regulations in this area.</p>	

REGULATIONS RELATING TO:	Charging fees
BILL PART:	Chapter 4
SECTION:	38(1)
DESCRIPTION OF THE POWER/REGULATION	
<p>This power will allow the Welsh Ministers to make provision requiring fees to be paid for :</p> <ul style="list-style-type: none"> (a) making an application for registration as a service provider; (b) making an application to vary a registration; (c) allowing a person to continue to be registered as a service provider; (d) for a copy of an inspection report; and (e) for a copy of the register or an extract of it. 	
POLICY INTENTION OF THE REGULATIONS	
<p>There are currently powers in The Care Standards Act 2000 for the Welsh Ministers to charge fees in connection with their regulatory functions under that Act.</p> <p>Welsh Ministers have previously exercised their powers to charge fees under the Registration of Social Care and Independent Healthcare (Fees) (Wales) Regulations 2002. These regulations were repealed in 2006 as there was concern that the fees were essentially a bureaucratic process which circulated existing money through the system, rather than created new revenue streams. However the sector has changed significantly since then, and will continue to change and thus the consideration of the benefits or otherwise of a fee regime will need to be reviewed regularly.</p> <p>The policy intention is that service providers should contribute to the cost of regulation. One of the ways this can be achieved is through the charging of fees, and therefore the intention is to retain a general and broad power for the Welsh Ministers to charge fees for its regulatory activity. Wales is the only administration in the UK not charging service providers a fee for registration. The financial cost of the registration of providers in Wales is therefore met entirely by the public purse. Service providers derive significant benefit from regulation and the policy intention is that they should make a proportionate contribution to that cost. The policy intention is to achieve partial rather than full cost recovery – the Welsh Ministers recognise the responsibility which they have towards the regulation of the social care sector.</p> <p>The regulation making power would be used to establish a fee charging arrangement which would achieve the policy intention of a partial cost recovery.</p> <p>The Bill includes a requirement for the Welsh Ministers to consult on any regulations relating to fees. The intention is to work closely with the sector in developing these regulations so that the impact on the sector is fully understood and that any system established is fair and equitable.</p>	

REGULATIONS RELATING TO:	Failure by service provider to comply with requirements in regulations
BILL PART:	Chapter 5
SECTION:	43
DESCRIPTION OF THE POWER/REGULATION	
This power will allow the Welsh Ministers to make provision that it is an offence for a service provider to fail to comply with a specified provision of regulations made under section 26.	
POLICY INTENTION OF THE REGULATIONS	
<p>Section 25 of the Care Standards Act 2000 provides that it is an offence to fail to comply with any specified provision of the regulations which is punishable on summary conviction to a fine not exceeding level 4 on the standard scale.</p> <p>Section 43 of the Bill replicates this approach. Section 50 of the Bill specifies the penalties upon conviction of an offence under regulations made under section 43. These are:</p> <ul style="list-style-type: none"> (a) On summary conviction, to a fine, or to imprisonment for a term not exceeding 6 months, or to both; (b) On conviction on indictment, to a fine, or to imprisonment for a term not exceeding 2 years, or both. <p>The policy intention is that there should be greater accountability and the ability to enforce any breaches of the regulatory system proportionately and appropriately. This includes the ability to prosecute the registered service provider.</p> <p>The regulation making power enables the Welsh Ministers to establish further offences in the event that the service provider fails to comply with specific provisions of the regulations which are made under section 26.</p> <p>The regulation making powers will be used to prescribe which regulatory breaches will be capable of prosecution either as an alternative to or in addition to civil enforcement action.</p> <p>The current approach is that breaches of all of the regulations made under section 22 of the Care Standards Act 2000 are offences established in regulations, albeit summary only offences. This approach is unlikely to work in the context of how it is proposed that the regulation making power in section 26 will be used. It is intended that there will be two sets of regulations made under that power. The first will be set of regulations which deal with the things that providers must do or have in place. That set of regulations would lend themselves to the same approach so that offences</p>	

would be established in relation to a breach of any of those regulations. For example, a failure by the provider to complete a statement of purpose or a failure to ensure that services users' records are maintained. The other set of regulations will establish standards of quality of care against which the provider can be assessed in relation to the extent to which a service is being provided in a manner which is consistent with the personal well-being outcomes of each service user. It is likely that those regulations will be fairly high level and might contain an indicative but non-exhaustive list of things which a provider might do to satisfy the requirement. It is intended then that guidance issued under section 28 will provide more of the detail into how the regulatory standard may be met in relation to each service. The establishment of offences in relation to such high level regulations will need to be carefully considered so as to ensure a sufficient degree of legal certainty to providers in knowing when an offence has been committed. There may be some elements of a standard which might be subject to an offence and others that are not capable of being so.

REGULATIONS RELATING TO:	Failure by responsible individual to comply with requirements in regulations
BILL PART:	Chapter 5
SECTION:	44
DESCRIPTION OF THE POWER/REGULATION	
This power will allow the Welsh Ministers to make provision that it is an offence for a responsible individual to fail to comply with a specified provision of regulations made under section 27.	
POLICY INTENTION OF THE REGULATIONS	
<p>Section 25 of the Care Standards Act 2000 provides that it is an offence to fail to comply with any specified provision of the regulations which is punishable on summary conviction to a fine not exceeding level 4 on the standard scale.</p> <p>Section 44 of the Bill replicates this approach but applies specifically to responsible individuals and relates to the provision of regulations made under section 27. Section 50 of the Bill specifies the penalties upon conviction of an offence under regulations made under section 44. These are:</p> <ul style="list-style-type: none"> (c) On summary conviction, to a fine, or to imprisonment for a term not exceeding 6 months, or to both; (d) On conviction on indictment, to a fine, or to imprisonment for a term not exceeding 2 years, or both. <p>The policy intention is that there should be greater accountability and the ability to enforce any breaches of the regulatory system proportionately and appropriately. This includes the ability to prosecute the designated responsible individual. The regulation making power enables the Welsh Ministers to establish further offences in the event that the responsible individual fails to comply with specific provisions of the regulations which are made under section 27.</p> <p>The regulation making powers will be used to prescribe which regulatory breaches will be treated as an offence. The duties which it is intended will be placed on responsible individuals in regulations made under section 27 are listed above under the statement of intent in relation to section 27. It is likely the power in section 44 will be used to specify that a breach by a responsible individual of each of those duties will be an offence.</p>	

REGULATIONS RELATING TO:	Penalty notices
BILL PART:	Chapter 5
SECTION:	51(6)
DESCRIPTION OF THE POWER/REGULATION	
This power will allow the Welsh Ministers to make provision in relation to penalty notices.	
POLICY INTENTION OF THE REGULATIONS	
<p>Section 30ZA and section 30ZB of the Care Standards Act 2000 are the current powers to establish in regulations a fixed penalty notice scheme. This power only applies to Wales but has not been used. The power was inserted into the Care Standards Act 2000 by the Health and Social Care Act 2008 which established a new regime for the regulation of health and adult social care in England. The Health and Social Care Act 2008 contains a similar power. The power has been used in England (see Health and Social Care Act 2008 (Regulated Activity) Regulations 2014.</p> <p>The Bill contains a power to the Welsh Ministers to issue a penalty notice, the implication being that such a notice may be fixed or variable.</p> <p>The policy intention is to establish a flexible system of regulation so that the regulator has a full range of powers at its disposal to deal with regulatory breaches. Sometimes there may be a need for prosecution as an alternative to civil enforcement. Other times there may not be an overriding desire to pursue prosecution which is expensive and consumes valuable time and resources in preparing for prosecution. An alternative or additional measure open to the regulator under the Bill is the issuing of penalty notices. The power is broad so as to allow both fixed and variable notices but in relation to only those offences which are listed in section 51(6).</p> <p>The regulation making power will allow the Welsh Ministers to establish a penalty notice system.</p> <p>The regulation making power will be used to set out the detailed arrangements for the penalty notice system in the context of the new service-based model of regulation. The regulations will provide clarity by dealing with the practicalities of administering the penalty notice system including the form and content of the penalty notice; amounts payable; method of payment; record keeping etc. There will be full engagement with the regulator, the sector and citizens in the development of the regulations.</p>	

REGULATIONS RELATING TO:	Reports by local authorities and general duty of the Welsh Ministers
BILL PART:	Chapter 6
SECTION:	55 - Inserts section 144A(2)(b) into the Social Services and Well-being (Wales) Act 2014 - annual report by local authorities. 55 - inserts section 144A(4) into the Social Services and Well-being (Wales) Act 2014 – form of annual report.
DESCRIPTION OF THE POWER/REGULATION	
<p>This power will enable the Welsh Ministers:</p> <ul style="list-style-type: none"> to make provision in relation to such other information to be included in the annual report prepared by local authorities in relation to the exercise of social services functions; to prescribe the form of the annual report prepared by local authorities under section 144A. 	
POLICY INTENTION OF THE REGULATIONS	
<p>Currently, guidance issued under Local Authority and Social Services Act 1970 requires local authorities to produce and publish an annual report on their delivery of care and support. This is commonly known as the Annual Report of the Director of Social Services. The format and length of the reports vary widely between local authorities.</p> <p>The policy intention is to ensure that the Annual Report of the Directors of Social Services is placed on a statutory footing and standardised across the local authorities in Wales. It will ensure that service users and citizens are able to make comparisons of service quality between local authorities in Wales.</p> <p>The main items to be included within the report are set out in subsection 2(a). The regulation making power will set out the form of the report and will specify any additional information which should be included in the report. The regulation making power will be used to ensure that reports are clear and accessible and are produced in a way which allows for the performance of local authorities to be compared easily. The regulation making power will enable the Welsh Ministers to require that additional information is included in the report and so allow them to respond appropriately to new models of service and recommendations of best practice.</p>	

REGULATIONS RELATING TO:	Reviews, investigations and inspections
BILL PART:	Chapter 6
SECTION:	56(1) - Inserts section 149B into the Social Services and Well-being (Wales) Act 2014– criteria for rating.
DESCRIPTION OF THE POWER/REGULATION	
This power in sub-section 4 will enable the Welsh Ministers to prescribe criteria by which a rating may be given in relation to the standard to which a local authority's social services functions of a kind specified is to be exercised.	
POLICY INTENTION OF THE REGULATIONS	
<p>The existing power is contained in section 94(3) of the Health and Social Care (Community Health and Standards) Act 2003.</p> <p>The Bill replicates for local authorities the provision that is made in section 35 of the Bill in relation to private sector service providers.</p> <p>The policy intention is to provide parity with the ratings system which will be adopted under section 35 for private sector service providers. It will provide service users and citizens with an indication of a local authority's performance in the exercise of its social services functions. The intention is to encourage improvement in the provision of social services function by local authorities in Wales. It is not intended to create a 'league table'.</p> <p>It is anticipated that, consistent with the Social Services and Well-being (Wales) Act 2014, the service regulator will express these ratings in terms of expectations and outcomes for users of that service and their carers; and the way that people are involved in the delivery of those functions. They will be included in the report of the review and made public.</p> <p>Publicly available and clearly expressed review ratings will assist those who have an interest in the quality of service provided by local authorities and will enable people to make comparisons between two or more local authorities.</p> <p>As with the proposed service provider ratings any such framework will require careful development in order to ensure a reliable and consistent judgement of service delivery and quality. Such regulations would only be introduced after thorough consultation with the regulator and the local authorities.</p>	

REGULATIONS RELATING TO:	Reviews, investigations and inspections
BILL PART:	Chapter 6
SECTION:	56(1) - Further inserts section 149C into the Social Services and Well-being (Wales) Act 2014 - fee for review.
DESCRIPTION OF THE POWER/REGULATION	
This power requires local authorities to pay a fee in respect of a review conducted by Welsh Ministers under section 149B(1)	
POLICY INTENTION OF THE REGULATIONS	
<p>Section 94(6) of the Health and Social Care (Community Health and Standards) Act 2003 provides Welsh Ministers with a regulation making power to require a local authority in Wales to pay a fee in relation to the exercise of its function of review.</p> <p>The Welsh Ministers' functions in the Health and Social Care (Community Health and Standards) Act 2003 are to be repealed and have been re-stated in the Bill and so the Bill continues the same approach by making provision for the charging of fees.</p> <p>The Social Services and Well-being (Wales) Act 2014 imposes statutory duties on local authorities in respect of their social services functions. The Social Services and Well-being (Wales) Act 2014 is intended to be a stand alone piece of legislation in relation to local authority social services functions. Section 56 inserts a provision into that Act.</p> <p>The regulation making power enables the Welsh Ministers to require a fee to be paid; to determine the level of fees payable; and the time limit for payment. There is no intention to charge fees to local authorities for inspections carried out by Welsh Ministers and therefore it is not anticipated that any regulations will be made in this area.</p>	

REGULATIONS RELATING TO:	Reviews, investigations and inspections
BILL PART:	Chapter 6
SECTION:	56(2) – Replaces section 161 of and inserts section 161 A into the Social Services and Well-being (Wales) Act 2014.
DESCRIPTION OF THE POWER/REGULATION	
<p>Subsection (4) of section 161 provides a power to make provision about the qualifications and other conditions to be met by an individual who may be an inspector.</p> <p>Section 161A requires that the Welsh Ministers must publish a code of practice about the manner in which inspections of premises under section 161 are carried out (including the frequency of such inspections).</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>The existing regulatory system is set out in the Care Standards Act 2000 which provides the Welsh Ministers with a wide set of inspection powers – including the rights of entry, search and seizure. The requirements in terms of the frequency and manner in which they are to be carried out and the qualifications and other conditions to be met by an inspector are not currently set out in the Care Standards Act 2000 or regulations.</p> <p>The Social Services and Well-being (Wales) Act 2014 imposes statutory duties on local authorities in respect of their social services functions. The Social Services and Well-being (Wales) Act 2014 is intended to be a stand alone piece of legislation in relation to local authority social services functions. Section 56 inserts a provision into that Social Services and Well-being (Wales) Act 2014 in respect of the inspection of premises owned or controlled by a local authority or which are used in connection with the exercise of a local authority function.</p> <p>The Bill replicates for local authorities the provision that is made in in section 32 of the Bill in relation to private sector service providers.</p> <p>The policy intention is to ensure that inspectors are suitable and appropriately qualified and that the regulator has a clear set of powers to inspect services, and to report on their effectiveness and that those powers are consistent with the new service-based model of regulation and which focuses on outcomes.</p> <p>The Bill allows the Welsh Ministers to authorise individuals (inspectors) to carry out inspections of regulated services on their behalf. The regulation making power enables the Welsh Ministers to prescribe the qualifications and other conditions to be met by an individual who is an inspector. The Bill requires that the Welsh Ministers must publish a code of practice about the manner in which inspections are carried</p>	

out (including the frequency).

The regulations and code of practice will be used to provide clarity and legal certainty for both the regulator and the service provider. They will be used to ensure that inspectors are appropriately qualified and experienced They will ensure a consistent approach both in terms of inspection cycles and the inspection process. .

These regulations will be used in this way to ensure that there is continued local authority and public confidence in the inspection process.

REGULATIONS RELATING TO:	Regulation of local authority functions relating to looked after and accommodated children
BILL PART:	Chapter 6
SECTION:	57 - Inserts section 94A and 94B into the Social Services and Well-being (Wales) Act 2014
DESCRIPTION OF THE POWER/REGULATION	
<p>Section 94A(1) is a regulation making power to make provision about the exercise by local authorities of functions conferred on them by section 81 (ways in which looked after children are to be accommodated and maintained) or regulations made under section 87 of a kind as is mentioned in sections 92(1), 93 or 94 of the Social Services and Well-being (Wales) Act 2014.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>The existing power is contained in section 48 of the Care Standards Act 2000. Part III of the Care Standards Act 2000 provides the Welsh Ministers with the function of regulating 'relevant fostering functions'.</p> <p>The Bill replicates this approach in providing Welsh Ministers with powers to regulate the comparable fostering functions under the Social Services and Well-being (Wales) Act 2014.</p> <p>The Social Services and Well-being (Wales) Act 2014 imposes statutory duties on local authorities in respect of their social services functions. The Social Services and Well-being (Wales) Act 2014 is intended to be a stand alone piece of legislation in relation to local authority social services functions. Part 6 of the Social Services and Well-being (Wales) Act 2014 makes provision in relation to looked after and accommodated children. Section 57 of the Bill inserts a provision into the Social Services and Well-being (Wales) Act 2014 in respect of the regulation of local authority functions relating to looked after and accommodated children.</p> <p>The policy intention is to bring the exercise of those functions under Part 6 of the Social Services and Well-being (Wales) Act 2014 within the regulatory regime established by this Bill.</p> <p>The regulations will be used to specify the requirements which will be placed on local authorities. The areas which may be covered such as the fitness of people employed in connection with the exercise of those functions (including their management and training) and the fitness of premises used in this regard.</p>	

REGULATIONS RELATING TO:	Offence of contravening regulations under section 94A
BILL PART:	Chapter 6
SECTION:	57 – Inserts Section 94B(1) into the Social Services and Well-being (Wales) Act 2014
DESCRIPTION OF THE POWER/REGULATION	
Section 94B(1) is a regulation making power to make provision that it is an offence for a person to contravene or fail to comply with a specified provision of regulations made under section 94A.	
POLICY INTENTION OF THE REGULATIONS	
<p>Section 25 of the Care Standards Act 2000 provides that it is an offence to fail to comply with any specified provision of the regulations which is punishable on summary conviction to a fine not exceeding level 4 on the standard scale. Part III of the Care Standards Act 2000 provides the Welsh Ministers with the function of regulating ‘relevant fostering functions’.</p> <p>The Social Services and Well-being (Wales) Act 2014 imposes statutory duties on local authorities in respect of their social services functions. The Social Services and Well-being (Wales) Act 2014 is intended to be a stand alone piece of legislation in relation to local authority social services functions. Part 6 of the Social Services and Well-being (Wales) Act 2014 makes provision in relation to looked after and accommodated children. Section 57 of the Bill inserts a provision into the Social Services and Well-being (Wales) Act 2014 in respect of the regulation of local authority functions relating to looked after and accommodated children.</p> <p>Section 57 of the Bill replicates this approach and specifies the penalties upon conviction of an offence under the regulations made under section 94A of the Social Services and Well-being (Wales) Act 2014. These are:</p> <ul style="list-style-type: none"> (a) On summary conviction, to a fine, or to imprisonment for a term not exceeding 6 months, or to both; (b) On conviction on indictment, to a fine, or to imprisonment for a term not exceeding 2 years, or to both. <p>The policy intention is that there should be greater accountability and the ability to enforce any breaches of the regulatory system proportionately and appropriately. This includes the ability to prosecute persons who contravene regulations in the same way that service providers may be prosecuted.</p> <p>The regulation making power enables the Welsh Ministers to establish further offences in the event that a person fails to comply with specific provisions of the regulations which are made under section 26.</p>	

The regulation making powers will be used to prescribe which regulatory breaches will be capable of prosecution either as an alternative to or in addition to civil enforcement action.

Market Stability

REGULATIONS RELATING TO:	Market Oversight
BILL PART:	Part 1 Chapter 6
SECTION:	<p>55 inserts section 144B(1) into the Social Services and Well-being (Wales) Act 2014 – Local market stability reports.</p> <p>55 inserts 144B(2)(a)(i) into the Social Services and Well-being (Wales) Act 2014 – Local market stability reports.</p> <p>55 inserts 144B(2)(a)(iii) into the Social Services and Well-being (Wales) Act 2014.</p> <p>55 inserts section 144B(3) into the Social Services and Well-being (Wales) Act 2014 – Local market stability reports.</p>
DESCRIPTION OF THE POWER/REGULATION	
<p>55 inserts section 144B (1) into the Social Services and Well-being (Wales) Act 2014 – Local market stability reports: this power will enable Welsh Ministers to prescribe the time cycle for the preparation and publication of the local market stability report by local authorities.</p> <p>55 inserts 144B(2)(a)(i) into the Social Services and Well-being (Wales) Act 2014 – Local market stability reports: this power will enable Welsh Ministers to prescribe the period during which a local market stability assessment must address the sufficiency of provision of care and support.</p> <p>55 inserts section 144B(2)(a)(iii) into the Social Services and Well-being (Wales) Act 2014 – Local market stability reports: this power will enable Welsh Ministers to make provision requiring additional matters to those listed in subsection (2)(a)(i) and (ii) in the local market stability report.</p> <p>55 inserts section 144B (3) into the Social Services and Well-being (Wales) Act 2014 – Local market stability reports: this power will enable Welsh Ministers to prescribe the form of the local market stability report.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>There is currently no requirement on local authorities in Wales to prepare and publish a local market stability reports on the social care market in Wales. That requirement is established in section 55 of the Bill which will insert section 144B into the Social Services and Well-being (Wales) Act 2014.</p>	

The report is intended to provide local authorities with a snapshot of the sector. It will help them to plan and shape services, including care for the future.

The regulation making power in section 144B(1) will be used to set out when and how often the reports are to be published. It is the intention of the Welsh Government to align the requirement to publish this report with the local needs assessment required under section 14 of the Social Services and Well-being (Wales) Act 2014, that is once every electoral cycle. However, it will also be expected that local authorities provide updates or addenda to these reports on an annual basis.

The power in section 144B(2)(a)(i) permits the Welsh Ministers to set out the period over which local authorities are required to assess the sufficiency of provision. So for example, there might be a requirement to assess the sufficiency of the market for the next 5, 10 or 20 years.

The regulations also provide flexibility for Welsh Ministers to require additional but related matters to be part of the report.

The further requirements which might be prescribed under the power in section 144B(2)(a)(iii) will be better known when work has taken place with the sector.

Engagement will also take place with local authorities to discuss the format of the report along with reporting cycles and timeframes for taking action.

The policy intention is not to over burden the reporting requirements imposed on local authorities. For example, as part of the considerations, it may be that the publication of the required information can be delivered through existing publications. It is also intended that local authorities maybe able to fulfil these requirements through joint reports at a regional level where this is considered appropriate, including with other sector representatives such as local NHS boards.

The Welsh Government will discuss the content of these reports with the sector before drafting any regulations.

The power under 144B(2)(a)(iii) is likely to be used when both the market oversight provisions and the new reporting requirements are established to focus on specific matters with which the report may not be dealing but should be.

The Welsh Government has supported the development of model market assessment through the Social Services Improvement Agency, working with local authorities. This work will inform the detailed development of policy in this area (http://www.ssiacymru.org.uk/home.php?page_id=7899)

REGULATIONS RELATING TO:	Market Oversight
BILL PART:	Chapter 7
SECTION:	<p>58(1) – criteria for determining whether section 60 applies to a service provider</p> <p>58(4) – the extent of application of section 60</p> <p>60(6) – information to assess financial sustainability</p> <p>60(7) – assessments</p>
DESCRIPTION OF THE POWER/REGULATION	
<p>58(1) – criteria for determining whether section 60 applies to a service provider: this power will allow the Welsh Ministers to specify the criteria for determining whether (subject to regulations made under subsection (4)) section 60 applies to a service provider in respect of regulated services.</p> <p>58 (4)- the extent of application of section 60: this power will allow the Welsh Ministers to provide that section 60 does not apply, or applies only to the extent specified, to a specified service provider or to a service provider of a specified description.</p> <p>60(6) – information to assess financial sustainability: this power will allow the Welsh Ministers to make provision for enabling the obtaining of information from such persons as they consider appropriate, information which they believe will assist them to assess the financial sustainability of a service provider to which this section applies.</p> <p>60(7) – assessments: this power will allow the Welsh Ministers to make provision about the making of assessments.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>Welsh Ministers currently do not have powers to assess the financial sustainability of providers. Information is therefore provided of a voluntary basis. As such, there are no existing criteria for determining which providers might be assessed or how any assessment might look and be undertaken.</p> <p>These are significant regulations intended to reduce the likelihood of unsighted market failure. The broad intention of these regulations is to introduce a systematic approach for fairly determining which providers will be subject to the financial sustainability provisions and to develop a criterion that is proportionate, effective and guards against over burdening providers. The information obtained will provide the Welsh Ministers with an early warning of market failure and in doing so provide the</p>	

Welsh Ministers with a level of reassurance over the state of the market. These regulations will also state the types of information required and from whom, along with determining how the actual assessment will work.

The detail and practical application of the criterion, type of information sought and the process for the making of an assessment is to be worked up. However, given that the over-riding intention of these provisions is to identify early warning signs of financial weakness in those areas where provider failure would likely have a significant and adverse impact on the sector, the provisions are likely to fall on larger providers and/or providers who have a significant presence in the market or who operate in the more specialist support areas.

The Welsh Government will set out in regulation the criteria for selecting those providers who should fall under this regulatory regime. It is intended that these criteria will be specific to each regulated service and are likely to be:

- For nursing residential care and residential care – number of beds provided
- For domiciliary care – numbers of hours of care provided or number of individuals receiving care in a week
- Other services - number of individuals receiving care or support within a specified time period

The precise number against each of these criteria will be the subject of consultation and discussion.

The Welsh Government will also set out those providers who will not fall under these provisions. These providers will normally be those who already are subject to similar oversight. Local authorities will not fall under these provisions. Given that these provisions mirror closely legislation in England under the Care Act 2014 it is also expected that the Welsh Government will seek to co-operate with the Care Quality Commission to avoid duplication of effort and regulation.

The intention is that the service regulator will have access to a provider's accounts and any financial reports prepared. There would then be a "due diligence" exercise undertaken by the service regulator. The intention is that this will be a similar approach to the exercise undertaken by the Welsh Government in relation to Housing Associations through Financial Viability Judgements:

<http://wales.gov.uk/topics/housing-and-regeneration/services-and-support/regulation/financialviabilityjudgements/?lang=en>.

The information analysed will be from a variety of sources but it is envisaged it will include:

Audited annual accounts, including the internal controls assurance statement;
External auditors' management letter;
Quarterly management accounts;
5 year business plans;
Internal audit reports;
Board papers, as requested;
Financial and risk management information collected through undertaking regulatory engagement.

It is envisaged that the service regulator could either employ staff to undertake such reviews or alternatively such assessments could be carried out by external third parties such as a firm of accountants. The purpose of the review would be to form a professional opinion about the state of the business. In that respect, it is not a report which is intended to set out the historical position of the business but one that sets out the likely future of the business.

If that assessment together with other information that the service regulator has leads the service regulator to form the view that the business is at significant risk of failure, then the service regulator will have the power to require the provider to undergo a business review and/or provide the regulator with contingency planning arrangements.

If, following receipt of that business review and/or contingency plans, the Welsh Ministers are of the view that the business is failing or is likely to fail then they will then have a duty to inform local authorities who have corresponding duties which are set out in sections 189 to 192 of the Social Services and Well-being (Wales) Act 2014 to manage that failure.

The criterion, sources of information and method of assessment will be developed in partnership with providers and the wider sector. A technical group made up of key stakeholders will be established to discuss and advise Welsh Ministers on the detailed development of these regulations. This will include detailed discussions over how any information obtained from providers for the purpose of these regulations is stored and used. For example, how information is shared with local authorities so as not to put a provider at any disadvantage and/or disclose market sensitive information is likely to be a key issue.

The regulations which have been made under the Care Act 2014 which applies in England which correspond with the regulation making power in section 58 (1) are The Care and Support (Market Oversight Criteria) Regulations 2014.

The regulations which are made under the Care Act 2014 which applies in England that correspond with regulations made under section 60(6) of the Bill are The Care and Support (Market Oversight Information) Regulations 2014.

REGULATIONS RELATING TO:	Market Oversight
BILL PART:	Chapter 7
SECTION:	62(1) - national market stability report 62(3)(a)(i) – national market stability report 62(3)(a)(iii) – national market stability report
DESCRIPTION OF THE POWER/REGULATION	
<p>62(1) - national market stability report: this power will allow the Welsh Ministers to make provision for the timing and publication of a national market stability report.</p> <p>62(3)(a)(i) – national market stability report: this power will allow the Welsh Ministers to make provision for the national market stability report to include an assessment of the sufficiency of care and support provided in Wales during a specific period.</p> <p>62(3)(a)(iii) – national market stability report: this power will allow the Welsh Ministers to make provision for any matter related to the provision of care and support to be included in the national market stability report.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>The Welsh Ministers are currently required to publish reports on the carrying out of their functions in relation to relevant Parts of the Health and Social Care Act 2003 and the Care Standards Act 2000 on an annual basis. However no requirement is made for any reports to undertake analysis of the care and support market now or in the future.</p> <p>Section 62 of the Bill places a duty on the Welsh Ministers to prepare and publish a national sector stability report. This is intended to be a report on the social care market in Wales made up of information from whatever source is considered relevant, but with regard to the local market reports produced by local authorities. The Bill requires that report to include information on:</p> <ul style="list-style-type: none"> The sufficiency of care and support provided in Wales during a prescribed period; The extent to which regulated services were provided in Wales during that period which are subject to financial sustainability assessments under the market oversight provisions of the Bill; Any action taken under the market oversight provisions of the Bill. <p>In relation to the power under section 62(1) it is the intention of the Welsh Government publish this report in the period following the production and publication</p>	

by local authorities of the local market stability reports required by section 55 of the Bill which inserts section 144B into the Social Services and Well-being (Wales) Act 2014. However, it will also be expected that there are updates or addenda to these reports on an annual basis.

In relation to the power under section 62(3)(a)(iii) this is a power which is likely to be used when both the market oversight provisions and the new reporting requirements are established, to focus on specific matters which the report may not be dealing but should be.

REGULATIONS RELATING TO:	Meaning of Social Care Workers
BILL PART:	4: Social Care Workers
SECTION:	78
DESCRIPTION OF THE POWER/REGULATION	
The power allows categories of workers to be added to or excluded from persons defined in the section as social care workers.	
POLICY INTENTION OF THE REGULATIONS	
<p>The current overarching legislation relating to the regulation of the social care workforce is the Care Standards Act 2000. Section 55 sets out those persons who are “social care workers” for the purposes of the Care Standards Act 2000. Section 55(2) lists those persons who are always to be treated as social care workers. Subsection (3) enables the Welsh Ministers, by regulations, to treat other categories of person as social care workers for the purposes of the Care Standards Act 2000. This Bill continues this approach with section 78 setting out those persons who are “social care workers” for the purposes of the Bill. Subsection (1) derives from the definition of social care worker in section 55 of the Care Standards Act 2000 and lists those persons who manage, or provide care and support in connection with regulated services. Those persons are always to be treated as social care workers for the purposes of the Bill. As in the Care Standards Act 2000 subsection (2) then enables the Welsh Ministers by regulations to treat other categories of persons as social care workers for the purposes of the Bill, and subsection (3) lists those categories. Those persons are intended to capture the breadth of persons who work in the social care sector and do things which relate to care and support and therefore might need to be treated as social care workers.</p> <p>There are a number of references to “social care workers” in the Bill. Currently references to “social care workers” are only to those persons listed in section 78(1). It is the Welsh Government’s intention, however, to treat other categories of social care workers listed in subsection (3) as social care workers for the purposes of the Bill.</p> <p>The policy intention is that regulations will be made which requires all those persons listed in subsection (3) of section 78 to be treated as social care workers for the purposes the following sections:</p> <ul style="list-style-type: none"> Section 67 (Social Care Wales (“SCW”) exercising its functions to promote high standards of practice and conduct among social care workers); Section 68 (provision of care and support by social care workers for the purposes of defining care and support service); Section 70 (SCW’s engagement with social care workers); 	

Section 74 (requirement for SCW to consult with social care workers before issuing rules, code etc);

Section 111 (SCW must prepare codes of practice for social care workers)

Section 113 (approval of courses etc);

Section 163 (orders prohibiting practising as a social care worker).

The policy intention is to ensure that the work of Social Care Wales brings together and encompasses all those who contribute to the quality of care. Social care works closely with other sectors such as health and education, and it is important that as SCW seeks to improve the provision of services it is able to consider the multidisciplinary nature of modern social care.

The policy intention is that regulations will be made that require a narrower category of social care workers to be treated as social care workers for the purposes of the following sections:

Section 79 (social care workers that can be required to register with SCW);

Sections 116, 122, 135 and 158 (Part 6 social care workers: fitness to practise).

These sections relate to the groups of the workforce that SCW is required to register and the subsequent procedures that apply. These sections would not be relevant to those parts of the workforce that are not registered with SCW.

The intention is that the regulations will provide that in addition to those social care workers listed in section 78(1), student social workers as well as residential child care workers will be treated as social care workers for the purposes of the above sections.

It is necessary to have the ability to adjust the categories of persons defined as social care workers as the sector develops and grows, in order that consideration can be given to whether existing or newly emerging types of workers should be subject to regulation as set out in the sections above. For example, over recent years we have seen the growth of personal assistants because of the use of direct payments, as well as those who employ and manage them. This example shows that the social care sector continues to evolve, and our understanding of its workforce will need to adapt accordingly over time. It may be necessary therefore in the future to treat such persons as social care workers for the purpose of registration or for the purpose of approving courses for such persons.

REGULATIONS RELATING TO:	Register of designated social care workers
BILL PART:	4: Social Care Workers
SECTION:	79
DESCRIPTION OF THE POWER/REGULATION	
The power allows types of social care workers to be required to register with the workforce regulator.	
POLICY INTENTION OF THE REGULATIONS	
<p>The regulations will ensure that SCW must maintain a register of social care workers who are currently required to register with the Care Council for Wales. There is no immediate intention to add other categories of workers to this requirement.</p> <p>Section 79 is a restatement of section 56 of the Care Standards Act 2000 and 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 policy intention is that the Welsh Ministers will through regulations require SCW to keep a register of managers of regulated services, students participating on an approved social work degree course in Wales and residential child care workers. This is consistent with the register that the Care Council for Wales currently maintain.</p> <p>This Bill will, however, allow Ministers, through regulations, to extend those categories of the social care workers for whom SCW must maintain a register . This is a restatement of the existing position established within the Care Standards Act 2000.</p> <p>Like the Care Standards Act 2000, the Bill does not require social care workers of other descriptions to register. Under the Care Standards Act 2000, managers, students and residential child care workers are required to register by virtue of requirements set out in regulations made pursuant to section 22 of the Care Standards Act 2000. The intention is that regulations made under section 26 and 27 of the Bill will set out similar requirements. The Welsh Ministers could require further categories of social care workers to register by virtue of regulations made under sections 26 or 27 if they considered that this was necessary for reasons of public protection. The Welsh Ministers could also impose a requirement to register on other categories of social care workers by extending the protection of title afforded to social workers by virtue of section 110 to other categories of social care workers. If such requirements were imposed on other categories of social care workers it would be necessary to extend the categories of social care workers for whom SCW must maintain a register.</p> <p>These regulations together with regulations made under sections 26, 27 and 110</p>	

effectively future proofs 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 registration of the social care workforce is something which needs to be regularly reviewed and reconsidered in the light of experience and changes in the sector. The progress of other forms of regulation, such as prohibition orders or employer-led regulations, will influence whether registration of other categories of the workforce needs to be considered. These regulation making powers will enable the Welsh Ministers to extend the categories of social care workers who are required to register with SCW if this is considered necessary in the future. It is considered important therefore to be able to retain the ability to extend registration if necessary as one tool in the wider regulatory framework.

However at this stage, it is not the Welsh Government policy to change the current groups of the workforce who are required to register and therefore SCW will be required to maintain a register of those social care workers it currently registers. The current approach has worked well in reinforcing accountability within key parts of the workforce, especially in relation to elements of the workforce where there are particular professional or corporate responsibilities. The approach has much in common with the regulatory approaches in the other UK countries.

This approach will allow the workforce regulator time to adapt to its new requirements established in this Bill, and to embed the relatively recent requirements for domiciliary managers to be registered. It is the intention of the Welsh Government to continually monitor this area to assess the benefits and disadvantages of extending or reducing the groups of the workforce required to register. These reviews will involve engagement and consultation across the sector.

REGULATIONS RELATING TO:	Content of the register
BILL PART:	4: Social Care Workers
SECTION:	90
DESCRIPTION OF THE POWER/REGULATION	
These powers allow the content of the register to be varied.	
POLICY INTENTION OF THE REGULATIONS	
<p>The intention is to set out what information must to be included in the register in relation to:</p> <p style="padding-left: 40px;">qualifications, knowledge or experience beyond that required to initially practise in the role for which the person is registered; a registered person's fitness to practise.</p> <p>The Care Standards Act 2000 requires the Care Council for Wales to maintain a register for social care workers and provides that the method and format of the register is to be set out in registration rules maintained by the Care Council and approved by Welsh Ministers. The current rules set out that the register will include seven fields of information including for example, the registrant's name, registration number and any conditions imposed as a consequence of fitness to practise proceedings.</p> <p>The Bill prescribes certain requirements which must be included in the register, to be maintained by SCW, rather than leaving this to be set out in regulations or rules. Section 90 sets out the information that must appear on the register in relation to registered persons. It requires for example that the register must include details of the registered person's qualification which enables them to practise as a social worker or social care worker. The Welsh Ministers can set out in regulations that the register must show additional qualifications or experience that the registered person has gained. This will ensure that the register can be adapted to the particular features of, and groups within, the social care workforce in Wales.</p> <p>The policy intention is that that annotating the register to reflect different levels of qualification will be used to support the implementation of a career structure model for social care workers. The Care Council has developed a comprehensive range of programmes for the continuing professional education and learning of social workers. These programmes are in the process of being implemented and are already having a positive effect on the quality of the workforce. The Care Council is keen to maximise the impact and recognition of this professional development and including reference to it on the register is a powerful way of doing this. The intention is therefore for the register to be annotated to show that a social worker has completed SCW's continuing professional education programme. This could be used to reflect that a social worker has completed a senior social programme, for</p>	

example, in order that the register reflects the different level of social worker.

The regulation making power in S90(1)(d) will set out what information will appear on the register in relation to a registrant's fitness to practise. This information is currently contained in the Care Council's rules.

It is vital that clear information about fitness to practise is available on the register in order to provide public protection. This allows the general public, employers and others with an interest in the workforce, to check the fitness to practise of registrants, including any limitations which may apply to their practise. The policy intention is that regulations made under S90(1)(d) will specify the same information that currently appears in the register in relation to a registered person's fitness to practise. Currently any admonishment (called a warning in the Bill) or condition of practise order imposed by a committee is included. Currently the Council have discretion to include any other detail as it considers appropriate. The policy intention is that there should be a consistent approach in relation to what must appear on the register and this should be clearly set out. The policy intention is that any determination that a person's fitness to practise is impaired and any current fitness to practise sanction should be entered in the register. This means all sanctions issued by a fitness to practise panel following a finding of impairment. It is vital for public protection that such information is not kept privately by regulators. The policy intention is also that the register is to contain the details of any conditions on practice (except where the conditions relate to the registrant's health) and not just the fact that conditions have been imposed. This is important to ensure monitoring and compliance with any conditions imposed. The intention is also to ensure that the register reflects the fact that warnings have been issued to registrants, undertakings have been agreed and interim orders imposed. The imposition of such orders or the agreement of such undertakings has been made for reasons of public protection and therefore it is right that the register should reflect those decisions.

The regulation making power will enable the Welsh Ministers to respond if it is considered necessary to include other decisions or information relating to a person's fitness to practise on the register or if it is felt necessary to limit the information which appears on the register in light of SCW's experience.

REGULATIONS RELATING TO:	List of persons removed from the register
BILL PART:	4: Social Care Workers
SECTION:	109
DESCRIPTION OF THE POWER/REGULATION	
<p>These powers allow the Welsh Minister to make provision about the form and content of the list of persons removed from the register to be specified, the publication of the list and the circumstances in which an entry relating to a person must be removed from the list.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>The intention is to set out the requirements in relation to the list of persons who have been removed from the register. The maintenance of such a list by SCW is a new requirement.</p> <p>The workforce regulator does not currently maintain a list of people removed from the register. If a member of the public or an employer is seeking to find out if someone is registered, they first need to search the register. If they cannot identify the person there, they can search the list of outcomes of fitness to practise decisions to see if the person has been removed from the register. Further to this, they can contact the workforce regulator to ascertain the status of the person they are looking for. A person would remain on the list of outcomes of fitness to practise unless new evidence arises that calls the original decision into question or they are reinstated on the register.</p> <p>For reasons of public protection the register will reflect those sanctions imposed by a fitness to practise panel on a registrant. However, the register will not reflect that a person's entry has been removed. Therefore by virtue of section 109 SCW will be required to keep a list of those persons whose entries have been removed. Such a list will avoid any confusion as to why a registrant cannot be located within the register.</p> <p>In relation to the form and content of the list the policy intention is that the list will be consistent with the register. It will therefore include information to allow the identification of the former registrant such as the registered person's name and registration number. The intention is that the list will specify the reason why the registered person was removed from the register. SCW will be required to publish fitness to practise decision therefore the intention is that the reasons for removal will provide a summary of the published decision. Further discussions will take place with the workforce regulator and the sector to define what further information, if any, is needed.</p> <p>In relation to publication of the list the policy intention is that once again it will be</p>	

consistent with how the register is published. Currently the Care Council publish the register in electronic format and therefore the intention is that the list will also be published in the same way. This will ensure that the list is sufficiently accessible to members of the public, employers and others with an interest in the social care workforce. The regulations can make provision about the circumstances in which an entry must be removed from the list. It is the intention that one relevant circumstance would be a successful application to be restored to the register, or after a period of time, to be further considered, had elapsed.

The regulations will ensure that there is transparency about those that have been removed from the register, as well as about those who are on the register so that if members of the public have concerns about a social care worker and cannot find their name on the register, they can check the list of removed persons to see if they have been removed on the basis of being unfit to practise. The regulations will ensure that the way in which this list operates is carefully considered by the regulator and the government, so that the interests of the general public, employers and registrants are properly balanced and maintained.

The way in which the list operates may be subject to change in light of SCW's experience of maintaining such a list particularly given as this is a new requirement. It is necessary therefore to have the ability to make such changes .

REGULATIONS RELATING TO:	Use of the title social care worker
BILL PART:	4: Social Care Workers
SECTION:	110 (2)
DESCRIPTION OF THE POWER/REGULATION	
This power allows for protection of title to be applied to other types of social care workers in addition to social workers	
POLICY INTENTION OF THE REGULATIONS	
<p>The Care Standards Act 2000 provides protection of title for social workers. It makes it an offence for a person to use the title of social worker in Wales, unless they are registered with the Care Council for Wales or an equivalent UK regulator of social workers. The Bill replicates this position in section 110. Subsection (2), however, provides a regulation-making power for the Welsh Ministers to be able to add other descriptions of social care workers whose titles might require protection.</p> <p>There is no immediate intention to add other protected titles beyond that of social worker.</p> <p>Protection of title is a useful means of providing public protection beyond that provided by a requirement to register, by ensuring that workers in key roles can only carry out those roles if they are appropriately registered. Given that registration is dependent upon meeting certain requirements, protection of title can ensure that key workers are suitable for the roles that they are performing. Protection of title has worked well in relation to social workers and a variety of other professions. This power enables the same approach to be taken to other titles as the social care workforce develops.</p> <p>Nevertheless there needs to be the ability to add further descriptions of social care workers whose titles may need protecting in response to how the sector develops and evolves. The current model of registered managers is still developing and needs time to be fully embedded. It may be that non-registered individuals begin to use titles that closely resemble those of registered staff, resulting in public confusion. In these circumstances it may be necessary for protection of title to be considered to provide clarity and restore confidence.</p> <p>However it is not clear at this stage which groups will require protection. Regulations could for example make it an offence for a person who is not registered as a manager of a regulated service to use that title or hold themselves out as being registered with an intention to deceive. Given that the use of this power would create new criminal offences, full consultation would be carried out on any intention to use it. The consultation would involve the workforce regulator, the relevant groups of workers and their employers in order to ensure that the additional protection of title would deliver improved public assurance and protection.</p>	

REGULATIONS RELATING TO:	Amending relevant register list
BILL PART:	4: Social Care Workers
SECTION:	110 (5)
DESCRIPTION OF THE POWER/REGULATION	
<p>This power enables the Welsh Ministers to amend section 110(4). Section 110(4) sets out which are relevant registers for the purposes of the protection of title. If a social worker or social care worker is registered in a relevant register then they can use or take the title of social worker or social care worker.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>For the purposes of section 110, a register is a “relevant register” if it is a register maintained by SCW, the Health and Care Professions Council, the Scottish Social Services Council or the Northern Ireland Social Care Council. Therefore social workers who are registered with SCW or an equivalent social care regulator in the UK are able to take and use the title social worker. Subsection (5) enables the Welsh Ministers to amend the bodies who maintain a register. This is currently the position under the Care Standards Act 2000. A “relevant register” is a prescribed register maintained under a provision of the law of the UK which appears to the Welsh Ministers to correspond to the register in Wales. The Welsh Ministers have currently prescribed the register maintained by the Health and Care Professions Council, the Scottish Social Services Council and the Northern Ireland Social Care Council.</p> <p>There is no intention at this time to amend this through regulations under section 110. The policy intention is that the arrangement should continue so that there are no barriers for social care workers registered elsewhere in the UK to use their titles within Wales. It might be necessary in the future, however, to amend or add to those bodies if for example protection of title is extended to additional categories of social care workers who are regulated by other regulators or if there is a change in the way social care workers are regulated in other parts of the UK. There might also come a time in the future when registration with equivalent UK regulators is not considered to offer similar safeguards as registration with SCW, due to divergence of qualification criteria. This power would enable Welsh Ministers to limit a relevant register to a register maintained by SCW only.</p>	

REGULATIONS RELATING TO:	Grounds of impairment of fitness to practise
BILL PART:	6: Social Care Workers: Fitness to practise
SECTION:	116
DESCRIPTION OF THE POWER/REGULATION	
This power allows for the grounds by which a registrant's fitness to practise may be regarded as impaired to be amended.	
POLICY INTENTION OF THE REGULATIONS	
<p>Currently, Section 59 of the Care Standards Act 2000 provides that the workforce regulator must set out in rules the circumstances in which fitness to practise action will be taken. The Care Council for Wales' Fitness to Practise rules set the criteria out.</p> <p>Given the importance of the grounds for impaired fitness to practise in the regulatory process, these are now set out on the face of the Bill, rather than in rules. However it is also necessary for the grounds of impairment to be capable of being updated and adjusted to ensure that the system of regulation continues to be relevant and effective. This power provides for that to happen.</p> <p>The power provides the necessary ability to update this core feature of the regulatory process to ensure that the process continues to be fit for purpose in the context of the experience of the application of the grounds set out in the Bill; wider changes to the social care workforce; or to relevant case law. Although the grounds set out in the Bill have been carefully considered, any of these factors may lead the regulator and Ministers to the view that the grounds need to be adjusted in the future to ensure that the regulatory process can continue to function efficiently and effectively. This facility exists in the present system where the grounds of impairment are set in rules and for the reasons above needs to continue to be a feature of the new arrangement. Given the current consideration applied to setting the grounds of impairment in the Bill, there is no intention to make any regulations in the short term.</p>	

REGULATIONS RELATING TO:	Persons who cannot carry out preliminary consideration or investigations
BILL PART:	6: Social Care Workers: Fitness to practise
SECTION:	118, 124
DESCRIPTION OF THE POWER/REGULATION	
These powers allow for additional types of persons to be excluded from carrying out preliminary consideration or investigation of matters referred to the workforce regulator.	
POLICY INTENTION OF THE REGULATIONS	
<p>Preliminary consideration refers to the process of considering allegations or information to determine whether or not a case should proceed to be given further consideration. The workforce regulator will establish the process for screening such allegations and information; and this process could be carried out by a member or members of the workforce regulator's staff or by other persons appointed for that purpose. Where appropriate, this process is followed by investigation of the allegations, led by an investigation committee. Currently, Section 59 of the Care Standards Act 2000 provides for these arrangements to be set out in rules. The Fitness to Practise rules set the procedures for preliminary consideration and investigation including who can and cannot be involved.</p> <p>Under the Bill, the workforce regulator will be able to engage its own staff in these processes or appoint people for these purposes. However, in order to ensure that these processes are carried out in an objective and unbiased manner and are sufficiently separated from other processes, the Bill sets out certain persons who are excluded from being involved. These powers allow Ministers to exclude additional persons from involvement in these processes.</p> <p>There needs to be the capacity to make changes to who should not carry out preliminary consideration or investigation as these persons may need to be changed in light of the workforce regulator's experience; or as the system evolves; or in response to changes in the wider regulatory landscape. For example, if new regulatory bodies are created elsewhere in the UK, it may be necessary to exclude members of the new bodies from involvement in these processes. Similar provision is currently contained in rules made by the Care Council.</p> <p>There is no current policy intention to make any provision in regulations but this capacity needs to exist to respond to the factors above. Any regulations would be made following consultation with the regulator.</p>	

REGULATIONS RELATING TO:	Notice of onward referral
BILL PART:	6: Social Care Workers: Fitness to practise
SECTION:	122, 135, 149
DESCRIPTION OF THE POWER/REGULATION	
<p>These powers allow for the regulator to be under a duty to give notice of onward referral and to disclose undertakings to additional persons to those already listed in the Bill.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>Currently, Section 59 of the Care Standards Act 2000 provides for these arrangements to be set out in rules. The Fitness to Practise rules set the procedure out for giving notice and information at the various stages of the fitness to practise process.</p> <p>In order to provide effective public protection through the workforce regulatory process, it is necessary that the process is transparent and those with a direct interest are efficiently informed at the key points of the process. These sections now set out on the face of the Bill who must be informed of the onward referral of matters following preliminary consideration and of the agreement of undertakings. The Bill allows these lists to be added to by regulations.</p> <p>Ministers may need to make changes to the list of persons who should be given notice and information as these may need to be altered in light of the workforce regulator's experience or as the system evolves, particularly if new categories of workers are registered with the regulator. The intention is that the legislation will continue to ensure that every type of person with a direct interest in the registrant's work will be informed about fitness to practise actions.</p> <p>There is no current policy intention to make any provision in regulations and any regulations would be made following consultation with the workforce regulator.</p>	

REGULATIONS RELATING TO:	The provision of mediation
BILL PART:	6: Social Care Workers: Fitness to practise
SECTION:	129
DESCRIPTION OF THE POWER/REGULATION	
This power allows for the workforce regulator to put in place a system of mediation	
POLICY INTENTION OF THE REGULATIONS	
<p>There is no immediate intention to make regulations to introduce mediation. This power allows mediation to be put in place in due course if it is decided that this would be a useful addition to the regulatory process.</p> <p>The view of the Welsh Government is that mediation could be valuable in relation to matters raised where there is no realistic prospect of a panel finding impairment of fitness to practise, so that a mechanism is still available outside of the fitness to practise panel process to resolve difficulties that have arisen between a registered person and a complainant or service user. The availability of mediation could be a useful addition to the system for those reasons.</p> <p>This is a developing area in relation to health and social care regulation and a number of regulators across the UK use this method in a variety of ways. The Law Commission report on the Regulation of Health Care Professionals and Regulation of Social Care Professionals in England provides useful analysis of current practice and guidance on how it may be used in the future. The Law Commission recommended, following its review, that the Government should be provided with a regulation making powers to introduce mediation and provided for this in its draft Bill. Mediation could become an appropriate tool for the regulator and therefore the Welsh Ministers consider it necessary to have the ability to introduce this power of disposal. However it would be vital that such a means of disposal was used appropriately. In particular it would be important to continue the existing process where if the regulator receives information that is capable of amounting to a complaint, it must engage the fitness to practise process. Mediation would not be carried out as an alternative to this and would not undermine the public assurance provided by the fitness to practise process. Thus such regulations would set out the particular circumstances in which mediation could be undertaken and the circumstances in which it should not be undertaken. Circumstances in which mediation could be undertaken would include cases where there was a difficulty with communication, a misunderstanding or a relationship problem between a registrant and the person they were working with. Such a matter might not amount to impairment of fitness to practise but might still benefit from a process of resolution to the benefit of all of those involved.</p> <p>The regulations would also set out the arrangements for carrying out mediation.</p>	

These would ensure that there was no potential for confusion with the fitness to practise process. This would mean, for example, that there would be a requirement for mediation to be carried out by an organisation external to the regulator or by persons appointed for this dedicated purpose. Regulations would also set out that mediation should only be carried out early in the process following preliminary consideration or investigation. Given that mediation is an alternative approach to addressing matters referred to the regulator, full consultation would be carried out in the development of the approach and subsequent regulations.

REGULATIONS RELATING TO:	Disposals by fitness to practise panels
BILL PART:	6: Social Care Workers: Fitness to practise
SECTION:	141
DESCRIPTION OF THE POWER/REGULATION	
This power allows for the disposals by fitness to practise panels set out in the Bill to be added to, changed or removed.	
POLICY INTENTION OF THE REGULATIONS	
<p>Under the current regime, Section 59 of the Care Standards Act 2000 provides for these arrangements to be set out in rules. The Fitness to Practise rules set out the disposals or sanctions which may be applied. Given the fundamental importance of knowing how matters can be disposed of by panels in the regulatory process, these are now set out on the face of the Bill, rather than in rules. This provides for transparency of the regulatory process. However, it is also necessary for the range of disposals to be capable of being updated and adjusted to ensure that the system continues to be a relevant and effective system of regulation.</p> <p>The power provides the necessary ability to update this core feature of the regulatory process to ensure that the process continues to be fit for purpose in the context of the experience of the use of the disposals set out in the Bill by this or other workforce regulators; wider changes to the social care workforce; or to relevant case law. For example, other regulators have been giving consideration to other ways of disposing of cases including financial reimbursements, requiring an apology or ending pension rights. Although the disposals set out in the Bill have been carefully considered, any of these factors may lead the workforce regulator and Ministers to the view that the disposals need to be adjusted in the future to ensure that the regulatory process can continue to function efficiently and effectively. This facility exists in the present system where the grounds of impairment are set in rules and can be modified. For the reasons above, this needs to continue to be a feature of the new system.</p> <p>Given the current consideration that has been applied to setting the disposals in the Bill, there is no intention to make any regulations in the short term.</p>	

REGULATIONS RELATING TO:	Prohibition orders
BILL PART:	7: Orders prohibiting work in social care: unregistered persons
SECTION:	163,164,166,168,169,170,171
DESCRIPTION OF THE POWER/REGULATION	
These powers enable the Welsh Ministers to establish a prohibition scheme.	
POLICY INTENTION OF THE REGULATIONS	
<p>Currently the Care Council for Wales does not operate a prohibition scheme or have the ability to prohibit unregistered social care workers from working. Prohibition orders would be a new way of regulating the social care workforce for which a part of the register does not exist, in order to ensure that social care workers are competent and fit to provide care to the public.</p> <p>The regulations provide for all the aspects of this process to be put in place. In practice this would involve fitness to practise panels making orders prohibiting particular individuals from carrying out activities designated by the regulations. The scheme would not restrict entry to practise but would allow the regulator to take action against a person who fails to comply with specified standards of conduct.</p> <p>Prohibition orders could be applied to particular roles, activities or job titles. This could include, for example, domiciliary care workers or workers in care homes for adults. Such workers would not be required to pay fees or comply with qualification or continuing professional development requirements, but they could be required to meet specified standards of conduct which might, for example, be equivalent to the existing code of practice for social care workers. Breaching such standards or meeting a variety of other conditions, such as being convicted of a criminal offence, could lead to referral to a fitness to practise panel, which would consider the matter in a similar way to their consideration of matters under the full fitness to practise system of regulation. The system of prohibition orders would also allow for interim orders, reviews and appeals in a similar way to the fitness to practise system. However, the outcome of the process would be simpler: either someone would be prohibited from working or allowed to continue working. There would be no provision for conditions to limit the freedom of an individual's practice. Regulations would set out the format of the list of prohibited persons and how this would be published. A person who continued to work in a designated role or activity that had been included in the list of prohibited persons, would have committed an offence and be subject to financial penalty. In addition, a person employing someone to carry out a role or activities in relation to which they had been included in the list of prohibited persons could be guilty of committing an offence and subject to a fine.</p> <p>The regulations could be used to bring public assurance to parts of the workforce</p>	

that are not currently subject to regulation. Prohibition orders have been used in other countries and have been considered for use in the UK. They could offer a proportionate and cost-effective alternative to full statutory registration and offer a higher level of public assurance than voluntary registration, which is being removed. The Law Commission analysed the arguments around the use of prohibition schemes and concluded that the advantages outweigh the drawbacks and that some of the drawbacks could be mitigated. For example, any confusion of the public about the relationship between full statutory registration and prohibition schemes could be addressed through public information campaigns. They recommended that the ability to introduce prohibition schemes should exist through regulations.

Given that prohibition orders would represent a new component of social care workforce regulation in Wales, full consultation would be carried out involving all parties with an interest in the social care workforce before putting such a process into place. However there is no current intention to make regulations in this area.

REGULATIONS RELATING TO:	Persons excluded from panels
BILL PART:	8: Social Care Wales: duty to establish panels
SECTION:	172
DESCRIPTION OF THE POWER/REGULATION	
This power allows for persons to be excluded from being a member of the panels established in the Bill.	
POLICY INTENTION OF THE REGULATIONS	
<p>Regulations will set out persons, in addition to those specified in the Bill, that will be excluded from being members of panels. This power will also allow this list to be adjusted in the future.</p> <p>Section 172 of the Bill provides that SCW must, by rules, make provision for there to be registration appeal panels, interim orders panels and fitness to practise panels. Subsection (5) sets out that members or members of staff of SCW and other equivalent UK social care regulators cannot be members of the panel. This is to ensure that panel members are impartial and can make decision without being affected by conflicts of interest. There is also a need to ensure that panels can reach decisions in an objective and unbiased manner, by ensuring that panel members are sufficiently separated from other parts of the fitness to practise process. The policy intention therefore is to prescribe in regulations additional persons who cannot sit as panellists on the various panels. The intention is to prescribe persons for different panels. For example, persons who have sat on an interim orders panel will be unable to sit as a fitness to practise panellist in relation to the same case. Similarly persons who were involved in preliminary consideration or investigation of a matter will not be able to be a member of the fitness to practise panel who hears the case. This will ensure that registrants subject to panel proceedings experience a fair process at which each stage is objective and not inappropriately influenced by other stages of the process.</p> <p>There also needs to be the capacity to make changes to who should not be a member of a panel as these persons may need to be changed in light of the workforce regulator's experience; or as the system evolves; or in response to changes in the wider regulatory landscape. For example, if new regulatory bodies are created elsewhere in the UK, it may be necessary to exclude members of the new bodies from involvement in this process. Similar provision is currently contained in rules made by the Care Council. Regulations will be made following consultation with the workforce regulator.</p>	

REGULATIONS RELATING TO:	Proceedings before panels
BILL PART:	8: Social Care Wales: duty to establish panels
SECTION:	173
DESCRIPTION OF THE POWER/REGULATION	
This power allows the Welsh Ministers to make regulations in respect of proceedings before the panels.	
POLICY INTENTION OF THE REGULATIONS	
<p>Regulations will set out certain aspects of how panel proceedings will take place. They will also allow the regulator to make rules about panel proceedings. This power will allow such arrangements to be adjusted in the future.</p> <p>Under existing legislation, Section 59 of the Care Standards Act 2000 provides for these arrangements to be set out in rules. The Fitness to Practise rules set out practical arrangements for committees, which are the current equivalent of panels.</p> <p>This section of the Bill allows the Welsh Ministers to make regulations in respect of proceedings before panels. Given the central role of panels to the regulatory process, it is vital that they operate with efficiency and effectiveness. Ministers therefore need powers to be able to define certain aspects of how panels will work and to be able to adapt procedure in light of experience.</p> <p>The regulations will set out certain aspects of how panels will operate. They will also make provision for the workforce regulator to make rules about certain aspects of how panels will operate.</p> <p>The integrity of the panel process is central to the reliability of the regulatory process. In order to secure this, detailed arrangements will need to be set out on how panels will operate. The policy intention is that overarching matters that orientate the role of panels, such as their general objectives or their case management processes will be set out in regulations. The intention is that the regulations will broadly follow the Care Council's current procedures which are set out in rules as well as reflecting the principles highlighted by the Law Commission in its draft Bill that was prepared following its review of review of health and social care regulation.</p> <p>The intention is that the matters which will be set out in regulations or rules under this section include:</p> <ul style="list-style-type: none"> General objectives of panels – what each type of panel is to achieve; Case management process – the co-ordination and flow of the panel process; Circumstances when a hearing is not necessary – when a case can be 	

considered on the basis of the documentation alone;
Rules of evidence – acceptable forms of evidence;
The circumstances in which members of the public may be excluded from proceedings;
The summoning of witnesses – where the participation of essential witnesses needs to be secured;
Special measures for witnesses – where witnesses may be vulnerable or have special needs;
Who is entitled to make representations at hearing;
Circumstances when hearing can be postponed or adjourned or when case can be heard together