

Mark Drakeford AC / AM
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: LF/MD/0775/15

David Melding AM
Chair of the Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

Dear David,

8 September 2015

Regulation and Inspection of Social Care (Wales) Bill

You will recall, during the General Principles debate on the Bill on 14 July, I confirmed that I would provide a detailed response to your Committee's Stage 1 report and its 14 recommendations. Whilst there is no strict requirement to provide a response to every single one of the recommendations, I feel that it is important to help you understand the consideration that I have given to each of them.

I am copying this letter to David Rees AM, Chair of the Health and Social Care Committee.

Best wishes,

Mark

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Recommendations from the Constitutional and Legislative Affairs Committee Stage 1 Report into the Regulation and Inspection of Social Care (Wales) Bill.

I thank the Constitutional and Legislative Affairs Committee for their detailed consideration of the Regulation and Inspection of Social Care (Wales) Bill. I have considered each of your recommendations and am responding accordingly.

Recommendations 2, 3 and 4 call for a number of amendments to be made to the Bill, I am happy to confirm that I **accept** all three recommendations and will bring forward amendments in response to all three recommendations at stage two. My response to recommendation 2 will take the form of amending a number of sections to ensure a duty to consult applies, for example to sections 35 and 38.

In respect of recommendation 3 I accept the principle of this recommendation, however I will not be bringing forward an amendment to change the procedure for regulations introduced under section 6(1)(d) of the Bill. I will however bring forward amendments to put more detail directly on the face of the Bill regarding the fitness test to provide services and be nominated as a Responsible Individual. I believe this goes beyond the intention for this recommendation so trust the Committee will be satisfied by this approach.

I will bring forward an amendment to put extra detail regarding the content of the annual return directly on the face of the Bill, this will set out some of the standard information that will be required. I will also propose amendments to the Bill at stage two so that the first set of regulations drafted under this section will be subject to the affirmative procedure.

As previously indicated I have considered **recommendation 5** in further detail, I remain of the view that it would not be helpful to list on the face of the Bill some of the potential circumstances in which Welsh Ministers may designate a Responsible Individual. Such an amendment would not in my view enhance the Bill and could instead have the unintended consequence of the list being interpreted as exhaustive and tie the hands of Welsh Ministers in dealing with unlisted and unexpected circumstances. On this basis I am **rejecting** this recommendation.

I have reviewed sections 26-30 of this Bill in response to **recommendation 6** and noted the views of the Committee but am of the view that there is inherent risk in placing further detail on the face of the Bill. I intend the power to be wide so that the things that providers may be required to do may be many and varied. The Assembly will have the opportunity to review the appropriateness of each of the requirements that may be imposed via the affirmative procedure. There is further detail in the Explanatory Notes which accompany the Bill. I am happy to commit to review that information to see if additional detail can be provided, however I am **rejecting** this amendment.

Recommendations 7, 8, 9 and 10 call for amendments to be made to the Bill to apply the super affirmative procedure to a number of sections of the Bill relating to ratings, offences, penalty notices and financial sustainability. I am happy to accept the principle behind the recommendations, which would require a 12 week consultation on the draft regulations themselves with a statement from the Minister regarding the consultation and detailing what the regulations change. I will give effect to this recommendation by making amendments to the Explanatory Notes detailing that it would be our intention to follow the procedure set out

in section 33 of the Social Services and Well-being (Wales) Act 2014 for substantive regulations.

The committee recommended in **recommendation 11** that the affirmative procedure is applied to section 110(5) relating to protection of title. Protecting titles of social care workers is a significant regulatory intervention and because of this I have already considered that the affirmative procedure should apply to section 110(2) where the titles of other social care workers, in addition to social workers are protected. However, I am not of the view that the affirmative procedure is needed in relation to section 110(5) as this will only need to be used if there are changes to those relevant regulators listed in subsection (4). Such changes will only be made to keep the Bill up to date. The regulation making power will not therefore substantially affect the provisions of the Bill. I am therefore **rejecting** this recommendation.

Recommendation 12 calls for an amendment to the Bill to apply the affirmative procedure to the making of regulations under section 124(5)(d). The Committee's report refers to the fact that this is because section 124 relates to the right to a fair trial under the European Convention on Human Rights and this could therefore potentially be compromised by the composition of a fitness to practise panel. Section 124(5) deals with those persons who are precluded from carrying out an investigation. Provision in relation to the composition of the panel adjudication decisions is set out in section 172. This is to ensure that there is a separation between those carrying out investigations into a person's fitness to practise and those adjudicating on those issues. The regulation making power in section 125(5)(d) enables persons to be added to that list of persons who cannot carry out an investigation. It does not allow the Welsh Ministers to 'take away' from that list. Therefore the separation between investigation and adjudication required by Article 6 of the European Convention on Human Rights will always be maintained irrespective of whether regulations are made or not. As such, this detail is relatively minor in the overall legislative scheme and I am concerned that applying the affirmative procedure in line with **recommendation 12** would tie up National Assembly and Government resources. I am therefore **rejecting** this recommendation.

The power in section 135(2) is included in order to enable the lists of persons to whom Social Care Wales is required to disclose details of undertakings agreed with a registered person to be kept up to date and adjusted if the key organisations or structures within social care change. The disclosure of undertakings is a significant feature of public protection and as such, it is important that the list of persons to whom disclosure must be made is carefully and thoroughly considered. I therefore **accept** the **recommendation 13** that these regulations should be subject to the affirmative procedure.

Recommendation 14 calls for an amendment to apply the negative procedure commencement orders that include transitory, transitional or saving provisions in accordance with section 254(3). I am **rejecting** this recommendation as the making of commencement orders is not normally subject to any procedure, as they bring into force what the National Assembly has already approved, I see no reason to therefore deviate from the current convention in relation to commencement orders.

