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



Llywodraeth Cymru
Welsh Government

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Chair of the Health and Social Care Committee
National Assembly for Wales
Cardiff Bay
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19 May 2015

Dear David,

Regulation and Inspection of Social Care (Wales) Bill

I would like to thank you and the Committee for the opportunity to discuss the Regulation and Inspection of Social Care (Wales) Bill on 25 March 2015.

I am pleased to provide the Committee with further information on the following issues which were raised during the session:

- a.) the costs associated with registering domiciliary care workers and adult residential care workers;
- b.) information on what a Market Stability Report might look like; and
- c.) an indication of the expected timescales for publication of draft regulations under section 60(6) and 60(7) relating to Ministers' ability under section 60 to assess the financial sustainability of a service provider.

Registering Domiciliary Care Workers

The Regulatory Impact Assessment provides the costs and benefits associated with extending mandatory registration across the whole of the social care workforce. Two options are presented for extending registration:

- i. extending registration using the existing fee structure; and
- ii. extending registration using an increased fee structure.

The supplementary analysis set out below discusses the costs and benefits of applying these options to two groups of the workforce: domiciliary care workers and adult residential care workers.

There are an estimated 47,163 domiciliary care workers and adult residential care workers in Wales (see table one below for a breakdown). The current cost to the Care Council for Wales of registering care and support workers is £273.31 per registrant (see table two below). The current registration fee for domiciliary care workers and adult residential care workers, where they choose to register voluntarily, is £10. The Care Council for Wales suggested in discussions with officials during the preparation of the RIA that due to economies of scale extending mandatory registration across the whole of the social care and support workforce would cost £85.24 per registrant (see table three below). In addition, the Care Council for Wales suggested increasing fees to enable mandatory registration to be extended without additional cost to the public purse. The Council proposed an increased fee for domiciliary care workers and adult residential care workers of £25.

Table one: number of care workers by sector and role

Sector	Role	Number
Local authority	Domiciliary care worker (adult services)	5,109
Local authority	Senior Domiciliary care worker (adult services)	359
Independent sector	Domiciliary care worker (adult services)	11,831
Independent sector	Senior domiciliary care worker (adult services)	831
Local authority	Domiciliary care worker (children's services)	411
Local authority	Senior domiciliary care worker (children's services)	11
Independent sector	Domiciliary care worker (children's services)	955
Independent sector	Senior domiciliary care worker (children's services)	30
Local authority	Care workers (residential homes for adults)	2,855
Independent sector	Care workers (residential homes for adults)	24,771
	Total	47,163

Table two: current cost of mandatory registration

Year	Estimated Cost	Number of registrants	Cost per registrant	Income from fees (existing rates)	Grant in aid required
2012-13	3,170,175	11,599	273.31	264,350	2,905,825

i. Extending registration to domiciliary care workers and adult residential care workers using the existing fee structure of £10

Table three: cost of extending mandatory registration to domiciliary care workers and adult residential care workers using existing fee structure of £10

Year	Number of registrants	Cost per registrant	Estimated Cost	Estimated income from fees (existing fee of £10)	Estimated grant in aid required	Current grant in aid (2012-13)	Additional cost to the public purse (existing fees)
2017-18	47,163	85.24	4,020,174	471,630	3,548,544	2,905,825	642,719
2017-18	47,163	130.00	6,131,190	471,630	5,659,560	2,905,825	2,753,735
2017-18	47,163	273.31	12,890,120	471,630	12,418,490	2,905,825	9,512,665

Where economies of scale are realised and the consequent cost per registrant is £85.24, extending mandatory registration to domiciliary care workers and adult residential care workers, based on the existing fee of £10, would result in an additional cost of £642,719 per annum to the public purse (see table three above).

If no economies of scale are realised and the cost per registrant remains at £273.31, extending mandatory registration to domiciliary care workers and adult residential care workers, based on the existing fee of £10, would result in an additional cost of £9,512,665 per annum to the public purse.

It is likely that some economies of scale will be realised by extending registration. For illustrative purposes, a cost per registrant of £130 has, therefore, been assumed. Using this cost and the existing fee of £10, this would result in an additional cost of £2,753,735 to the public purse.

ii. Extending registration to domiciliary care workers and adult residential care workers using an increased fee structure

Where economies of scale are realised and the consequent cost per registrant is £85.24, extending mandatory registration to domiciliary care workers and adult residential care workers using the increased fee of £25, would result in a saving to the public purse of £64,726 per annum (see table four below).

If no economies of scale are realised and the cost per registrant remains at £273.31, extending mandatory registration to domiciliary care workers and adult residential care workers, using the increased fee of £25, would result in an additional cost of £8,805,220 to the public purse.

It is likely that some economies of scale will be realised by extending registration. For illustrative purposes, a cost per registrant of £130 has been assumed. Using this cost and the increased fee of £25, this would result in an additional cost of £2,046,290 to the public purse.

The significant assumption of the figures provided by the Council is the delivery of significant savings in terms of economies of scale. It has also no calculation of other effects of these changes such as the impact on the supply of the workforce and costs to employers, for example in enabling their staff to achieve the required qualifications.

Table four: extending mandatory registration to domiciliary care workers and adult residential care workers using increased fees of £25

Year	Number of registrants	Cost per registrant	Estimated Cost	Estimated income from fees (increased fee of £25)	Estimated grant in aid required	Current grant in aid (2012-13)	Additional cost to the public purse (increased fees)
2017-18	47,163	85.24	4,020,174	1,179,075	2,841,099	2,905,825	-64,726
2017-18	47,163	130.00	6,131,190	1,179,075	4,952,115	2,905,825	2,046,290
2017-18	47,163	273.31	12,890,120	1,179,075	11,711,045	2,905,825	8,805,220

Market Stability Reports

As promised, I have enclosed a link to the guidance paper drafted by the Institute of Public Care at Oxford Brookes University on behalf of the Social Services Improvement Agency (SSIA), "Developing a Market Position Statement: A Commissioner's Toolkit," which shows that local authorities in Wales have already given careful consideration to the issue of market stability reports. A copy of this document is enclosed for ease of reference at **Annex A** and further copies can be found at:

<http://ipc.brookes.ac.uk/publications/index.php?absid=796>. As you will notice, the toolkit recognises that there is currently no statutory requirement for local authorities to produce Market Position Statements (MPS), although many authorities are currently collecting this information. The guidance also sets out what questions an MPS should seek to address as well as outlining what it should look like. It reiterates our sentiments why such statements are beneficial to local authorities and their stakeholders (at page 11) stating that:

"Putting together an effective MPS is not easy. It requires good information, succinct analysis and a willingness to engage with many different stakeholders in a way which promotes a genuine and meaningful dialogue. It can be worth the effort, however, in helping local authorities and their partners secure the kind of services that will be needed to meet the needs of its local population into the future."

I would reiterate that this is provided for illustrative purposes only. It is likely that any such statement would, following engagement and consultation, differ from this model. However I hope it is helpful in providing a flavour of such a report.

The rationale for legislating in this area is twofold: firstly by making it a statutory duty we will ensure compliance and improve consistency across Wales; and secondly, it will provide local authorities with the levers to more readily bring partners around the table to develop a more collaborative approach to identifying and meeting the specific needs of their communities. Our intention is not to use this information to highlight bad practice or failures in local government, but ensure that commissioners have the ability to readily identify and source the necessary service providers to fill gaps in the market in their communities and help the sector identify areas for greater opportunities.

Timescales for publication of draft regulations under section 60(6) and 60(7).

It would be my intention to undertake early consultation on these matters, and to bring forward draft regulations in 2016.

Amendments to Transcript of Health & Social Care Committee meeting of 23 March 2015

Following on from the receipt of the draft transcript of the meeting, my officials noted some minor factual amendments that were needed to the transcript and I thought it might be useful to remind the Committee what these were and provide a short rationale for them:

- In paragraphs 11 and 14, I made reference to the Health and Social Care Act. The formal name of the legislation to which I was referring is the Health and Social Care (Community Health and Standards) Act 2003;

- In paragraph 38 there was some confusion regarding the organisation that regulates Occupational Therapists. For clarity, this is the Health and Care Professions Council (HCPC), not the College of Occupational Therapists (which is also not a Royal College as stated);
- In paragraph 39 it was suggested that the groups of workers to be regulated are named on the face of the Bill. In fact, the Bill currently only requires a register for Social Work to be maintained and the requirement for a register of other groups is a matter for regulations;
- In paragraph 57 it was stated that the HCPC haven't introduced a form of negative registration. For absolute clarity, it is noted that there is a scheme that relates to social work students currently in operation; and
- In paragraph 131, I stated that the Inspectorate would have the power to require information following a due diligence exercise. In fact, the powers to require information are not reliant on such an exercise and would be used to facilitate such a due diligence exercise.

Other information requested

Your letter also sought my views on a number of areas that Committee members felt would help them with their consideration of the Bill:

Commissioning of services

1. *The provisions in section 26 of the Bill and section 9 of the Social Services and Well-being (Wales) Act 2014, and whether it is your intention to provide for a specific quality standard for the commissioning of services in regulations made under section 26 of the Bill?*

I understand the Committee's rationale for this suggestion - members will recall my own comments regarding this area in our session. However I am not yet fully persuaded that additional standards under section 26 of this Bill would be helpful. Section 26 is the regulation making power to impose requirements on providers of regulated services. Commissioning is a function of local authorities and it is they who must be held accountable for how it is carried out. The regulations under section 26 will not apply to local authorities.

Local Authorities are currently and will continue to be regulated with regard to the exercise of their social services functions that are set out in Schedule 2 to the 2014 Act. Section 9 place a duty on Welsh Ministers to issue codes to set out how local authorities can achieve well being outcomes and section 145 provides a power to Welsh Ministers to issue a Code in relation to the exercise of social services functions. I believe it would be much more helpful to focus our legislation in this area on the codes being established under the Social Services and Well-being (Wales) Act 2014. These will establish the requirement for local authorities to ensure that the care and support provided to a citizen in their home adequately meets their needs. The role of the Inspectorate will be to ensure that local authorities are meeting these requirements.

2. *The provisions in section 26(4) of the Bill, which refers to codes under section 9 of the Social Services and Well-being (Wales) Act 2014, and whether there should be similar references to sections 34(3) and (4) of the Act (which provide that a local authority must be satisfied that care visits to a person's home are of sufficient length and that guidelines to this effect must be included in the code of practice under section 145) to ensure inspection against these provisions?*

In a similar line of reasoning, I am not yet persuaded that a 'double lock' on the provision of domiciliary care would be the best approach to avoid inappropriately short visits. This double lock would place, through regulations, a similar obligation on providers to that placed on local authorities by the 2014 Act to ensure that there is sufficient time to deliver quality care during home visits to meet people's needs. I believe this would complicate the accountabilities in our system. It is local authorities that are required to ensure visits are of a suitable length, and this should be reflected through their commissioning. The local authority has a responsibility to be satisfied that its contractual requirements are being met, and I am not convinced that the Inspectorate should act, effectively, as their contract managers in this case.

In any event, the standards that will be developed in regulations made under section 26 will ensure that care must be provided with reference to a service user's well being outcomes. The general system that will be established under regulations will therefore ensure that the service regulator inspects a provider with regard to the quality of the care that is provided without the need for a specific provision to be made on this.

Changes to service provision/provider failure

3. *Whether the Bill will provide sufficient protection for people in receipt of social care services if or when the provider of their services decides to change or cease the services they provide?*

Protection to service users when a provider fails is afforded through the Social Services and Well-being (Wales) Act 2014. Section 189 of that Act sets out how, in addition to similar duties already in place for children, a local authority must for so long as it considers necessary (and in so far as it is not already required to do so) meet;

- a.) those of an adult's needs for care and support, and
- b.) those of a relevant carer's needs for support,

This Bill supports that protection by providing powers to Welsh Ministers to inspect against how any local authority is meeting its duties, including this one.

If there is a proposed change to service provision, then the proposed new provider will have to make an application for registration in the normal way. The service regulator will need to be satisfied that the new provider is fit and suitable to provide the service that it is proposed that they take over. New providers of regulated services who take over an existing service will not be able to circumvent the requirements for registration that exist on the face of the Bill.

4. *Whether the Bill provides adequate powers of intervention for the regulator when social care services are failing to meet the required standards, including your views on the use of interim managers or improvement notices?*

I believe the Bill strengthens the powers of the regulator in terms of its enforcement options. Sections 14 and 15 provide the regulator with the power to issue statutory Improvement Notices and the ability to, effectively, provide a time limit for improvements to be made. In terms of the use of interim managers, I do not believe it is the role of the Inspectorate to take over failing services. The response to such a situation is one for the local authority and whilst the Inspectorate has a role to play in providing information and advice, ultimately it should not become a direct deliverer of services by default.

5. *The extent to which the Bill enables the regulator - when making decisions in relation to social care services that are failing to meet the required standards - to take into account the impact on people in receipt of that service and the local market for that service?*

The Welsh Ministers are and will continue to be the service regulator and are required to make decisions that are reasonable and proportionate in the circumstances. Under the current system the service regulator does take into account the impact on service users of enforcement action and I would expect that to continue under the arrangements set out in this Bill. However, the service regulator has as its general objective under section 4 of the Bill to 'protect, promote and maintain the safety and well-being of people who use regulated services' and in that light I would expect that on occasions enforcement action is the best possible way to achieve that objective.

Public engagement;

6. *Whether the provisions in sections 39, 40 and 70 in relation to public engagement with regulation and inspection are sufficient to achieve your policy intentions?*

I firmly believe that this Bill clearly sets out our expectation that our regulators must work closely with citizens in carrying out their work. However, I feel that it would be inappropriate and unhelpful to be overly prescriptive on how this is achieved on the face of the Bill, as there is a danger that this would constrain rather than encourage greater citizen involvement.

Our service and workforce regulators, CSSIW and the Care Council for Wales are already taking steps to involve citizens in their work, through a variety of ways. For example, members of the Committee will be aware of the newly established CSSIW National Advisory Board following its presentation of evidence on this Bill, and they will also be aware of the long-standing lay-led approach to regulation of the Care Council. The Bill will further this work and place a new duty on both regulators to publish a policy on their engagement with citizens and to report annually on how this been achieved. At this stage I believe this is the right approach, because it allows the regulators to adapt their approach as they learn how and when citizens want to be involved, and what works well. It also allows the regulator to adapt their approach dependent upon the group of citizens most directly involved in a particular service area.

Inspections

7. *The provisions in the Bill in relation to the involvement of lay inspectors, and whether the Bill could be more explicit?*

Whilst there is no specific mention of them in the Bill, we do recognise that lay inspectors can, in appropriate circumstances, make an effective contribution to the inspection process. Indeed, CSSIW has used lay inspectors in their work. However I do not intend to restrict the regulator to a particular approach on the face of the Bill. The understanding of lay inspection, and what a lay inspector is, differs across our sector. Ultimately I do not believe that the Bill is the place to provide this level of operational detail. However, the requirement to publish plans in this area and report on their delivery by regulators will ensure you, and the general public, will have an opportunity to scrutinise and comment on whether the regulators are meeting expectations in this area.

8. *The Older People's Commissioner's recommendation that Community Health Councils should be given a formal role in carrying out inspections?*

I agree with the Committee that there may well be merit in utilising the expertise of Community Health Councils (CHCs) in the inspection process. I recognise that they provide an important link between health, social care and citizens and I am aware that the Commission on Public Service Governance and Delivery has also identified a number of ways that CHCs could be utilised to improve oversight. The Bill as it stands does not prevent CHCs from being involved in the inspection process. However, I am not convinced that placing such a requirement on the face of primary legislation is appropriate. As I mentioned in Committee, I will be issuing a Green Paper on a number of aspects that relate to health and social care before the summer recess; and I am confident that the issue around the involvement of CHCs will be a part of the discussion that flows from that process.

9. *Whether regulations made under section 38(1) would enable the regulator to charge service providers for the inspection, or re-inspection, of their services?*

This would be possible under the Bill as drafted.

Joint working

10. *Whether Part 9 of the Bill is sufficiently broad in focus to enable joint working between relevant regulators in the health and social care sector?*

I am confident that the Bill strengthens information sharing between regulators, and with other bodies. Ultimately, getting organisations to work collaboratively is not a matter simply for law. However, through this Bill we will ensure that there can be no excuses for these organisations failing to work in partnership and failing to share information, where this is appropriate. I believe that section 180 of the Bill, for example, is a powerful new duty on our regulators to share information if well-being is at risk.

Part 9 of the Bill makes a distinction between regulatory bodies and relevant authorities in order to distinguish the powers and duties that are placed on the social care regulators whose functions are set out in this Bill; and those powers and duties that are to be placed

on those bodies that are connected in some way to, and may have a role in, assisting the social care regulators in Wales in relation to those functions. The regulatory bodies named in the Bill are limited to the Welsh Ministers exercising their functions under this Bill and Social Care Wales; and all of the powers and duties that are within Part 9 are placed on those regulatory bodies. That includes making it clear that co-operation between these two is mandatory in carrying out their functions (section 176(1)) and the ability to exercise their functions jointly (section 177).

The Bill currently only includes at section 175 a range of relevant authorities that are Wales-only bodies. Our intention is for this legislation to include in the list those bodies in the UK which are integral to social care regulation in Wales, for example, Care Quality Commission (CQC) and Health and Care Professions Council (HCPC). Discussions are taking place with the UK Government as to how best to achieve this intention.

Preventative services

11. The extent to which this Bill will provide for effective scrutiny of the preventative services developed under section 16 of the Social Services and Well-being (Wales) Act 2014?

I am confident that we have provided for the effective scrutiny of preventative services, as they have been set out in the Social Services and Well-being Act 2014.

Section 15 of the 2014 Act will place a duty on local authorities to provide or arrange for the provision of preventative services in their areas. This duty is a social services function within the meaning of Schedule 2 of the 2014 Act and falls within the scope of the inspection powers of Welsh Ministers as set out in this Bill which inserts section 149B into the 2014 Act, and therefore members can be confident that they can and will be scrutinised.

Financial implications

12. The anticipated economic and financial impact of the regulatory framework established by the Bill on small-scale social care providers?

Economic and financial implications for small-scale service providers

In Wales, the data available indicates the greater majority of care and support providers are small-scale. This profile provides diversity in provision and a more community centred approach.

The financial impact of the Bill from 2017/18 for care and support providers in the RIA is estimated to be approximately an additional £50 per annum. It is anticipated that much of this, if not all, will be absorbed through providers utilising existing time, and thus have no direct cash impact on businesses. The information on which the calculations were based was provided by the UK Homecare Association, an organisation which represents providers of domiciliary care.

Any use of the power to set fees will be done in a proportionate way to ensure small-scale providers are not unfairly penalised.

13. How the increased costs of £9.2 million to the Care and Social Services Inspectorate Wales between 2016-17 and 2020-21 will be funded, from which other departments these funds will be drawn, and whether this has any implications for the affordability of the Bill?

The RIA sets out costs that will fall to CSSIW, both to cover transition and those required on a year by year basis.

In terms of **transition costs**, the Welsh Government is already investing significantly in the changes required by Sustainable Social Services generally, and the Social Services and Well-being (Wales) Act 2014 specifically. Members will be aware that in the current year, the Welsh Government is providing £3 million to the sector directly to support transition and in particular the implementation of the Social Services and Well-being (Wales) Act 2014. This funding has always been earmarked to support the overall change agenda in social care, and therefore should be available for transition costs under this Bill.

In terms of ongoing costs, the RIA identifies approximately £1.7m annually for CSSIW. The overwhelming majority of this (£1.4m) is due to the implementation of ratings, a Quality Judgement Framework, and in particular the additional time required by Inspectors to make these judgements. However I think these costs for ratings are likely to be reduced as we understand more about how the system might work, given that Inspectors are already undertaking inspections and making judgements about compliance. Secondly this is a power not a duty. Any introduction could only take place after detailed regulations which will have their own Regulatory Impact Assessment. The Assembly will therefore have an opportunity, through affirmative procedure, to assess whether the system has been costed accurately and will be resourced appropriately. And, of course, the Welsh Government will not introduce ratings if they are not value for money.

The other cost of significance is the delivery of the market stability and oversight provisions by the regulator. This has been estimated by CSSIW to be £200,000, although given that similar work is already undertaken by other Welsh Government departments, and a closely aligned scheme of oversight is underway in England, I am sure there are opportunities for economies in this area.

I am sure the Committee will also appreciate the wider picture, and those factors in play that will ultimately affect any resource requirements.

As the Committee will be aware, CSSIW is not only responsible for social care regulation, it also oversees early years and childcare. Therefore, the work of CSSIW follows the policy directions set out by my Cabinet colleagues, the Minister for Education and Minister for Communities and Tackling Poverty. Significant changes in that area are currently being consulted on, for example increasing the age of compulsory registration of childcare from eight years up to 16 or 17 years in the case of disabled children.

As a Welsh Government we work across portfolios, including that if the Minister for Public Services who is responsible for the administrative management of CSSIW, to deliver the most cost-effective way of running the Inspectorate.

The Green Paper I have committed to publish later this year will consider the way that HIW and CSSIW work together, and where they are located. The outcome of that debate will also have a significant impact on the costs of any change.

I can confirm that under current arrangements the Welsh Government will be able to fund the costs that fall on CSSIW as a result of this Bill.

14. Anticipated timescales for the provision of more detailed cost benefit analyses of the proposed subordinate legislation?

The Regulatory Impact Assessment continues to be reviewed. Members will be aware that prior to my recent attendance at the Finance Committee I set out in correspondence some minor changes to the calculations within it that had emerged through this reviewing process. I will lay a revised version at the appropriate stage.

In terms of the impact of secondary legislation, these will be developed in consultation with stakeholders so that full and robust RIAs will be presented alongside the draft regulations.

Human Rights implications

15. The analysis which has been undertaken in the drafting of the Bill and preparation of the Explanatory Memorandum of the Human Rights implications for actions proposed under the Bill?

I am satisfied that the provisions of the Bill are compatible with the rights contained in the European Convention on Human Rights. As you will be aware to be within competence, the provisions in the Bill must be compatible with the Convention. Human rights issues were considered as part of the overall legal advice which I received and which enabled me to make the declaration in the Explanatory Memorandum that the Bill is within the legislative competence of the Assembly.

The Presiding Officer has also determined that the Bill is within the legislative competence of the Assembly.

I hope that the information provided in this letter answers the questions raised by Committee members and I look forward to answering any further questions from members in due course.

I am copying this letter to the Chair of the Constitutional and Legislative Affairs Committee.

Best wishes,

Mark

Mark Drakeford AC / AM

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol

Minister for Health and Social Services