



Llywodraeth Cymru  
Welsh Government

**Number: WG45428**

Welsh Government

## Consultation Document

# Proposals for primary legislation in relation to children's social care, Continuing Health Care, mandatory reporting and regulation and inspection

This 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

Date of issue: 17 August 2022

Action required: Responses by 7 November 2022

Mae'r ddogfen hon ar gael yn Gymraeg hefyd /  
This document is also available in Welsh

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## Overview

This consultation seeks views on several proposals for changes to primary legislation which aim to improve social care in Wales.

This consultation document:

- 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 service providers, responsible individuals and the social care workforce, and seeks views on potential amendments.

## How to respond

You can submit your response **by midnight on 7 November 2022**, in any of the following ways:

- Complete our [online form](#)
- Download, complete our [consultation response form](#) and email it to: [SocialCareConsultation@gov.wales](mailto:SocialCareConsultation@gov.wales)  
Please include the reference number **WG45428** in the subject of your email
- Download, complete our [consultation response form](#) and post to the address stated below.

## Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

## Contact details

Programme and Legislative Implementation Team  
Social Services and Integration Directorate  
Welsh Government  
Cathays Park  
Cardiff CF10 3NQ  
Email: [SocialCareConsultation@gov.wales](mailto:SocialCareConsultation@gov.wales)

This document is also [available in Welsh](#).

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The Welsh Government will be data controller for any personal data you provide as part of your response to the consultation. Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations. Where the Welsh Government undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (e.g. a research organisation or a consultancy company). Any such work will only be undertaken under contract. Welsh Government's standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data.

In order to show that the consultation was carried out properly, the Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.

You should also be aware of our responsibilities under Freedom of Information legislation

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- to (in certain circumstances) data portability
- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection.

For further details about the information the Welsh Government holds and its use, or if you want to exercise your rights under the UK GDPR, please see contact details below:

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Welsh Government  
Cathays Park  
CARDIFF  
CF10 3NQ  
e-mail: [Data.ProtectionOfficer@gov.wales](mailto:Data.ProtectionOfficer@gov.wales)

The contact details for the Information  
Commissioner's Office are:  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire SK9 5AF  
Tel: 01625 545 745 or 0303 123 1113  
Website: <https://ico.org.uk/>

## Contents

Ministerial Foreword.....	2
Chapter 1: Eliminating profit from the care of children looked after.....	3
Chapter 2: Introducing direct payments for Continuing NHS healthcare.....	11
Chapter 3: Mandatory reporting of children and adults at risk.....	20
Introduction to chapters 4, 5 and 6 relating to the Regulation and Inspection of Social Care (Wales) Act 2016.....	25
Chapter 4: Amendments to regulation of service providers and responsible individuals.....	26
Chapter 5: Amendments to regulation of the social care workforce.....	47
Chapter 6: Extending the definition of social care worker to include childcare and play workers.....	53

## **Ministerial Foreword**

As Deputy Minister for Social Services, I am determined that we continue to improve the quality of experience for everyone who uses our social care services. This consultation document sets out a number of proposals for changes to primary legislation that will contribute to these improvements.

As part of our Updated Programme for Government, our Co-operation Agreement and ongoing work with Designated Members, we are committed to working with social partners to eliminate profit from the care of children looked after. This consultation sets out how this will help us to deliver our wider vision for the care and support available to families, children and young people.

In our Programme for Government, we have also committed to improving the Continuing Health Care and Direct Payments interface. In this consultation, we propose to enable adults who are eligible for Continuing NHS Healthcare to access direct payments, which will allow them to decide how, when and by whom their care and support needs are met. We believe this will further strengthen the voice and control of service users and their carers.

In this consultation we also reflect on other important areas where the existing legislative framework might be improved, both in the light of the experience of operating this framework, and also thinking ahead to the findings of the Independent Inquiry into Child Sexual Abuse. This includes consideration of the relevant duties to report children and adults at risk within the Social Services and Well-being (Wales) Act 2014, and whether these duties should be expanded to include a legal requirement upon individuals within relevant bodies to report those at risk of harm, including through abuse or neglect.

We also explore a number of areas within the Regulation and Inspection of Social Care (Wales) Act 2016 where we believe minor improvements could be made to enable the existing regulatory frameworks to operate more effectively. This includes legislative change to clarify and improve how Social Care Wales supports and regulates the social care workforce, and how Care Inspectorate Wales undertakes functions relating to the regulation and inspection of 'regulated services'. Finally, we propose to extend the definition of a 'social care worker' to include all childcare and play workers, to reinforce Social Care Wales' support for the sector.

The chapters in this document set out the context and rationale for each proposed change; explain why we consider we need to introduce or amend the law in these areas, and what this is intended to achieve; before seeking your views on the proposals and their likely impacts.

Through this consultation I look forward to engaging with all those who have an interest in continuing to improve our health and social care system. I welcome your views and insights and look forward to a productive dialogue in the coming months.

**Julie Morgan MS**

**Deputy Minister for Social Services**

## Chapter 1: Eliminating profit from the care of children looked after

### What is this consultation about?

1. Our [Programme for Government](#) contains a number of commitments that set out our vision for children's services in Wales. Our ambition is for whole system change and, at its heart, we want to see more children and young people being enabled to live with their families and in their home neighbourhoods with many fewer needing to enter care. We also want to ensure the period that young people are in care is as short as possible.
2. We are committed to keeping families together. Our vision is to redesign how we look after children and young people so we can do the best for our young people, their families and communities by providing services that are locally based, locally designed and locally accountable.
3. As part of the [Co-operation Agreement](#) between the Welsh Government and Plaid Cymru, there is a clear commitment to 'eliminate private profit from the care of children looked after' as a key component of this radical agenda.
4. Feedback from children and young people suggests they have strong feelings about being cared for by privately owned organisations that make a profit from their experience of being in care. The Welsh Government does not believe there should be a market for care for children, or that profits should be made from caring for children facing particular challenges in their lives and intends to bring forward legislation to end this. This means the future care of children that are looked after in Wales will be provided by public sector, charitable or not-for-profit organisations.
5. Our 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 experiences and outcomes for children and young people, addressing service development and improvement and further professional development for staff.
6. The initial focus of our proposals is on the private provision of residential care for children, alongside independent sector foster care.

### What is the current position?

7. Section 75 of the [Social Services and Well-being \(Wales\) Act 2014](#) ('the 2014 Act') places a duty on local authorities to secure sufficient accommodation to meet the needs of their looked after children population. Section 81 of the

2014 Act requires local authorities to ensure placements are made within their own area unless it is not reasonably practicable to do so. The [Part 6 Code of Practice \(Looked After and Accommodated Children\)](#) states that local authorities must consider the benefits of having a number of providers, offering a range of accommodation to meet different needs.

8. Local authorities arrange various placements to accommodate children looked after:
  - 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)
9. Placements are currently provided directly by a local authority, through its in-house services, or by independent providers in the private and third sectors. In Wales, all providers of a care home service for children or a fostering service are required, by the [Regulation and Inspection of Social Care \(Wales\) Act 2016](#), to register with the Welsh Ministers (in practice, Care Inspectorate Wales).
10. Data published on StatsWales show the number of children in care in Wales has grown consistently over the last decade. At March 2021, in Wales the rate was 115.3 per 10,000 population aged under 18<sup>1</sup>, in comparison to 67 per 10,000 population in England.<sup>2</sup>
11. At March 2021 there were around 5,070<sup>3</sup> children looked after who were living with a foster family (public and private arrangements). Around a third of these placements are with an Independent Agency.
12. In July 2022, there were approximately 1,068 residential places available, 85% of which were with independent providers<sup>4</sup>.
13. Whilst we acknowledge that placements away from home communities are sometimes necessary in the best interests of the child, there needs to be careful consideration of the benefits and potential impacts of using such

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<sup>1</sup> [Children looked after by local authorities: April 2020 to March 2021 | GOV.WALES](#)

<sup>2</sup> [Children looked after in England including adoptions, Reporting Year 2021 – Explore education statistics – GOV.UK \(explore-education-statistics.service.gov.uk\)](#)

<sup>3</sup>, <https://statswales.gov.wales/Catalogue/Health-and-Social-Care/Social-Services/Childrens-Services/Children-Looked-After/childrenlookedafterat31march-by-localauthority-placementtype>

<sup>4</sup> Bespoke analysis, CIW data

placements more widely. Wherever possible, Welsh Government wants to see placements provided for children and young people that will preserve their links with their local neighbourhoods and communities and allow as much continuity in their lives as possible.

14. The circumstances of children and young people will differ according to their individual needs and family circumstances. Placements can be short-term, long-term or permanent. Therefore, both fostering and care home services throughout Wales need to be flexible to meet these diverse needs and circumstances.
15. The long-term trend of increasing use of care, along with presentation of more complex needs, has presented significant challenges to local authorities and impacted on children and young people themselves. Stable placements are crucial to feeling a sense of belonging and security. There is strong evidence that matching children with appropriate placements across the range of options, such as fostering and care homes, is becoming more challenging. It is sometimes hard for local authorities to meet their sufficiency duties and to find suitable placements that meet individuals' needs. This can adversely affect placement choice, permanency and stability and consequently, outcomes for children and young people. It has resulted in increased use of private sector providers to meet the demand for placements.
16. 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<sup>5</sup>. This demonstrates a heavy reliance on the private sector. Indeed, there are nine local authorities in Wales wholly reliant on the private sector for their children's care home provision. We discuss further on in this chapter the issues that this potentially presents in relation to levels of profit being taken out of this care.
17. 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 22 by local authorities.
18. This imbalance in provision and monies being extracted as profit has raised concerns in relation to detrimental outcomes being experienced by children and young people. A summary of the main issues is set out below.

**Competition:** with demand outstripping supply, children's care homes are a seller's market and this impacts on the prices charged to local authorities. The availability and choice of placement that genuinely meets the needs of

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<sup>5</sup> Bespoke analysis, CIW data



children aged 11 and over with complex needs is particularly difficult. The recent Competition and Markets Authority (CMA) report<sup>6</sup> discusses placement costs and profit levels and how these can be amplified where placements are often needed under considerable time pressure. The CMA report indicates that in some areas the level of profit being taken out of these services is in excess of 20% for children's residential care and approaching this for independent fostering. This is money being taken out of children's services which could be re-directed to improving services, capacity and outcomes.

**Availability:** across Wales there is an insufficient supply of foster placements to meet the wide-ranging needs of our children looked after population.

**Competition amongst foster care providers:** due to the nature of the foster care market, foster care providers (IFAs) work independently of each other and compete with local authorities in terms of recruiting foster carers, in an overall market where local authorities face a shortage of foster carers.

**Placement moves:** placement stability for children and young people helps optimise an environment where they have the best chance to recover, develop, flourish and progress. Developing and expanding the selection of high-quality placement options which best meets the wide ranging and complex needs of children helps ensure the right placement for each child is made at the start of their journey.

19. Eliminating profit from the care of children looked after is one of a number of measures we are delivering through our Programme for Government. We want to provide the right type of care for each child: reduce the number of children in care by better supporting them to remain with their families; reform and join up services for children looked after and care leavers; and provide additional specialist support for children with complex needs whilst better supporting those who care for these children.

### **Why are we proposing legislative change?**

20. Primary legislation will 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 and which enable further investment in such services.

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<sup>6</sup> <https://www.gov.uk/government/news/cma-outlines-concerns-on-availability-and-price-of-children-s-care>

## **What are we proposing?**

21. Since Autumn 2021, the Welsh Government has been working with a multi-agency Eliminating Profit from the Care of Children Looked After Programme Board consisting of a membership that is representative of the sector, alongside supporting work streams, to consider and develop proposals for legislation, which can support delivery of the commitment. The Board's goal is to develop and build our public and not-for-profit provision of care for children looked after and improve outcomes for children, with their best interests, rights and entitlements at the core of decisions that are made and the services and support which follow.

22. We propose the following for inclusion in legislation in order to give this agenda its proper statutory underpinning:

### ***a) A definition of 'not-for-profit' for the care of children looked after***

23. We propose the inclusion of a definition of 'not-for-profit' that will support the delivery of the Programme for Government commitment to 'eliminate private profit from the care of children looked after'.

24. As part of this, we think that Welsh Ministers should be able to amend the definition through subordinate legislation, to reflect developments in law and practice in a timely and efficient way.

### ***b) Securing the elimination of private profit through provision that only allows 'not-for-profit' providers to register with Care Inspectorate Wales.***

25. We propose using the registration of service providers in Wales to support delivery of the commitment. This could be achieved by including provision in primary legislation that permits only not-for-profit providers to register as a care home service for children or a fostering service under the Regulation and Inspection of Social Care (Wales) Act 2016. This would mean that no 'for profit' providers of care home services for children or fostering services would be permitted to operate within Wales following full implementation of the proposal.

### ***c) Timelines & Transitional Period***

26. Work is currently being undertaken to:

- Support local authorities to better model and forecast future placement requirements, alongside reducing the number of children in care
- Support existing not-for-profit organisations who wish to expand their provision
- Encourage new not-for-profit creation of provision
- Support private providers who wish to transition to not-for-profit models of care.

27. We recognise however that there will need to be clear timelines associated with the implementation of this policy so as to enable providers to plan for its introduction, including a clear transitional period. Welsh Ministers are therefore seeking to bring any primary legislation into effect so that:

- New providers registering with CIW will have to have not-for-profit status from 1 April 2026
- Any current 'for profit' providers will need to transition to, and register with CIW, as not for profit status by 1 April 2027

#### ***d) Supporting Guidance***

28. Welsh Ministers propose taking a power to issue guidance to support the implementation of the legislative changes to eliminate private profit from the care of children looked after, such as referencing or describing appropriate organisational models. This guidance will act as an aid in providing information and support to stakeholders as we implement the changes.

#### ***e) Additional areas for comment***

29. There are two further areas which we would like to gather your views on through this consultation process.

- (i) Alongside the proposal to restrict registration with CIW to not-for-profit organisations only, there is the potential to introduce a complementary approach within legislation to address commissioning practices. This would entail placing a restriction on local authorities to commission care placements for children and young people from not-for-profit organisations only. We are inviting views from stakeholders on such an approach and on the appropriate timescales if it were to be pursued.

- (ii) In setting out their policy that care home services for children and fostering services are provided on a not-for-profit basis in Wales, Welsh Ministers wish to secure that the policy is not undermined by practices which go against its spirit and intention, thus defeating the purpose of our legislative changes to remove profit from the care of looked after children in Wales. One potential example would be the charging of excessive fees by parent companies of not-for-profit services, which could amount to the taking out of profit in other ways. We invite stakeholder views on this issue and what approaches, whether through commissioning arrangements or otherwise, could be taken to address it.

### **What outcomes do we expect?**

- 30. We expect that the changes introduced through the legislation, in the context of the wider work we are putting in hand through our programme, will have a positive impact on the experience of living in care in Wales. It will promote the development of local services that are locally accountable. It will rebalance the social care market in favour of public sector and not-for-profit care provision and will create a larger provider base and secure better social value. There will be a greater emphasis placed on what is needed rather than what is profitable. The changes will particularly assist with the development of a social value approach to commissioning and procurement of placements which includes the development of not-for-profit provision, helping local authorities fulfil their duty under section 16 of the 2014 Act.
- 31. Rebalancing the care and support sector for children looked after in a way which meets the identified needs of local populations across Wales, will further the goal of the 2014 Act that all individuals who need care and support, have access to the services they need to meet their well-being goals. (This will contribute to the national well-being goal of a more equal Wales).
- 32. 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.
- 33. As the overall objective of the commitment is to rebalance the market in favour of public or not-for-profit provision for children looked after, this will inevitably have impacts on and consequences for this sector and its providers, but also for private sector providers. The Welsh Government is working with our local authorities to map the current profile of residential and foster care provision across Wales, alongside modelling and forecasting of future

placement requirements, to inform our plans for transition to a not-for-profit system which can meet the needs of each child in care.

34. We are supporting and working with existing not-for-profit organisations who wish to expand their provision and are seeking to encourage new not-for-profit creation of provision in Wales. We are also working with our private providers to support those who wish to transition to not-for-profit models of care. There will ultimately be an adverse impact on private children's care services who do not transition to a not-for-profit model of care as the legislation will require providers of care home services for children and fostering services registered with Care Inspectorate Wales (CIW) to be not-for-profit. Hence, private organisations will be unable to offer these services in Wales.
35. The changes will help further develop integrated approaches to the commissioning and provision of care and support services for children looked after. We will see more innovative, shared approaches such as are already underway for developing regional residential accommodation for care-experienced children with complex needs. These types of provision require local authorities and their partners to ensure there is more holistic provision of care and support provided, in order to meet the range of children's health, social care and well-being needs. (This will contribute to the national well-being goal of a healthier Wales).
36. It is a cause for concern when children are placed a long way from home because there are not enough settings available locally for Welsh children. On the other hand, private placements that are available locally, are often accommodating children who are very far from their own homes. The changes introduced through this legislation will support the Welsh Government wider programme of transformation of children's services, within which there is a clear focus on keeping children closer to home, their families and communities.
37. There will potentially be benefits in terms of Welsh language provision, in that local authorities must assess the sufficiency of care and support provided for these placements through the medium of Welsh. It is hoped that this will stimulate the growth of new provision to meet identified need and demand. (This will contribute to the national well-being goals of a Wales of a vibrant culture and thriving Welsh language and a more equal Wales).
38. We will legislate to improve outcomes for children and young people and any changes will be undertaken in a careful, considered and phased way.
39. A full Regulatory Impact Assessment will be developed alongside the legislation, with input from stakeholders. For this consultation, however, we

would welcome your views on the likely benefits, disbenefits, costs, savings, equality impacts and impacts for the Welsh Language, of the proposals.

## Questions on chapter 1

**Question 1.1:** Do you think that introducing provision in legislation that only allows 'not-for-profit' providers to register with CIW will support delivery of the Programme for Government commitment to eliminate profit from the care of children looked after?

**Question 1.2:** What in your view are the likely impacts of the proposal? You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical matters such as cross-border issues.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

**Question 1.3:** One approach could be for the legislation to define 'not-for-profit' in terms of the types of organisation that would qualify. Do you consider that the restriction should also be expressed in terms of the way that any trading surplus is expended? What would be the effects and implications of this?

**Question 1.4:** Do you think the primary legislation should include a power for Welsh Ministers to amend the definition of 'not-for-profit' through subordinate legislation?

**Question 1.5:** What are your views on the proposed timings for the primary legislation to come into effect?

**Question 1.6:** Are there any issues in relation to transition for children looked after, local authorities and service providers you would like to draw our attention to?

**Question 1.7:** What are your views on the issuing of guidance to support the implementation of the primary legislation?

**Question 1.8:** What are your views on using legislation to place a restriction on local authorities to commission placements from 'not-for-profit' organisations only? In particular:

- Do you think it would support us to deliver the commitment to eliminate profit from the care of children looked after in Wales?
- What would be the benefits, disbenefits and other implications of such an approach?
- What would be an appropriate timescale for implementing such an approach, if it were to be adopted in Wales?

**Question 1.9:** What are your views on the possibility of approaches being taken in response to these legislative proposals which would undermine the intention to eliminate profit from the care of children looked after in Wales? Are there any actions which would guard against such activity?

**Question 1.10:** We would like to know your views on the effects that the legislative changes to eliminate profit from the care of children looked after will have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favorably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

**Question 1.11:** Please also explain how you believe the legislative changes to support delivery of eliminating profit from the care of children looked after could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

**Question 1.12:** This chapter has focused on how we can achieve the commitment to eliminate profit in the care of children looked after, and we have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.



## Chapter 2: Introducing direct payments for Continuing NHS healthcare

### What is this consultation about?

1. Through implementation of the [Social Services and Well-being \(Wales\) Act 2014](#) ('the 2014 Act') Welsh Ministers have sought to put in place a framework that empowers people to have greater involvement and control over the care and support they receive. This is an important factor in making sure that services work with and for them, and in many cases that people have the opportunity to directly seek bespoke arrangements to meet their individual needs.
2. One element for delivering this voice and control over services is via direct payments. Direct payments are monetary amounts, made available by local authorities under sections 50 and 53 of the 2014 Act, which are paid to a person or their representative, to enable them to meet their eligible needs for care and support, or their support needs in the case of a carer. Direct payments are a means to allow people to exercise voice and control; that is, to decide how, when and by whom their care and support needs are met.
3. This consultation seeks your views on our proposal to extend this flexibility to access direct payments to adults who are eligible for NHS Continuing Health Care ('CHC').

### What is the current position?

4. 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 the person's needs are considered suitable and is subject to regular reassessment. In these cases, both the health and other care needs are wholly met by the NHS, without charge, in accordance with their duties under [the NHS \(Wales\) Act 2006](#) ('the 2006 Act'). Currently, a person receiving CHC cannot receive direct payments to enable them to make arrangements to meet those needs.
5. If a person who has been receiving direct payments from a local authority is assessed as eligible for CHC but declines to take up this entitlement, it will not automatically mean that the local authority will continue to retain responsibility for meeting their care and support needs (including through direct payments). A local authority is not under a duty to meet needs for care and support that can be provided by other means (in this case, CHC). Furthermore, section 47 of the 2014 Act sets out the limits of a local authority's power to provide

services which are required to be provided under another enactment, such as the 2006 Act.

6. Over a number of years, concerns have been raised that transferring from local authority direct payments for care and support to a CHC package, arranged by the NHS to meet all health and care needs, compromises people's control over their care arrangements. Some people with complex health conditions are choosing to refuse assessments for CHC or declining to take up CHC packages. Reasons for this include not wanting to lose the flexibility they have through direct payments, as this may interrupt their existing arrangements for care; concerns about this impacting on other benefits and support received; and the change contributing to a reduced sense of independence.

### **Why are we proposing legislative change?**

7. The Welsh Government's [Programme for Government](#) sets out a commitment to '*Improve the interface between continuing health care and Direct Payments*'. A working group – whose membership includes disabled people and those with lived experience of direct payments/CHC, local health boards, local authorities, third sector groups and disability organisations – has been established to support the implementation of this commitment and consider options for further improvement, including the use of legislation.
8. In April 2022 a revised [national framework for Continuing NHS Healthcare](#), for adults, became operational. This strengthened wording around voice and control, stating that where a person whose care was arranged utilising direct payments becomes eligible for CHC funding, a local health board must work with them in the spirit of co-production and make every effort to maintain continuity of the personnel delivering the care, where the person wishes this to be the case and it can contribute to meeting their needs.
9. The national framework says that in doing so, local health boards should consider a range of options. These would include the LHB employing staff (either directly or via an agency) e.g. personal assistants, who were previously employed by the person under direct payments; or the LHB providing funding to an Independent User Trust to manage the person's care (this is where a relative of the person or other interested party sets up a trust which becomes the provider of care for the individual). Supplementary guidance to support the use of these options is being co-produced with the working group.

10. Whilst the mechanisms put forward within the national framework – permissible within law as it currently stands – go some way to strengthen voice and control for adults, we recognise they may not ensure the same degree of flexibility and direct control for people as would be the case if local health boards were permitted to provide them with direct payments to make arrangements to meet their own needs. This would require legislative change.
11. In England, this change has been made through [amendments to the NHS Act 2006](#), and consequently, direct payments have been permissible for CHC, via Personal Health Budgets ('PHBs') since 2014. PHBs can be used to meet a person's needs as set out in their care plan and are available for adults' and children's CHC. They can also be provided for other purposes, including maternity care and wheelchairs.
12. There are three types of PHB:
- a notional budget where the money is held by the NHS who arrange any agreed care;
  - a third party budget where an organisation or trust holds the money for an individual and manages it on their behalf; and
  - direct payments, where the funds are held and administered directly by the individual. However, there are a number of exclusions, including for primary and general medical services, drugs, medicines, appliances, dental charges, planned surgery, vaccination, NHS Health Checks, alcohol, tobacco and gambling services.
13. In Wales, we are considering, with our working group, changing the law to enable local health boards to provide adults with direct payments to meet their eligible CHC needs. This would complement and build upon the mechanisms put forward in the national framework such as local health boards employing personnel or making payments to an Independent User Trust. Our intention would be to better support disabled and seriously ill adults to maintain their independence, as well as promoting the principles of person-centred care and voice and control; and more closely aligning with the social model of disability.

### **What are we proposing?**

14. In order to introduce direct payments for CHC for adults, we propose to amend the NHS (Wales) Act 2006, to include:
- a power for local health boards to make direct payments to adults (or their representative) who have been determined to qualify for NHS-funded continuing health care. 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 met their needs.

- a power for the Welsh Ministers to make regulations about direct payments. This would allow Ministers to prescribe further matters including what sort of healthcare direct payments can be made for, exceptions and prohibitions and how the scheme will operate. This would enable us to tailor the best approach for Wales, potentially with supplementary guidance to support implementation.
- a power for local health boards to make arrangements to give assistance to persons or bodies in connection with direct payments. These would be similar to the arrangements which already exist for assistance to people who receive direct payments for social care.

### **What outcomes do we expect?**

15. Enabling greater voice and control for adults by allowing direct payments for CHC, would undoubtedly have the biggest impact on service recipients themselves. By moving towards more integrated, person-centred provision within both health and social care we would advance the principles of 'Voice, Choice and Control' enshrined within the 2014 Act and ensure the core principles of the United Nations Convention on the Rights of Disabled People (UNCRDP) are further embedded in service delivery across Wales.
16. We are seeking to promote fairness and continuity for individuals, to ensure their voice and control continues, whether their entitlement to care/healthcare is from a local authority or a local health board. This could result in better health outcomes, for example if more individuals agree to CHC assessments, without fear of losing their direct payments, this will enable them to better manage their complex health needs.
17. It is envisaged that these proposals will open up new ways to deliver care, reducing strain on domiciliary care services and better recognising the part played by unpaid carers. We have an opportunity to learn from measures and guidance in place for PHBs in England and evaluations of what has worked well there, to tailor a solution which fits the Welsh context. One that supports adults to exercise voice and control across this health and social care interface.
18. We recognise there may be a number of issues to resolve and concerns to manage in transitioning to the use of direct payments to deliver health services, including in areas such as resourcing, processes and governance. However, regulations and guidance could be used to set out, specifically,

what can and cannot be included under direct payments, as well as measures to ensure clinical and financial appropriateness, thereby reducing risks and addressing areas of concern.

19. We will also work to ensure that any legislative changes are supported by robust guidance to help both payment recipients and practitioners understand how the system will operate. Such guidance will be co-produced with service users, those with lived experience of direct payments/CHC, practitioners and providers, thus strengthening partnership working and ensuring a wide range of viewpoints are considered. We will work with local health boards to ensure that appropriate training and assurance are provided for staff, in decision making and administration of any payments system.

20. A full Regulatory Impact Assessment will be developed alongside the legislation, with input from stakeholders. For this consultation, however, we would welcome your views on the likely benefits, disbenefits, costs, savings, equality impacts and impacts for the Welsh Language, of the proposals.

## Questions for chapter 2

**Question 2.1:** We have outlined our proposals to introduce further voice and control for adults receiving Continuing Health Care (CHC) in Wales. Do you agree or disagree with these proposals? Please explain your reasoning.

**Question 2.2:** What in your view are the likely impacts of the proposal?

You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical matters such as cross-border issues or transition to the new arrangements.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

**Question 2.3:** What lessons can we learn from other countries' practice in this area?

**Question 2.4:** Do you believe there are any other or complementary approaches we should be considering to achieve the same effect? If so, please outline below.

**Question 2.5:** We will work to ensure that any legislative change is supported by robust guidance to help both payment recipients and practitioners understand how the system will operate. Can you identify anything that it would be helpful to include in this guidance? What other support should be provided?

**Question 2.6:** We would like to know your views on the effects that introducing direct payments for continuing NHS healthcare would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

**Question 2.7:** Please also explain how you believe our proposals for introducing direct payments for continuing NHS healthcare could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

**Question 2.8:** We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

## Chapter 3: Mandatory reporting of children and adults at risk

### What is this consultation about?

1. The [Independent Inquiry into Child Sexual Abuse](#) (IICSA) was established in 2015, under the Inquiries Act 2005, 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. It is also considering the extent to which failings have since been addressed; identifying any further action required to address those failings; and making wider recommendations about how children can be better protected from sexual abuse and exploitation in future.
2. The Welsh Government has cooperated fully with the Inquiry and responded to several of its 15 investigations, providing both written and oral evidence when asked to do so; taking part in public hearings; and participating in seminars on areas of particular interest. The Inquiry is due to publish its report and recommendations later this year.
3. During the Inquiry, there has been significant discussion of mandatory reporting duties (also referred to as a ‘duty to report’) – where there is a legal requirement to report knowledge or suspicions of harm (e.g. abuse or neglect) to a designated authority. In particular, there has been consideration of whether such reporting duties should be placed directly on individuals, in the interests of protecting children and young people from harm.

### What is the current position?

4. The duty to report children at risk in Wales is an organisational duty, set out in section 130 of the [Social Services and Well-being \(Wales\) Act 2014](#) (‘the 2014 Act’). This requires ‘relevant partners’ of a local authority, and youth offending teams, to inform that authority if they have reasonable cause to suspect that a child in its area is experiencing or at risk of abuse, neglect or other kinds of harm and the child has needs for care and support<sup>7</sup>. If the child is in the area of another authority, the relevant partner must inform that other local authority. Welsh local authorities must also inform other local authorities in Wales, or

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<sup>7</sup> Section 130(4) of the 2014 Act defines a ‘child at risk’ as a child who is experiencing or is at risk of abuse, neglect or other kinds of harm, and has needs for care and support (whether or not the authority is meeting any of those needs)

England, if a child they suspect to be at risk is in their area and lives or proposes to live in the other local authority area.

5. A 'relevant partner', as defined within section 162 of the 2014 Act, includes the police, probation services, a local health board or NHS trust, the Welsh Ministers or Secretary of State (in discharging certain functions) and other local authorities. Information and the Supporting Practice Guide on the current duty to report is contained in [Working Together to Safeguard People: Volume 5 – Handling Individual Cases to Protect Children at Risk](#). This is to be read alongside [Volume 1 – Introduction and Overview](#).
6. We also have 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<sup>8</sup>. If the adult at risk is in the area of another local authority, the relevant partner must inform that other local authority. Section 128 also requires a Welsh local authority to inform another local authority, in Wales or England, if the adult they suspect to be at risk is in their area and lives or proposes to live in the other local authority area.
7. In line with the aims of [Age Friendly Wales: Our strategy for an Ageing Society](#), and the current development - with the Older People's Commissioner for Wales and other key partners - of a [draft Action Plan to Prevent the Abuse and Neglect of Older People in Wales](#), we believe that any consideration of mandatory reporting duties should include both children and adults, alike. This would reflect the person-centred focus established in the 2014 Act.
8. A number of jurisdictions around the world have mandatory reporting laws of one sort or another that place duties directly on individuals - generally on specified professionals, although in some countries/jurisdictions this extends to the general public also. Evidence on their impact, for example, on the extent to which they have prompted referrals/reports which would not have been made in the absence of such a duty, or on the overall prevalence or persistence of child abuse, is mixed. No UK administration has to date imposed a legal duty on individuals to report known or suspected concerns relating to harm. The [UK Government undertook a consultation](#) which included proposals on mandatory reporting and acting on child abuse and neglect, in July 2016. Following this, in March 2018, the Home Office

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<sup>8</sup> Section 126(1) of the 2014 Act defines an 'adult at risk' as an adult who is experiencing or is at risk of abuse or neglect; has needs for care and support (whether or not the authority is meeting any of those needs); and, as a result of those needs, is unable to protect themselves against the abuse or neglect (or risk of it).



confirmed that it had determined, at that stage, not to proceed with the proposed mandatory reporting duty, or with a duty to act.

### **Why are we consulting?**

9. 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 local authority, in order to consider whether this will better protect children and adults from harm.
10. In order to inform our policy thinking on this and potential response to the forthcoming IICSA report, we are inviting your views on whether it is proportionate or appropriate to introduce a legal duty to report children and/or adults at risk which would apply to individuals within relevant bodies, as distinct from the current duties which fall on organisations.
11. Finally, we would also welcome views on which occupation types or roles, in which sectors, should be covered if a duty on individuals were to be introduced, as well as what sanctions might be proportionate or appropriate in situations where the duty was not complied with.
12. A full Regulatory Impact Assessment will be developed alongside any legislation, with input from stakeholders. For this consultation, however, we would welcome your views on the likely benefits, disbenefits, costs, savings, equality impacts and impacts for the Welsh Language if individual reporting duties were to be introduced.

### **Questions for chapter 3**

**Question 3.1:** What are your views on the principle of imposing a duty to report a child at risk (as defined in section 130(4) of the Social Services and Well-being (Wales) Act 2014) directly on individuals within relevant bodies?

**Question 3.2:** What are your views on the principle of imposing a duty to report an adult at risk (as defined in section 126(1) of the 2014 Act) directly on individuals within relevant bodies?

**Question 3.3:** What in your view would be the likely benefits, disbenefits, risks, costs, savings and equality impacts of such an approach?

Please explain your reasoning.

**Question 3.4:** What lessons can we learn from the duties to report in other countries?

**Question 3.5:** If individual reporting duties were to be introduced – for children and adults at risk – should these sit alongside, or replace, the existing duties on organisations under the 2014 Act?

**Question 3.6:** If individual reporting duties were to be introduced, should they apply to the workforce of current ‘relevant partners’ under section 162 of the 2014 Act (including youth offending teams in relation to children), or more widely, for example to those working in religious or sports settings, etc., and in particular:

- (a) What are your views on this in respect of children (under the age of 18)?
- (b) What are your views on this in respect of adults?

**Question 3.7:** If individual reporting duties were to be introduced, which occupation types or roles should be subject to any duty (e.g. members of regulated professions; employed staff, even if they are not regulated; volunteers), and in particular:

- (a) What are your views on this in respect of children (under the age of 18)?
- (b) What are your views on this in respect of adults?

**Question 3.8:** What sanctions do you think would be proportionate or appropriate for failure to comply with an individual reporting duty?

**Question 3.9:** We would like to know your views on the effects that introducing individual reporting duties would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

**Question 3.10:** Please also explain how you believe proposals for introducing individual reporting duties could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

**Question 3.11:** We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

## Introduction to chapters 4, 5 and 6 relating to the Regulation and Inspection of Social Care (Wales) Act 2016

The [Regulation and Inspection of Social Care \(Wales\) Act 2016](#) ('the 2016 Act') introduced a new registration and regulatory regime for providers of care and support services ('regulated services') in Wales. It also reformed the system of registration and regulation of the social care workforce.

The 2016 Act was implemented in three phases. This saw the development of a significant suite of regulations and statutory guidance by the Welsh Government. It also included codes of practice, rules and procedures put in place under the Act by both the service and workforce regulators.

- **From April 2017:** Social Care Wales assumed the functions of the Care Council for Wales, with enhanced functions, to become the registrar and regulator of social care workers.
- **From April 2018:** Care home, secure accommodation, residential family centre, and domiciliary support services began re-registration with Care Inspectorate Wales, subject to new requirements, standards and sanctions for service providers and their responsible individuals.
- **From April 2019:** Adoption, fostering, adult placement and regulated advocacy services were required to re-register/register with CIW, subject to new requirements, standards and sanctions for service providers and their responsible individuals.

Now the 2016 Act has been operational for several years, we are beginning to see the benefits of more flexible systems that prioritise continual improvement over minimum standards; place greater emphasis on outcomes for people who need care and support; and contribute to professionalising our vital social care workforce.

Within chapters 4 and 5 we propose several amendments to the 2016 Act, identified in conjunction with the service and workforce regulators, that will either serve to achieve the original policy intent; to resolve anomalies within systems that have become apparent in practice; and/or to assist Care Inspectorate Wales and Social Care Wales in their regulatory processes and activities.

In chapter 6 we propose to amend the 2016 Act to enable the extension of the definition of social care worker, to include all childcare and play workers, thereby providing a clear mandate for Social Care Wales to carry out its functions in order to support this sector as a whole.

## Chapter 4: Amendments to regulation of service providers and responsible individuals

1. Part 2 and Schedule 1 of the [Regulation and Inspection of Social Care \(Wales\) Act 2016](#) ('the 2016 Act') provides the basis on which Care Inspectorate Wales ('CIW') – on behalf of the Welsh Ministers – undertakes functions relating to the registration, regulation and inspection of 'regulated services'.
2. This chapter of the consultation focuses on proposed amendments to the regulatory regime for regulated services, service providers and their designated responsible individuals. These relate to a range of matters provided for within the 2016 Act, including:
  - a) Identifying unregistered services
  - b) Publication of annual returns
  - c) Publication of inspection reports
  - d) Improvement notices and cancellation of registration
  - e) Responsible individuals
  - f) Definition of 'Care' for children and young people
3. Further detail about the proposed amendments for each area is detailed below.
4. A Regulatory Impact Assessment will be developed alongside the legislation, with input from stakeholders. For this consultation, however, we have summarised the likely impacts of the proposals and would welcome views on these.

### a) Identifying unregistered services

#### What are the issues with existing provision and how do we propose to amend the 2016 Act?

5. This section deals with two issues – the power to obtain information and the power of entry to carry out an inspection.

### *Power to obtain information*

6. It is an offence under section 5 of the 2016 Act for a person to provide a regulated service without being registered to do so. Part of CIW's role – acting on behalf of the Welsh Ministers, as the service regulator – is to identify and take appropriate enforcement action against those it believes to be operating without lawful registration.
7. Section 32 of the 2016 Act provides the Welsh Ministers (CIW) with a power to obtain information from relevant persons relating to a regulated service. These include a service provider, responsible individual, a person employed by or otherwise working for a service provider and any person who has held any of these positions.
8. However, it does not include a person who CIW has reasonable cause to believe is providing a regulated service without registration. This omission makes it more difficult for CIW to obtain key information from individuals who appear to be operating a regulated service without being registered to do so.
9. **We propose to amend the 2016 Act to enable the Welsh Ministers (CIW) to require information from any person where there is reasonable cause to believe that they are providing a service which should be regulated.**
10. **It is an offence, under section 49 of the 2016 Act, to fail to provide information when required to do so. Therefore, we propose to extend this offence, to apply in connection with the proposed amendment.** Penalties upon conviction could be a fine or up to 2 years imprisonment or both.

### *Power of entry*

11. Section 33 of the 2016 Act describes the term “inspection” as an inspection of the quality of care and support provided by a service provider in the course of providing a regulated service and of their organisation and co-ordination of a regulated service. Section 34 of the Act provides the Welsh Ministers (CIW) with a power of entry for the purposes of carrying out an inspection, providing that an inspector may enter and inspect any premises which the inspector has grounds to believe is (or has been) used as a place at or from which a regulated service is (or has been) provided. As a result there is a lack of clarity as to whether this would enable entry and inspection of premises from which a service which is not registered (and therefore not regulated) is operating.
12. **We propose to amend the 2016 Act to make it clear that an inspector may enter and inspect any premises which they have reasonable cause to believe:**

- is (or has been) used as a place at or from which a service is (or has been) provided, or
- which is (or has been) used in connection with the provision of a regulated service.

13. It is an offence, under section 50 of the 2016 Act, to obstruct an inspector or fail to comply with a requirement imposed by an inspector. Therefore, we propose to extend this offence, to apply in connection with the proposed amendment. Penalties upon conviction could be a fine or up to 2 years imprisonment, or both.

### **What are the intended outcomes?**

14. These proposed amendments will restore the previous position under the Care Standards Act 2000<sup>9</sup> and ensure clarity on the face of the 2016 Act, removing any legal ambiguity.
15. They will ensure that the Welsh Ministers (CIW) have the necessary legal powers to establish whether individuals are operating a service without registration. This will help to safeguard vulnerable people who may be at risk from using a service which does not have the necessary oversight or measures in place to ensure their safety and well-being.

### **What are the likely impacts?**

16. These amendments will ensure that the Welsh Ministers (CIW) have the necessary legal powers to establish whether individuals are operating a service without registration. There will be no impact for existing providers and responsible individuals of regulated services who are already registered.

### **b) Publication of annual returns**

### **What are the issues with existing provision and how do we propose to amend the 2016 Act?**

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<sup>9</sup> See section 31(2) of the Care Standards Act 2000 'A person authorised by the registration authority may at any time enter and inspect premises which are used, or which he has reasonable cause to believe to be used, as an establishment or for the purposes of an agency.'

17. Section 10 of the 2016 Act requires a service provider to submit an annual return – including a statement of compliance and other key information about the running of the service – to the Welsh Ministers (CIW) following the end of each financial year. Subsection (5) requires the Welsh Ministers (CIW) to publish each return submitted. This has the unintended consequence of creating liability for the Welsh Ministers in data protection and defamation terms for anything contained within the returns.

**18. We propose to amend the 2016 Act to place the requirement to publish annual returns on the service provider, who owns the information.**

**19. It is an offence under section 48 of the 2016 Act for a service provider to fail to submit an annual return to the Welsh Ministers (CIW). Therefore Welsh Ministers consider it prudent to create a parallel offence of failing to publish a return.** The penalty upon conviction would be a fine.

#### **What are the intended outcomes?**

20. Placing the requirement to publish annual returns on the service provider will ensure that returns are published each year and that information about the regulated service is publicly available and accessible.

#### **What are the likely impacts?**

21. Whilst CIW will still be required to consider annual returns as part of the inspection process, inspectors will not need to check the returns for potential data breaches or other information which may not be appropriate to publish. This will reduce the burden on inspectors and reinforce service providers' responsibility for the content of their returns.

22. Although service providers connect with CIW online (for example, to submit their annual returns), there is a risk that not all will have the means to publish returns, as they may not have a website. In these circumstances, there would be cost implications for those providers, in terms of developing and maintaining a website.



### c) Publication of inspection reports

#### **What are the issues with existing provision and how do we propose to amend the 2016 Act?**

23. Section 36 of the 2016 Act requires the Welsh Ministers (CIW) to prepare and publish an inspection report as soon as is practicable after an inspection has been carried out.
24. This includes an assessment of the quality of care and support provided and an assessment of the organisation and co-ordination of the service.
25. The current wording suggests that this would apply to any inspection activity carried out by CIW, regardless of the purpose of the visit, including routine or follow-up enforcement work, which would not warrant a report.
26. As set out in CIW's [Code of Practice for Inspection of Regulated Services](#) there are 4 types of inspection:
  - Full inspection – an in-depth consideration of all four themes (well-being, care and support, environment, and leadership and management). It is an opportunity for inspectors to check that service providers are adhering to legislative and regulatory requirements and are meeting the conditions of their registration.
  - Focused inspection - usually carried out in response to a specific concern, or to follow-up on regulatory breaches or other issues identified at a previous inspection. Focused inspections are generally shorter than full inspections and will not necessarily cover all four themes. However, a focused inspection will always cover the theme of 'well-being'.
  - Provider inspection - where CIW identifies patterns or high volumes of non-compliance, concerns, or safeguarding issues in a number of services, this may trigger a provider inspection. Provider inspections will look specifically at the corporate governance and management arrangements of the service provider
  - Thematic inspections - focus on certain areas of practice across the social care sector. For example, this could include reviewing care practice in learning disability residential homes, medication practice in care homes or dementia care. This enables CIW to have an understanding of, report on, and make recommendations in relation to specific care practices across Wales.

27. All types of inspection listed above will continue to require the production and publication of an inspection report in most circumstances.
28. However, an example of where the publication of an inspection report would not be appropriate is where this could lead to the identification of vulnerable individuals or children – for example a care home for children or a small, locally-based care home for vulnerable adults. An inspection report would still be written and recorded by inspectors.
29. In addition, certain activity - such as an inspector visiting a service to follow up on enforcement activity, including matters identified in an improvement notice - would not require an inspection report to be published following the visit. However, a record of the visit would be made by inspectors.
30. An inspector may also visit a service as part of the process of registering the service, which would not be an activity that would require an inspection report.
- 31. We propose to amend Section 36 of the Act 2016 to provide additional flexibility for the Welsh Ministers (CIW) to recognise circumstances where it may not be appropriate, relevant, or proportionate to prepare and/or publish an inspection report.**

#### **What are the intended outcomes?**

32. This proposed amendment would make clear that CIW is not required to produce and/or publish an inspection report after each and every visit to a service.

#### **What are the likely impacts?**

33. The amendment will be clear that inspection reports will still be required to be published following any of the 4 types of inspection listed above – full inspection, focussed inspection, provider inspection 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-based care home for vulnerable adults). The amendment will provide clarity about circumstances in which a report will not be necessary.
34. As the proposed amendment will reinforce existing practice, we do not anticipate any direct positive or negative impacts.

#### **d) Improvement notices and cancellation of registration**

##### *Variation of registration as a service provider*

#### **What are the issues with existing provision and how do we propose to amend the 2016 Act?**

35. Section 13 (3) and (4) of the 2016 Act gives the Welsh Ministers (CIW) the power to vary a provider's registration, without application, by removing a regulated service or a place at which a regulated service is provided, in circumstances where a service provider provides more than one regulated service, *but no longer provides one of those services*. It also includes where a service provider previously provided a regulated service at a particular place, *but no longer provides the regulated service at or in relation to that place*.
36. When taking this action, CIW must follow the improvement notice process set out in sections 16 and 17.
37. The improvement notice process requires a service provider to set out the improvements they intend to make to their service, within a specified time limit, to avoid the service being removed from their registration by CIW.
38. In these circumstances there is no purpose in issuing an improvement notice as part of the variation process, as the service provider is no longer providing the service.
39. **We propose to amend the 2016 Act to remove the requirement for the Welsh Ministers (CIW) to follow the improvement notice process set out in sections 16 and 17 where the Welsh Ministers utilise their powers under section 13 (3) and (4), to remove a regulated service, or a place from which a regulated service is provided from a service providers registration because they are no longer providing that service or using that place to provide a service.**

#### **What are the intended outcomes?**

40. This proposed amendment would remove an unnecessary step for CIW inspectors and service providers in removing a service from registration which has already closed.

## **What are the likely impacts?**

41. The proposed amendment will save time for both CIW and service providers by streamlining the process of removing a service from registration which has already ceased to operate.

### *Removal of a condition on a service provider's registration*

## **What are the issues with existing provision and how do we propose to amend the 2016 Act?**

42. Section 13 (1) of the 2016 Act gives the Welsh Ministers (CIW) the power to vary conditions and impose further conditions on a service provider's registration without an application by the service provider.
43. To do this, the Welsh Ministers (CIW) are currently required to give a notice of proposal under section 18 followed by a notice of decision (section 19). This currently applies even when the circumstances which led to the imposition of the condition no longer apply.
- 44. We propose to amend the 2016 Act to enable the Welsh Ministers (CIW) to remove a condition on a service provider's registration, without giving a notice of proposal and a notice of decision (section 18 and section 19), when the circumstances which led to the imposition of the condition no longer apply.**

## **What are the intended outcomes?**

45. This proposed amendment will ensure that CIW has the necessary legal powers to remove a condition on a service provider's registration without following the notice of proposal (section 18) and notice of decision following notice of proposal (section 19) process when the circumstances which led to the imposition of the condition no longer apply.

## **What are the likely impacts?**

46. The amendment would reduce the administrative burden on providers and CIW offering a sensible, pragmatic approach.

## *Power to cancel a service provider's registration*

### **What are the issues with existing provision and how do we propose to amend the 2016 Act?**

47. Section 15 of the 2016 Act sets out the circumstances in which the Welsh Ministers (CIW) may cancel the registration of a service provider. This includes (section 15(1)(a)) circumstances where the service provider no longer provides any regulated service.
48. Cancelling a service provider's registration requires the Welsh Ministers (CIW) to follow the improvement notice process set out in Sections 16 and 17. We consider there is no purpose in issuing an improvement notice to a service provider who no longer provides any service.
49. **We propose to remove the requirement for the Welsh Ministers (CIW) to follow the improvement notice process set out in sections 16 and 17 of the 2016 Act to cancel the registration of a service provider who no longer provides any regulated service.**

### **What are the intended outcomes?**

50. The proposed amendment will remove an unnecessary step for CIW in removing a service from registration which has already closed.

### **What are the likely impacts?**

51. The amendment will save time for both CIW and providers by streamlining the process of removing a service from registration which has already ceased to operate.

## *Information from providers who are cancelling their registration*

## **What are the issues with existing provision and how do we propose to amend the 2016 Act?**

52. Section 11 of the 2016 Act deals with applications for variation of registration as a service provider and includes a regulation-making power to specify the information required to support an application.
53. Regulations made under this section require a provider to provide the Welsh Ministers (CIW) with a statement as to how they will continue to comply with regulations made under section 27, until the service closes. The [Regulated Services \(Service Providers and Responsible Individuals\) \(Wales\) Regulations 2017](#), which are made under section 27, set out the requirements as to the standard of care and support to be provided.
54. Section 14 of the 2016 Act deals with applications for cancellation of registration by a service provider. However, it does not include a regulation-making power, equivalent to that under section 11.
55. This creates a gap in CIW's powers to require information from a service provider who is cancelling their registration and exiting the market, about how they will comply with regulations made under section 27, until the service closes.
56. **We propose to amend the 2016 Act to create a regulation-making power under Section 14, equivalent to that under Section 11, to enable the Welsh Ministers (CIW) to require information from a service provider who is cancelling their registration and exiting the market.**

## **What are the intended outcomes?**

57. The proposed amendment will ensure CIW has the necessary legal powers to require information from a service provider who is exiting the market and cancelling their registration. It will create clarity for service providers about the information that is expected in these circumstances. It will also align the approach for service providers exiting the market with that for those who are varying their registration.

## **What are the likely impacts?**

58. This proposed amendment will provide clarity and reassurance to CIW that service providers are compliant with the requirements placed on them under

Section 27 in respect of the quality of care and support to vulnerable people using the service.

### *Power to extend the timescale within an Improvement Notice*

#### **What are the issues with existing provision and how do we propose to amend the 2016 Act?**

59. Section 17 of the 2016 Act requires the Welsh Ministers (CIW) to notify the service provider of decisions following an improvement notice. Section 17(2) sets out that if the service provider does not provide the information required, within the time limit stated in the improvement notice, the Welsh Ministers (CIW) must continue with the action to cancel or vary their registration.
60. Section 17(3) sets out that if the provider does not fulfil an action required in the improvement notice, the Welsh Ministers (CIW) may wish to extend the timescale. There is no comparable option in section 17(2) for the Welsh Ministers (CIW) to extend the timescale when information is not provided (even though there may be good reason - for example the provider needs to complete an action to provide the information).
61. In such circumstances CIW is left with no choice but to cancel the service provider's registration, which may be disproportionate and unnecessary.
62. **We propose to amend the 2016 Act to give the Welsh Ministers (CIW) the power to extend the timescale for information to be provided when improvement notices are issued.**

#### **What are the intended outcomes?**

63. Enabling CIW to extend the timescale for information to be provided when improvement notices are issued will create a more proportionate and flexible approach to enforcement in circumstances where the service provider is unable to provide the information within the specified time limit.

#### **What are the likely impacts?**

64. This proposed amendment will allow CIW to respond in a more nuanced way when service providers are not meeting the required standards. It will give

CIW more flexibility to extend the time limit within which information must be provided by a service provider, in certain circumstances. This is preferable to having to cancel their registration, should they have a reasonable explanation as to why they are unable to provide the information. Cancelling a service provider's registration may be disproportionate in these circumstances and lead to individuals needing to move and find another service.

*Power to cancel a service provider's registration in prescribed circumstances*

**What are the issues with existing provision and how do we propose to amend the 2016 Act?**

65. Section 16 of the Act requires the Welsh Ministers (CIW) to issue an improvement notice before cancelling or varying a service provider's registration. Section 16(3) sets out the information to be specified in an improvement notice including (at 16(3)(b)) the actions to be taken or information to be provided to satisfy the Welsh Ministers (CIW) that cancellation or variation is not appropriate.
66. In practice there are cases where the reasons for cancellation are irretrievable, for example if the service provider is convicted of a very serious offence, and as such the requirement to request action/information, within an improvement notice, as part of the process, serves no purpose.
67. **We propose to amend the 2016 Act to enable the Welsh Ministers (CIW) to disapply the s.16(3)(b) requirement within the improvement notice – to take particular action or provide information – in prescribed circumstances, when it would be futile to apply the requirement.**

**What are the intended outcomes?**

68. The proposed amendment will remove an unnecessary element of the improvement notice process in circumstances where the reasons for cancellation are irretrievable. This will promote a more fit-for-purpose approach to the use and content of improvement notices in this context. The improvement notice will specify the reasons why no action or information is required from the service provider.



## What are the likely impacts?

69. In a prescribed range of circumstances, service providers will not be given the opportunity to take action or provide information in order to satisfy CIW that a cancellation or variation is not appropriate. However, this will only apply where a provider has committed a serious offence or where the reasons for the proposed cancellation are irretrievable.

### e) Responsible Individuals

## What are the issues with existing provision and how do we propose to amend the 2016 Act?

70. The 2016 Act requires a service provider to appoint a Responsible Individual who is designated by the provider as part of their registration, to carry out specific responsibilities in respect of a regulated service. The requirements on Responsible Individuals are set out, for example, in the [Regulated Services \(Service Providers and Responsible Individuals\) \(Wales\) Regulations 2017](#).

### *Making representations*

71. Section 22 of the 2016 Act gives the Welsh Ministers (CIW) the power to cancel the designation of a Responsible Individual, on specified grounds. However, before doing so the individual must be served with an improvement notice, specifying the reason for the proposed cancellation, and requiring action or the provision of information within a time limit to satisfy CIW that their designation should not be cancelled.
72. Currently, there is no legal right for the Responsible Individual to make representations against the improvement notice or cancellation of their designation. In practice, CIW does give individuals the opportunity to submit representations but an amendment to the 2016 Act would place this requirement in law.
73. **We propose to amend the 2016 Act to give individuals the right to make representations to the Welsh Ministers (CIW), against an improvement notice or cancellation of their designation, provided these are made within the time limit specified within the notice.**

### *Sending the Improvement Notice to the service provider*

74. There is also currently no requirement for the improvement notice given to the Responsible Individual to be sent to the service provider. Provision is currently made in Section 22(7) of the 2016 Act for the Welsh Ministers (CIW) to give notice of cancellation (once it has occurred) to the service provider but not at the earlier stage of issuing an improvement notice.
- 75. We propose to amend the 2016 Act to require that any improvement notice given to a Responsible Individual is also sent to the service provider.**

### *Removing a Responsible Individual without making an application to designate a new RI*

76. Section 11 of the 2016 Act requires a service provider to apply to the Welsh Ministers (CIW) if they need to vary the conditions of their registration. This includes if they want to designate a different Responsible Individual because there is no such individual in place. When service providers want to change their designated responsible individual they are required to apply to vary a condition of their registration in order to remove the previous named Responsible Individual and to add the new one.
77. Whilst service providers are required to designate another Responsible Individual within a specified timeframe (28 days), as set out in [regulations](#) made under Section 11, they may not be able to do so immediately. The consequence is that the original Responsible Individual remains on the service provider's registration until a new Responsible Individual is designated, even though they may no longer be at the service.
- 78. We propose to amend the 2016 Act to allow a service provider to apply to the Welsh Ministers (CIW) for a variation of conditions of their registration to remove a Responsible Individual even if they are not designating the replacement Responsible Individual as part of the same application.**

## **What are the intended outcomes?**

### *Making representations*

79. Giving Responsible Individuals the right to make representations against an improvement notice or the cancellation of their designation as a Responsible Individual will ensure that the regulator only proceeds to a decision about cancellation after hearing any views from the individual in question.

### *Sending the Improvement Notice to the service provider*

80. Requiring any improvement notice to be sent to the service provider will ensure that they are aware of the issues at an early stage and can take steps to address and resolve them. It will also ensure that the service provider is fully aware of the potential need to designate a new Responsible Individual. A legal requirement to share this information will also resolve any data protection issues.

### *Removing a Responsible Individual without making an application to designate a new RI*

81. Allowing service providers to apply to remove a Responsible Individual without having to make an application to designate a new Responsible Individual will mean that the original Responsible Individual, who may no longer be part of the service, ceases to be responsible for the legal requirements placed on them. This approach will create clarity in terms of legal responsibility.

## **What are the likely impacts?**

### *Making representations*

82. Giving Responsible Individuals the right to make representations against an improvement notice or the cancellation of their designation as a Responsible Individual will not create a significant impact for service providers, CIW or the public as this amendment will set out in law what is already happening in practice.

### *Sending the Improvement Notice to the service provider*

83. Requiring the improvement notice to be sent to the service provider will ensure that sharing this information is carried out in accordance with a statutory requirement. It will ensure that the service provider is aware of issues at an early stage. We do not consider this will have any negative impact on providers, Responsible Individuals, CIW or the public.

### *Removing a Responsible Individual without making an application to designate a new RI*

84. Removing a Responsible Individual's designation without having to make an application to designate a new Responsible Individual at the same time, would mean that these services will be operating without a designated Responsible Individual on the public facing register for a short period of time (up to 28 days). In practice, Responsible Individuals do sometimes leave at short notice, leaving services temporarily without a designated Responsible Individual to fulfil their duties. In such circumstances section 9(4) of the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017, requires the service provider to ensure there are appropriate arrangements in place for the fulfilment of the Responsible Individual's duties, will apply.

### **f) Definition of 'Care' for children and young people**

#### **What are the issues with existing provision?**

85. Presently, section 3 of the 2016 Act provides a definition of 'care' covering both services for adults and services for children. In the context of residential services for children, activities must take place which reflect the sort of care (guidance, direction and boundaries) which a parent would offer a child. Such services, if provided for adults, would fit within the definition of 'support', but when provided for older children, could be properly described as 'care'.

86. This is important as part of the definition of a care home service within Schedule 1 of the 2016 Act requires that they be involved in the provision of 'care'<sup>10</sup>.

### **How are we proposing to amend the 2016 Act?**

87. The definition of 'care' within section 3 of the 2016 Act encompasses care in a number of contexts including the provision of care that it would be reasonable to expect to be given/provided by a parent. We therefore propose to clarify the definition of 'care' in the 2016 Act to reflect the different types of care that may be applicable in children's social care settings where accommodation is provided. The examples in Care Inspectorate Wales' [Guide to Registration](#) provide a model for the approach we propose to take. This states that "*Where children are accommodated, care also includes exercising parental type measures and/or boundaries in line with the needs as set out in any care and support plans and/or risk assessments*" and gives a range of examples including *Preparing meals and drinks, Monitoring the child's whereabouts and responding to any unexplained absences in line with national protocols, and Implementing behaviour management measures.*

### **What are the intended outcomes?**

88. The intended outcome is to place beyond doubt that the provision of parental-type care, within children's social care settings where accommodation is provided, is recognised as being 'care' within the meaning of the 2016 Act.

### **What are the likely impacts?**

89. As the proposed amendment will reinforce existing practice, we do not anticipate and direct positive or negative impacts.

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<sup>10</sup> "provision of accommodation, together with nursing or care at a place in Wales, to persons because of their vulnerability or need"

## Questions for chapter 4

**Question 4.1:** *(a) Identifying unregistered services - power to obtain information:* Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to require information from any person where there is reasonable cause to believe that they are providing a service which should be regulated?

**Question 4.2:** *(a) Identifying unregistered services - power to obtain information:* Do you agree with the proposal to extend the offence of failing to provide information when required to do so, to include these persons?

**Question 4.3:** *(a) Identifying unregistered services - power of entry:* Do you agree with the proposal to amend the 2016 Act to remove ambiguity and make it clear that the Welsh Ministers (CIW) have the power to enter and inspect any premises which they have reasonable cause to believe is (or has been) used as a place at or from which a service is (or has been) provided, or which is (or has been) used in connection with the provision of a regulated service?

**Question 4.4:** *(a) Identifying unregistered services - power of entry:* Do you agree with the proposal to extend the offence of obstructing an inspector or failing to comply with a requirement imposed by an inspector, to include these circumstances?

**Question 4.5:** *(b) Publication of annual returns:* Do you agree with the proposal to amend the 2016 Act to require service providers to publish their annual returns?

**Question 4.6:** *(b) Publication of annual returns:* Do you agree with the proposal to create a related offence of failing to publish an annual return?

**Question 4.7:** *(c) Publication of inspection reports:* Do you agree with the proposal to amend the 2016 Act to provide additional flexibility for the Welsh Ministers (CIW) to recognise circumstances where it may not be appropriate, relevant, or proportionate to prepare and/or publish an inspection report?

**Question 4.8:** *(d) Improvement notices and cancellation of registration – variation of registration as a service provider:* Do you agree with the proposal to amend the 2016 Act to remove the requirement for the Welsh Ministers (CIW) to issue an improvement notice to a provider in circumstances where the provider is no longer providing that service or using that place to provide a service?

**Question 4.9:** *(d) Improvement notices and cancellation of registration - removal of a condition on a service provider's registration:* Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to remove a condition on a service provider's registration without giving a notice of proposal (section 18) and notice of decision following notice of proposal (section 19), when the circumstances which led to the imposition of the condition no longer apply?

**Question 4.10:** *(d) Improvement notices and cancellation of registration – power to cancel a service provider's registration:* Do you agree with the proposal to amend the 2016 Act to remove the requirement for the Welsh Ministers (CIW) to follow the improvement notice process to cancel the registration of a service provider in circumstances when the provider has already ceased to provide a regulated service?

**Question 4.11:** *(d) Improvement notices and cancellation of registration – information from providers who are cancelling their registration:* Do you agree with the proposal to create a regulation-making power under Section 14 of the 2016 Act to enable the Welsh Ministers (CIW) to require information from a service provider who is cancelling their registration and exiting the market?

**Question 4.12:** *(d) Improvement notices and cancellation of registration – power to extend the timescale within an Improvement Notice:* Do you agree with the proposal to amend the 2016 Act to give the Welsh Ministers (CIW) the power to extend the timescale for information to be provided when improvement notices are issued?

**Question 4.13:** *(d) Improvement notices and cancellation of registration – power to cancel a service provider's registration in prescribed circumstances:* Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to disapply the section 16(3)(b) requirement within the improvement notice – to take particular action or provide information – in prescribed circumstances, when it would be futile to apply the requirement?

**Question 4.14:** *(e) Responsible individuals – making representations:* Do you agree with the proposal to amend the 2016 Act to give Responsible Individuals the right to make representations to the Welsh Ministers (CIW), against any improvement notice or cancellation of their designation, provided the representations are made within the time limit specified within the notice?

**Question 4.15:** *(e) Responsible individuals – sending the improvement notice to the service provider:* Do you agree with the proposal to amend the 2016 Act to require that any improvement notice served to a Responsible Individual must also be sent to the service provider?

**Question 4.16:** *(e) Responsible individuals - Removing a Responsible Individual without making an application to designate a new Responsible Individual:* Do you agree with the proposal to amend the 2016 Act to allow a service provider to apply to the Welsh Ministers (CIW) for a variation of the conditions of their registration to remove a Responsible Individual when they are not designating a replacement Responsible Individual as part of the same application?

**Question 4.17:** *(f) Definition of ‘Care’ for children and young people:* Do you agree with the proposal to adjust the definition of ‘care’ in section 3 of the 2016 Act in order to place beyond doubt that the provision of parental-type care is recognised as being ‘care’ within the meaning of the 2016 Act?

**Question 4.18:** What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical issues.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning, either here or, if easier, please feel free to note any impacts specific to an individual proposal under the appropriate question above.



**Question 4.19:** We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

**Question 4.20:** Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

**Question 4.21:** We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

## Chapter 5: Amendments to regulation of the social care workforce

### What is this consultation about?

1. Parts 2 to 8 and Schedule 2 of the [Regulation and Inspection of Social Care \(Wales\) Act 2016](#) ('the 2016 Act') provide the basis on which Social Care Wales ('SCW') is established and undertakes functions in relation to the registration, regulation and training of social care workers.
2. This chapter of the consultation focuses on proposed amendments to workforce-related provisions, particularly:
  - Schedule 2, Part 2(4) – Members terms of office
  - Section 83 – Registration of social care workers
  - Section 144 – Interim orders
  - Part 6, Chapter 5 (sections 152 – 155) – Revocation of interim orders
3. These proposed amendments seek to clarify or adjust existing provisions, to support SCW in its role as the workforce regulator.

### What are the issues with existing provisions and how do we propose to amend the Act?

#### Schedule 2, Part 2(4) – Members terms of office

4. This provision states that '*a person appointed as a member of SCW holds office for such period as the Welsh Ministers may determine when making the appointment; but that period may not exceed 4 years.*' No further detail is included, therefore it is unclear as to how many times a person may be appointed.
5. **We propose 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 current SCW practise and aligns with the strong presumption set out in the Governance Code on Public Appointments that no individual should serve more than two terms.

## Section 83 – Registration of social care workers

6. Section 83 of the 2016 Act relates to the registration of social care workers. Section 82(2) sets out the requirements for registration which include that a person is 'appropriately qualified' and meets the qualification requirements set out in section 84. Currently, if a person who is applying to renew their registration does not meet this requirement, SCW cannot grant their application and their registration will lapse. Sometimes failure to meet this requirement can result from delays in documents being sent. This can result in a person losing their registered status and their employment.
7. An amendment is proposed that would allow SCW to impose conditions on a person's registration [where they are applying to renew their registration] e.g., that the person complete the required training within a certain timescale, where this is considered appropriate. This would avoid a lapse in a person's registered status and allow SCW to monitor compliance with any condition and remove it once all registration requirements were met.
8. **We propose 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 be set out in regulations.** The inclusion of such a power on the face of the 2016 Act would provide SCW with the ability to consider exceptional cases and reinforce trust that the system can be fair and flexible, where necessary.
9. This would allow SCW the flexibility to work with individuals to ensure they meet the necessary requirements and avoid unfairly removing people from the register when, with some support and a reasonable timeframe, they could comply. It would also reiterate SCW's role in supporting the registered workforce to meet their obligations and strengthen the importance of registration in creating a professional workforce.

## Section 144 – Interim orders

10. Section 144 of the 2016 Act permits SCW to impose an interim order on a registered person, that places temporary restrictions on their ability to practise, whilst Fitness to Practise investigations are undertaken into allegations made against them.
11. Interim orders can be put in place for up to a maximum of 18 months and the imposition of an order is subject to a strict review process. Interim orders should be imposed for the minimum period which is warranted, in the particular circumstances. However, where investigations take longer than

anticipated or there is a need to conduct further investigations there may be a need to extend the duration of the order

12. Currently, this can only be achieved through applying to the Care Standards Tribunal under section 148, for an extension. This process can be costly and requires a detailed, additional case for an extension. This has led to a practise of SCW granting interim orders for longer periods, as a defensive practice. This could be avoided if SCW's review panel had the power to make further orders, up to the same maximum total period of 18 months.
13. **We propose to amend the 2016 Act to allow a panel<sup>11</sup> to review and extend interim orders as appropriate, up to the maximum of 18 months.**
14. This will ensure that interim orders are used as appropriate and proportionate to the circumstances and give SCW panels the power to review and extend them, as necessary, up to a maximum total period of 18 months. This 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.

#### **Part 6, Chapter 5 (sections 152 – 155) – Revocation of interim orders**

15. Part 6, Chapter 5 of the 2016 Act sets out the system for 'review proceedings', where a Fitness to Practise (FtP) panel reviews a person's fitness to practise, 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)
16. 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 an FtP panel to revoke any interim orders when disposing of review proceedings – currently an FtP panel can only do so when disposing of the substantive matter (as part of separate proceedings).

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<sup>11</sup> A panel is defined for the purpose of chapter 4 of the 2016 Act, within s.143, "panel" means the interim orders panel or fitness to practice panel before which the proceedings are brought

- 17. We propose 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.** This would enable a more streamlined approach that would be beneficial for all parties and provide greater clarity that the process is not overly prescriptive and inflexible.

#### **What are the intended outcomes?**

18. The intended outcome of these 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, to the benefit of the sector and workforce.
19. The first proposed amendment sets out for those interested in joining the SCW Board, the maximum time they can serve – providing clarity and removing any uncertainty around the current wording.
20. The proposed amendments relating to registration and interim orders will provide SCW with mechanisms to ensure a clearer and more streamlined service, that will benefit registered social care workers and SCW itself. For registered persons, the changes relating to registration and interim orders will remove some of the perceived inflexibility and unfairness in the current system, enabling SCW to act in a timelier manner, to lessen the stress and burden of these processes for individuals.

#### **What are the likely impacts?**

21. The proposed amendments will have a positive impact on all registered social care workers, as they will provide greater clarity and help to streamline some of the processes associated with workforce regulation.
22. The proposed registration and interim orders amendments seek to enhance current processes and ensure that a registered person's right to a fair hearing is protected. They will also help to ensure that processes are not unduly protracted.
23. The proposed interim order amendments at section 144 and within Part 6, Chapter 5 (sections 152-155) in particular, will provide SCW with relevant powers to make appropriate and proportionate decisions more quickly, whilst observing due process.

24. A full Regulatory Impact Assessment will be developed alongside the legislation, with input from stakeholders. For this consultation, however, we would welcome your views on the likely benefits, disbenefits, costs, savings, equality impacts and impacts for the Welsh Language, of the proposals.

## **Questions for chapter 5**

**Question 5.1:** Do you agree with the proposal to amend the 2016 Act to provide that a person who has held office as a member of Social Care Wales may be reappointed once? Please explain your reasoning.

**Question 5.2:** Do you agree with the proposal to amend the 2016 Act to provide Social Care Wales with the power to grant a conditional registration for a person, when they are renewing their registration, in certain circumstances? Please explain your reasoning.

**Question 5.3:** Do you agree with the proposal to amend the 2016 Act to allow a panel to review and extend interim orders as appropriate, up to the maximum of 18 months? Please explain your reasoning.

**Question 5.4:** Do you agree with the proposal to amend the 2016 Act to provide a Fitness to Practise panel with the ability to revoke an interim order, during review proceedings, where it is necessary and appropriate? Please explain your reasoning.

**Question 5.5:** What, in your view, would make it necessary and appropriate for a Fitness to Practise panel to revoke an interim order?

**Question 5.6:** What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical issues.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

**Question 5.7:** We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

**Question 5.8:** Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

**Question 5.9:** We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

## Chapter 6: Extending the definition of social care worker to include childcare and play workers

### What is this consultation about?

1. This chapter of the consultation describes the current relationship between childcare and play workers and Social Care Wales ('SCW') and seeks your views on amending the [Regulation and Inspection of Social Care \(Wales\) Act 2016](#) ('the 2016 Act') to enable – through the making of regulations – all childcare and play workers, working in the childcare sector, to be treated as social care workers. This will provide a clear mandate for SCW to carry out its functions in relation to the childcare and play workforce, as a whole.

### What is the issue with existing provision?

2. The current definition of 'social care worker' within section 79 of the 2016 Act does not provide the necessary comprehensive and coherent basis for SCW's accepted and historical function of supporting the childcare sector.
3. Section 79 sets out the meaning of a 'social care worker' for the purposes of the 2016 Act. In addition, subsection (2) provides the Welsh Ministers with a regulation-making power to prescribe that persons of any of the descriptions in subsection (3) are to be treated as social care workers. By virtue of section 79(3)(d) and the [Social Care Wales \(Extension of Meaning of 'Social Care Workers'\) \(Wales\) Regulations 2016](#) – made under section 79(2) – a person registered under Part 2 of the [Children and Families \(Wales\) Measure 2010](#) as (i) a child minder or (ii) a provider of day care for children may be treated as a social care worker, for certain of SCW's purposes.
4. As currently described within section 79(3)(d)(ii), 'a provider of day care for children' only covers a person who is the service provider. This does not include their staff. The practical effect is that childcare and play workers do not fall within the legal definition of a 'social care worker', regulated under the 2016 by SCW.
5. The role of SCW – formerly 'the Care Council for Wales' – as a strategic partner of the Welsh Government, has historically been to support **all** those working in the childcare sector. SCW is responsible for the qualification framework for childcare, stipulating the qualifications that managers and practitioners must hold in order to work in the sector. It is also instrumental in the development of new qualifications, as well as in the quality-assurance of existing qualifications. In addition, SCW supports the sector and its workforce



in a number of ways, through the provision of advice and guidance, as well as the provision of information on topics ranging from infection prevention and control to safeguarding through to effective recruitment.

### **How are we proposing to amend the Act?**

6. Section 79(3) of the 2016 Act contains descriptions of different sorts of social care workers. The extent of SCW's functions – its remit – is set by reference to these sorts of workers. Section 79(3) does not currently include the childcare workers or play workers employed by registered providers. Ensuring that these workers are included as a class of social care worker will clarify the statutory basis for SCW's role in promoting quality and overseeing the qualifications framework for **all** childcare workers and play workers employed in the sector.
7. **Therefore, we propose to amend section 79(3) to ensure that childcare and play workers are included in the descriptions of persons who can be treated as social care workers.** This will enable the Welsh Ministers, through the making of regulations, to extend the meaning of 'social care worker' to include childcare and play workers.

### **What are the intended outcomes?**

8. Extending the definition of 'social care worker' in the 2016 Act will clarify the statutory role which SCW plays, not just in relation to registered providers of childcare but to all childcare and play workers employed in the sector.
9. This would include those workers who provide care within childcare and play settings (not those in administration or other roles within settings) and are employed through a variety of contractual arrangements (permanent, fixed term, zero hours etc as well as agency staff and those who volunteer at settings).
10. It is vital that SCW is able to provide the necessary support to childcare and play workers, to ensure the sustainability of the sector, so that parents and families are able to access the provision they require, to be able to work. In particular, the Welsh Government's [Programme for Government](#) and [Co-operation Agreement](#) commitments regarding expanding childcare provision to all 2 year olds in Wales, as well as the commitment to grow Welsh-medium provision, depend on the sector being sustainable; on there being a sufficiently sized and qualified workforce. SCW's work is fundamental to this

and requires a clear legislative basis to be able to continue to support the childcare and play sector, as a whole.

### **What are the likely impacts?**

11. The impact of the change would principally be on SCW. While its existing arrangements to support childcare workers would continue, there would be an increased demand because of the need to include support for play workers.
12. The work of SCW will increase in scope and is likely to include work to support and hold the recognised list of play qualifications, as well as the provision of specific advice and guidance for play workers. SCW is supportive, in principle, of the proposal to extend the definition of 'social care worker' to include childcare and play workers and will work in partnership with the Welsh Government to assess the resource implications.
13. A full Regulatory Impact Assessment will be developed alongside the legislation, with input from stakeholders. For this consultation, however, we would welcome your views on the likely benefits, disbenefits, costs, savings, equality impacts and impacts for the Welsh Language, of the proposal.

### **Questions for chapter 6**

**Question 6.1:** We would like to know your views on the proposal to extend the definition of 'social care worker' to include both childcare and play workers. In particular, are you in favour of extending the role of Social Care Wales to cover childcare and play workers working in the childcare sector?

Please explain your reasoning.

**Question 6.2:** What in your view would be the likely impacts of the proposal? You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical issues.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

**Question 6.3:** We would like to know your views on the effects that the proposal would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

**Question 6.4:** Please also explain how you believe the proposal could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

**Question 6.5:** We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.