

SOCIAL AND HEALTH CARE OVERVIEW AND SCRUTINY COMMITTEE

Date of Meeting	27 th October 2022
Report Subject	Primary Legislation Changes
Portfolio Holder	Deputy Leader of the Council and Cabinet Member for Social Services and Wellbeing
Report Author	Chief Officer (Social Services)
Type of Report	Strategic

EXECUTIVE SUMMARY

The Welsh Government are engaging with all those who have an interest in continuing to improve the health and social care system within Wales.

The Welsh Government are seeking views on a number of proposals for changes to be made to primary legislation through a consultation process with all responses to the consultation being received by 7th November 2022. The consultation covers the following main areas;

- Eliminating profit from the care of children looked after
- Introducing Direct Payments for Continuing Health Care
- Extending mandatory reporting of children and adults at risk
- Amendments to regulation of service providers, responsible individuals and the social care workforce

Within the consultation document it further details the proposal changes to each of the main areas;

- Outlines legislative proposals for eliminating profit from the care of children looked after;
- Proposes enabling access to Direct Payments for adults who are eligible for Continuing NHS Healthcare;
- Looks at existing duties to report children and adults at risk in Wales, and asks whether these duties should be expanded;

- Explores areas within existing regulation of services providers, responsible individuals and the social care workforce, and seeks views on potential amendments.

Social Services, Senior Management Team, have collectively completed the response form to submit to the Welsh Government. The responses given within the Response Form, regarding the primary legislation changes that the Welsh Government are proposing, have highlighted the positive impact, the risks associated, and the potential implications and investment(s) (financially and human resources) that will be required, should changes be made to primary legislation.

RECOMMENDATIONS

1	Members approve the response that Flintshire County Council have produced to provide to the Welsh Government in relation to the proposals for changes to primary legislation.
---	---

REPORT DETAILS

1.00	EXPLAINING WELSH GOVERNMENT CONSULTATION ON CHANGES TO PRIMARY LEGISLATION
1.01	The consultation document has been divided into six chapters. The chapters in the document set out the context and rationale for each proposed change; explain why we consider the need to introduce or amend the law in these areas, and what this is intended to achieve.
1.02	<p><u>Chapter 1; Eliminating profit from the care of children looked after</u></p> <p>Within the Programme for Government and Co-operation Agreement, the Welsh Government are committed to working with social partners to eliminate profit from the care of children looked after. The initial focus of the proposals is on the private provision of residential care for children, alongside independent sector foster care</p>
1.03	Welsh Government are proposing legislative changes to provide a statutory basis to eliminate private profit from the care of children looked after in order to develop services that are locally based, locally designed and locally accountable; that improve the care experience for young people.
1.04	Aim is to ensure that public money invested in the care of children looked after does not profit individuals or corporate entities, but instead is spent on children's services to deliver better experience and outcomes for children and young people, addressing service development and improvement and further professional development for staff.

1.05	<p>Local authorities arrange various placements to accommodate children looked after;</p> <ul style="list-style-type: none"> • With a relative (a 'kinship placement') • With foster parents • In a children's care home • In other residential settings such as supported lodgings, a school, or, for a small number of cases, a secure unit • With a prospective adopter (in certain circumstances)
1.06	<p>Over 80% of care homes for children and young people in Wales are run by the private sector. In July 2022, there were 223 private sector care home services for children, providing a total of 908 places and 37 public or not-for-profit services, providing 160 places.</p>
1.07	<p>In relation to foster care, there are 46 fostering services in Wales (public and private sectors) with 24 provided by the private and independent/voluntary sectors and by 22 local authorities.</p>
1.08	<p>Welsh Government are proposing a definition of 'not-for-profit' for the care of children looked after and securing the elimination of private profit through provision that only allows 'not-for-profit' providers to register with Care Inspectorate Wales.</p>
1.09	<p>Overall objective of the commitment is to rebalance the market in favour for public or not-for-profit provision for children looked after. Through this work there will be an increased opportunity to reinvest funding into public sector and not-for-profit care provision, including supporting improved pay and conditions, opportunities for professional development and improved career paths for staff, which will, in turn, lead to better care for children and young people.</p>
1.10	<p><u>Chapter 2: Introducing direct payments for Continuing NHS Healthcare</u></p> <p>This consultation seeks views on the proposal to extend the flexibility to access direct payments to adults who are eligible for NHS Continuing Health Care ('CHC'). Direct payments are monetary amounts, made available by local authorities under sections 50 and 53 of the Social Services and Well-being (Wales) Act 2014. Direct payments are a means to allow people to exercise voice and control; that is decide how, when and by whom their care and support needs are met.</p>
1.11	<p>Healthcare, provided by the NHS, is free at the point of need and when that need outweighs other care needs a person may be eligible for a CHC package of ongoing care. This is only provided when a person's needs are considered suitable and is subject to regular reassessment. Currently, a person receiving CHC cannot received direct payments to enable them to make arrangements to meet those needs.</p>
1.12	<p>Welsh Government are proposing to introduce direct payment for CHC for adults, they propose to amend the NHS (Wales) Act 2006, to include;</p> <ul style="list-style-type: none"> • a power for local health boards to make direct payments to adults

	<p>(or their representative) who have been determined to qualify for NHS funded CHC. Giving this power to health boards would allow them to make direct payments to people for their CHC, where the person wished to have these. People would then be able to purchase healthcare and care and support that best meet their needs.</p>
1.13	<p>In by making these legislative changes it is envisaged that the proposals will open up new ways to deliver care, reducing strain on domiciliary care services and better recognising the part played by unpaid carers. The Welsh Government have the opportunity to learn from measures and guidance in place for Personal Health Budgets ('PHBs') in England (direct payments have been permissible for CHC via PHBs since 2014). Any legislative changes will be supported by robust guidance to help both payment recipients and practitioners understand how the system will operate.</p>
1.14	<p><u>Chapter 3: Mandatory reporting of children and adults at risk</u></p> <p>The Independent Inquiry into Child Sexual Abuse (IICSA) was established in 2015, to investigate the extent to which relevant institutions – public bodies and others – in England and Wales have failed in their duty of care to protect children from sexual abuse and exploitation. The Welsh Government has cooperated fully with the Inquiry and responded to several of its 15 instigations; the Inquiry is due to publish its report and recommendations later this year.</p>
1.15	<p>During the Inquiry, there has been significant discussion of mandatory reporting duties (also referred to as 'duty to report') – where there is a legal requirement to report knowledge or suspicions of harm to a designated authority. In particular, there has been consideration of whether such reporting duties should be placed directly on individuals, in the interest of protecting children and young people from harm. The duty to report children at risk in Wales is an organisational duty, set out in Section 130, of the 2014 Act.</p>
1.16	<p>There is also a duty to report adults at risk in Wales, set out in section 128 of the 2014 Act. Like the duty in relation to children, this requires 'relevant partners' of a local authority to inform that authority if they have reasonable cause to suspect an adult in its area is at risk.</p>
1.17	<p>It is the view of Welsh Ministers that it is timely to reflect on the duties to report contained within the 2014 Act, and whether they should be expanded to include a legal requirement upon certain individuals to report children and/or adults at risk to the relevant authority, in order to consider whether this will better protect children and adults from harm. This would reflect the person-centre focus established in the 2014 Act.</p>
1.18	<p><u>Chapter 4: Amendment to regulation of service providers and responsible individuals</u></p> <p>A focus on proposed amendments to the regulatory regime for regulated</p>

services, service providers and their designated responsible individuals. This relates to a range of matters provided for, within the Regulation and Inspection of Social Care (Wales) Act 2016 (RISCA), including;

- a) Identifying unregistered services – A Power to Obtain Information and Power of Entry are the proposed amendments. The amendments will restore the previous position under the Care Standards Act 2000 and ensure clarity on the face of the 2016 Act, removing any legal ambiguity. It will ensure that the Welsh Ministers (Care Inspectorate Wales, CIW) have the necessary legal powers to establish whether individuals are operating a service without registration. This will help safeguard vulnerable people who may be at risk from using a service, which does not have the necessary oversight or measure in place to ensure their safety and well-being.
- b) Publication of annual returns – propose to amend the Act 2016 to place the requirement to publish annual returns on the service provider, who owns the information. Section 10 of the 2016 Act requires a service provider to submit an annual return. Subsection (5) requires CIW to publish each return submitted and this has the unintended consequence of creating liability for CIW in data protection and defamation terms for anything contained within the returns.
- c) Publication of inspection reports – propose to amend the Section 36 of the Act 2016 to provide additional flexibility for CIW to recognise circumstances where it may not be appropriate, relevant, or proportionate to prepare and/or publish an inspection report. The amendment will be clear that inspection reports will still be required to be published following any of the 4 types of inspection (full, focussed, provider or thematic inspection), except in circumstances where the publication of an inspection report may reveal the location of a care home for children or a small locally base care home for vulnerable adults. The amendment will also provide clarity about circumstances in which a report will not be necessary.
- d) Improvement notices and cancellation of registration – propose to amend the Act 2016 by making changes to; *Variation of registration as a service provider, Removal of a condition on a service provider's registration, Power to cancel a service provider's registration, Information from providers who are cancelling their registration, Power to extend the timescale within an Improvement Notice and Power to cancel a service provider's registration in prescribed circumstances.*
- e) Responsible individuals – propose to amend the Act 2016 to three areas. 1) **Making representation** - to give individuals the right to make representations to CIW, against an improvement notice or cancellation of their designation, provided these are made within the time limit specified within the notice. 2) **Sending the Improvement Notice to the service provider** - any improvement notice given to the Responsible Individual (RI) is also sent to the service provider. 3) **Removing a RI without making an application designate a**

	<p>new RI – to allow a service provider to apply to CIW for a variation of conditions of their registration to removed RI even if they are not designating the replacement RI as part of the same application.</p> <p>f) Definition of ‘Care’ for children and young people – the intended outcome is to place beyond doubt that the provision of parental-type care, within children’s social care setting where accommodation is provided, is recognised as being ‘care’ within the meaning of the 2016 Act.</p>
1.19	<p><u>Chapter 5; Amendments to regulation of the social care workforce</u></p> <p>This chapter focuses on proposed amendments to workforce-related provisions, particularly Parts 2 to 8 and Schedule 2 of RISCA Act 2016.</p> <p>Schedule 2, Part 2(4) – Members terms of office. Current provision is unclear as to how many times a person may be appointed. Proposals to amend the 2016 Act to provide that a person who has held office as a member of SCW may be reappointed once. This reflects SCW practise and aligns with the Governance Code on Public Appointments that no individual should serve more than two terms.</p>
1.20	<p>Section 83 – Registration of social care worker. Proposals to amend the 2016 Act to provide SCW with the power to grant a conditional registration for a person, when they are renewing their registration, in certain circumstances – potentially to set out in regulations. Would allow SCW the flexibility to work with individuals to ensure they meet the necessary requirements and any avoidance on unfairly removing people from the register.</p>
1.21	<p>Section 144 – Interim Orders. Propose to the amend the 2016 Act to allow a panel to review and extend the interim orders as appropriate, up to the maximum of 18 months. Section 144 of the 2016 Act permits SCW to impose an interim order on an registered person, that places temporary restrictions on their ability to practise, whilst Fitness to Practise investigation are undertaken into making allegations against them. The amendment to the Act would provide for a more streamlined process, beneficial for all parties, without reducing a person’s right to request a review of (s.146) or appeal against (s.145) interim orders.</p>
1.22	<p>Part 6, Chapter 5 (sections 152-155) – Revocation of Interim Orders. In practice, in some instances a registered person can be subject to review proceedings and also be subject to an interim order under section 144, in relation to a separate matter. In such instances, the 2016 Act does not allow a Fitness to Practise (FtP) panel to revoke any interim order when disposing of review proceedings. Proposals to amend the 2016 Act to provide a Fitness to Practise panel with the ability to revoke any interim order, during review proceedings, where it is necessary and appropriate. Intended outcomes of the proposed amendments will be to provide greater clarity and reinforce that there is flexibility in the registration and interim orders processes established by the 2016 Act.</p>

1.23	<p><u>Chapter 6: Extending the definition of social care worker to include childcare and play workers</u></p> <p>Welsh Government propose to amend section 79(3) of RISCA Act 2016 to ensure that childcare and play workers are included in the descriptions of persons who can be treated as social care workers. Currently the 2016 Act does not provide the necessary comprehensive and coherent basis for Social Care Wales (SCW) function of supporting the childcare sector.</p>
1.24	<p>By ensuring that childcare and play workers are included in this definition will clarify the statutory basis for SCW's role in promoting quality and overseeing the qualifications framework for all childcare and play workers employed in the sector.</p>

2.00	RESOURCE IMPLICATIONS
2.01	<p>Human Resources - Going forward it is likely that any proposed changes to legislation will require some level of investment at either a local or regional level.</p>
2.02	<p>Financial - Any revisions to primary legislation changes will likely have some finance implications. There will be an element of staff time and resources to take into consideration, this includes training requirements of staff, amendments to policies and procedures, changes in practice of working (documentation changes, recording of information).</p>
2.03	<p>Capital - there are no capital implications at this time</p>
2.04	<p>Revenue – there are no revenue implications at this time</p>

3.00	CONSULTATIONS REQUIRED / CARRIED OUT
3.01	<p>The full consultation document and summary documents of each of the proposals have been provided to Senior Managers within Social Services portfolio, for their views in preparation for a collective response to be provided to the Welsh Government, on behalf of Flintshire County Council.</p>

4.00	IMPACT ASSESSMENT AND RISK MANAGEMENT
4.01	<p>A full Regulatory Impact Assessment will be developed alongside the legislation, with input from stakeholders. For the consultation, the Welsh Government are welcoming views on the likely benefits, disbenefits, costs, savings, equality impacts and impacts for the Welsh Language, of the proposals.</p>

5.00	APPENDICES
5.01	Appendix 1 – Consultation Document (Proposals for primary legislation in relation to children’s social care, Continuing Health Care, mandatory reporting and regulation and inspection)
5.02	Appendix 2 – Consultation Summary Document (Proposals for primary legislation in relation to children’s social care, Continuing Health Care, mandatory reporting and regulation and inspection)
5.03	Appendix 3 – Completed Response Form

6.00	LIST OF ACCESSIBLE BACKGROUND DOCUMENTS
6.01	<p>Programme For Government https://gov.wales/programme-for-government-update</p> <p>Co-operation Agreement https://gov.wales/co-operation-agreement-2021</p> <p>Social Services and Well-being (Wales) Act 2014 https://www.legislation.gov.uk/anaw/2014/4/contents</p> <p>Part 6 Code of Practice (Looked After and Accommodated Children) https://gov.wales/sites/default/files/publications/2019-05/part-6-code-of-practice-looked-after-and-accommodated-children.pdf</p> <p>Regulation and Inspection of Social Care (Wales) Act 2016 https://www.legislation.gov.uk/anaw/2016/2/contents</p> <p>The NHS (Wales) Act 2006 https://www.legislation.gov.uk/ukpga/2006/42/contents</p> <p>National Framework for Continuing NHS HealthCare https://gov.wales/national-framework-continuing-nhs-healthcare</p> <p>Amendments to the NHS Act 2006 https://www.legislation.gov.uk/ukpga/2006/41/part/1/crossheading/direct-payments-for-health-care</p> <p>Independent Inquiry into Child Sexual Abuse (IICSA) https://www.iicsa.org.uk/</p> <p>Volume 1 – Introduction and Overview https://gov.wales/sites/default/files/publications/2019-05/working-together-to-safeguard-people-volume-i-introduction-and-overview.pdf</p> <p>Working Together To Safeguard People’ Volume 5 – Handling Individual Cases to Protect Children at Risk https://gov.wales/sites/default/files/publications/2019-05/working-together-to-safeguard-people-volume-5-handling-individual-cases-to-protect-children-at-risk.pdf</p> <p>Age Friendly Wales; Our strategy for an Ageing Society https://gov.wales/age-friendly-wales-our-strategy-ageing-society</p> <p>Draft Action Plan to Prevent the Abuse and Neglect of Older People In Wales https://gov.wales/draft-action-plan-end-abuse-and-neglect-older-people-wales</p> <p>Code of Practice for Inspection of Regulated Services</p>

	<p>https://www.careinspectorate.wales/sites/default/files/2021-01/210122-code-of-practice-for-inspection-RISCA-en.pdf Regulated Services (Services Providers and Responsible Individuals) (Wales) Regulations 2017</p> <p>https://www.legislation.gov.uk/wsi/2017/1264/contents/made Care Inspectorate Wales' Guide To Registration</p> <p>https://www.careinspectorate.wales/sites/default/files/2022-03/220325-risca2016-reg-guidance-en.pdf Social Care Wales (Extension of Meaning of 'Social Care Worker') Regulations 2016</p> <p>https://www.legislation.gov.uk/wsi/2016/1251/made Children and Families (Wales) Measure 2010</p> <p>https://www.legislation.gov.uk/mwa/2010/1/contents/wales</p>
--	---

7.00	CONTACT OFFICER DETAILS
7.01	<p>Contact Officer: Neil Ayling, Chief Officer (Social Services) Telephone: 01352 704511 E-mail: neil.j.ayling@flintshire.gov.uk</p>

8.00	GLOSSARY OF TERMS
8.01	<p>Programme for Government – The Welsh Government programme sets out the ambitious commitments they will deliver over the next 5 years (2021-2026). These will tackle the challenges that the Welsh Government face and improve the lives of people across Wales.</p> <p>Co-operation Agreement - Outlines how the Welsh Government and Plaid Cymru will work together over the next three years on policies where there is a common interest.</p> <p>Care Inspectorate for Wales (CIW) – Are the independent regulator of social care and childcare in Wales. CIW register, inspect and take action to improve the quality and safety of services for the well-being of the people of Wales.</p> <p>Direct Payments – are a means to allow people to exercise voice and control. Direct payments are monetary amounts, made available by the local authorities (under section 50 and 53 of the Social Services and Well-being (Wales) Act 2014), which are paid to a person or a representative, to enable them to meet their eligible needs for care and support.</p> <p>Continuing Health Care (CHC) - Continuing Health Care is a package of care for adults aged 18 or over which is arranged and funded solely by the NHS. In order to receive CHC funding individuals, have to be assessed by integrated commissioning boards (ICBs) according to a legally prescribed decision making process to determine whether the individual has a 'primary health need'</p>

Social Care Wales (SCW) - work with people who use care and support services and organisations to lead improvement in social care in Wales. Provide national leadership and expertise in social care and early years. Lead on regulating and developing the social care workforce, service improvement, data and research to improve care.

Responsible Individuals - The Regulation and Inspection of Social Care (Wales) Act 2016 requires care providers to designate a Responsible Individual (RI) for each place at, from or in relation to which a regulated service is provided as part of the registration process. The RI role is a distinct leadership role to ensure sound governance within the providing organisations.

Fitness to Practise (FtP) – a panel reviews a person’s fitness to practice in accordance with any relevant requirement contained;

- in any undertakings agreed between a FtP panel and the registered person;
- within a conditional registration order;
- within a suspension order; or
- where there is a referral by SCW for review (under section 133)