



Llywodraeth Cymru  
Welsh Government

# **HEALTH AND SOCIAL CARE (WALES) BILL**

**Explanatory Memorandum**  
incorporating the  
Regulatory Impact Assessment and  
Explanatory Notes

**May 2024**

# **Health and Social Care (Wales) Bill**

## **Explanatory Memorandum to the Health and Social Care (Wales) Bill**

This Explanatory Memorandum has been prepared by the Health, Social Care and Early Years Group of the Welsh Government and is laid before Senedd Cymru.

### **Member's Declaration**

In my view the provisions of the Health and Social Care (Wales) Bill, introduced by me on the 20 May 2024, would be within the legislative competence of Senedd Cymru.

### **Dawn Bowden MS**

Minister for Social Care  
Member of the Senedd in charge of the Bill

20 May 2024

## Contents page

<b>Part 1 – EXPLANATORY MEMORANDUM</b>	<b>Page</b>
1. Description	3
2. Legislative Competence	4
3. Purpose and intended effect of the legislation	5
4. Consultation	26
5. Power to make subordinate legislation	29
<b>PART 2 – REGULATORY IMPACT ASSESSMENT</b>	
6. Regulatory Impact Assessment summary	42
7. Options, costs and benefits	46
8. Competition Assessment	130
9. Impact Assessments	133
10. Post Implementation Review	148
11. Affordability Assessment	150
<b>ANNEX 1 – Explanatory Notes</b>	<b>156</b>
<b>ANNEX 2 – Index of Standing Orders</b>	<b>173</b>
<b>ANNEX 3 – Schedule of Amendments</b>	<b>177</b>

# **PART 1 – EXPLANATORY MEMORANDUM**

## **1. Description**

1.1. The Health and Social Care (Wales) Bill contains provisions to:

- (i) eliminate private profit from the care of looked after children;
- (ii) enable introduction of Direct Payments for NHS Continuing Healthcare (CHC); and
- (iii) make amendments to ensure that the Regulation and Inspection of Social Care (Wales) Act 2016 and Social Services and Well-being (Wales) Act 2014 are able to operate fully and effectively.

## 2. Legislative Competence

2.1. Senedd Cymru (“the Senedd”) has the legislative competence to make the provisions in the Health and Social Care (Wales) Bill (“the Bill”) pursuant to Part 4 of the Government of Wales Act 2006 (“GoWA 2006”) as amended by the Wales Act 2017.<sup>1</sup>

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<sup>1</sup> NB Paragraph 4 of Schedule 2 makes a consequential amendment to section 6 of the Safeguarding Vulnerable Groups Act 2006 whose effect is to modify the functions of the Disclosure and Barring Service (“DBS”). The DBS is a “reserved authority” in the terms of Schedule 7B of GOWA 2006 and the provision which modifies the DBS function is within competence if it is the subject of the consent of a Minister of the Crown. The Minister of the Crown consent has been sought but not yet received at the time of drafting this Explanatory Memorandum.

### **3. Purpose and intended effect of the legislation**

- 3.1. Building on the vision set out in the 2011 White Paper on Sustainable Social Services, social care law in Wales has been reformed and consolidated through the Social Services and Well-being (Wales) Act 2014 (“the 2014 Act”) and the Regulation and Inspection of Social Care (Wales) Act 2016 (“the 2016 Act”).
- 3.2. The 2014 Act established a new framework for local authority social services in Wales. It provides the legal framework for improving the well-being of people who need care and support, for carers who need care and support and for transforming social services in Wales.
- 3.3. The 2016 Act provides a statutory framework for the regulation and inspection of social care services and a framework for the regulation of the social care workforce in Wales.
- 3.4. Through the Updated Programme for Government, Welsh Ministers are seeking to further improve social care, and the health and social care interface, in Wales.

#### **Eliminating profit from the care of looked after children**

##### **Context**

- 3.5. “Looked after children” are provided with accommodation by a local authority, either because there is no-one with parental responsibility for them, or because their parent or carer is prevented from being, or unable to, care for them, or alternatively in accordance with a “care order” made under section 31 of the Children Act 1989 (“the 1989 Act”), or an “interim order” made under section 38 of the 1989 Act. Where placing a child with their parent(s) is not consistent with the child’s well-being, or is not reasonably practicable, the child is placed with a foster parent (including kinship care arrangements) or in a children’s home.
- 3.6. When a child is subject to a care order made by a court in public law proceedings, section 33(3)(a) of the 1989 Act provides that while a care order is in force, the local authority designated in the order has parental responsibility for the looked after child. Parental responsibility is defined in section 3(1) of the 1989 Act as “all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property”.
- 3.7. In some cases a child may need the local authority to provide them with accommodation because there is no-one who has parental responsibility for them, or in cases where they are lost or abandoned, or circumstances prevent them from receiving care and accommodation from a parent or person with parental responsibility.

- 3.8. The local authority has a duty under section 76 of the Social Services and Well-being (Wales) Act 2014 (the 2014 Act) to provide such a child with accommodation. Accommodation can be secured by way of a placement with a foster parent, in a residential setting, such as a children's home or by placement with a relative (a "kinship placement"). A child accommodated by a local authority under section 76 is a "looked after" child, but the local authority does not acquire parental responsibility for the child.
- 3.9. Section 75<sup>2</sup> of the 2014 Act places a duty on local authorities to secure sufficient accommodation, so far as is reasonably practicable, to meet the needs of their looked after children population. The circumstances in which a local authority has a duty to provide such children with accommodation are set out in section 76<sup>3</sup>. Section 81<sup>4</sup> places a duty on local authorities to ensure placements are made within its own area, unless it is not reasonably practicable to do so. Part 6 of the Code of Practice on Looked After and Accommodated Children<sup>5</sup> states that local authorities must consider the benefits of having several providers, offering a range of accommodation to meet different needs.
- 3.10. Local authorities provide various placements to accommodate looked after children:
- 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)
- 3.11. Placements are currently provided by local authorities through their in-house services or by arrangement (commissioned) with independent providers in the private and third sector.
- 3.12. 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) and must all achieve the required standards in the provision of care and support,<sup>6 7</sup> so that children's well-being and safety is promoted and maintained. Local authorities are not required to register as providers of fostering services because it is an intrinsic part of the exercise of their statutory functions.

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<sup>2</sup> <https://www.legislation.gov.uk/anaw/2014/4/section/75>

<sup>3</sup> <https://www.legislation.gov.uk/anaw/2014/4/section/76>

<sup>4</sup> <https://www.legislation.gov.uk/anaw/2014/4/section/81/enacted>

<sup>5</sup> <https://gov.wales/sites/default/files/publications/2019-05/part-6-code-of-practice-looked-after-and-accommodated-children.pdf>

<sup>6</sup> [Statutory guidance for providers of care home and domiciliary support services](#)

<sup>7</sup> [Statutory guidance for regulated fostering services](#)

- 3.13. Data published on StatsWales shows the number of looked after children in Wales has consistently grown over the last decade, albeit with a slight drop in 2022. As of 31 March 2023<sup>8</sup> there were a total of 7,080 looked after children in Wales. The rate was 116.3 per 10,000 population aged under 18, compared to 91 per 10,000 in 2013.
- 3.14. The growth of the number of looked after children in Wales has resulted in a long-term trend of increasing use of care, along with presentation of more complex needs, and has presented significant challenges to local authorities and impacted on children and young people themselves.
- 3.15. Matching the needs of children with appropriate placements across the range of options such as fostering and care homes, is becoming more difficult. It is sometimes hard for local authorities to find suitable placements in suitable locations 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.
- 3.16. **Competition:** with demand outstripping supply, the market for placements in children's care homes in particular favours sellers and this impacts on the prices charged to local authorities. The availability and choice of placements that genuinely meet the needs of children aged 11 and over with complex needs is particularly difficult. A 2021 report by the Competition and Markets Authority (CMA)<sup>9</sup> looking at the position across England, Scotland and Wales 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. More detail on the findings on the CMA report can be found in Chapter 7.
- 3.17. An independent review into children's social care in England<sup>10</sup> also highlighted concerns about levels of profit and recommended that the UK government should levy a windfall tax on the 15 largest private residential children's homes and independent fostering providers.
- 3.18. Welsh Ministers agree with the CMA's view that the children's social care market is not functioning well. Welsh Ministers believe that the profit incentive is a key reason why the market is not functioning properly and the impact of that on the market means that it is ill-suited to securing care that meets the needs of vulnerable children and young people.

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<sup>8</sup> [Children looked after at 31 March per 10,000 population aged under 18 by local authority and year](#)

<sup>9</sup> [Children's social care market study final report - GOV.UK \(www.gov.uk\)](#)

<sup>10</sup> Available at: [Home - The Independent Review of Children's Social Care \(childrensocialcare.independent-review.uk\)](#)



- 3.19. **Availability:** across Wales there is an insufficient supply of residential and foster care placements to meet the wide-ranging needs of our looked after children population. The CMA report highlighted a highly fragmented, complex, dysfunctional market which means individual local authorities are exposed and find it hard to plan for and provide their own residential and foster care, often taking whatever placement is available, even when it is not fully appropriate for the needs of the child..
- 3.20. Whilst we acknowledge placements away from home communities are sometimes necessary for the best interests of the child, there needs to be careful consideration of the benefits and potential impact of using such placements more widely. Wherever possible, the 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.
- 3.21. Due to a shortage of suitable care home placements, local authorities may use providers who are registered but are not providers on the all-Wales framework.<sup>11</sup> For profit providers are motivated to set up care homes where overheads are cheap rather than in the locations where there is most need. There has also been an increase in placements being made in unregistered settings<sup>12</sup> given the lack of sufficiency in the secure estate and services that support children with the highest and often multiple, complex needs. This is a concern for local authorities in relation to both quality and price and negatively impacts on children and young people.
- 3.22. **Placement moves:** placement stability for children and young people is critical and helps optimise an environment where they have the best chance to recover, develop, flourish and progress. There is a need to develop and expand the selection of high-quality placement options which best meet the wide ranging and complex needs of children to help ensure the right placement for each child is made at the start of their journey. As at 31 March 2023 there were 669 looked after children who had three or more placements during the year, an increase of 52 children (8%) compared to the previous year.
- 3.23. Two-thirds (66%) of children who were looked after as at 31 March 2023 were in placements inside the local authority where they were living when they first became looked after. However, 27% of children were in placements outside their home local authority but within Wales and a further 7% were placed outside Wales.

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<sup>11</sup> The commissioning of children's foster and residential care placements is undertaken via the Children's Commissioning Consortium Cymru. All 22 Welsh local authorities are members of this consortium and are committed to source placements through the All Wales Foster Framework and All Wales Residential Framework.

<sup>12</sup> The Regulation and Inspection of Social Care (Wales) Act 2016 sets out the range of services that the Act seeks to regulate. These include settings where young people looked after by the local authority are placed such as a care home service; an adoption service; a fostering service. These settings are required under the Act to be registered with CIW so they can be monitored and inspected. It is an offence to carry out a regulated service without registering that service with CIW and meeting the criteria set out for registration.

## **Background to the Bill Provisions**

3.24. The Welsh Government's Programme for Government contains a number of key commitments relating to a new vision for Children's Social Care:

- We want to see fewer children and young people entering care, by providing the right support at the right time to families going through difficult times.
- For those children who are in care, we want them to remain close to home so they can continue to be part of their community. This means putting in place the right type of care for each child: reforming and joining up services for looked after children and care leavers, providing additional specialist support for children with complex needs and better supporting those who care for children. We want these services to be locally based, locally designed and locally accountable.
- We want those young people leaving care to feel supported to start to live independently when they are ready and to plan for their future.

3.25. The Programme for Government contains 8 commitments, which taken together provide the framework for our vision to radically transform Children's Services. The delivery of these commitments will effect change across the whole system in Wales and also align to our [Children and Young People's Plan](#). Both these commitments and the Plan will be delivered over this whole Senedd term.

### **Programme for Government commitments for Children's Services:**

1. Explore radical reform of current services for looked after children and care leavers.
2. Eliminate private profit from the care of looked after children during the next Senedd term.
3. Fund regional residential services for children with complex needs ensuring their needs are met as close to home as possible and in Wales wherever practicable.
4. Strengthen public bodies in their role as 'corporate parent'.
5. Prevent families breaking up by funding advocacy services for parents whose children are at risk of coming into care.
6. Provide additional specialist support for children with complex needs who may be on the edge of care.
7. Continue to support and uphold the rights of unaccompanied asylum-seeking children and young people.
8. Support our national Fostering Wales scheme.

3.26. The commitment to '**put in place a framework to remove profit from the care of looked after children**' is a clear part of our wider vision for whole system change. The aim is to ensure that public money invested in the care of looked after children— starting with care home services for children and fostering services – does not profit individuals or corporate entities, but instead is spent on children's services, to deliver better

experiences and outcomes for young people; support service development and improvement; and further build professional development for those providing care.

- 3.27. 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 Children's Commissioner for Wales and Voices from Care have also campaigned on the issue. It was a recommendation of the former Commissioner in her annual reports and Voices from Care included the issue as a commitment in its own Senedd election manifesto.
- 3.28. 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 is bringing forward this legislation to end this. This means the future residential, secure accommodation and foster care of children that are looked after in Wales will be provided by public sector, charitable or not-for-profit organisations.
- 3.29. We are not promoting a like-for-like replacement of for-profit providers, but rebalancing the shape and scale of provision including models of care, wrap-around support and models of ownership, as part of our wider vision for children's services to make it needs-based, integrated, local and affordable.
- 3.30. We have allocated an additional £68m over three years (2022-2025) to help local authorities build in-house capacity for not-for-profit residential and foster care provision.
- 3.31. Removing profit from care is about values and needs based provision, it is about fundamentally changing how services are provided to children and their families as part of a network of local, community-based services that safeguard and promote the welfare of the young person.

### **Key proposals in legislation**

- 3.32. The eliminating profit provisions within the Bill will restrict the making of profit in the provision of care home services provided wholly or mainly to children, secure accommodation services, and fostering services (referred to as 'restricted children's services') by amending Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 and Part 6 of the Social Services and Well-being (Wales) Act 2014.

### **Amendments to the Regulation and Inspection of Social Care (Wales) Act 2016**

- 3.33. The amendments to the 2016 Act will impose a requirement on a provider of a restricted children's service (other than a local authority) that is

registered (with Care Inspectorate Wales) after the provisions come into force to be a “not-for-profit entity”. A not-for-profit entity will be defined as:

- (a) a charitable company limited by guarantee without a share capital,
- (b) a charitable incorporated organisation,
- (c) a charitable registered society, or
- (d) a community interest company limited by guarantee without a share capital.

3.34. These models all satisfy the principle there must be no payment of dividends to shareholders or members and that the trading surpluses should be reinvested into the service (including building appropriate reserves and capital expenditure). A not-for-profit entity will also be required to have objects or purposes that primarily relate to the welfare of children or such other public good as the Welsh Ministers determine.

3.35. In order to ensure the policy is not undermined by practices which go against its spirit and intention, thus defeating the purpose of the legislative changes, the Bill will also provide that unreasonable or inappropriate payments made by a not-for-profit entity can be taken into account by Welsh Ministers when deciding if a provider is a fit and proper person to be registered.

3.36. In order to mitigate disruption to the lives of children in existing residential and foster care placements, transitional arrangements will allow a registered for-profit provider of a restricted children’s service (a legacy provider) to continue operating after the provisions have come into force, subject to conditions imposed by regulations. Welsh Ministers will have a power, exercised through regulations, to bring the registration of legacy providers to an end at an appropriate time.

#### Amendments to the Social Services and Well-being (Wales) Act 2014

3.37. The Bill will amend the existing duty in section 75 on a local authority to take steps to secure that it can provide accommodation within its area, so as to require it to secure sufficient accommodation provided by not-for-profit entities either within or near to its area.

3.38. To complement the new duties, local authorities will also be required to prepare an annual sufficiency plan setting out (among other matters) how they will be taking steps towards reducing and finally eliminating, where possible, dependence on for-profit providers. This plan will be subject to approval by the Welsh Ministers and must be published.

3.39. The duty in the 2014 Act of a local authority to place a looked after child who cannot live with either or both parents in a children’s home or with foster parents is also amended so that where these circumstances arise, the local authority must place the child in accommodation provided by a not-for-profit entity unless that is inconsistent with a child’s well-being.

3.40. If a local authority considers that none of the available not-for-profit placements would be consistent with the child's well-being it will be able to place the child in a "supplementary" (for-profit) placement. However, the Bill will require a supplementary placement to be approved by the Welsh Ministers.

#### Timelines and Transitional Period

3.41. Work has been undertaken, and continues to take place, 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.

3.42. The intention is for the relevant provisions of the Bill to be brought into effect so that:

- New providers registering with CIW will have to have not-for-profit status from 1 April 2026;
- Existing "for profit" providers will be subject to transitional provisions (to be set out in regulations) from 1 April 2027. The transitional provisions will prevent such providers from registering new homes or approving new foster carers; the provisions will also mean they will be unable to accommodate new children except subject to approval, sought by the placing local authority, from Welsh Ministers. Where the placing authority is an English placing authority providers will only be able to accept placements in prescribed circumstances.

#### **Introducing Direct Payments for Continuing Health Care**

3.43. The Programme for Government contains the commitment to 'Improve the interface between continuing health care and Direct Payments'.

3.44. Continuing Health Care (CHC) is provided when an individual has a primary health need which outweighs their needs for other care and support, and is subject to regular reassessment. The health and care needs are paid for wholly by the NHS in accordance with duties under the NHS (Wales) Act 2006 ("the 2006 Act"), without any charge for the person receiving the care as, subject to limited exceptions, health care must be provided free at the point of delivery. Direct payments are not possible under the 2006 Act at present.

3.45. For social care, legislation enabling a local authority to make direct payments is already in place. Direct payments within social care are payments made by local authorities in accordance with duties in Part 4 of the 2014 Act, which are paid to individuals, or, in appropriate cases, their representative, to enable them to secure services to meet their eligible needs

for care and support, or support needs in the case of a carer. Direct payments allow people to exercise voice and control; that is, to decide how, when and by whom their eligible care and support needs are met.

3.46. There is evidence that some people with complex health conditions are refusing CHC assessments. This can be for a number of reasons but these reasons often include:

- not wanting to lose the voice and control they have through local authority direct payments and the further feeling of loss of independence;
- concern that there may be fluctuation in CHC eligibility that could interrupt their stable package of care.
- concern that they may have to let one or more trusted and familiar Personal Assistants go because traditionally commissioned CHC offers less flexibility and choice in terms of the care provider.

3.47. Some people will therefore continue to contribute to their social care costs, with the local authority also contributing, depending on the financial assessment, where this would otherwise be fully funded by the NHS under CHC.

3.48. If a person is assessed as eligible for CHC but refuses a CHC package, it will not automatically mean that the status quo can be maintained and that the local authority retains responsibility for meeting their care and support needs. A local authority is not under a duty to meet needs for care and support which can be provided by other means (in this case by the NHS via a package of care to meet a need for primary health care via entitlement to 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 a health enactment, such as the 2006 Act.

3.49. Over a number of years, stakeholders have raised the issues around this interface and the compromise of people's voice and control when transferring from local authority provided care (with direct payments), to CHC (where that option is lost).

3.50. In England, direct payments have been permissible under 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. PHB provision also covers other areas including section 117 after-care in mental health and wheelchairs.

3.51. There are three types of PHB in England: a notional budget where the money is held by the NHS; a third party budget; and direct payments. The first two types are already permissible in Wales under current legislation (the second option in the form of an Independent User Trust), however the third type – direct payments – is not yet possible in Wales. There are a number of types of service that may be required by an individual under the 2006 Act for which direct payments are not available to a person entitled to CHC under arrangements made in England, including primary and general medical

services, drugs, medicines, appliances, dental charges, planned surgery, vaccination, NHS Health Checks, and alcohol, tobacco, and gambling services.

#### Proposed change to legislation

3.52. In order to address the issues, it is proposed to amend the 2006 Act to allow the Welsh Ministers to make direct payments to individual patients; this will enable them to secure services to meet their assessed needs for health care in lieu of receiving services provided or commissioned by the NHS in Wales.

3.53. The policy intention is to use this power to enable direct payments to be made to persons who have been assessed as having a primary health need and are therefore entitled to receive CHC.

3.54. The demand for a policy change in this area has been growing to address concerns of unfairness and lack of voice and control faced by disabled and seriously ill people. LHBs currently commission a significant portion of most CHC packages from private sector care home providers and domiciliary care agencies, who in turn may purchase or commission health care such as nursing. The introduction of direct payments would therefore improve voice and control for individuals by allowing them more of a choice in how, and by whom, their care is delivered. Currently individuals have limited control over how their care is delivered under CHC.

#### Policy principles

3.55. The objectives are to ensure fairness and equality for disabled and seriously ill people, ensuring they do not lose voice and control over their care, when receiving CHC. Initially the provision of direct payments within CHC would be focused on adults receiving CHC in their own homes only, as this is where stakeholder feedback has indicated the most demand for increased voice and control exist currently.

3.56. This should be in keeping with the principles of voice and control, person-centred care, equality and the Social Model of Disability. The approach should also support the principle of partnership working and integration, therefore allowing an improved interface between the delivery of local authority direct payments and direct payments made by the NHS in Wales.

3.57. We are also following the principle of co-production in working with stakeholders, including disabled people and people with lived experience, to refine how the proposals should be implemented.

#### Intended effect

3.58. The proposed changes are intended to ensure individuals have a strong voice and control over their care, whether responsibility for the

provision of that care rests with a local authority or a local health board. The changes should potentially lead to more individuals agreeing to undergo CHC assessments, without fear of losing an entitlement to direct payments, and therefore having their complex health needs better managed as a result of having their full package of healthcare and care funded by the NHS.

3.59. The evaluation of the PHBs three-year pilot in England<sup>13</sup> found that use of personal health budgets was associated with a significant improvement in quality of life and psychological well-being. There is also evidence to show that better health outcomes are achieved when someone has a greater say in their own care. Direct payments support the provision of care in a person's own home and studies in England have shown that this can provide better value for the public purse.

### Timelines

3.60. The intention is for the provisions relating to this element to be implemented in spring 2026.

### **Amendments to the Regulation and Inspection of Social Care (Wales) Act 2016**

3.61. The Bill will make a number of amendments to the regulation of social care services and the social care workforce, in order to help the regulatory framework operate more effectively.

3.62. 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.

3.63. 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 (SCW) 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 services, secure accommodation services, residential family centre services, and domiciliary support services began re-registration with Care Inspectorate Wales (CIW), subject to new requirements, standards and sanctions for service providers and their responsible individuals.
- From April 2019: Adoption services, fostering services, adult placement services and regulated advocacy services were required to re-

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<sup>13</sup> [Forder et al 2012 PHBE final report nov 2012.pdf \(kcl.ac.uk\)](#)



register/register with CIW, subject to new requirements, standards and sanctions for service providers and their responsible individuals.

3.64. 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.

3.65. In this Bill, several amendments to the 2016 Act are proposed, identified in conjunction with the service and workforce regulators, that will either:

- serve to better achieve the original policy intent;
- resolve anomalies within systems that have become apparent in practice; and/or
- assist CIW and SCW in their regulatory processes and activities (this includes a regulation making power which will allow the Welsh Ministers to specify that childcare and play workers are to be treated as social care workers).

#### Regulatory regime for regulated services, service providers and designated responsible individuals

3.66. The Bill will make a number of changes to Part 1 of the 2016 Act, which details the regulatory regime for regulated services, service providers, and designated responsible individuals. The proposed amendments aim to address specific issues within the 2016 Act to bolster the functionality of the regulatory framework and assist CIW in fulfilling its regulatory responsibilities. CIW is an operationally separate arm of the Welsh Government, responsible for registering, inspecting and taking action to improve the quality and safety of regulated care services in Wales. Where the legislation places requirements on the Welsh Ministers, in practice these are undertaken by CIW.

3.67. These amendments cover a number of areas:

- Duty to submit and publish annual returns
- Application for cancellation of a service provider's registration: information to be provided
- Cancellation of a service provider's registration without application
- Information and inspections – power to require information

#### Duty to submit and publish annual return

3.68. Section 10 of the 2016 Act requires service providers to submit an annual return to the Welsh Ministers (CIW) at the end of each financial year during which the provider is registered. The annual return must contain key information about the operation of the service, as well as a statement of

compliance. The purpose of the annual return is to provide transparent, comparable information to the public about regulated services in Wales.

3.69. Details of the information to be included in an annual return are set out on the face of the 2016 Act and the Regulated Services (Annual Returns) (Wales) Regulations 2017, as amended. The requirements include information about the service provision, the responsible individual, information about staffing (such as numbers of staff, turnover and training) and information about facilities within services that provide accommodation.

3.70. Section 10 (5) of the 2016 Act places a requirement on the Welsh Ministers (CIW) to publish annual returns. This requirement has the unintended consequence of creating a potential liability for Welsh Ministers in terms of data protection and defamation for anything contained within the returns. Whilst the 2016 Act and Regulations do not require service providers to submit personal information relating to individuals using their service, the free text option within the online form means providers could inadvertently include personal information or other information which may not be appropriate to publish.

3.71. Because the requirement to publish annual returns is placed on the Welsh Ministers (CIW), they are currently liable for the content of the annual returns. However, the intention has always been for service providers to retain responsibility for this information. As stated in the [Explanatory Memorandum](#) to the Regulation and Inspection of Social Care Bill (page 21, paragraph 3.51), “*The reports would have to be signed off and submitted by the registered service provider, who would have overall accountability for the content of this report.*”

3.72. For this reason, the Bill will amend the 2016 Act to place the requirement to publish annual returns on the service provider, who owns the information, on their own website. The Bill will include a regulation-making power to prescribe the time limit for publication of the annual return by the service provider. The Bill will also require the service provider to make a copy of the published annual return available on request.

3.73. 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). The Bill will create a parallel offence of failing to publish a return. The penalty upon conviction would be a fine.

#### **Application for cancellation of service provider’s registration: information to be provided**

3.74. Section 14 of the 2016 Act allows a service provider to apply to cancel its registration. The Bill will include a regulation-making power to allow the Welsh Ministers to require that an application for cancellation of registration

as a service provider contains prescribed information and is made in a prescribed form.

3.75. This will provide a power equivalent to the one in section 11 relating to applications to vary a service provider's registration,<sup>14</sup> and will give CIW the power to ask service providers how they intend to comply with regulations made under Section 27<sup>15</sup> of the Act until the service ceases to be provided.

### **Cancellation of service provider's registration without application: notice procedures**

3.76. The 2016 Act provides CIW with powers to support its improvement and enforcement process. Section 15 includes the power to cancel a service provider's registration without an application being made, on the grounds listed in that section. The 2016 Act currently provides that a cancellation may not be made under this section unless the improvement notice procedure is followed (see section 16 and section 17 of the 2016 Act).

3.77. The Bill will change the procedure that is to be followed when cancelling a service provider's registration, depending on the grounds for cancellation. The Bill will provide that the notice of proposal procedure (see section 18 and section 19 of the 2016 Act), rather than the improvement notice procedure, must be followed where cancellation is on one of the following grounds:

- i. The service provider has been convicted of, or has been given a caution in respect of, a relevant offence.
- ii. The Welsh Ministers are no longer satisfied that the service provider is a fit and proper person to be a service provider.
- iii. The service provider no longer provides any regulated service.

3.78. An improvement notice is a notice of intention to cancel and gives the provider the opportunity to rectify matters. An improvement notice must specify a time limit within which the actions, which the Welsh Ministers identify as being necessary to avoid cancellation, must be taken. The rationale is that the giving of an improvement notice is not appropriate in the circumstances listed above as no improvement can actually be made to prevent cancellation.

3.79. A notice of proposal is a notice informing the provider of the decision the Welsh Ministers propose to take and giving the service provider the opportunity to make written representations within a certain time period, which must be at least 28 days.

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<sup>14</sup> For reference, the Regulations made under section 11 are the [Regulated Services \(Registration\) \(Wales\) Regulations 2017](#), as amended. Regulation 9(1)(c) states that "an application for variation of registration...must.. contain... a statement as to how the service provider intends to continue to comply with the regulations made under section 27 until the service ceases to be provided."

<sup>15</sup> The Regulations made under section 27 are the [Regulated Services \(Service Provider and Responsible Individuals\) \(Wales\) Regulations 2017](#), as amended.

### **Information and inspections: power to require information**

3.80. Section 32 of the 2016 Act provides the Welsh Ministers with the power to require information in relation to the exercise of their functions under Chapters 2 and 3 of Part 1 of the Act. The amendment will confer a power on the Welsh Ministers to require information from a person who is providing a regulated service in respect of which they are not registered in accordance with section 7 of the 2016 Act. This amendment will support the Welsh Ministers to carry out their functions under section 5 of the Act, whereby it is an offence for a person to provide a regulated service without being registered.

3.81. The power to require information from those providing a regulated service without registration were clearly set out under the previous legislation, the Care Standards Act 2000. Section 31(1) of the Care Standards Act states:

*The registration authority may at any time require a person who carries on or manages an establishment or agency to provide it with any information relating to the establishment or agency which the registration authority considers it necessary or expedient to have for the purposes of its functions under this Part.*

3.82. Under the Care Standards Act, the use of the words “establishment or agency” relate to the service more generally and the activities being undertaken by the service, rather than its status as being registered with the inspectorate.

### **Social care workers: registration and fitness to practise**

3.83. Following the enactment of the 2016 Act, in April 2017 Social Care Wales (SCW) assumed the functions of the Care Council for Wales, with enhanced functions, and became the registrar and regulator of social care workers. The Bill makes some amendments to the 2016 Act in relation to the functions of SCW.

### **Meaning of social care worker: childcare workers**

3.84. The Bill will amend section 79 of the 2016 Act, to provide Welsh Ministers with the power by regulation to extend the definition of social care workers for the purpose of the Act to include childcare workers. For the purpose of this amendment childcare workers are individuals who are employed by or who work (including as agency workers) for, a person registered under Part 2 of the Children and Families (Wales) Measure 2010 as a day care provider, to provide care and supervision for children.

3.85. The purpose of this amendment is to enable regulations to be made specifying that childcare workers are to be treated as social care workers and, to enable SCW to carry out functions to support the childcare workforce and provide a formal basis for any support SCW is currently providing to the childcare workforce, to formalise any functions it is currently undertaking.

## **Fitness to practise cases: powers to extend interim orders**

3.86. In light of the experience of operating under the 2016 Act, the Bill will amend the powers held by SCW to review and extend interim orders.

3.87. As part of its work, SCW can undertake fitness to practise investigations when allegations are made against registered social care workers. Under section 144 of the 2016 Act, SCW is permitted 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 the person.

3.88. 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.

3.89. Currently, an interim order can only be extended by making an application to the First-tier Tribunal under section 148 of the 2016 Act. This process has cost, time and administrative implications for both SCW and the First-tier Tribunal.

3.90. The amendment will provide an interim orders panel, or a fitness to practise panel before which the interim order proceedings are brought, with the power to extend an interim order up to a maximum of 18 months (from the date the interim order is first made), without an application being required to the First-tier Tribunal. Any extension beyond 18 months will continue to require an application to the tribunal.

3.91. The amendment will provide SCW with the power to take proportionate action, extending interim orders where necessary and appropriate avoiding any unnecessary applications to the First-tier Tribunal. It will enable a more streamlined process, without reducing a person's right to request a review of interim orders (under section 146) or appeal against interim orders (under section 145).

### References to Senedd Cymru

3.92. The Bill also makes some minor amendments to a number of references in the 2016 Act to 'the National Assembly for Wales'. These are amended to read 'Senedd Cymru', reflecting the Senedd and Elections (Wales) Act 2020.

## **Amendments to the Social Services and Well-being (Wales) Act 2014**

3.93. The Bill also presents an opportunity to improve the effectiveness of the 2014 Act, in order to ensure that current practice aligns with the legislation. The Bill will make a number of amendments to the 2014 Act, specifically:

- Amending Section 47 of the 2014 Act in order to ensure that the boundaries of health and social care are maintained;
- Reconfiguring the provisions in Part 4 of the 2014 Act that enable the making of direct payments by local authorities in order to enable provision for a direct payment to be made to a third party nominated by an individual entitled to receive such a payment in cases where the individual person has mental capacity to make that decision;
- Amending Sections 76 and 81 to clarify references to “child arrangement orders”;
- Amending the Welsh text of section 124(9) to add reference to circumstances where a local authority is placing a child in secure accommodation in Scotland in accordance with section 25 of the Children Act 1989 to the cases in which the provision in section 124 is disapplied. This will restore the equivalence of the English and Welsh texts of that provision.

### **Amending Section 47 in order to incorporate the full test which is used to determine the limit of the powers of a local authority to provide health care services**

3.94. Section 47 of the 2014 Act will be amended by the Bill to address an unintended consequence arising from the drafting of the 2014 Act, in order to incorporate the full test which determines the limit of the powers of a local authority to provide “health services”.

3.95. Section 47 establishes the limit of health services that a local authority could lawfully be expected to provide to meet health care needs. Sub-sections (1) and (2) contain the exceptions for the provision of health services by local authorities.

3.96. The “quantity and quality” test, developed by the Court of Appeal as a result of the *Coughlan* case (*R. v. North and East Devon Health Authority, ex parte Coughlan* [1999 EWCA civ 1871], and sometimes referred to as the “*Coughlan test*”, determines the limit of the powers of a local authority to provide health care services. The provisions in Section 47 of the 2014 Act were intended to follow the Law Commission’s recommendations,<sup>16</sup> including that the *Coughlan test* should be codified in statute. However, the Social Services and Well-being (Wales) Bill as introduced contained the first limb only of the “*Coughlan test*”, which is now set out in current Section 47 of the Act. This is different to its counterpart in the Care Act 2014 which applies in England, and which contains both limbs of the *Coughlan test* (see Section 22). The second limb was added to what is now section 22 of the Care Act

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<sup>16</sup> <https://lawcom.gov.uk/document/adult-social-care-report/>

2014 following an amendment resulting from a report by a Joint Parliamentary Committee during scrutiny, which highlighted risks to the boundary between health and social care if the second limb was omitted.

3.97. We are not aware of any issues arising from this omission in practical application of Section 47 since the Act was commenced. However, the Welsh Government's '*Continuing NHS Healthcare - The National Framework for Implementation in Wales*<sup>17</sup> makes reference to the *Coughlan* case in the context of reflecting relevant Welsh legislation but also refers to the existing provision in section 47 of the 2014 Act (which only contains part of that test).

3.98. Whilst we believe the omission has had no impact on the provision of services for domiciliary support, including the second limb of the test would ensure that there was no perceived shift in the limits of a local authority's power and the boundary between health and social care.

#### Making provision for a direct payment to be made to a third party i.e., a nominated individual or an organisation

3.99. Under the 2014 Act, section 50, a local authority can only make a direct payment to either:

- an adult with mental capacity who has care and support needs; or
- a "suitable person" if the adult lacks mental capacity.

3.100. Section 50 does not enable an adult with mental capacity to nominate a person to receive and manage their direct payment.

3.101. There are equivalent provisions in section 51 relating to direct payments for children, and in section 52 relating to direct payments for carers; recipients of direct payments under these sections are also unable to nominate a person to receive and manage their direct payment on their behalf.

3.102. The 2014 Act does not currently make provisions for a local authority to make the direct payment to a nominated person to manage the direct payment on behalf of the direct payment recipient.

3.103. The Bill will amend section 53 of the 2014 Act and substitute the existing sections 50-52 and Schedule A1 with new sections 49A – 52, and 53A and a new Schedule A1, to include:

- (a) A power for local authorities to make direct payments to "a person" (an individual or organisation) when they have been nominated by the individual entitled to receive the direct payment because they have been assessed as having eligible needs for care and support under the 2014 Act and who have mental capacity to consent to the making of the payment (or, in the case of an individual under the age of 16, are deemed by a local authority to have sufficient understanding to make

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<sup>17</sup> [National framework for Continuing NHS Healthcare | GOV.WALES](#)

an informed decision about consenting to the making of direct payments);

- (b) Schedule A1 applies the provision made in Part 4 of the 2014 Act to enable a local authority to discharge its duty to provide after-care services under the Mental Health Act 1983 by making direct payments in lieu of providing or securing services to meet such needs.

3.104. The current Part 4 Code of Practice<sup>18</sup> (which is made under Part 8 of the 2014 Act and is relevant to the making of direct payments by local authorities), describes in more expansive terms the expectations placed on local authorities to secure the intended policy outcomes and the social model of disability. The Code reflects the policy intent when the 2014 Act was developed even though this was not fully reflected in the wording of the 2014 Act. The Code of Practice sets out that:

- direct payments can be provided for any identified need for care and support a local authority is to meet (paragraph 133);
- direct payments must be made available in all cases where they enable personal outcomes to be achieved (paragraph 131);
- individuals must not be refused a direct payment purely because they are unable to manage the payment, or apprehensive about managing one. A local authority, in partnership with the person, must explore all options for supporting the individual to manage a direct payment. Where areas of difficulty are identified, local authorities must ensure the correct level of support to overcome such barriers is available (paragraph 132).

3.105. The alternative option, revising the Code to align with the more limited provisions currently in the 2014 Act has been considered. However, this option would result in a more limited framework and could deter some people from choosing direct payments to access their care and support needs.

3.106. The parallel arrangements within the Care Act 2014 which applies to adults in England (particularly section 31(2)) include additional provision for local authorities to make direct payments to “a nominated person” whether or not the person entitled to receive the payments has mental capacity.

3.107. The proposed amendments to the 2014 Act will allow local authorities to make direct payments to a person (either a nominated individual or an organisation) where the individual has capacity to consent to the making of a direct payment (or, in the case of an individual under the age of 16, are deemed by a local authority to have sufficient understanding to make an informed decision about consenting to the making of direct payments), and thereby ensure equivalent rights to those currently enjoyed by an adult recipient of a direct payment who lacks capacity where a “suitable person” may receive and manage the payment on their behalf.

3.108. The amendments are mirrored in Schedule A1 which enable the making of direct payments to persons who are entitled to receive after-care

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<sup>18</sup> [Meeting people's care and support needs: code of practice | GOV.WALES](#)



services from a local authority in accordance with rights under section 117 of the Mental Health Act 1983.

### Current Practice

3.109. Informal engagement with local authorities indicates that current practice is more reflective of the policy intent and the Code of Practice, i.e., to enable an individual to choose a direct payment by empowering them to nominate a person to manage that payment on their behalf.

3.110. It has not been possible to establish how many instances exist where the local authority is making the direct payment to a person or organisation nominated by the person with care and support needs rather than to the individual themselves. Nor has it been possible to establish the number of instances where the person with care and support needs has chosen a managed budget and either the local authority passes the direct payment to a third-party organisation or retains the direct payment themselves and manages the budget on behalf of the individual in-house. However, indications from local authorities are that there are a significant number of these arrangements in place where a direct payment recipient has capacity to consent to the making of a direct payment.

3.111. These enabling and supportive actions to utilise or provide support to the individual are wholly consistent with the Part 4 Code of Practice governing the provision and use of direct payments. Paragraph 145 states:

*A local authority must develop local support services for direct payment recipients which are able to provide the help and assistance a recipient, or their representative, requires to receive and manage a direct payment. Support services must be able to meet the support requirements of a recipient to enable them to achieve their personal outcomes. Local authorities must explore, in partnership with recipients, the different models and ways support can be provided to ensure the arrangements they have in place are effective, responsive to recipients' requirements and are person centred.*

3.112. The 2014 Act, as currently drafted, is insufficiently aligned with the policy intent and the Code by requiring the individual to receive the direct payment from the local authority and then transfer the equivalent amount to their nominated person.

### Amending Sections 76 and 81 to clarify references to "child arrangement orders"

3.113. The Welsh Government has identified that due to changes to the 2014 Act made by the Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2017, the scope of references in sections 76 and 81 of the Act, which were previously to 'residence orders', have been unintentionally broadened. Section 76 sets out the obligations of a local authority to provide accommodation for children who are not being cared for by a person with parental responsibility for some reason, while section 81

requires a local authority that is looking after a child to make arrangements for their accommodation in a placement which is consistent with their well-being.

3.114. Residence orders have now been replaced by 'child arrangement orders'. However, child arrangement orders cover a wider range of matters, including contact arrangements for children. The references to 'child arrangement orders' in sections 76 and 81 therefore need to make clear that these should only cover those orders which specify the person with whom the child should live, in order to preserve the original policy intention.

3.115. The Bill will amend the references to 'child arrangement orders' in sections 76 and 81 of the 2014 Act, which were inserted by the 2017 Regulations, to clarify that reference to child arrangements orders only relates to those orders which specify a person with whom the child should live.

Amending the Welsh text of section 124(9) to ensure equivalence of meaning between the English and Welsh text of the 2014 Act

3.116. Section 124 of the 2014 Act makes provision about making arrangements to assist children to live outside England.

3.117. Subsection (9) of section 124 of the 2014 Act disapplies the provision made by the section in specified circumstances:

- (a) where a local authority is placing a child in secure accommodation in Scotland under section 25 of the Children Act 1989;
- (b) where a local authority is placing a child for adoption with prospective adopters.

3.118. When the 2014 Act was enacted, subsection (9) of section 124 only referred to the circumstances which are now in paragraph (b). At that point the English and Welsh texts were equivalent.

3.119. However, the provision was amended by the Children and Social Work Act 2017 (at Schedule 1, paragraph 13). This Act amended the English language text to section 124(9) of the 2014 Act but did not make the equivalent amendment to the Welsh text.

3.120. The proposed amendment to the Welsh text of section 124(9) inserts paragraph (a) which adds cases where a local authority is placing a child in secure accommodation in Scotland in accordance with section 25 of the Children Act 1989 into the circumstances in which the provision under section 124 is disapplied.

## 4. Consultation

4.1. A formal public consultation on primary legislative proposals in the main areas listed below took place, over twelve weeks, between 17 August and 7 November 2022. The consultation document set out the context and rationale for each proposed change; explained why the Welsh Government consider it necessary to introduce or amend the law in these areas, and what this is intended to achieve; before seeking views on the proposals and their likely impacts. 200 responses were received and an analysis of the consultation responses has been undertaken. Respondents included members of the public, companies, public bodies and third sector organisations involved in providing care, representative groups, statutory Commissioners and others. All responses received have been published, redacted where appropriate. The original consultation, the summary of responses, and the full responses, are all available at the following link: [Proposed changes to legislation on social care and continuing health care | GOV.WALES](#)

4.2. The consultation covered the following main areas:

- Eliminating profit from the care of looked after children;
- 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. This included extending the definition of social care worker to include childcare and play workers.

4.3. On eliminating profit from the care of looked after children, there was strong support through the consultation from a range of public and third sector bodies for the principle of our central proposal to register only not-for-profit providers in Wales. There was opposition from some private and third sector organisations and individuals.

4.4. Consultation responses from a wide range of individuals and organisations highlighted the challenges associated with implementation, particularly the risk to the sufficient supply of placements whilst we build resilience. These considerations have informed the development of the legislation.

4.5. In relation to proposals on CHC and Direct Payments, there was a high degree of support for the principle of increased voice and control for those in receipt of CHC in Wales, and for Direct Payments as a way of enabling this. There were some concerns, principally over how Direct Payments would be implemented within CHC. Engagement with delivery partners and stakeholders relating to implementation has been maintained following the consultation and will continue.

4.6. The consultation included exploratory questions about existing organisational duties – under the Social Services and Well-Being (Wales) Act 2014, on ‘relevant partners’ of local authorities – to report children and adults at risk of abuse, neglect and other harms. These questions were in

anticipation of a likely recommendation on mandatory reporting of child sexual abuse, by the Independent Inquiry into Child Sexual Abuse (IICSA), which had not (at the time of publication of the consultation) published its final report and the detail of its proposals.

- 4.7. In light of the consultation feedback, and those final proposals from IICSA, Ministers determined to focus on reform of mandatory reporting by strengthening and improving compliance with the safeguarding aspects of existing regulatory frameworks across childcare, education, health and social care in Wales, alongside exploring views on ensuring that others who provide services or offer activities for children and adults who may be experiencing or at risk of abuse have proportionate and effective safeguarding arrangements in place, rather than on changes to primary legislation at that time.
- 4.8. This approach reflects calls during the consultation for further engagement and consideration before introducing any new duties.
- 4.9. For the other amendments proposed to the 2016 Act, there was generally a high level of support. Respondents raised a number of relevant questions in their responses. In some cases, these were already addressed by existing regulations and guidance, but others have been given further consideration as the legislation has been developed.
- 4.10. There has been no formal consultation on a draft Bill. It was considered more appropriate to consult on policy proposals during their development to ensure that consultation responses could be considered in developing the Bill itself. The proposals that are included in the Bill align with the policy intentions set out in the consultation but have taken into account points raised in consultation responses. There has also been focussed and proactive ongoing engagement with relevant stakeholders during the development of the Bill.

#### Amendments not consulted on

- 4.11. None of the miscellaneous amendments to the 2014 Act were consulted on – i.e. the amendments which:
- Amend Section 47 of the 2014 Act in order to ensure that the boundaries of health and social care are maintained;
  - Reconfigure the provisions in Part 4 of the 2014 Act that enable the making of direct payments by local authorities in order to enable provision for a direct payment to be made to a third party nominated by an individual entitled to receive such a payment in cases where the individual person has mental capacity to make that decision;
  - Amend Sections 76 and 81 to clarify references to “child arrangement orders”;
  - Amend the Welsh text of section 124(9) to restore the equivalence of the English and Welsh texts of that provision.

4.12. These amendments seek to ensure delivery of the existing policy intentions of the 2014 Act and so do not represent a new policy approach.

## **5. Power to make subordinate legislation**

5.1. The Bill contains provisions to make subordinate legislation and issue determinations. Table 5.1 (subordinate legislation) and Table 5.2 (directions) set out in relation to these:

- (i) the person upon whom, or the body upon which, the power is conferred;
- (ii) The form in which the power is to be exercised;
- (iii) The appropriateness of the delegated power;
- (iv) The applied procedure; that is, whether it is “affirmative”, “negative”, or “no procedure”, together with reasons why it is considered appropriate.

5.2. The Welsh Government will consult on the content of the subordinate legislation where it is considered appropriate to do so. The precise nature of consultation will be decided when the proposals have been formalised.

**Table 5.1: Summary of powers to make subordinate legislation in the provisions of the Health and Social Care (Wales) Bill**

<b>Section</b>	<b>Power conferred on</b>	<b>Form</b>	<b>Appropriateness of delegated power</b>	<b>Procedure</b>	<b>Reason for procedure</b>
3(2) <i>(proposed new section 6(1A) in the 2016 Act)</i>	Welsh Ministers	Regulations	The power will allow Welsh Ministers to prescribe information required in an application to be registered to become a provider of a restricted children's service, in order for them to be satisfied that the person applying to become a provider meets the necessary requirements.	Negative	The power relates to a task which is administrative in nature, and also mirrors the approach already taken in section 6(1)(d) of the 2016 Act (concerning applications for registration as a service provider).
3(3) <i>(proposed new section 6A(3)(b) in the 2016 Act)</i>	Welsh Ministers	Regulations	The power will allow Welsh Ministers to prescribe what is an acceptable "public good" to which the objectives or purposes of a person proposing to provide a restricted children's services must primarily relate, thus permitting the 'future-proofing' of	Negative	The power would widen the list of public goods beyond only "the welfare of children" specified in proposed new section 6A(3)(a), and so would not disadvantage providers.

<b>Section</b>	<b>Power conferred on</b>	<b>Form</b>	<b>Appropriateness of delegated power</b>	<b>Procedure</b>	<b>Reason for procedure</b>
			the provisions against the possibility of new public goods being identified.		
4(3) <i>(proposed new paragraph 1(1)(b), in Schedule 1A to the 2016 Act)</i>	Welsh Ministers	Regulations	The power will allow Welsh Ministers to determine the end of the transition period for restricted children's services, including the ability to determine different days in relation to different types of service and descriptions of service provider.	Draft affirmative	The main purpose of the transitional period is to avoid placement disruption for children and service providers. The draft affirmative procedure will support scrutiny of the proposed date(s) for end of the transition period.
4(3) <i>(proposed new paragraph 2(4)(b), in new Schedule 1A to the 2016 Act)</i>	Welsh Ministers	Regulations	The power will allow Welsh Ministers to prescribe enactments for the purposes of which sub-paragraph (3) of paragraph 2 does not apply.	Negative	The power relates to tasks which are administrative in nature, for example specifying that different enactments may apply to different descriptions of service provider.
4(3) <i>(proposed new paragraph 3(1), in new Schedule 1A to the 2016 Act)</i>	Welsh Ministers	Regulations	The power will allow Welsh Ministers to impose conditions on existing providers of	Draft affirmative	The draft affirmative procedure will support scrutiny of the proposed conditions.



Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			restricted children's services.		
4(3) <i>(proposed new paragraph 4(3), in Schedule 1A to the 2016 Act)</i>	Welsh Ministers	Regulations	The power will allow Welsh Ministers to specify the information contained within, and the form of, an application by a provider of restricted services for a variation of that provider's registration.	Negative	The power relates to a task which is administrative in nature and the procedure mirrors that in relation to applications for variation under s.11(3)(a)(iii) and (3)(b) of the Act.
7(a) <i>(proposed paragraph (viii) inserted into subsection 10(2)(a) of the 2016 Act)</i>	Welsh Ministers	Regulations	The power will allow Welsh Ministers to prescribe information about evidence relevant to the fit and proper person test which must be included in the annual return.	Draft affirmative on the first use, and subsequently negative (see section 10 of the 2016 Act, and section 7(c)(ii) of the Bill)	The power relates to a task which is administrative in nature and the procedure mirrors that in relation to annual returns under s.10(2)(a)(ix) of the 2016 Act.  As with some existing powers under s. 10, it would be appropriate to follow the draft affirmative procedure when this power is first exercised.
7(b) <i>(proposed new section 2A inserted after subsection (2))</i>	Welsh Ministers	Regulations	The power will allow Welsh Ministers to prescribe information to be included in an annual return in order to satisfy	Draft affirmative on the first use, and subsequently negative (see section 10 of the	The power relates to a task which is administrative in nature and the procedure mirrors that in relation to annual returns under s.10(2)(a)(ix) of the 2016 Act.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
<i>into section 10 of the 2016 Act)</i>			Welsh Ministers that the provider meets the requirements of section 6A(1) (concerning requirements in order to be registered as a provider of a restricted children's service).	2016 Act, and section 7(c)(iv) of the Bill)	As with some existing powers under s. 10, it would be appropriate to follow the draft affirmative procedure when this power is first exercised.
8(2) <i>(proposed new subsection (4) inserted after subsection (3) into section 11 of the 2016 Act)</i>	Welsh Ministers	Regulations	The power will allow Welsh Ministers to prescribe information to be included in an application to vary a provider's registration to be able to provide a restricted children's service, in order to satisfy Welsh Ministers that the provider meets the requirements of section 6A(1) (concerning requirements in order to be registered as a provider of a restricted children's service).	Negative	The power relates to a task which is administrative in nature and the procedure mirrors that in relation to application for variation to registration as a service provider under s.11(3)(a)(iii) of the Act.

<b>Section</b>	<b>Power conferred on</b>	<b>Form</b>	<b>Appropriateness of delegated power</b>	<b>Procedure</b>	<b>Reason for procedure</b>
11 <i>(subsection (2)(d)(iii) and (iv) of new section 75A to be inserted into the 2014 Act)</i>	Welsh Ministers	Regulations	The power will allow Welsh Ministers to prescribe information to be contained in local authority sufficiency plans, about for-profit providers who provide accommodation in Wales or England, respectively, and who are likely to be named in applications for approval of supplementary placements.	Negative	The power relates to a task which is administrative in nature.
11 <i>(subsection (2)(f) of new section 75A to be inserted into the 2014 Act)</i>	Welsh Ministers	Regulations	The power will allow Welsh Ministers to prescribe other information to be contained in local authority sufficiency plans.	Negative	The power relates to a task which is administrative in nature.
11 <i>(subsection (3) of new section 75A to be inserted into the 2014 Act)</i>	Welsh Ministers	Regulations	The power will allow Welsh Ministers to prescribe the form of local authority sufficiency plans.	Negative	The power relates to a task which is administrative in nature.

<b>Section</b>	<b>Power conferred on</b>	<b>Form</b>	<b>Appropriateness of delegated power</b>	<b>Procedure</b>	<b>Reason for procedure</b>
13(3) <i>(subsection (3)(g) of new section 81B to be inserted into the 2014 Act)</i>	Welsh Ministers	Regulations	The power will allow Welsh Ministers to prescribe other information to be contained in an application by a local authority for a supplementary placement.	Negative	The power relates to a task which is administrative in nature.
14(2)(c) <i>(inserting new subsection (4A) into section 10 of the 2016 Act)</i>	Welsh Ministers	Regulations	The power will allow the Welsh Ministers to specify a time limit within which an annual return must be published by a service provider.	Negative	The annual return is currently submitted to the Welsh Ministers by the registered service provider within a prescribed time limit and published online by the Welsh Ministers. The regulations made pursuant to this provision will specify the time limit in which the annual return is to be published online by the service provider.
15(2) <i>(inserting new subsection (1A) into section 14 of the 2016 Act)</i>	Welsh Ministers	Regulations	The power will allow the Welsh Ministers to require that an application for cancellation of registration as a service provider contain prescribed information	Negative	The regulations made pursuant to this provision will require the submission of uncontentious, but important, information in a required format. There are equivalent regulation-making powers in section 11(3) of the 2016 Act dealing with an

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			and be made in a prescribed form.		application for variation of registration as a service provider.
18(2)(a)(ii) <i>(inserting a new subsection 3(m) into section 79 of the 2016 Act)</i>	Welsh Ministers	Regulations	The power will allow the Welsh Ministers to provide that childcare workers (persons employed/working to provide care and supervision to children by a person registered under Part 2 of the Children and Families (Wales) Measure 2010) are to be treated as social care workers.	Negative	The regulations made under these provisions will enable Social Care Wales to undertake functions to support the childcare workforce and to formalise any functions they already undertake.
20(2)(a) <i>(inserting a new section 49A into the 2014 Act)</i>	Welsh Ministers	Regulations	This power replaces existing powers in sections 50-52 of the 2014 Act for the Welsh Ministers to make regulations to require or allow local authorities to make direct payments towards meeting the needs of adults, children or carers.	Negative	These regulations would set out technical matters relating to the operation of these direct payments and so the negative procedure would be more appropriate. This also mirrors the existing procedure for the equivalent powers currently in the 2014 Act.

<b>Section</b>	<b>Power conferred on</b>	<b>Form</b>	<b>Appropriateness of delegated power</b>	<b>Procedure</b>	<b>Reason for procedure</b>
20(2)(c) and (d) <i>(inserting section 53A and Schedule A1 into the 2014 Act)</i>	Welsh Ministers	Regulations	The power to make regulations in a new Schedule A1 to be inserted into the 2014 Act enables the Welsh Ministers to make regulations to require or allow local authorities to make direct payments in respect of a person to whom section 117 of the Mental Health Act 1983 (after-care) applies, in lieu of providing or arranging for the provision of after-care services. This replaces equivalent powers in the existing Schedule A1 of the 2014 Act and sections 50, 51 and 53 of the 2014 Act.	Negative	These regulations would set out technical matters relating to the operation of these direct payments and so the negative procedure would be more appropriate. This also mirrors the existing procedure for the equivalent powers currently in the 2014 Act.
24(2) <i>(inserting section 10B(5) into the 2006 Act)</i>	Welsh Ministers	Regulations	This regulation-making power will enable the Welsh Ministers to make provision that will require or enable LHBs	Draft affirmative on the first use, and subsequently negative (see section 203 of the	It would be appropriate to follow the draft affirmative procedure when this power is first exercised, as this would introduce a requirement for, or

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			<p>to make direct payments, with the consent of a patient, to that patient (or a person nominated by them) in lieu of the LHB's duty to provide after-care services under section 117 of the Mental Health Act 1983 (c.20) (the 1983 Act).</p> <p>The duties under section 117 are directly conferred on LHBs (unlike many of the health functions exercised by the LHBs on behalf of the Welsh Ministers which are exercised in accordance with the Local Health Boards (Directed Functions) (Wales) Regulations 2009).</p>	<p>2006 Act, and section 27(3) of the Bill)</p>	<p>enable, LHBs to make direct payments in lieu of these services.in order to discharge their duty to provide after-care service under the 1983 Act.</p> <p>The first exercise of the power, which would enable the discharge of LHB duties under the 1983 Act in a new way, therefore merits a greater level of scrutiny than would be appropriate in relation to any subsequent exercise of the power, which would not involve the consideration of the principle of enabling the discharge of an LHB duty to provide care in a different way.</p> <p>These regulations would also set out technical matters relating to the operation of these direct payments and so the negative procedure would be more</p>

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			This power would ensure the Welsh Ministers can ensure consistency between persons who are entitled to after-care services under the 1983 Act and those who receive services under the 2006 Act.		appropriate for subsequent regulations.
24(2) <i>(inserting section 10C into the 2006 Act)</i>	Welsh Ministers	Regulations	This is a power to set out the detail of how direct payments made in lieu of the provision of NHS services would need to operate.	Negative	These regulations would set out technical matters relating to the operation of these direct payments and so the negative procedure would be appropriate. This will also mirror the use of the negative procedure for the existing powers to make regulations in relation to direct payments in social care.
28	Welsh Ministers	Regulations	This is a power to allow the Welsh Ministers to make provision that is incidental or supplementary to, or consequential on, any provision of this Act and	Negative amending repealing subordinate legislation. if or	These consequential amendments will be technical and procedural in nature so the negative procedure would generally be appropriate.



Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			to make transitional or saving provision in connection with any provision of this Act.	Draft affirmative if amending or repealing primary legislation.	However, where regulations would amend, repeal or otherwise modify a provision in primary legislation, the draft affirmative procedure would be appropriate and would apply.

**Table 5.2: Summary of powers to make directions in the provisions of the Health and Social Care (Wales) Bill**

<b>Section</b>	<b>Power conferred on</b>	<b>Form</b>	<b>Appropriateness of delegated power</b>	<b>Procedure</b>	<b>Reason for procedure</b>
13(3) <i>(inserting new section 81B(5)(c) into the 2014 Act)</i>	Welsh Ministers	Directions	<p>If the Welsh Ministers are not satisfied that a local authority's application to place a looked after child with a for-profit or private provider satisfies the requirements set out in section 81B(3) and (4), they must set out the reasons why and direct the local authority to reconsider.</p> <p>This is intended to reinforce the need for local authorities to carefully consider whether any placement with a for-profit or private provider is appropriate.</p>	None	This is an administrative action in relation to a specific supplementary placement decision by a local authority of a looked after child.

## PART 2 – REGULATORY IMPACT ASSESSMENT

### 6. Regulatory Impact Assessment (RIA) summary

6.1. A Regulatory Impact Assessment has been completed for the Bill and it follows below.

6.2. There are no specific provisions in the Bill which charge expenditure on the Welsh Consolidated Fund.

6.3. The following table presents a summary of the costs and benefits for the Bill as a whole. The table has been designed to present the information required under Standing Order 26.6 (viii) and (ix).

<b>Health and Social Care (Wales) Bill</b>		
<b>Preferred option:</b> To legislate in relation to the elimination of profit from certain types of social care for children, continuing health care direct payments, and amendments to the Social Services and Wellbeing (Wales) Act 2014 and Regulation and Inspection of Social Care (Wales) Act 2016 to ensure these work as intended.		
<b>Stage:</b> Introduction	<b>Appraisal period:</b> 2025-26 – 2034-35	<b>Price base year:</b> 2022-23
<b>Total Cost</b> Total: £429.8 - £455.7m Present value: £364.9m - £388.6m	<b>Total Benefits</b> Total: £275.9m - £362.2m Present value: £216.7m - £284.7m	<b>Net Present Value (NPV):</b> £ -103.9m - £-148.2m

#### Administrative cost

##### **Costs:** .

There is a cost to Welsh Government of approximately £4.5m associated with the implementation of the provisions in the Bill. The estimated cost to local authorities for implementing the policy to eliminate profit from the care of looked after children is £185.7m - £245.5m. Of this between £107.1m and £142.8m is the capital cost to purchase and refurbish properties to replace capacity that is expected to be lost when for-profit providers exit the market in Wales. This cost to local authorities is expected to be at least partially offset by a reduction in outturn costs (these are included below as a benefit). There is a cost to local health boards of between £20.5m and £24.2m associated with CHC direct payments. The remaining administrative costs are expected to fall to CIW (£5.9m).

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<b>Transitional:</b> £175.5m- £232.9m	<b>Recurrent:</b> £41.2m - £47.3m	<b>Total: £216.7m - £280.2m</b>	<b>PV: £200.2m – £259.3m</b>
<b>Cost-savings:</b> There is an administrative cost-saving of £83,000 (over ten-years) accruing to CIW from no longer having to check service providers annual returns. There is a further administrative cost-saving to Social Care Wales from no longer having to apply to HM Courts and Tribunal Service to extend an interim suspension order, this cost-saving is estimated to total £2.2m over the appraisal period.			
<b>Transitional: £0</b>	<b>Recurrent: £2.3m</b>	<b>Total: £2.3m</b>	<b>PV: £1.8m</b>
<b>Net administrative cost: £214.3m - £277.8m</b>			

### Compliance costs

There will be a small compliance cost of between £145,000 and £247,000 incurred by those service providers who need to develop a website on which to publish their annual return.			
<b>Transitional:</b> £0.1m - £0.2m	<b>Recurrent: £0</b>	<b>Total: £0.1m - £0.2m</b>	<b>PV: £0.1m - £0.2m</b>

### Other costs

The elimination of profit from the care of looked after children will result in a cost to those businesses which currently make a profit from these activities. The cost of this lost profit has been estimated to be between £177.7m and £215.3m over the ten-year appraisal period. These figures are likely to over-estimate the domestic impact of the policy change since some of the businesses operating in Wales are known to be foreign-owned.			
<b>Transitional: £0</b>	<b>Recurrent:</b> £177.7m – £215.3m	<b>Total: £177.7m - £215.3m</b>	<b>PV: £130.9m - £166.4m</b>

### Unquantified costs and disbenefits

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There will be a cost to service providers who are exiting the market to provide a statement explaining how they will comply with quality standards until the service closes. While a unit cost for preparing such a statement has been presented, it has not been possible to aggregate this cost since it is not known how many providers will exit the market during the appraisal period.

## Benefits

For the purposes of completing this summary table, the residual value at the end of the appraisal period of the children's residential care homes has been categorised as a benefit, this is estimated to be between £64.3m and 85.7m. Local authorities are expected to benefit from lower outturn costs for children's care, with a saving of between £184.0m and £253.9m. There will be a benefit to local authorities and individuals when the latter switch from receiving social care payments to CHC Direct Payments, this is estimated to be £13.7m over the appraisal period. The remaining benefits accrue to Local Health Boards as savings begin to be realised towards the end of the appraisal period due to the cost of CHC direct payments being lower than traditionally commissioned CHC.

**Total: £275.9m - £362.2m**

**PV: £216.7m - £284.7m**

## Key evidence, assumptions and uncertainties

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ADSS Cymru were commissioned to provide cost estimates for the section of the RIA on the elimination of profit from the care of looked after children, this work was informed by Welsh Government officials, public sector stakeholders and previous research including that undertaken by the Competition and Markets Authority. The main area of uncertainty in the analysis relate to the proportion of for-profit children's residential care providers who will exit the market in Wales following the elimination of profit.

The analysis in relation to CHC direct payments has been informed by experiences following the implementation of a similar scheme in England and discussions with key stakeholders there. The main area of uncertainty in relation to this part of the analysis relates to the number of people who will opt to receive a CHC direct payment, the scale and nature of the package that will be offered and the potential saving from direct payments when compared to traditionally commissioned CHC.

Where necessary, ranges have been presented in the analysis to reflect the uncertainty.

## 7. Options, costs and benefits

### Eliminating private profit from the care of looked after children

#### Evidence Base

- 7.1. There is a limited but growing evidence base regarding for-profit provision for looked after children. It supports the view that the existing arrangements in Wales (and in other parts of the UK) are not working. They do not lend themselves to creating a landscape of care and support provision that caters to the needs of its population and reflects the growing demand for and growing cost for care and support.
- 7.2. Studies including those from the Competition and Markets Authority's 2022 *Social Care Market Study*<sup>19</sup>, the Local Government Association (via Revolution Consulting) *Profit making and Risk in Independent Children's Social Care Placement Providers*<sup>20</sup>, *State of the Sector* reports from the Care Homes Association<sup>21</sup> and longitudinal studies of and evidence reviews by academics such as Anders Malthé Bach-Mortensen<sup>22</sup> have been undertaken. Although most of the focus of these does not exclusively apply to Wales, due to the commonalities between market and other conditions in England and in Wales, they inform the overview presented below.
- 7.3. The broad context of for-profit provision in England and Wales shows that larger organisations have a sizeable portion of the market. The LGA/Revolution 2022/23 analysis<sup>23</sup> of data from England for 19 of the top 20 providers of care for looked after children shows they accrued £1.63 billion in fees, a 6.5% increase over the previous year and £310m (19%) in profit. The study also noted **half of these top providers** have some form of **private equity or sovereign wealth fund ownership**.

#### *Data on Looked After Children*

- 7.4. Overall, the number of children in care in Wales has mostly seen growth over the last decade but with some fluctuations (Figure 1). The latest data

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19 [Final report - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

20 [Alt Profit Making and Risk in Independent Children's Social Care Placement Providers final 2023 \(revolution-consulting.org\)](https://revolution-consulting.org)

21 [CHA Spring 2023 final \(revolution-consulting.org\)](https://revolution-consulting.org)

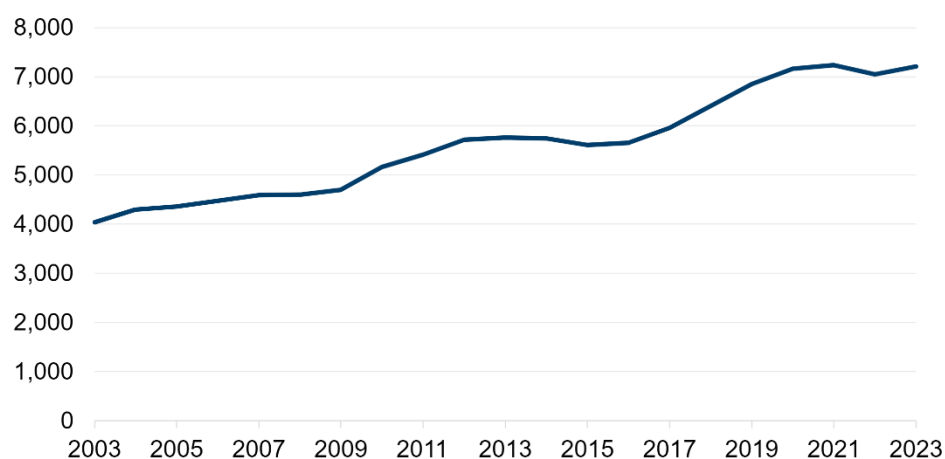
22 [Outsourcing and children's social care: A longitudinal analysis of inspection outcomes among English children's homes and local authorities - ScienceDirect](https://www.sciencedirect.com)

23 [Alt Profit Making and Risk in Independent Children's Social Care Placement Providers final 2023 \(revolution-consulting.org\)](https://revolution-consulting.org)

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from Stats Wales<sup>24</sup> shows 7,210 children were looked after in Wales in 2022/23, an increase of 155 (2%) on the previous year. This equates to a rate of 116.3 per 10,000 population aged under 18, compared to a rate of 114.4 in 2021-22 and a significantly higher rate than in England. The UK Government cited 83,840 children in care (around 71 per 10,000 population) in 2022/23<sup>25</sup> up 2% on the previous year.

**Figure 1: Looked after children on 31 March 2003 to 2023 (Source: Stats Wales)**



7.5. 69% of looked after children were in foster care placements on 31 March 2023. This is a similar proportion since 2020 and a gradual decline from a high of 79% in 2011. A third (34%) of children in foster care were in placements with a relative or friend on 31 March 2023. This proportion has increased each year from 2015, when it was 20%.

7.6. 14% of all looked after children were placed with their own parents or others with parental responsibility; these were mostly children subject to care orders. This proportion has decreased slightly compared to recent years, having been around 16% since 2019. 10% of looked after children were in secure units, children's homes or hostels; an increase from 8% in the previous year. The remaining other placement types have stayed broadly similar accounting for around 7% of placements in total.

7.7. Where information was provided, two-thirds (66%) of children who were looked after on 31 March 2023 were in placements inside the local authority (LA) where they were living when they first became looked after. 27% of children were in placements outside their home LA but within Wales and a further 7% were placed outside Wales. These proportions have remained broadly constant in recent years.

<sup>24</sup> [Children looked after at 31 March per 10,000 population aged under 18 by local authority and year \(gov.wales\)](https://gov.wales/children-looked-after-at-31-march-per-10000-population-aged-under-18-by-local-authority-and-year)

<sup>25</sup> [Children looked after in England including adoptions, Reporting year 2023 – Explore education statistics – GOV.UK \(explore-education-statistics.service.gov.uk\)](https://explore-education-statistics.service.gov.uk/reports-and-publications/children-looked-after-in-england-including-adoptions-reporting-year-2023)



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### *The Number of Services and Places*

7.8. A bespoke request for data held by CIW in September 2023 showed 295 care home services for looked after children. 245 services were for-profit, 38 services were either LA or not for profit. The growth in demand for residential care has, according to CIW, more than doubled since 2012. There were 45 fostering services, of which 19 services were private, 4 services were not-for-profit and 22 were local authority run.<sup>26</sup>

**Table 7.1 A Breakdown of Care Home and Fostering Services in Wales**

<b>Service type</b>	<b>Number of services</b>
<b>Care Home Service</b>	<b>295</b>
Local Authority	49
Not for profit	1
Private	245
<b>Fostering Service</b>	<b>23</b>
Not for profit	4
Private	19
<b>LA Fostering Service</b>	<b>22</b>
Local Authority	22
<b>Total</b>	<b>340</b>

7.9. This data equates to 83% of care home services for children and young people being run by the private sector.

### *The current market and sufficiency*

7.10. The Competition and Markets Authority (CMA)<sup>27</sup> launched its market study into the supply of children’s social care in England, Wales and Scotland in response to concerns raised regarding difficulties in finding appropriate placements and the prices paid. These two factors place significant strain on local authority budgets and limit their scope to fund other important activities in children’s services and other areas.

7.11. The CMA report highlighted a highly fragmented, complex, dysfunctional market which means individual local authorities are exposed and find it hard to plan for and provide their own residential and foster care. In its Wales summary<sup>28</sup> it noted “LAs must often take whatever placement is available, even when it is not fully appropriate for the needs of the child. This blunts the ability to shape the market to provide for their

<sup>26</sup> [Bespoke CIW data](#)

<sup>27</sup> [Children’s social care market study final report - GOV.UK \(www.gov.uk\)](#)

<sup>28</sup> [Wales summary \(publishing.service.gov.uk\)](#)

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true needs”.<sup>29</sup> It also found most Welsh LAs do not attempt to actively shape the market by encouraging providers to invest in new provision. Demand for certain types of specialist provision “is too low to justify contracting a whole service to meet these needs”.<sup>30</sup>

7.12. The CMA also found that the profitability of children’s homes in Wales was higher than the average across all three nations. This equated to providers of care in children’s homes seeing steady profit margins of over 22% and average prices totalling £3,830 per week between 2010-16. Fostering prices were at an average of £820 per week, with some profit margins averaging 19.4%. This is money being taken out of children’s services which could be re-directed to improving services, capacity and outcomes.

7.13. The report found significant problems in how the placements market functions in England and Wales because:

- A lack of placements of the right kind, in the right places, means that children are not consistently getting access to care and accommodation that meets their needs or are being placed far from their established communities.
- The largest private providers of placements are making materially higher profits, and charging materially higher prices, than would be expected if the market were functioning effectively.

7.14. The CMA stated that if the market were functioning well, profitable providers would invest and expand in the market and new providers would enter. This would drive down prices with a greater choice of placements. Less efficient providers would have to become more efficient or exit the market and the largest providers’ profits would be reduced. The high profits of the largest providers therefore shows that competition is not working as well as it should be.

7.15. The CMA also found some of those providers carry remarkably prominent levels of debt, creating a risk of disorderly failure which could further threaten the placements of those in care. Narey and Owers<sup>31</sup> noted that private equity investment has created a situation of fast-paced buying and selling of independent fostering agencies with investors taking high returns and leaving the providers with the burden of debt that then causes them to inflate their prices. This level of indebtedness also causes concern about resilience and is likely to increase the risk of disorderly exit of firms from the market.

7.16. Surveys of members of the Children’s Homes Association by Revolution Consulting<sup>32</sup> and separately its report commissioned by the

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<sup>29</sup> *ibid* para 42

<sup>30</sup> *ibid* para 43

<sup>31</sup> [Foster Care in England: Review \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

<sup>32</sup> [CHA Spring 2023 final \(revolution-consulting.org\)](https://revolution-consulting.org)

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LGA<sup>33</sup> (p.10) found profit levels reported by smaller providers are “at materially lower levels (absolute and margin %) than those of the larger providers,” i.e. outside of the largest six. There are a variety of reasons for the reduced profit levels including planned periods of investment in growth of services, but also the impact of emerging pressures on staffing costs and inflationary effects are referenced by some providers.

7.17. A 2022 analysis by What Works for Social Care of all up-to-date children's social care sufficiency strategies in England found that commissioning and procurement practices vary widely across English local authorities<sup>34</sup>. The analysis found, among other things, that most authorities do not currently have the in-house capacity to meet the demand of children in need of care nor the ability to forecast future need, which severely restricts their ability to meaningfully engage with and commission providers. The CMA agreed with this, calling the market ‘dysfunctional.’ It identified a series of market failures, most of which were reported to be driven by the inability of LAs to effectively oversee and engage with the market in the face of an insufficient supply of appropriate placements.

7.18. A report by the Association of Directors of Social Services Cymru<sup>35</sup> into the rebalancing of children’s social care in 2020 found that provider dominance is such that, even when a local authority has a grip on business, with robust monitoring and providers being challenged about the quality of care, monies claimed for activities not undertaken, and about outcomes, there is a risk of a placement being ended. A child in care might be pushed “closer to the door” by the provider. Providers know demand is such they can always fill a place, selling to other local authorities in England and Wales, often at a higher price.

7.19. Private providers can also select to work across borders and set up homes unannounced. The report states this has been seen in parts of Wales where property prices are less than, for example, the southeast of England. New providers set up in parts of Wales and fill places with children from outside Wales. This was described in the report by one respondent as “pop up” private homes which do not add value to the local care markets.

7.20. In her 2019 *Pass the Parcel* report<sup>36</sup>, the Children’s Commissioner for England also noted that many children end up going to live in children’s homes run by private companies, often operating in cheaper and less ‘desirable’ parts of the country”. Her report contains pertinent qualitative

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<sup>33</sup> [Alt Profit Making and Risk in Independent Children's Social Care Placement Providers final 2023 \(revolution-consulting.org\)](#)

<sup>34</sup> [Are Local Authorities Achieving Effective Market Stewardship For Children's Social Care Services? \(whatworks-csc.org.uk\)](#) p.3

<sup>35</sup> [Rebalancing Social Care: A report on Children’s Services \(adss.cymru\)](#) p.37 of report

<sup>36</sup> [cco-pass-the-parcel-children-posted-around-the-care-system.pdf \(childrenscommissioner.gov.uk\)](#)

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evidence from care experienced children on the way out-of-county provision impacts their lives. Those children reported feeling isolated and unable to see their loved ones, as the long travel distances disincentivise family members who may otherwise wish to visit.

7.21. The Children’s Commissioner for England’s 2020 report<sup>37</sup> on private provision in children’s social care noted that the turmoil of acquisitions and restructures in marketised children’s home provision can transfer over into instability in client-facing practice, with higher staff turnover and changing hierarchies in larger companies meaning that young people lose continuity in relationships with staff and management.

### Cost

7.22. The CMA’s study found the cost to local authorities of providing their own children’s home placements is no lower than the cost of procuring placements from private providers, despite prominent levels of profit. It found that the primary driver of the cost differentials between local authority children’s homes and private sector children’s homes was higher staff ratio and costs in local authority provision.

7.23. Residential care services are a labour-intensive activity whose cost base is primarily determined by the employment terms and conditions of high volumes of low-paid workers’. Wages of lower-paid workers tend to be higher in the public sector and are typically determined by standardised pay scales that reflect job roles, responsibilities, and seniority. Public sector employees usually access more comprehensive benefits, including much more expensive pension schemes.

7.24. For-profit companies can offer more varied employment contracts, such as part-time, temporary, and zero-hour contracts. This flexibility allows these employers to adjust their labour force quickly based on demand, potentially reducing labour costs and increasing operational efficiency. This is important in a sector where the hours required by an individual service can unpredictably fluctuate depending on occupancy levels. Nevertheless as stated further on in this RIA, those flexibilities can also present distinct challenges to the terms and conditions of a provider’s workforce, in contrast to those in the public sector.

7.25. The CMA also found “indicative evidence” that local authorities could provide some fostering placements more cheaply than by purchasing them from independent fostering agencies. However, although local authorities still dominate the supply of foster care placements, they compete against for-profit and not-for-profit foster care agencies to attract new and existing foster carers. For-profit and not-for-profit foster care agencies in this case are also more flexible in the fees and allowances

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<sup>37</sup> [Private provision in children’s social care | Children’s Commissioner for England \(childrenscommissioner.gov.uk\)](https://www.childrenscommissioner.gov.uk/private-provision-in-childrens-social-care/)

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they can give foster carers. This is important in areas where the supply of foster care often outstrips demand.

- 7.26. Bach-Mortensen et al<sup>38</sup> (2023) make the claim that “existing work generally demonstrates that the for-profit outsourcing of public services does not typically transfer into cost reduction and improved service quality (Petersen et al. 2018)”, and that “children’s social care is no exception”.

### *Quality*

- 7.27. There is a mixed picture in terms of the quality of care offered by for-profit and not-for-profit business models. Evidence from inspections led the CMA to deduce there are no real differences, overall, in the quality of residential care offered by local authority or private providers in Wales. However, a longitudinal analysis of inspection outcomes in English children’s homes would suggest otherwise.<sup>39</sup> It found for-profit children’s homes negatively correlate with inspection findings and were rated as being of lower quality than not-for-profit models and that those homes violate more requirements and receive more recommendations for action.
- 7.28. However, it should be noted that most of the Ofsted domains of inspection in English local authorities relate to a broad range of services (e.g. child protection services, referral and assessment, and non-statutory Early Help), whilst for-profit inspection is specific to children in care placements. The longitudinal analysis was the first of its kind to gauge the impact of outsourcing children’s residential social care services in England. Its findings, nonetheless, are in line with existing research on the adult residential care sector, which tends to identify worse outcomes for for-profit providers.
- 7.29. It should also be noted that existing data from Care Inspectorate Wales does not currently support this finding in that it shows no marked difference in quality between local authority and for-profit provision of residential and foster care services. This may be explained in part by the different approach to inspection in Wales and the absence of quality ratings. However, feedback provided by the Children’s Commissioning Consortium Cymru’s (the 4C’s) own members and monitoring also does not support the view demonstrating that overall, the services its members provide have led to good outcomes and met the child’s needs “*most or all the time*”.

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<sup>38</sup> [For-profit outsourcing and its effects on placement stability and locality for children in care in England, 2011–2022: A longitudinal ecological analysis - ScienceDirect](#)

<sup>39</sup> [Outsourcing and children's social care: A longitudinal analysis of inspection outcomes among English children's homes and local authorities - ScienceDirect](#)

### *Placement Stability*

- 7.30. Placement stability for children and young people is critical and 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.
- 7.31. There is a body of evidence that demonstrates that placement stability and distance has continued to deteriorate over the past decade. This is due to continuing problems around supply and access.<sup>40</sup> Analysis from evidence-based studies (Bach-Mortensen et al. 2022; CMA 2022; MacAlister 2022), suggests the placement process of for-profit organisations is significantly impacted by market conditions, hindering local provision.<sup>41</sup>

### *Out of area placements*

- 7.32. Wherever possible, the 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. Placements away from home communities are sometimes necessary for the best interests of the child but there should be careful consideration of the benefits and potential impact of using such placements more widely.
- 7.33. A longitudinal analysis on the outsourcing, placement locality and stability, and characteristics of children in care in England between 2011 and 2022 found that for profit outsourcing is linked with more placements away from the child's home and with more unstable, short-term placements, i.e. under two years.<sup>42</sup> Placement stability and distance have deteriorated over the past decade, especially, as the supply and access problem has become predominant.
- 7.34. The analysis suggests fewer children enjoy 'long term stability' of care (living in the same place for at least 2.5 years) from for-profit providers. The longitudinal analysis shows this is marking a continuing trend, with that number having shrunk by 3 percentage points since 2018. An increase of 1% of for-profit outsourcing is associated with an average increase of 0.10 percent more children being in the same placements for <2 years. It notes that "local authorities that rely on outsourcing have the highest rates of disruptions to an individual in terms of stable placement of

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40 Bach-Mortensen, A.M., Goodair, B. and Barlow, J., (2023). [For-profit outsourcing and its effects on placement stability and locality for children in care in England, 2011-2022: A longitudinal ecological analysis. \*Child Abuse & Neglect\*, 144, 106245.](#)

41 *ibid*

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two years or more and a higher number of out-of-area placements” For-profit provision has not therefore created a sense of belonging and security over care and support arrangements.

- 7.35. The Children’s Commissioner for England in her *Pass the Parcel*<sup>43</sup> report visited children’s homes across England and noted that out-of-area provision is sometimes organised intentionally for child protection purposes such as being kept safe from child criminal exploitation. However, this also often occurs simply because there are no available spaces in the child’s own local authority. The Children’s Commissioner concluded that for-profit outsourcing relates to an increased likelihood of both out-of-area and unstable placements.
- 7.36. These results echo previous qualitative research on the shift of out-of-home-care from the public to the private sector, which was not found to improve continuity or consistency in care for children.<sup>44 45</sup> As reported in paragraph 7.20 above, the Children’s Commissioner noted that private providers often invest in clusters of homes in certain areas because it is financially beneficial to do so, but that this has a knock-on effect of creating ‘pockets’ with high numbers of looked after children that causes a strain on local services such as mental health services.
- 7.37. Although the CMA report did not find that residential provision would necessarily be cheaper in-house than procuring from private providers, broader research captured in the longitudinal survey<sup>46</sup> suggests out-of-area placements may increase costs in terms of travel for social workers, which, in addition, may negatively affect the ability of social workers to monitor the progress and well-being of children. Similarly senior managers spend many working hours trying to procure scarce residential provision.

### *Workforce*

- 7.38. Research suggests that across the children’s residential care sector the workforce is generally committed to working with children and young people. The recruitment and retention of staff is, however, notoriously difficult in both children’s and adult social care across the UK but tends to be more so in the private sector. The UK’s Department of Education Workforce Census in 2013 (Children’s home workforce census) in England documented that the average employment conditions, in terms of

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<sup>43</sup> [cco-pass-the-parcel-children-posted-around-the-care-system.pdf \(childrenscommissioner.gov.uk\)](#)

<sup>44</sup> [Turning away from the public sector in children's out-of-home care: An English experiment - ScienceDirect](#)

<sup>45</sup> <https://doi.org/10.1093/bjsw/bcs101> pages 367-383

<sup>46</sup> [For-profit outsourcing and its effects on placement stability and locality for children in care in England, 2011–2022: A longitudinal ecological analysis - ScienceDirect](#)

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pay and working hours, are worse among for-profit providers than in LA-run services.<sup>47</sup>

7.39. In 2019 a thematic review by Care Inspectorate Wales<sup>48</sup> found that staff in the children's residential sector often do not have the required qualifications to work in that sector. Those working in the private sector were much less likely to have the required qualifications than those in local authorities or the third sector. For example, 40% of female staff and 48% of male staff in the private sector had the required qualifications. Figures in the voluntary sector were 63% and 71% and in the local authority sector were 80% and 70% respectively.

7.40. Social Care Wales published their ninth report of residential childcare managers and workers in 2017.<sup>49</sup> The report provided a detailed look at both residential childcare managers and workers. It noted concerns over falls in the number of residential childcare workers holding required qualifications evident since 2014. They attributed the reduction in numbers of qualified staff to high turnover of workers; the evidence suggested that whilst the number of individuals registering who have gone through the induction framework is increasing, many are then coming off the Register before completing the required qualification. The proportion of workers leaving jobs within two years had gone up from 33.7 per cent in 2014 to 41.6 per cent in the year of the survey. Almost a quarter who left the Register had been registered for less than a year, which suggests that many new workers are not staying in post for long.

7.41 In their review for the Department for Education, Narey and Owers (2018)<sup>50</sup> also noted that the demand-led nature of foster care and the shortage of carers in the system means Independent Foster Agencies (IFAs) often compete with both each other and local authorities to recruit staff and can dictate pricing. In addition to this research from Sellick and Connolly<sup>51</sup> found 46% of the IFA foster carers in their sample had no previous fostering experience.

## Summary of Options

7.42 Two options have been considered to achieve the Welsh Government's stated objective of eliminating profit from the care of looked after children.

- **Option One** – Business as Usual
- **Option Two** – Introduce legislation to remove profit from residential and foster care for looked after children.

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<sup>47</sup> [Department for Education \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

<sup>48</sup> [National review of care for children in Wales | Care Inspectorate Wales](#)

<sup>49</sup> Social Care Wales. (2017). [Residential child care managers and workers on the register in Wales](#). 2017. Cardiff: Social Care Wales

<sup>50</sup> [Foster Care in England: Review \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

<sup>51</sup> [Independent fostering agencies uncovered: the findings of a national study - Sellick - 2002 - Child & Family Social Work - Wiley Online Library](#)



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- 7.43 Whilst consideration was given to other measures such as setting a maximum fee rate, setting a cap on profit, limiting the profit or dividend paid out to shareholders, and developing local not-for-profit provision with Welsh Government funding these were rejected as being viable options due to their inability to affect the profit element/motive itself, administrative complexity, limited success in controlling costs and significant uncertainty. It was concluded that it is therefore unrealistic to expect successful change in this regard without the outside stimulus of legislation.
- 7.44 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 challenges in their lives and intends to bring forward legislation to end this.
- 7.45 The commitment to eliminate for-profit provision of services for looked after children is key to the Programme for Government. The clear definition and parameters around this commitment therefore provide the necessary certainty and criteria under which providers can operate.

#### **Option One: Business As Usual**

- 7.46 Under this option, the status quo will be maintained whereby any for-profit provider of children's residential and foster care could continue to be registered and provide services for looked after children.
- 7.47 Local authorities will continue to provide residential and foster care placements through their in-house services or by arrangement (commissioned) with independent providers in the private and third sector who would continue to make up a considerable proportion of the children's social care market.
- 7.48 Public money spent on children's services will continue to be taken out as profit instead of being re-directed to improving services, capacity and outcomes for children.
- 7.49 The current approach to supporting the development of local not-for-profit provision as a core component of the Welsh Government's overall plan for the transformation of children's social services would continue, potentially to be supported by further investment in local authorities to drive the expansion of such provision and a focus on working with local authorities to improve their placement planning and reduce reliance on residential care placements, including in for-profit provision.
- 7.50 Whilst this will support the desired transition it will not prevent the further accession of for-profit provision to the system or remove local authorities from a position of reliance on for-profit provision within a reasonable period and may not do so at all.

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## **Option Two: Introduce legislation to remove profit from residential care and foster care for looked after children.**

- 7.51 Under option two a Bill will be introduced to amend Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 and Part 6 of the Social Services and Well-being (Wales) Act 2014 to restrict the making of profit in the provision of care home services provided wholly or mainly to children, secure accommodation services and fostering services (referred to as 'restricted children's services').
- 7.52 This option will impose a requirement on a provider of a restricted children's service (other than a local authority) that is registered (with Care Inspectorate Wales) to be a "not-for-profit entity". It will also introduce a revised duty on a local authority to take steps to secure sufficient accommodation either within or near to its area.
- 7.53 This option will ensure delivery of the Welsh Government's commitment to fundamentally change how services are provided to children and their families is delivered.

### **Costs/Savings and Benefits/Disbenefits**

- 7.54 Officials have worked with ADSS Cymru to provide an assessment of the costs and savings, benefits and disbenefits associated with our legislative proposals quantified as best as possible.
- 7.55 The assessment had three interlinked phases.
- (i) Phase 1 - A review** of published information.
  - (ii) Phase 2 - Development of a logic model** to supply a systematic and visual framework for estimating the financial impact of the policy change (costs/savings and benefits/disbenefits)
  - (iii) Phase 3 - Engagement** with key stakeholders to help capture costs by:
    - a. providing data/existing evidence and identifying gaps
    - b. challenging and clarifying assumptions
    - c. examining figures
    - d. pinpointing potential barriers
    - e. engaging in debate and provoking thought
    - f. building understanding and promoting consensus
    - g. establishing a common language with common points of reference.
- 7.56 An iterative and collaborative approach was used to develop the logic model. Constructive discussions about capturing costs were held with key stakeholders (including the Welsh Government, Welsh Local Government Association, Foster Wales, and the 4C's) and stakeholders then stress-

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tested the model and reviewed the evidence base for the assumptions before final draft costs were arrived at. These were then reviewed, challenged and refined.

7.57 The assessment uses a range of financial and other data, including:

- Aggregated publicly available financial information relating to social care.
- Financial information produced by local government, Foster Wales and the 4C's.
- A small amount of data is included, which is commercially sensitive and so is not in the public domain. This is used to triangulate conclusions.

7.58 The work of others has also been considered, including the CMA Report referenced elsewhere in this Regulatory Impact Assessment (RIA).

7.59 The overall key guiding principle for the economic assessment is proportionality. It has attempted to strike a balance between the level of detail, the effort required to capture new data, and the range of potential outcomes that could be achieved (given the complexity inherent in the Welsh social care system and the fact that the variation in costs generated will be most affected by the proportion of for-profit provision that shifts to not-for-profit business models).

7.60 The costs set out below cover administrative, compliance, transitional and ongoing burdens, on whom those costs fall and the financial years within which they are incurred. The assessment covers a 10-year period, from the 2025-26 to 2034-35 financial years.<sup>52</sup> The 2022-23 financial year has been determined as the price base year for all costs and benefits throughout the analysis. Costs falling in future financial years are not adjusted to reflect expected general price inflation.

7.61 Unless otherwise stated, cost figures have been rounded to the nearest £100,000.

7.62 There is a degree of uncertainty around the costs for this element of the Bill. In particular, the number of existing providers in the for-profit sector who will establish themselves as one of the four not-for-profit entities set out in the Bill (see paragraph 3.33). This could have a significant impact on the costs, particularly those associated with transition and several different scenarios have therefore been modelled.

7.63 The assessment does not include NHS costs associated with providing health services for children's residential care and foster care. It is noted

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<sup>52</sup> Some tables in this Chapter also include figures in relation to 2023-24 and 2024-25 but these years do not form part of the ten-year appraisal period.

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that some care providers' gross turnover will consist of fees for therapeutic services and/or nursing that will be paid from NHS budgets that are not included in the outturn financial data. However, it is not possible to estimate this from the data available.

## Option One – Business as Usual

### Costs

7.64 This is the baseline option and as such the following is a summary of the baseline costs and is presented to enable a comparison to be made with the costs under Option two.

### Costs to Local Authorities

7.65 The following tables<sup>53</sup> show the national expenditure for residential care and fostering services over seven years. They also highlight the percentage year-on-year rate of change of spend.

**Table 7.2 - Spend on Children's Residential Care in Wales (£ thousands)**

	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23
Residential care	65,449	82,107	95,396	108,915	116,204	128,518	198,252
% increase		25%	16%	14%	7%	11%	54%

7.66 The average year-on-year rate of increase in the cost of residential care was 21% over the period, compared to an average inflationary increase of 4%.

7.67 Table 7.2 shows that spending on residential services has tripled since 2016/17. Numbers in residential placements have however only gone up by 66% in this period from 355 to 590.

**Table 7.3 - Spend on Fostering Services in Wales (£ thousands)**

	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23
Fostering	116,821	120,411	126,663	133,595	137,281	136,522	143,848
% increase		3%	5%	5%	3%	-1%	5%

7.68 The average year-on-year rate of increase in the cost of foster care was 4% over the period, compared to an average inflationary increase of 4%. The numbers of children placed in fostering increased by 11% and costs only by 23%.

<sup>53</sup> The data in the tables is taken from <https://statswales.gov.wales/Catalogue/Local-Government/Finance/Revenue/Social-Services/social-services-socialservicesrevenueexpenditure-by-clientgroup>

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**Table 7.4 - Spend on Residential Care and Fostering Services in Wales**  
**(£ thousands)**

	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23
Total	182,270	202,518	222,059	242,510	253,485	265,040	342,100
% increase		11%	10%	9%	5%	5%	29%

7.69 The average year-on-year rate of increase in the cost of residential and foster care combined was 12% over the period, compared to an average inflationary increase of 4%.

**Summary of Costs in Option 1**

7.70 Table 7.5 highlights the cost of the ‘business as usual’ option. Inflation or other cost pressures have not been applied. It assumes zero growth in the number of looked after children and no change in the proportion of provision in the private, local authority and not-for-profit sectors. This is because it is hard to estimate the exact shape and balance of provision that might be needed and/or will exist in clear numerical terms. There are too many variables, including societal factors, leadership, culture, and role of existing providers in the future market to determine these projections with the level of precision that would be needed. Therefore, for a consistent and measurable basis the assumptions are based on the existing shape and balance of provision.

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**Table 7.5 Summary of costs in Option 1 (£ thousands)**

	2023/ 24	2024/ 25	2025/ 26	2026/ 27	2027/ 28	2028/ 29	2029/ 30	2030/ 31	2031/ 32	2032/ 33	2033/ 34	2034/ 35
<b>Welsh Government</b>												
(1.a) Policy Budget	752	752	752	752	752	752	752	752	752	752	752	752
<b>Local authorities</b>												
(1.b) Residential outturn	198,000	198,000	198,000	198,000	198,000	198,000	198,000	198,000	198,000	198,000	198,000	198,000
(1.c) Fostering outturn	144,000	144,000	144,000	144,000	144,000	144,000	144,000	144,000	144,000	144,000	144,000	144,000
(1.d) Legal	1,100	1,100	1,100	1,100	1,100	1,100	1,100	1,100	1,100	1,100	1,100	1,100
(1.e) Commissioning	5,300	5,300	5,300	5,300	5,300	5,300	5,300	5,300	5,300	5,300	5,300	5,300
<b>Regulators</b>												
(1.f) CIW	1,457	1,457	1,457	1,457	1,457	1,457	1,457	1,457	1,457	1,457	1,457	1,457
<b>Total</b>	350,609	350,609	350,609	350,609	350,609	350,609	350,609	350,609	350,609	350,609	350,609	350,609

### ***Benefits and Disbenefits of Option 1***

- 7.71 There appear to be limited existing benefits to the current system. As the context to this RIA sets out, the body of evidence demonstrates that it is not functioning as it needs to if it is to meet the needs of children and young people.
- 7.72 Children's needs, which can be short or long-term, will differ according to their circumstances. Maintaining the status quo by allowing for-profit provision of children's residential and foster care to continue to operate could in the short-term potentially provide a greater set of options for meeting those needs.
- 7.73 Retaining the current system would provide stability (albeit in a system that is not functioning well) and avoid the risks to disruption and greater insufficiency that transitioning to not-for-profit provision may bring.
- 7.74 Some private providers have developed specialised skills and qualities over many years, and their exit from the market could result in a significant loss of high-quality care and support for children. This option could help to ensure these skills are retained and that there is a sufficient supply of experienced care workers in children's residential and fostering services.
- 7.75 Whilst it could be argued better commissioning, planning and forecasting around provision may help improve the effectiveness of for-profit provision, the evidence suggests this arrangement can only work well when the various conditions perform optimally, as well as 'market stewardship' taking place to create positive outcomes. Those conditions include new providers being able to enter the market and grow, active competition, providers being able to exit the market easily, that people can make informed choices about their care, and that there are sufficient levels of funding to achieve those aims. The Institute of Government notes that such conditions are rarely met.<sup>54</sup>
- 7.76 The continuation of existing arrangements will not ease the challenges local authorities face. Our care population in Wales is disproportionately larger than elsewhere in the UK and faces increasing demand particularly in relation to complex needs.
- 7.77 The costs associated with the current approach to the provision of care are rising, local authorities continue to face increasing financial challenges and with that comes a greater reliance on for-profit provision, with all the associated problems of quality of care, stability, the workforce, and securing the range of provision to meet children's needs.

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<sup>54</sup> [Microsoft Word - PublicServiceMarkets - Final\\_v2 \(instituteofgovernment.org.uk\)](#) p 4

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7.78 The largest private providers of children's placements generate significantly higher profits and charge more than expected in a well-functioning market. This discrepancy points to inefficiencies and potential exploitation within the market.

7.79 In addition, this option will not deliver what children and young people have told us they want. There is evidence (see paragraph 3.27) they are strongly opposed to being cared for by privately owned organisations that make a profit from their experience of being in care and where commercial interests will affect how they are looked after.

7.80 Maintaining the existing approach would also contradict the Welsh Government's wider transformation programme (referenced in paragraphs 7.49 - 7.50) which aims to develop a holistic offer to children and young people, designed to promote family and community-centred living with many fewer ever needing to enter care.

## **Option Two: Introduce legislation to remove profit from residential care and foster care for looked after children.**

### ***Costs and Savings***

7.81 The high-level approach to assessing the costs and benefits was grounded in an assumption that the following remains constant:

- the overall shape of placement provision (e.g., numbers of children in the care system, balance of provision across fostering and residential care).

7.82 This is because it is hard to estimate the exact shape and balance of provision that might be needed and/or will exist in clear numerical terms. There are too many variables, including societal factors, leadership, culture, and role of existing for-profit providers in the future market to determine these projections with the level of precision that would be needed. Therefore, for a consistent and measurable basis the assumptions are based on the existing shape and balance of provision. However please see paragraph 7.111 which sets out the detail of the Welsh Government's expectations in respect of these matters.

7.83 The assessment of costs under this option has, however, been developed using different scenarios that could occur under the legislative changes. This allows consideration of various costs/savings and benefits/disbenefits in the RIA.

- **Scenario A:** Existing for-profit providers converting to a not-for-profit business model will provide 50 per cent of the residential and foster care capacity which is currently provided on a for-profit basis. This



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means the other 50 per cent of this capacity will need to be generated from the voluntary sector and by local authorities developing new residential and foster care services.

- **Scenario B:** Existing for-profit providers converting to a not-for-profit business model will provide 25 per cent of the residential and foster care capacity which is currently provided on a for-profit basis. This means the other 75 per cent of this capacity will need to be generated from the voluntary sector and by local authorities developing new residential and foster care services.
- **Scenario C:** No existing for-profit provision will convert. Providers converting to a not-for-profit business model will provide no capacity from the private sector. This means 100 per cent of current capacity in the private sector will need to be generated from the voluntary sector and by local authorities bringing in new services.

**Table 7.6 - Scenarios where providers convert to not-for-profit**

Scenario	Providers converted to not-for-profit	Remaining proportion of new or expanded services required from the voluntary sector and local authorities
A (most optimistic)	50%	50%
B	25%	75%
C (least optimistic)	0%	100%

7.84 Intelligence from local authorities, Foster Wales and the 4Cs suggests that high numbers of for-profit foster care agencies and small numbers of residential children’s providers will convert, although it is not possible to be precise at this stage as stakeholders are waiting to see the provisions within the Bill before making decisions about their future.

7.85 However, considering this and wider intelligence that informed this RIA, we estimate the costs presented under scenarios B & C are more likely. The range of costs presented in the Chapter 6 summary tables are therefore based on Scenarios B & C.

### Placement type

7.86 The following tables indicate the current number of placements in Wales across residential and foster care and the proportion of placements in the private, voluntary and local authority sectors.

7.87 The data presented here is a snapshot of placement numbers in a dynamic environment. These snapshots are helpful and relatively accurate approximations of placement numbers and ratios over a

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reasonable period. They are also the baseline used when considering the number of placements Wales requires and when modelling the conversion scenarios described later.

7.88 The data in the following table is taken from the CMA's **Children's Social Care Market Study final report**. This data set has been included in this RIA as it demonstrates.

- The relative proportion of children placed in residential care and fostering in Wales.
- The relative proportions of looked after children in foster and residential care in Wales and England, which demonstrate the relatively low proportion of children in residential care in Wales compared to England.

**Table 7.7 - Children in care in fostering and residential settings in England (2021) and Wales (2021)**

	England		Wales	
Foster care	57,330	71%	5,075	70%
Residential settings	12,790	16%	535	7%
Other settings <sup>55</sup>	11,850	13%	1,655	23%
Total	81,970	100%	7,265	100%

7.89 The data in the following table is taken from the Children's Social Care Market Study final report and data provided by the 4C's. This data set has been included in this RIA as it demonstrates the make-up of the residential sector by provider type.

**Table 7.8 - Children in care in residential settings by provider type**

	2014	2021	2023
Private Sector	78%	81%	87%
Voluntary Sector	4%	6%	1%
Local Authority	18%	13%	12%
Total	100%	100%	100%

7.90 The data in the following table is taken from the Children's Social Care Market Study. This data set has been included in this RIA as it demonstrates the make-up of the fostering sector by provider type.

<sup>55</sup> For England, other settings include other placements, other placements in the community, placed for adoption and placed with parents or other person with parental responsibility. For Wales, other settings include placed for adoption, placed with own parents or other person of parental responsibility, living independently and absent from placement or other.

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**Table 7.9 - Children in care in foster care by provider type**

	2022
Private Sector	35%
Voluntary Sector	5%
Local Authority	60%
Total	100%

7.91 Where existing for-profit provision remains, the assumption is it has converted to not-for-profit commercial arrangements. The increased proportions for LAs and NFPs are assumptions based on scaling up their current share of provision.

**Table 7.10 - Conversion Scenarios applied to current residential care placement distribution by provider type**

	Current position	Scenario A	Scenario B	Scenario C
Private Sector	81.0%	40.5%	20.3%	0%
Not-for-Profit Sector	13.0%	40.7%	54.6%	68.4%
Local Authority	6.0%	18.0%	25.2%	31.6%
	100.0%	100.0%	100.0%	100.0%

**Table 7.11 - Conversion Scenarios applied to current fostering placement distribution by provider type.**

	Current position	Scenario A	Scenario B	Scenario C
Private Sector	35.0%	17.5%	8.8%	0.0%
Not-for-Profit Sector	50.0%	76.2%	84.2%	92.3%
Local Authority	5.0%	6.3%	7.0%	7.3%

### **Beds required to meet demand**

7.92 Using nationally aggregated data provided by local authorities, as of 31 March 2023, the private sector accounted for 542 residential placements, while not-for-profit organisations provided 40 placements, with 110 located outside of Wales. The average children's residential home has 3.2 beds, usually occupied at 83% capacity.

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7.93 To meet the demand for residential placements without any conversions, i.e. Scenario C, a total of 653 beds (based on an occupancy level of 83%) across 204 additional homes are required. If, however, 50% of providers convert, only 102 additional homes are required. This is one of the two most significant drivers of transitional costs for local authorities.<sup>56</sup>

7.94 The development cost per home is the cost of purchasing and developing a residential children’s home to meet the required standard. A figure of £700,000 has been used as a standard development cost per home. Further detail can be found in the full ADSS Cymru report.

7.95 As part of its report ADSS Cymru has made an assumption that local authorities will meet the start-up costs of new not-for-profit organisations as these types of organisation are unlikely to enter the market without an agreement that initial start-up costs will be offset through commissioning arrangements or other arrangements. The financial risk of running a service under capacity until it is established is transferred to a local authority through an upfront investment.

**Table 7.12 – Varying the cost of developing sufficient homes for the different scenarios (£ thousands)**

	Scenario A	Scenario B	Scenario C
Development cost	50%	75%	100%
£ 500	£ 51,000	£76,500	£ 102,000
£ 600	£ 61,200	£91,800	£ 122,400
£ 700	£ 71,400	£ 107,100	£ 142,800
£ 800	£ 81,600	£ 122,400	£ 163,200

### **Private Sector Costs**

7.96 This is the profit lost by the private sector. This has been calculated by looking at the lost profits, as for-profit providers exit the market, and adding the increased profits gained during the transitional period as for-profit providers increase fees.

**Table 7.13 - Profit lost by the private sector under all three scenarios (£ thousands)**

Scenario	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30	2030/31	2031/32	2032/33	2033/34	2034/35
A	0	0	3,004	-6,549	-19,679	-32,809	-32,809	-32,809	-32,809	-32,809	-32,809	-32,809

<sup>56</sup> The capital costs are the cost of purchasing and then developing a suitable residential property. The average cost of a 4 bedroomed property in Wales is around £360,000. The development costs will include physical adaptations to a building to ensure it meets the regulatory and operational standards for a children’s home. This will include but is not limited to, the provision for the suitable accommodation of staff members who are required to be in the building during the night, office space and multiple toilets and bathrooms. In most cases where a residential property is bought, a full renovation will be required.

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B	0	0	20,910	6,580	-13,114	-32,809	-32,809	-32,809	-32,809	-32,809	-32,809	-20,448
C	0	0	38,816	19,710	-6,549	-32,809	-32,809	-32,809	-32,809	-32,809	-32,809	-27,265

### ***Welsh Government/Care Inspectorate Wales Costs***

7.97 A consideration of Welsh Government and Care Inspectorate Wales costs is undertaken below. Several of these will be opportunity costs, incurred by the allocation of existing staff to these tasks.

7.98 Welsh Government costs will include the approvals of local authority sufficiency plans and applications to Welsh Ministers to place children in 'supplementary' placements with existing for-profit providers. Resourcing for a small team to undertake this work is included. Broader work will include communications, engagement and awareness raising, the development of guidance and training materials, and reporting on and reviewing (including post-implementation review) the delivery and implementation of the proposed option.

7.99 There will be additional costs to Care Inspectorate Wales as the regulator, linked to the additional duties in the provisions of the Bill in relation to monitoring and enforcement and changed requirements in respect of registration of new and existing providers. Resourcing for a small team has been included in recognition of this, along with an amount for the development of bespoke IT systems to support the changes which the Bill will introduce.

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**Table 7.14 – Welsh Government and CIW additional costs associated with Option 2 implementation (Note: Actual figures, i.e. not in £thousands).** These costs are additional to those costs in Table 7.5

Year	24/25	25/26	26/27	27/28	28/29	29/30	30/31	31/32	32/33	33/34	34/35	Total Yr.
<b>Welsh Government</b>												
Guidance	0	50,300	0	0	0	20,000	0	0	0	0	0	70,300
Awareness sessions	4,000	4,000	0	0	0	0	0	0	0	0	0	8,000
Staff Travel	5,000	5,000	5,000	5,000	0	0	0	0	0	0	0	20,000
Review and reporting	0	25,000	25,000	25,000	0	0	0	0	0	0	0	75,000
Post-implementation review (Monitoring/Evaluation)	0	0	0	25,000	25,000	0	0	0	0	0	0	50,000
Comms	13,273	13,273	13,273	13,273	0	0	0	0	0	0	0	53,091
Approvals (WG)	0	0	0	136,484	136,484	136,484	136,484	136,484	136,484	136,484	136,484	1,091,874
<b>TOTAL all WG</b>	22,273	97,273	43,273	204,757	161,484	156,484	136,484	136,484	136,484	136,484	136,484	1,368,266
<b>Registration, IT Development,</b>	0	250,613	626,534	626,534	626,534	626,534	626,534	626,534	626,534	626,534	626,534	5,889,419

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<b>Monitoring and Enforcement (CIW)</b>													
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**Table 7.15 Additional and Current costs associated with Option 2 implementation (Note: in £thousands)**

Year	23/24	24/25	25/26	26/27	27/28	28/29	29/30	30/31	31/32	32/33	33/34	34/35	Total Yrs.
	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)
<b>Welsh Government</b>													
• <i>current costs</i>	752	752	752	752	752	752	752	752	752	752	752	752	<b>9,024</b>
• <i>additional</i>	0	22	97	43	205	161	156	136	136	136	136	136	<b>1,364</b>
<b>Welsh Government total</b>	<b>752</b>	<b>774</b>	<b>849</b>	<b>795</b>	<b>957</b>	<b>913</b>	<b>908</b>	<b>888</b>	<b>888</b>	<b>888</b>	<b>888</b>	<b>888</b>	<b>10,388</b>
<b>CIW</b>													
• <i>current costs</i>	1,457	1,457	1,457	1,457	1,457	1,457	1,457	1,457	1,457	1,457	1,457	1,457	<b>17,484</b>
• <i>additional costs</i>	0	0	251	627	627	627	627	627	627	627	627	627	<b>5,894</b>
<b>CIW Total</b>	<b>1,457</b>	<b>1,457</b>	<b>1,708</b>	<b>2,084</b>	<b>2,084</b>	<b>2,084</b>	<b>2,084</b>	<b>2,084</b>	<b>2,084</b>	<b>2,084</b>	<b>2,084</b>	<b>2,084</b>	<b>23,378</b>

**Transitional Costs**

**Table 7.16 – Transitional Costs Option 2, Scenario A (£ thousands)**

7.100 The table outlines transitional costs associated with Scenario A, where 50 percent of current for-profit providers leave the market and 50 percent transition to a not-for-profit entity. Consequently, new services created by the voluntary sector and local authorities will need to be established to compensate for the lost capacity.

	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30	2030/31	2031/32	2032/33	2033/34	2034/35
<b>Welsh Government</b>												

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(2.a) Policy budget	0	22	97	43	205	161	156	136	136	136	136	136
<b>Local Authorities</b>												
(2.b) Residential outturn	0	0	9,623	1,604	-6,415	-6,415	-6,415	-6,415	-6,415	-6,415	-6,415	-6,415
(2.c) Fostering outturn	0	0	-2,326	-4,652	-6,978	-6,978	-6,978	-6,978	-6,978	-6,978	-6,978	-6,978
<i>New residential</i>												
(2.d) Start-up costs	0	0	11,315	11,315	11,315	0	0	0	0	0	0	0
(2.e) Capital costs	0	0	23,800	23,800	23,800	0	0	0	0	0	0	0
(2.f) Legal costs	0	0	680	680	680							
(2.g) Commissioning	0	0	1,700	1,700	1,700	0	0	0	0	0	0	0
<i>New fostering</i>												
(2.h) Start-up costs	0	0	750	750	750	0	0	0	0	0	0	0
<b>Regulators</b>												
(2.i) CIW	0	0	251	627	627	627	627	627	627	627	627	627
<b>Total</b>	0	22	45,890	35,867	25,683	-12,606	-12,611	-12,631	-12,631	-12,631	-12,631	-12,631



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**Table 7.17 – Change in outturn Option 2, Scenario A (£ thousands)**

7.101 This table describes the variance between local authority Option 1 Outturn and the expected Option 2 Outturn during (and then following) the transitional period. This variance is initially dynamic as the service providers' ratios, and the associated costs, change over the transition period.

	2023/ 24	2024/ 25	2025/ 26	2026/ 27	2027/28	2028/29	2029/30	2030/31	2031/32	2032/33	2033/34	2034/35
Outturn variance	0	0	7,297	-3,049	-13,394	-13,394	-13,394	-13,394	-13,394	-13,394	-13,394	-13,394

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**Table 7.18 - Comparison between Option 1 and Option 2 (Scenario A) (£ thousands)**

7.102 This table describes the variance between the total cost of Option 1 and the expected cost of Option 2, including transitional costs. This is the expected cost and financial benefit of the eliminating profit policy in this scenario over ten years.

	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30	2030/31	2031/32	2032/33	2033/34	2034/35
	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)
<b>Option 1</b>												
Total Costs	350,609	350,609	350,609	350,609	350,609	350,609	350,609	350,609	350,609	350,609	350,609	350,609
<b>Option 2 costs</b>												
<i>Transitional</i>	0	22	38,593	38,915	39,076	788	783	763	763	763	763	763
<i>Operating</i>	350,609	350,609	357,906	347,560	337,215	337,215	337,215	337,215	337,215	337,215	337,215	337,215
Difference	0	22	45,890	35,867	25,683	-12,606	-12,611	-12,631	-12,631	-12,631	-12,631	-12,631

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## Option 2 Scenario B

**Table 7.19 - Transitional Costs Option 2 Scenario B (£ thousands)**

7.103 The table outlines transitional costs associated with Scenario B, where 25 percent of current for-profit providers leave the market and 25 percent transition to a not-for-profit entity. Consequently, new services created by the voluntary sector and local authorities will need to be established to compensate for the lost capacity.

	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30	2030/31	2031/32	2032/33	2033/34	2034/35
<b>Welsh Government</b>												
(2.a) Policy Budget	0	22	97	43	205	161	156	136	136	136	136	136
<b>Local authorities</b>												
(2.b) Residential outturn	0	0	12,830	802	-11,227	-11,227	-11,227	-11,227	-11,227	-11,227	-11,227	-11,227
(2.c) Fostering outturn	0	0	-3,489	-6,978	-10,468	-10,468	-10,468	-10,468	-10,468	-10,468	-10,468	-10,468
<i>New residential</i>												
(2.d) Start-up costs	0	0	16,973	16,973	16,973	0	0	0	0	0	0	0
(2.e) Capital costs	0	0	35,700	35,700	35,700	0	0	0	0	0	0	0
(2.f) Legal costs	0	0	1,020	1,020	1,020	0	0	0	0	0	0	0
(2.g) Commissioning	0	0	2,550	2,550	2,550	0	0	0	0	0	0	0
<i>New fostering</i>												
(2.h) Start-up costs	0	0	1,125	1,125	1,125	0	0	0	0	0	0	0
<b>Regulators</b>												
(2.i) CIW	0	0	251	627	627	627	627	627	627	627	627	627
<b>TOTAL</b>	<b>0</b>	<b>22</b>	<b>67,057</b>	<b>51,861</b>	<b>36,506</b>	<b>-20,906</b>	<b>-20,911</b>	<b>-20,931</b>	<b>-20,931</b>	<b>-20,931</b>	<b>-20,931</b>	<b>-20,931</b>

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**Table 7.20 - Change in outturn Option 2, Scenario B (£ thousands)**

	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30	2030/31	2031/32	2032/33	2033/34	2034/35
	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)
Outturn variance	0	0	9,341	-6,177	-21,694	-21,694	-21,694	-21,694	-21,694	-21,694	-21,694	-21,694

**Table 7.21 - Comparison between Option 1 and Option 2 (Scenario B) (£ thousands)**

7.104 This table describes the variance between the total cost of Option 1 and the expected Cost of Option 2, scenario B, including transitional costs. This is the expected cost and financial benefit of the eliminating profit policy in this scenario over ten years.

	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30	2030/31	2031/32	2032/33	2033/34	2034/35
	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)
<b>Option 1</b>	350,609	350,609	350,609	350,609	350,609	350,609	350,609	350,609	350,609	350,609	350,609	350,609
<b>Option 2 costs</b>												
<i>Transitional</i>	0	22	57,716	58,038	58,200	788	783	763	763	763	763	763
<i>Operating</i>	350,609	350,609	359,950	344,432	328,915	328,915	328,915	328,915	328,915	328,915	328,915	328,915
<b>Difference</b>	<b>0</b>	<b>22</b>	<b>67,057</b>	<b>51,861</b>	<b>36,506</b>	<b>-20,906</b>	<b>-20,911</b>	<b>-20,931</b>	<b>-20,931</b>	<b>-20,931</b>	<b>-20,931</b>	<b>-20,931</b>

## Option 2 Scenario C Costs

**Table 7.22 - Transitional Costs Option 2 Scenario C (£ thousands)**

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7.105 The table outlines transitional costs associated with Scenario C, where all current for-profit providers leave the market.

Consequently, new services created by the voluntary sector and local authorities will need to be established to compensate for the lost capacity.

	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30	2030/31	2031/32	2032/33	2033/34	2034/35
	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)
<b>Spending</b>												
<b>Welsh Government</b>												
<i>Budget</i>	0	22	97	43	205	161	156	136	136	136	136	136
<b>Local authorities</b>												
Residential outturn	0	0	16,038	0	-16,038	-16,038	-16,038	-16,038	-16,038	-16,038	-16,038	-16,038
Fostering outturn	0	0	-4,652	-9,305	-13,957	-13,957	-13,957	-13,957	-13,957	-13,957	-13,957	-13,957
<i>New residential services</i>												
Start-up costs	0	0	22,630	22,630	22,630	0	0	0	0	0	0	0
Capital costs	0	0	47,600	47,600	47,600	0	0	0	0	0	0	0
Legal costs	0	0	1,360	1,360	1,360	0	0	0	0	0	0	0
Commissioning	0	0	3,400	3,400	3,400	0	0	0	0	0	0	0
<i>New fostering services</i>												
Start-up costs	0	0	1,500	1,500	1,500	0	0	0	0	0	0	0
<b>Regulators</b>												
CIW	0	0	251	627	627	627	627	627	627	627	627	627
<b>Total</b>	0	0	88,224	67,856	47,327	-29,207	-29,212	-29,232	-29,232	-29,232	-29,232	-29,232

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**Table 7.23 - Change in outturn Option 2, Scenario C**

	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30	2030/31	2031/32	2032/33	2033/34	2034/35
	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)	(£ 000s)
Outturn variance	0	0	11,386	-9,305	-29,995	-29,995	-29,995	-29,995	-29,995	-29,995	-29,995	-29,995

**Table 7.24 - Comparison of Option 1 with Option 2, Scenario C, including transitional costs (£ thousands)**

7.106 This table describes the variance between the total cost of Option 1 and the expected Cost of Option 2, scenario C, including transitional costs. This is the expected cost and financial benefit of the eliminating profit policy in this scenario over ten years.

	2023/ 24	2024/ 25	2025/ 26	2026/ 27	2027/ 28	2028/ 29	2029 /30	2030/ 31	2031/ 32	2032/ 33	2033/ 34	2034/ 35
<b>Option 1 costs</b>	350,609	350,609	350,609	350,609	350,609	350,609	350,609	350,609	350,609	350,609	350,609	350,609
<b>Option 2 costs</b>												
<i>Transitional</i>	0	22	76,838	77,160	77,322	788	783	763	763	763	763	763
<i>Operating</i>	350,609	350,609	361,995	341,304	320,614	320,614	320,614	320,614	320,614	320,614	320,614	320,614
<b>Difference</b>	0	22	88,224	67,856	47,327	-29,207	-29,212	-29,232	-29,232	-29,232	-29,232	-29,232

7.107 The tables demonstrate initial cost estimates in relation to option 2 fall within a broad range of c£120m to c£225m over a three-year period (2025-26 to 2027-28). After this, our projections suggest that the changes in relation to eliminating profit will begin to deliver cost savings of between £10m and £30m annually.

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7.108 It is important to note that whereas it has been necessary for the purpose of making these calculations to assume a like-for-like replacement of placements, in policy terms we would not expect this to be the case, as the eliminating profit policy sits in a wider context of encouraging the sector to reduce the number of children that come into care and to move away from reliance on residential placements and towards other forms of meeting children's needs. This means that the future requirements for residential care placements for children may well be smaller than projected and consequently that the costs of establishing provision will be less than in the scenarios above, although it is not presently possible to quantify this. Similarly, the transitional provisions (which should have the effect of preserving, albeit with restrictions, existing for-profit providers' ability to accept placements whilst transition is underway) may slow the rate at which sufficiency problems arise and mean that the replacement costs are incurred over a longer timeframe than is currently projected.

## **Benefits/Disbenefits of Option 2**

### **Benefits**

- 7.109 The direct financial impacts of the proposed changes are discussed above. These need to be considered in the context of the broader benefits which should be accrued from developing a functioning market where local authorities can plan and secure appropriate care placements for children and young people.
- 7.110 The conclusion of the CMA is that the inability of local authorities to consistently and effectively oversee and engage with the market in the face of an insufficient supply of appropriate placements is one of the root causes of the inefficient functioning of the market., This conclusion is a strong indicator that successful change in this regard requires the outside stimulus of legislation to provide the sector with the requirements and controls to deliver a sustainable system of care with a greater emphasis placed on what is needed rather than what is profitable.
- 7.111 Legislation will ensure that public money invested in care home services for children and fostering services does not profit individuals or corporate entities, but instead is spent on children's services, to deliver better experiences and outcomes for young people; support service development and improvement; and further build professional development for those providing care.
- 7.112 It will enable local authorities to plan and secure appropriate care placements more effectively with children and young people more likely to be placed in environments that match their needs more closely. This will support the overall well-being and development of looked after children, leading to better social, educational, and health outcomes.
- 7.113 A more efficiently managed market will reduce the need to place children far from their communities. By improving placement planning and capacity management, local authorities can make more placements available closer to the children's original communities thereby ensuring continuity and greater stability of placements.
- 7.114 Bringing services in-house will support a social worker-led understanding of patterns in placement, which will enable proactive capacity management, minimising the scramble for last-minute placements that can lead to suboptimal matches and higher costs.
- 7.115 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.



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7.116 The changes should help further develop integrated approaches to the commissioning and provision of care and support services for looked after children. We hope to see more innovative, shared approaches such as are already underway for developing regional residential accommodation for looked after 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, 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).

### **Disbenefits**

7.117 Moving to new arrangements will undoubtedly pose several challenges. Yet many should be placed within the context of broader, existing challenges the sector faces, not least the shortage of placements, a high number of individuals in care, a cost-of-living crisis and significant workforce pressures.

7.118 The departure of some for-profit providers, who have developed unique and high-quality care models, could present a challenge to the care system. These companies often provide specialised services that are the result of years of investment. Their potential exit could leave a gap in the care sector that may not be easily filled by new or existing not-for-profit organisations, risking a dilution of the quality and diversity of care available.

7.119 Although local authorities and not for profit organisations can seek funding and use their reserves or operating surpluses, for-profit entities often have greater commercial flexibility to invest or fund research, development and innovative practices. Limiting this ability may deter collaborative efforts and reduce the sector's capacity to evolve and meet the changing needs of those it serves.

### **Risks**

7.120 Many of the risks posed by eliminating for-profit provision centre around challenges in the short or medium term from the transition to such arrangements.

7.121 The shift towards a not-for-profit model could exacerbate existing pressures on the social care workforce. Despite the beneficial terms and conditions not-for profit providers offer to their workforce on the whole, some of these professionals working in for-profit organisations may be reluctant to transition to local authority or not-for-profit provision. Some may take advantage of the opportunity for a career break, or career change, and some may enjoy the enhanced flexibilities their existing contracts offer.

7.122 Local authorities will need to consider the recruitment, development and training of the social care workforce in order to mitigate any gaps in

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their workforce that could impact on the quality and model of care. They will need to innovate to address any identified need, to retain staff and ensure they are suitably trained. Such innovation could include using foster carers to deliver models of care (for example, trauma informed approaches to working with children in care or any language barriers regarding the placement of, for example, asylum seeking children and children from minority ethnic backgrounds). These considerations are being taken forward as part of the governance arrangements underpinning implementation of the policy to eliminate profit.

7.123 While delivering this commitment, instability in the market, one which is weighted towards the private sector, may be created. We will undoubtedly see some providers withdraw from the market or concentrate on providing placements only to children placed by English local authorities. Both would clearly impact sufficiency for children and young people looked after by Welsh local authorities and may have a particular impact on children requiring specialist provision.

7.124 Not-for-profit providers may choose not to develop children's residential services because of reputational and financial risks. If this happens, local authorities will have to take on additional responsibilities for the development and direct provision of children's homes, because of policy decisions of not-for-profit providers, some of whom may be based outside Wales.

7.125 These risks will be managed and mitigated as far as possible through the transitional arrangements which have been provided for in the Health and Social Care (Wales) Bill which seek in particular to minimise any disruption to the existing placements of children and young people. They will also be scrutinised as part of the wider governance arrangements that have been put in place, as set out in Chapter 10. A phased approach to delivery will also be adopted. The £68 million we are investing to manage transition to not-for profit care will be aimed at developing in-house and third sector residential and foster care provision. It will focus on moving children from residential care to a family setting, on providing local and tailored services, including specialist provision for children with more complex needs, and at improving outcomes for children.

### **Continuing Health Care (CHC) and Direct Payments**

7.126 The options are:

- **Option one:** business as usual
- **Option two:** amend the NHS (Wales) Act 2006 ("the 2006 Act") to allow health boards to make direct payments to individuals under Continuing Health Care (CHC).

## Option one: business as usual

- 7.127 Under this option, direct payments for CHC will not be possible, as the 2006 Act as currently drafted does not allow the Welsh Ministers (or health boards acting on their behalf) to make direct payments. Currently only local authorities are able to make direct payments to individuals or their representatives to enable them to meet their needs for social care and support under the Social Services and Well-being (Wales) Act 2014 (“the 2014 Act”).
- 7.128 When individuals are having their social care and support needs met by local authorities’ duties under the 2014 Act, they have the option of accessing direct payments, enabling them to exercise voice and control; that is, to decide how, when and by whom their eligible care and support needs are met. When transferring from local authority provided social care to CHC, individuals who are receiving care in their own homes cannot access direct payments and therefore lose the independence to exercise voice and control over their eligible care and support needs.
- 7.129 There is evidence that some people with complex health conditions are refusing CHC assessments. This can be for a number of reasons but these reasons often include:
- not wanting to lose the voice and control they have through direct payments and the further feeling of loss of independence;
  - concern that there may be fluctuation in CHC eligibility that could interrupt their stable package of care.
  - Concern that they may have to let one or more trusted and familiar Personal Assistants go because traditionally commissioned CHC offers less flexibility and choice in terms of the care provider.
- 7.130 Some people will therefore continue to contribute to their social care costs, with the local authority also contributing, depending on the financial assessment, whereas this would be fully funded by the NHS under CHC.
- 7.131 In England, direct payments have been permissible for CHC via Personal Health Budgets since 2014 (following amendments to the National Health Service Act 2006 which took effect in 2013).
- 7.132 Over a number of years, stakeholders have raised issues around the interface between CHC and direct payments in Wales, and the compromise of people’s voice and control when transferring from local authority provided care, with direct payments, to CHC, where that option is lost.
- 7.133 This was discussed with the Petitions Committee in May 2022 through the Petition P-05-1106 - Introduce Personal Health Budgets and Personalised Care in Wales<sup>57</sup> and it is recommendation 8 in the Audit

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<sup>57</sup> [P-05-1106 Introduce Personal Health Budgets and Personalised Care in Wales \(senedd.wales\)](#)

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Wales report 'Direct Payments for Adult Social Care' that Welsh Government ensures that people who receive both NHS continuing healthcare and Direct Payments have greater voice, choice and control in decision making.<sup>58</sup>

7.134 As a first step in addressing this situation, the revised '*Continuing NHS Healthcare National Framework for implementation in Wales*', published in July 2021 and operational as of April 2022, contains an increased emphasis on enhancing voice and control for individuals in receipt of a package of care provided through CHC.<sup>59</sup>

7.135 Under the revised framework, potential options for achieving improved voice and control were highlighted, one of these being the establishment of an Independent User Trust (IUT). This is an arrangement whereby a group of trustees can receive and administer CHC funds on behalf of an individual. It does not offer the same voice and control as direct payments, but is a step towards it.

7.136 Work has been progressing on this option, to include the co-production of guidance and work to establish a pilot IUT in Betsi Cadwalader UHB. The complexities involved in this option mean that it would not be a route suitable for very many CHC recipients.

### **Option two: amend the 2006 Act to allow health boards to make direct payments to individuals under Continuing Health Care (CHC).**

7.137 Under Option two, a Bill will be introduced to amend the 2006 Act to include powers for Welsh Ministers to make regulations about direct payments, to enable the Welsh Ministers to make direct payments to people for CHC. The regulations will set out details and conditions of when the direct payments could be made available. It is likely that the Welsh Ministers would use existing powers in section 12 of the 2006 Act to direct local health boards to exercise the function relating to the making of direct payments on their behalf.

7.138 This option will improve the interface between CHC and direct payments to address the issues raised and to enable individuals to retain independence and voice and control when transferring from local authority provided care to CHC. It would support improved fairness and equality for disabled and seriously ill people, whether receiving care from the local authority or the health board, and support the principles of person-centred care.

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<sup>58</sup> [Direct Payments for Adult Social Care \(audit.wales\)](#), page 12

<sup>59</sup> [National framework for Continuing NHS Healthcare | GOV.WALES](#)

## **Costs and benefits**

- 7.139 There is a degree of uncertainty around the costs for this element of the Bill. In particular, the number of people who will opt to shift from receiving social care payments to a CHC direct payment is unknown. A best estimate for this number has been sourced from ADSS Cymru. The nature and cost of the care package received will depend on each individual's specific circumstances. Unless otherwise stated, the average cost of a social care package and CHC package has been used in the calculations.
- 7.140 Finally, the duration for which individuals continue to receive a CHC package varies from one case to the next, with people ceasing to receive payments for a variety of reasons. No data is available for the average length of time for which people receive CHC care packages. In the absence of this information and to enable costs to be estimated for the RIA, a simplifying assumption has been made that once an individual receives a CHC direct payment, they will continue to receive that payment for a five-year period.

### **Option one – business as usual**

#### **Costs**

- 7.141 This is the baseline option and as such the following is a summary of the baseline costs and is presented to enable a comparison to be made with the costs under Option two. Unless otherwise stated, cost figures have been rounded to the nearest £1,000.

#### **Cost profile – current**

- 7.142 In Wales, figures obtained by the health boards show that just over 10,000 people received CHC in financial year 2022-23. The total cost of CHC for that financial year was £448m, equating to an average cost of approximately £45,000 per person receiving CHC. There are caveats to the data however, because some cases counted relate to people receiving equipment, some relate to retrospective claims and some to costs joint-funded with local authorities.
- 7.143 Advice sought from the National Care Commissioning Unit for Wales has advised that an estimated average package cost of £50,000 is appropriate to use for planning purposes. Therefore a figure of £50,000 is used as an illustrative example within this document. This figure does not include additional costs such as staff costs, administration overheads, IT systems etc. There will of course be a range of packages at different costs which may be administered via direct payments.

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7.144 As a comparator from England, we have obtained a range of average costings for PHBs paid via direct payments across various Integrated Care Boards. These range from £46,000 to £120,000, with a median example being £80,000. There is likely to be a similar variation across packages in Wales also; we have used an exemplar cost at the lower end of this scale for projected expenditure and savings for this proposal.

7.145 Over the past ten years there has been a rise in spending on CHC, leading to an increasing focus on seeking value for money and on finding innovative commissioning and monitoring options to ensure sustainability. The rise in CHC costs is likely to be due to a number of factors, including an ageing population, increases in chronic disease, changes in lifestyle, and increases in health care costs.

**Table 7.25 Expenditure on CHC – all LHBs over previous 10 years**

	Aneurin Bevan UHB	Betsi Cadwaladr UHB	Cardiff & Vale UHB	Cwm Taf Morgannwg UHB	Hywel Dda UHB	Powys tHB	Swansea Bay UHB	TOTAL
	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000
2013-14	56,339	68,286	40,030	22,886	45,158	10,193	35,580	<b>278,472</b>
2014-15	66,973	72,253	42,089	27,606	43,809	12,076	41,443	<b>306,249</b>
2015-16	66,541	74,827	43,559	29,756	44,484	11,733	48,518	<b>319,418</b>
2016-17	68,123	76,848	47,414	30,465	45,499	12,964	50,553	<b>331,866</b>
2017-18	70,408	91,605	55,920	34,526	47,599	12,495	49,537	<b>362,090</b>
2018-19	71,481	99,032	57,757	33,298	47,012	11,508	52,076	<b>372,164</b>
2019-20	71,005	91,324	59,128	46,653	45,118	12,461	45,601	<b>371,290</b>
2020-21	81,347	106,173	62,120	46,093	49,440	15,055	55,606	<b>415,834</b>
2021-22	83,675	101,897	65,841	49,163	48,638	20,837	61,501	<b>431,552</b>
2022-23	86,006	99,614	73,113	55,798	49,203	23,667	60,703	<b>448,104</b>
	<b>721,898</b>	<b>881,859</b>	<b>546,971</b>	<b>376,244</b>	<b>465,960</b>	<b>142,989</b>	<b>501,118</b>	<b>3,637,039</b>

Source – LHBs' audited accounts

### **Cost profile – projected**

7.146 Imputation work was carried out in early 2023 to project what the costs for CHC could be in 10 and 25 years' time, without the introduction of alternative models of delivery, of which direct payments is one. The estimates from this modelling work based on an average CHC cost of £50,000 per person per year are outlined in the table below:

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**Table 7.26 Projecting CHC for 10 and 25 years' time:**

	2022-23	Ten years time (FY 32-33)			25 years time (FY 47-48)		
		Low	High	At £50k (22-23 prices)	Low	High	At £50k (22-23 prices)
<b>Aneurin Bevan</b>	1,783	2,094	2,399	£105m - £120m	2,197	2,716	£110m - £136m
<b>CTM</b>	1,129	1,415	1,568	£71m - £78m	1,475	1,784	£74m - £89m
<b>Betsi</b>	1,562	819	2,012	£41m - £101m	402	2,190	£20m - £110m
<b>Hywel Dda</b>	2,334	2,432	3,027	£122m - £151m	2,227	3,311	£111m - £167m
<b>Powys</b>	536	378	699	£19m - £35m	286	776	£14m - £39m
<b>Swansea</b>	1,630	1,821	2,269	£91m - £113m	1,762	2,666	£88m - £133m
<b>Cardiff and Vale</b>	1,564	1,514	2,129	£78m - £106m	1,372	2,249	£67m - £112m
			<b>Total £527m - £704m</b>			<b>Total £484m - £786m</b>	

7.147 The projection work does not take account of inflation, which will considerably add to the costings over time. It should be noted that healthcare inflation can be higher than general inflation, and can also vary between disciplines. The main point is that the costs trajectory for Option One – retaining only traditionally delivered CHC and not introducing direct payments - is rising year on year.

## **Benefits/disbenefits**

7.148 Under this option, direct payments will not be possible for individuals eligible for CHC and will continue to be possible only for individuals receiving social care provided by the local authority. This option will not address the issues around the interface between CHC and direct payments. Individuals transferring from local authority provided care to CHC will not be able to retain the independence and voice and control which they benefit from as a result of direct payments.

7.149 If an individual is assessed as eligible for CHC but refuses to transfer from local authority provided social care, it will not automatically mean that the status quo can be maintained and that the local authority will continue to meet the individual's care and support needs, as a local authority is not under a duty to meet needs that can be met by other means.

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7.150 If individuals should be receiving CHC, and are choosing not to because they don't want to lose direct payments, they are therefore not having their health requirements met. This is acknowledged in the Audit Wales report which says: 'Direct Payment managers also noted instances where individuals with deteriorating health needs are refusing to access NHS continuing healthcare because of fear of losing the flexibility of Direct Payments and the wellbeing improvements it brings.'(page 34) This refusal of appropriate healthcare is clearly likely to negatively impact the individual's physical and mental health in the longer term.

## **Option two – amend the 2006 Act to allow the Welsh Ministers (health boards) to make direct payments to individuals under Continuing Health Care (CHC)**

### **Costs and savings**

#### **Individuals**

- 7.151 As stated in Option one, there has been a rise in the demand for CHC packages over the past decade due to a number of factors. There is evidence that some people with complex health conditions are however refusing CHC assessments and preferring to retain their established social care packages. Unlike CHC, social care direct payments are subject to a charging or reimbursement policy, so some people are therefore continuing to contribute towards their care costs, with the local authority also contributing. A local authority is not under a duty to meet needs for care and support which can be provided by other means.
- 7.152 Without introducing the Bill under Option 2, individuals eligible to receive CHC but who do not want to lose direct payments are likely to continue to contribute to their social care costs, above what can be provided for by the local authority.
- 7.153 Having consulted ADSS Cymru contacts who lead in relation to CHC, it is estimated that approximately five individuals per local authority are delaying or refusing to transfer to CHC for the reasons outlined above. This cohort could transfer from receiving social care direct payments to receiving CHC in the first three years of direct payments for CHC being made possible. This equates to a maximum of 110 individuals across Wales, however it is possible that some local authorities will see fewer than five individuals transferring from social care to CHC. This would be a one-off transfer of a group of individuals who are in this set of circumstances. The first CHC direct payments are expected to be paid in 2025-26, with the 110 individuals all assumed to have moved to CHC payments by 2027-28. After this initial period, direct payments would be an option offered to people who are assessed as eligible for CHC and meet any direct payments criteria, so they would move across in a more gradual way.



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## Savings

7.154 Under Option two there will be cost savings to individuals who are eligible for CHC but who currently refuse to be assessed, or are assessed and refuse CHC packages, as a result of not wanting to lose the direct payments they currently receive for local authority provided care. It is assumed ten people will switch from social care payments to CHC direct payments in 2025-26, 50 in 2026-27 and 50 in 2027-28. The maximum contribution for individuals to their social care is set at £100 per week, depending on means test. Therefore the maximum savings per individual per year, if they could transfer to CHC, would be £5,200. It should be noted that many individuals will not be contributing to their social care costs, or will be contributing less than £100 per week. It is not possible to determine the contributions currently made by the individuals who will switch from social care to CHC direct payments and so, for the purposes of this RIA, a range of £0 to £5,200 per annum has been used. This cost-saving range has been applied to the number of people who are expected to be in receipt of a CHC direct payment each year, having switched from a social care package. The table below shows the maximum saving to individuals for the period 2025-26 to 2031-32. At the lower end of the range, the saving will be £zero in each year. As explained above, each person is assumed to be in receipt of a CHC direct payment for a period of five years. We further assume that, in the absence of this Bill, they would have continued to have received a social care package for the same period. As such, the cost-saving to the 110 individuals who switch from social care to a CHC direct payment is assumed to be £zero from 2032-33 onwards.

**Table 7.27 – Maximum cost-saving to individuals from no longer having to contribute to the cost of their social care package.**

£	2025-26	2026-27	2027-28	2028-29	2029-30	2030-31	2031-32
Recipients	10	60	110	110	110	100	50
Maximum cost-saving	52,000	312,000	572,000	572,000	572,000	520,000	260,000

## Local authorities

### Savings

7.155 Under Option two there would likely be some cost savings for local authorities when individuals who are eligible for CHC and wish to receive direct payments choose to transfer from local authority provided care to CHC provided by the local health board.

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7.156 According to the Audit Wales report *Direct Payments for Adult Social Care*,<sup>60</sup> the average social care Direct Payment for adults in 2018-19 was £12,344, ranging from £6,033 in Ceredigion to £21,836 in Wrexham.<sup>61</sup> These figures have been updated to 2022-23 prices using the GDP deflator series, giving a range of approximately £6,900 to £25,000 and an average of £14,100. Using these figures, it is estimated that the cost of social care packages to local authorities ranges from £130 to £480 per week, with an average of approximately £270 per week. Those individuals who need a CHC package are considered more likely to have complex care needs and to be at the upper end of the cost range for a social care package. For the purposes of the RIA then, we assume the average cost of a social care package for the relevant individuals is £480 per week.

7.157 It should be recognised that this savings estimate is based on the maximum projected number of recipients transferring away from social care, with packages at the highest average cost. The Audit Wales report identifies that there is a large degree of variation across local authorities in Wales, so in practice this variation would apply to the transferring of costs of care also. Cost savings to local authorities could be reduced further depending on how much the individuals contribute to their own care (as previously mentioned, this is currently a maximum limit of £100 per individual per week). If we assume all individuals contribute the maximum £100, this will leave a cost of £380 per week to local authorities.

7.158 The table below shows the estimated minimum and maximum cost-saving to local authorities, assuming they would otherwise have been paying £380 and £480 per week per resident respectively. As for the individual cost-savings calculated above, it is assumed local authority cost-savings will be £zero from 2032-33.

**Table 7.28 – Estimated cost-savings to local authorities from no longer having to provide a social care package to those individuals who transfer to CHC direct payments**

£	2025-26	2026-27	2027-28	2028-29	2029-30	2030-31	2031-32
Recipients	10	60	110	110	110	100	50
Minimum cost-saving	198,000	1,186,000	2,174,000	2,174,000	2,174,000	1,976,000	988,000
Maximum cost-saving	250,000	1,498,000	2,746,000	2,746,000	2,746,000	2,496,000	1,248,000

<sup>60</sup> [Direct Payments for Adult Social Care \(audit.wales\)](https://audit.wales.gov.uk/reports-and-publications/direct-payments-for-adult-social-care/) April 2022

<sup>61</sup> The report states that following the Welsh Government's decision to suspend data collection in response to the pandemic in 2020, no data on services other than expenditure had at the time of drafting been reported nationally since 2018-19. Figures do not include Caerphilly due to technical issues with their ICT systems when the data was being collected.

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7.159 Without direct payments as proposed under Option two, the local authority will continue to incur these costs through providing social care to individuals who do not want to lose direct payments.

### **Local Health Boards**

7.160 There will be additional costs to local health boards to establish the new approach of direct payments for CHC, as there were when they were introduced for social care. As the Audit Wales report into direct payments for adult social care states: 'There will be initial costs associated with setting up or commissioning an effective Direct Payment Support Service and training staff in Direct Payment processes. But once fully operational, Direct Payments should at least be cost neutral and should realise savings from, for instance, reduced administration, review and management of providers.'<sup>62</sup>

7.161 Requirements for training and support services will be addressed through appropriate guidance, similar to that developed for local authority direct payments. These transitional costs are expected to be met by Welsh Government and are considered further in the next section.

7.162 If this option were not to go ahead, local health boards would not incur additional costs for establishing direct payments for CHC nor for ongoing management. However, evidence from England shows that direct payments can reduce overall CHC costs over time. NHS England analysis in 2019 of the difference between personal health budget (PHB) costs and conventional home care package costs for CHC, which has been shared with the Welsh Government, showed the following key findings:

- For cases where there was no change in assessed needs, the aggregate cost reduction for PHB packages of care was 18%.
- Within this group, the aggregate cost reduction for PHBs delivered as direct payments was 22%. (PHB cases analysed were predominantly direct payments - 71%).<sup>63</sup>
- Cost reductions were evident across all age groups.
- 76% of all cases analysed stayed the same or decreased in cost following transition to a PHB.

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<sup>62</sup> [Direct Payments for Adult Social Care \(audit.wales\)](https://www.audit.wales) April 2022, p25

<sup>63</sup> PHBs in England can be one of 3 types – direct payments, 3rd party or notional (the latter closely resembles traditional CHC as the health board commissions the care but the budget amount is made known to the individual; 3rd party budgets involve having an independent organisation manage the care package, and are not widely used as yet).

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- In total, the aggregate cost reduction for all PHB packages of care was 11%, which increased to 16% for direct payments.<sup>64</sup>

7.163 An increased demand for CHC is likely to partially offset cost savings from implementing the direct payments approach, especially initially. This will be due to a number of individuals agreeing to assessments for CHC when they have previously refused them. As estimated, this could be a maximum of five individuals per local authority, or 110 individuals across Wales. This is a very small percentage however, 1.1% of the total CHC cohort reported at paragraph 7.142. There may also be more demand for CHC as time goes on, due to people not refusing assessments now that they can retain their Personal Assistants whilst in receipt of CHC.

7.164 The costs for some elements of Option two are expected to build each year for an initial period before a plateau of demand is likely to be reached. Therefore it is expected that the number of individuals choosing to receive direct payments for CHC will be comparatively low for the first year, and increase for some years thereafter. Anecdotal evidence from an ICB in England showed that the numbers of PHBs delivered as direct payments in their geographical area began relatively low and grew over time.

7.165 We have estimated growth in demand for direct payments for CHC – see table 7.29 below.

**Table 7.29 – projected growth in demand for CHC direct payment packages**

		Transfer from Social Care to CHC DP	Transfer from traditional CHC to CHC DP	New CHC packages delivered via a DP
<b>2025-26</b>	<b>Year 1</b>	10	5	0
<b>2026-27</b>	<b>Year 2</b>	50	30	0
<b>2027-28</b>	<b>Year 3</b>	50	30	55
<b>2028-29</b>	<b>Year 4</b>	0	10	55
<b>2029-30</b>	<b>Year 5</b>	0	10	70
<b>2030-31</b>	<b>Year 6</b>	0	10	70
<b>2031-32</b>	<b>Year 7</b>	0	10	70
<b>2032-33</b>	<b>Year 8</b>	0	10	140
<b>2033-34</b>	<b>Year 9</b>	0	10	140
<b>2034-35</b>	<b>Year 10</b>	0	10	140

7.166 There will be costs incurred to local health boards for the value of new CHC recipients who have previously refused a CHC assessment but have now transferred from local authority provided care, as well as the costs for

<sup>64</sup> A caveat noted in the report is that conclusions were based on data from a small number of sites who are amongst the most mature in relation to PHB delivery.

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managing and administering direct payments. It is estimated that a maximum of five individuals per local authority, therefore a maximum of 110 individuals across Wales, will transfer from local authority provided care to CHC. The current estimated average cost of CHC packages in Wales is £50,000 per individual per year. Therefore the maximum additional cost incurred to LHBs across Wales for 110 individuals transferring onto CHC (traditionally delivered) is estimated to be £5,500,000 per annum.<sup>65</sup>

7.167 This movement across from social care to CHC direct payments is likely to take some time. Only a small number is expected to transfer in the first year as this year will involve a good deal of preparation and set-up. The remainder are expected to move over in years two and three. Therefore, based on the cost of traditionally procured CHC packages, the additional cost for people switching from social care to CHC direct payments is projected to be £500,000 in 2025-26, £3,000,000 in 2026-27 and £5,500,000 from 2027-28 onwards. This cost is then expected to decline in 2030-31 and 2031-32 before reaching zero in 2032-33. It is important to recognise that this number of individuals, and therefore this overall cost, is the highest estimated point, and that local authorities suggest that there could be significantly fewer individuals transferring from social care to CHC.

7.168 The figures presented above are based on the cost of traditionally commissioned CHC care packages. However, as noted above, evidence from England indicates that the cost of CHC packages delivered by direct payments can be lower than traditionally commissioned packages of CHC.

7.169 As cited in the NHS England report on the impact of personal health budgets on spending on people eligible for NHS CHC, the aggregate cost reduction for all PHB care package was 11% and the average saving for PHB direct payment packages of care was 16%. Assuming the same reduction is achieved in Wales then the average cost per CHC direct payment package would be between £42,000 and £44,500 (a reduction of between £5,500 and £8,000 per package). Based on this amount, the cost to the LHBs for providing a Package of CHC to people switching from social care can be re-calculated as £420,000 - £445,000 in 2025-26, £2,520,000 - £2,670,000 in 2026-27 and £4,620,000 - £4,895,000 in 2027-28. As shown in Table 7.30, this cost is then expected to decline in 2030-31 and 2031-32 before reaching zero in 2032-33.

7.170 These additional costs are expected to be at least partially offset by a reduction in the cost of providing care to those individuals who currently receive traditional CHC but who will instead opt to receive a direct

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<sup>65</sup> This figure is higher than the corresponding saving for LAs of up to £2.75m which reflects the fact that individuals will be moving from social care packages which do not meet their complex health needs to CHC care which is tailored to meet those complex needs and is therefore more expensive. However see below for cost savings which will offset some of these transferred costs.

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payment in the future. As set out in Table 7.30, some future CHC recipients will, as a result of the Bill, be able to choose direct payments (with a lower average cost) when they would otherwise have received a traditionally commissioned CHC package.

7.171 Table 7.30 below shows the range of costs and savings to LHBs for CHC direct payments. The table is based on the numbers of people taking up a CHC direct payment as shown in Table 7.29 and assumes the cost of a CHC package delivered through direct payments is 11-16% lower than a traditionally commissioned CHC package. Again, the calculations assume that once an individual receives a CHC package, they continue to receive that package for a five-year period.

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**Table 7.30 – costs and cost-savings to LHBs for CHC direct payment packages**

		2025-26	2026-27	2027-28	2028-29	2029-30	2030-31	2031-32	2032-33	2033-34	2034-35
<b>Additional cost for people switching from social care to CHC direct payments (average cost of £50,000 per CHC package)</b>	<b>Number of people switching per year</b>	10	50	50	0	0	0	0	0	0	0
	<b>Cumulative total additional cost of switching package at 11% (£44,500) saving rate</b>	445,200	2,670,000	4,895,000	4,895,000	4,895,000	4,450,000	2,225,000	-	-	-
	<b>Cumulative total additional cost of switching package at 16% (£42,000) saving rate</b>	420,000	2,520,000	4,620,000	4,620,000	4,620,000	4,200,000	2,100,000	-	-	-
<b>Cost-saving for current CHC recipients switching to direct payments</b>	<b>Number of people switching per year</b>	5	30	30	10	10	10	10	10	10	10
	<b>Cumulative savings (at 11%) from switching</b>	27,500	192,500	357,500	412,500	467,500	495,500	385,500	275,000	275,000	275,000
	<b>Cumulative savings (at 16%) from switching</b>	40,000	280,000	520,000	600,000	680,000	720,000	560,000	400,000	400,000	400,000

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<b>Cost-saving for new CHC recipients opting for direct payments</b>	<b>Number of people switching per year</b>	0	0	55	55	70	70	70	140	140	140
	<b>Cumulative total of people switched</b>	0	0	55	110	180	250	320	460	600	740
	<b>Cumulative savings (at 11%) from switching</b>	-	-	302,500	605,000	990,000	1,375,000	1,760,000	2,227,500	2,695,000	3,080,000
	<b>Cumulative savings (at 16%) from switching</b>	-	-	440,000	880,000	1,440,000	2,000,000	2,560,000	3,240,000	3,920,000	4,480,000
<b>Net additional costs (a negative figure indicates a cost-saving)</b>	<b>At 11% savings figure</b>	417,500	2,477,500	4,235,000	3,877,500	3,437,500	2,580,000	80,000	-2,502,500	-2,970,000	-3,355,000
	<b>At 16% savings figure</b>	380,000	2,240,000	3,660,000	3,140,000	2,500,000	1,480,000	-1,020,000	-3,640,000	-4,320,000	-4,880,000



## **Welsh Government**

- 7.172 There will be a number of administrative costs incurred to implement and administer CHC direct payments. A transitional period of three years (2025-26 to 2027-28) is envisaged during which Welsh Government will provide financial support to cover the costs. These administrative costs will cover setting up and funding staffing, training for both staff and personal assistants, employer support for those in receipt of direct payments plus setting up the technical side of the scheme (IT tools to support the costing of individual budgets, payment and audit tools for managing the expenditure, payroll systems etc). The costs should then be fully borne by local health boards after the three-year transitional period, at a point when some savings should begin to be realised which will be offset against the costs incurred by LHBs.
- 7.173 There are several potential models for implementation, however a central hub for some key administrative functions is proposed, in order to create a pool of specialised staff who can deal efficiently with management of the direct payments elements. It will also ensure as far as possible a level playing field across Wales for those who access CHC via a direct payment. This model is based on a previous Welsh Government / NHS Wales project managing a large number of retrospective CHC claims across Wales via a single team. It is also in line with other centralised and standardised approaches being considered for data capture and financial management of CHC.
- 7.174 Based on other similar models, it has been assumed the central hub will need a permanent staff of 5.5 FTE's, with staff costs estimated to total £357,000 per annum. The other costs for the hub (including travel, training and office costs) have been estimated at £50,000 in 2025-26 and £47,000 in the following years. A further Welsh Government project management cost of £221,000 per annum is expected to be incurred in 2025-26 and 2026-27.

**Table 7.31 – Staffing costs per year – central hub (funded by Welsh Government for years 1, 2 and 3)**

Item	Cost			
	2025-26	2026-27	2027-28	Total
Centralised hub to co-ordinate delivery – 5.5 FTE staff	£357,000	£357,000	£357,000	<b>£1,071,000</b>
Travel	£10,000	£10,000	£10,000	<b>£30,000</b>
Training/induction	£10,000	£7,000	£7,000	<b>£24,000</b>
Office and overheads, supplies	£30,000	£30,000	£30,000	<b>£90,000</b>

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Additional project management by core WG team	£221,000	£221,000	£0	<b>£442,000</b>
<b>Total</b>	<b>£628,000</b>	<b>£625,000</b>	<b>£404,000</b>	<b>£1,657,000</b>

7.175 There will be IT costs to establish and maintain a payment platform for direct payments. The IT system will be time efficient, standardise the service across Wales and will allow accurate auditing of cashflow and expenditure. An allowance of £250,000 per annum has been made for IT costs. In line with the option to maintain maximum choice for the individual in receipt of direct payments, the option of them being able to handle their own payments, payroll etc. will be maintained as well, but in such cases full audit documentation will need to be supplied on request.

**Table 7.32 – IT tools cost per year – potentially budgeting a direct payments package, payment platform and payroll function (funded by Welsh Government for years 1, 2 and 3)**

Item	Cost			
	2025-26	2026-27	2027-28	Total
Includes license(s), installation, training and support (initial and ongoing)  Likely to include budgeting/ care plan, secure payment platform and payroll-related tools	£250,000	£250,000	£250,000	£750,000

7.176 In addition, there will be direct costs for Welsh Government to commission work to monitor and evaluate the policy at a cost of £90,000 over three years (spread across 2025-26 to 2027-28). These costs are set out in table 7.33.

**Table 7.33 – other/miscellaneous costs (borne by Welsh Government)**

Item	Cost			
	2025-26	2026-27	2027-28	Total
Creating Guidance and other documentation and refreshing delegation guidance	£100,000	£25,000	£25,000	£150,000
Evaluation contract	£30,000	£30,000	£30,000	£90,000
<b>Total</b>	<b>£130,000</b>	<b>£55,000</b>	<b>£55,000</b>	<b>£240,000</b>

7.177 Not all elements of implementation can be centralised and much will remain at a regional or local level. Assessment and review of CHC needs

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would still occur locally via the LHB CHC teams, who have the clinical skills to carry out that element in line with the National CHC Framework as they do for traditional CHC. Since this work already takes place at a regional or local level, this is not expected to generate an additional cost for LHBs.

7.178 Support services for those in receipt of CHC direct payments for elements such as employment support, recruitment etc. would also ideally be provided locally, with the proposal being to tap into existing services which support social care direct payment recipients. These implementation structures would need to be further developed via an Implementation Plan, but outline roles and costings are provided below.

7.179 Experience in England and Scotland has emphasised how essential providing support to direct payment recipients is to the success of the scheme. Support costs have been estimated on the basis of the cost being £500 per recipient year, with a one-off cost of £125 for new recipients.

**Table 7.34 – Direct Payment support services (funded by Welsh Government for years 1, 2 and 3)**

Item	Cost			Total
	2025-26	2026-27	2027-28	
Support for direct payment recipients  (based regionally & sourced through approved list; likely to be existing providers of support to social care direct payments)	£9,000	£58,000	£132,000	£199,000

7.180 Personal Assistants (PAs) are a key element of a direct payment scheme. There are a number of additional costs associated with the increase in the number of PAs that will be needed to support the additional direct payment recipients in Wales. These costs are expected to include the training of PAs, national workshops to provide support for PAs and an opportunity to share best practice for PAs themselves and their employers and LHBs. There will also be insurance and enhanced Disclosure and Barring Service (DBS) checks' costs. These costs are set out in tables 7.35 and 7.36 below.

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**Table 7.35 - Training and support costs per year (funded by Welsh Government for years 1-3)**

<u>Item</u>	Costs			Total
	2025-26	2026-27	2027-28	
Training for PAs including suite of core training modules and delegated healthcare tasks training as required by packages of care	£14,000	£74,000	£125,000	£213,000
National workshops and communications events – to promote personalised care approach, also to share guidance, progress and good practice ( face to face and online)	£15,000	£15,000	£15,000	£45,000
<b>Total</b>	<b>£29,000</b>	<b>£89,000</b>	<b>£140,000</b>	<b>£258,000</b>

**Table 7.36 – Additional cost items**

	Cost			Total
	2025-26	2026-27	2027-28	
PA insurance	£3,000	£16,000	£39,000	£58,000
Enhanced DBS checks for PAs	£1,000	£6,000	£10,000	£18,000
<b>TOTAL</b>	<b>£4,000</b>	<b>£22,000</b>	<b>£49,000</b>	<b>£76,000</b>

7.181 Totalling all of these elements, the cost to Welsh Government is expected to be a little over £1million per annum between 2025-26 and 2027-28.

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**Table 7.37 – Total Cost to Welsh Government, 2025-26 to 2027-28**

	<b>2025-26</b>	<b>2026-27</b>	<b>2027-28</b>	<b>Total</b>
<b>Costs</b>	£1,049,000	£1,099,000	£1,030,000	£3,178,000

7.182 From 2028-29 onwards, the cost for administering direct payments is expected to transfer to the local health boards. With the exception of PA insurance and DBS checks, these administrative costs have been calculated on the same basis as above. It is envisaged that the costs associated with PA insurance and DBS checks will be incorporated by the health boards into the care package costs and therefore they are not shown separately in the table below.

7.183 It is envisaged that the totals shown below will be divided between the LHBs; they are not the sums each LHB will need to find individually.

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**Table 7.38 – Administrative costs to Local Health Boards, 2028-29 to 2034-35**

£	<b>2028-29</b>	<b>2029-30</b>	<b>2030-31</b>	<b>2031-32</b>	<b>2032-33</b>	<b>2033-34</b>	<b>2034-35</b>
Central Hub	404,000	404,000	404,000	404,000	404,000	404,000	404,000
IT	250,000	250,000	250,000	250,000	250,000	250,000	250,000
Direct payment support services	131,000	198,000	235,000	260,000	296,000	314,000	324,000
PA training and support	75,000	89,000	89,000	89,000	154,000	154,000	154,000
<b>Total</b>	<b>860,000</b>	<b>941,000</b>	<b>978,000</b>	<b>1,003,000</b>	<b>1,104,000</b>	<b>1,122,000</b>	<b>1,132,000</b>

**Table 7.39 – Summary of cost-savings**

£		<b>2025-26</b>	<b>2026-27</b>	<b>2027-28</b>	<b>2028-29</b>	<b>2029-30</b>	<b>2030-31</b>	<b>2031-32</b>	<b>2032-33</b>	<b>2033-34</b>	<b>2034-35</b>
<b>Individual cost-savings</b>	Maximum	52,000	312,000	572,000	572,000	572,000	520,000	260,000			
	Minimum	0	0	0	0	0	0	0			
<b>LA cost-savings</b>	<b>Minimum</b>	198,000	1,186,000	2,174,000	2,174,000	2,174,000	1,976,000	988,000			
	<b>Maximum</b>	250,000	1,498,000	2,746,000	2,746,000	2,746,000	2,496,000	1,248,000			

Note. You cannot sum the maximum individual cost-savings and the maximum LA cost-savings. For LA cost-savings to be at the maximum level, individual cost-savings must be at the lower end of the range (i.e. zero) and vice versa.

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**Table 7.40 – Summary of costs**

£		2025-26	2026-27	2027-28	2028-29	2029-30	2030-31	2031-32	2032-33	2033-34	2034-35
Welsh Government											
Administrative costs		1,049,000	1,099,000	1,030,000							
Local Health Board											
Administrative costs					860,000	940,000	978,000	1,003,000	1,104,000	1,121,000	1,131,000
Package costs	11% reduction	418,000	2,478,000	4,235,000	3,878,000	3,438,000	2,580,000	80,000	-2,503,000	-2,970,000	-3,355,000
	16% reduction	380,000	2,240,000	3,660,000	3,140,000	2,500,000	1,480,000	-1,020,000	-3,640,000	-4,320,000	-4,880,000
Total Cost	Minimum	1,429,000	3,339,000	4,690,000	4,000,000	3,440,000	2,458,000	-17,000	-2,536,000	-3,199,000	-3,749,000
	Maximum	1,467,000	3,576,000	5,265,000	4,737,000	4,378,000	3,558,000	1,083,000	-1,399,000	-1,849,000	-2,224,000

7.184 These summary tables show net cost-savings are only expected to be realised from year 7 or 8 of the appraisal period. The timing will depend on the level of saving from direct payments relative to traditionally commissioned CHC packages. Based on these figures, this option has a Net Present Value of between £-5.2million and £1.7million over the ten-year appraisal period. However, as set out in the next section, there are a number of unquantifiable benefits that should also be considered.

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- 7.185 The evidence suggests that in the longer term, direct payments for CHC will be less expensive than conventional packages and will result in savings to the NHS, which can be offset against the costs that will be incurred. After a transitional phase evidence suggests there will be savings to local health boards for delivering CHC as direct payments.
- 7.186 An Integrated Care Board (ICB) in England told us that individuals managing their own CHC care through direct payments were typically very motivated to obtain better value for their direct payments budget than might be possible under traditional CHC. Being far closer to the care being purchased than an in-house LHB commissioning service, they are also able to monitor the full service is provided and pick up on any issues in terms of delivery.
- 7.187 The ICB told us that some services were being commissioned at a lower cost than the ICB is able to access. An example given was physiotherapy. It is likely that individuals are in some cases able to access services at a lower cost than the NHS as a result of procurement constraints on the NHS. Offset against this is the fact that ICBs or LHBs will have block commissioning capabilities for some services which might prove cheaper, but may be less tailored to the personal preferences or needs of the individual receiving care. An evaluation of the PHB pilot programme in 2012 found that PHB holders were securing services from outside conventional NHS providers.<sup>66</sup>
- 7.188 NHS England also reported significantly fewer challenges (such as care package breakdown or crisis) when delivering PHBs as direct payments. Apart from financial considerations, evaluations from England report that direct payments for CHC are highly valued by those in receipt of them, and there are many case studies available demonstrating positive outcomes for both the CHC recipient and their families.<sup>67</sup>

## **Benefits/disbenefits**

- 7.189 Under this option the Welsh Ministers will obtain powers to make regulations about direct payments, in order for them to enable local health boards to make direct payments to people for CHC. Welsh Ministers will be able to set out details and conditions of when the direct payments could be made available under the regulations.
- 7.190 This option provides the opportunity to improve the interface between CHC and direct payments, to address issues raised around the loss of independence and voice and control that individuals experience when transferring from local authority provided care to CHC. This option would support improved fairness and equality for disabled and seriously ill

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<sup>66</sup> [PHBE pilot evaluation - Executive summary and report](#) – paragraph 18

<sup>67</sup> [NHS England » Evidence and case studies](#)



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people, whether receiving care from the local authority or the health board, and supports the principles of person-centred care.

- 7.191 This option would be beneficial for individuals who would be eligible for CHC if assessed but who have continued to receive local authority funded care due to fear of loss of independence, voice and control if not able to receive direct payments. It is likely that these individuals' needs will be better met by receiving CHC which may improve their health and wellbeing in the short, medium or long term. They are likely to be better able to access their local community as a result of an improvement to having their needs met.
- 7.192 Beyond the immediate costs of the CHC being offered via direct payments, there are longer term cost benefit implications to consider also. If individuals in Wales are not having their health needs met due to refusing CHC packages, it is likely to result in higher costs to local health boards and the NHS in the longer term, such as increased hospital admissions and increases in the duration of hospital stays.
- 7.193 The flexibility offered by direct payments can also be a factor in saving costs later down the line. In the English Personal Health Budgets evaluation report, clinical commissioning staff are positive about the flexibility and range of health and care services which an individual can access via a direct payment. In particular they say that this has in their experience had a positive impact on reducing more expensive hospital service use. One commissioning manager stated "We've had ones where we've given alternative therapy, so Reiki, for example. A PHB paid for some Reiki and because of this Reiki, which was £800, the person who received the Reiki hasn't used Mental Health Services. The crisis team hasn't come out once since this Reiki happened and if you could unpick the contract and if you could break it down, you would see that that £800 as part of the personal health budget has paid as a positive that ten times over."<sup>68</sup>
- 7.194 Furthermore, English evaluations cite the opportunity offered by direct payments to deliver more self-directed, tailored and appropriate care to people as a reason for better health and wellbeing outcomes. The original personal health budget (PHB) independent 2012 evaluation, led by the Personal Social Services Research Unit at the University of Kent, showed improved quality of life and reduced reliance on unplanned care e.g. A&E admissions, as well as overall savings of £3,100 per person per year for CHC PHB holders. This included changes to direct and indirect costs and the majority of people were living in their own home.<sup>69</sup>

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<sup>68</sup> <https://www.pssru.ac.uk/pub/5331.pdf> 2017, p11

<sup>69</sup> [NHS England » Evidence and case studies](#)

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- 7.195 An evaluation of the PHB pilot programme in England found that access to direct payments for CHC was associated with improved care-related quality of life and psychological well-being.<sup>70</sup>
- 7.196 Some respondents to the [consultation](#) on the proposal to introduce direct payments for CHC in Wales highlighted likely benefits of this option alongside increased voice and control, including:
- Improved quality of care due to CHC packages being more appropriate for new recipients compared with local authority provided care;
  - Improved continuity of care and a level playing field between social care and health care, and between England and Wales CHC recipients;
  - Better partnership working e.g. between LAs and LHBs;
  - More access to care in the language of choice e.g. Welsh, other languages
- 7.197 Some respondents to the [consultation](#) on the Bill's proposals highlighted some potential disbenefits, including:
- A potential worsening of the quality of care for CHC recipients when commissioning their own care using direct payments without the day-by-day regulation of the NHS, and the individuals experiencing adverse outcomes as a result;<sup>71</sup>
  - capacity challenges in the social care system resulting in individuals not being able to source suitable services;
  - a potential worsening of working conditions for PAs employed using direct payments, without the assurance of being employed directly by a large employer such as the NHS.
- 7.198 Other possible benefits have been identified since the consultation, including:
- Improved social value – i.e. the local pound remaining within local economies and not going out to large care providers not based locally.
  - Alternative models of care reducing strain on current care workforce recruitment issues
  - Patients remaining at home where they would prefer to be, and at less cost than a care home placement.

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<sup>70</sup> [PHBE pilot evaluation - Executive summary and report](#) – paragraph 12

<sup>71</sup> This is a very valid concern but evidence from England has not borne out this concern, largely because of the structures, training and insurance mechanisms which are in place.

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## **Amendments to the Regulation and Inspection of Social Care (Wales) Act 2016**

7.199 As outlined in Chapter 3, the Bill will make a number of amendments to the regulation of regulated services and the social care workforce, in order to help the regulatory framework operate more effectively.

### **Publication of annual returns**

#### **Options, costs and benefits**

7.200 Two options have been considered as part of this assessment. These are:

#### **Option 1: Do not amend the 2016 Act**

7.201 This is the no change or baseline option, which would continue to place the requirement to publish annual returns on the Welsh Ministers (CIW).

#### **Costs**

7.202 There are no additional costs under this baseline option.

7.203 Retaining the requirement to publish annual returns on the Welsh Ministers (CIW) will incur a cost in time for CIW staff to check the returns for potential data breaches or other information that may not be appropriate to publish. This will continue the burden on inspectors, drawing them away from their core role of regulating services.

7.204 For 2023-24, CIW received 945 annual returns. CIW used artificial intelligence to indicate the ones that required further examination. The system indicated that 455 annual returns needed checking. These returns were then passed back to the provider for correction before resubmitting. Some annual returns needed checking multiple times if providers failed to adequately address the issues raised. This resulted in a total of 766 checks being completed which took approximately 400 hours.

7.205 Should CIW inadvertently publish annual returns containing personal information, such as the names of people living at a regulated service, they may be in breach of UK GDPR. The cost to Welsh Government of a data breach could be very significant, as the Information Commissioner's Office (ICO) has the power to issue fines to organisations who breach data protection laws. Any fine would be based on Welsh Government's turnover and the maximum fine could be £0.5bn. However, due to the mitigating factors CIW has put in place, including requesting that providers do not include personal information in their returns and checking all annual returns, a fine of this level is extremely unlikely.

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## **Benefits**

- 7.206 A quarter of people who responded to this part of the consultation (16 out of 65 respondents) disagreed or tended to disagree with the proposal to require service providers, rather than CIW, to publish annual returns. Feedback from several respondents raised concerns about providers who may not have a website and would have to create one in order to fulfil this requirement. One respondent commented on the additional administrative responsibility that the proposal would create. This indicates that some providers would prefer CIW to retain responsibility for publishing annual returns.
- 7.207 CIW has published service providers' annual returns on their directory alongside key information about services, such as service contact details and inspection reports. Having this information in one place would be beneficial to the public to support them to compare services. Placing the requirement on service providers to publish annual returns on their website will mean that the annual returns will not be published on CIW's public facing directory and people will have to search for this separately.

## **Disbenefits**

- 7.208 As set out in the costs section, option one will maintain a significant burden on CIW in checking the annual returns for data breaches and potential defamation.

## **Risks**

- 7.209 Retaining the requirement for CIW to publish annual returns creates a liability for the Welsh Ministers in data protection and defamation terms for anything contained within the returns.
- 7.210 The publication of personal information within an annual return – such as the names of individuals at the service – would breach data protection laws. This could be reputationally damaging for the Welsh Government and may result in a fine from the ICO. At the very least, dealing with the consequences of a data breach is likely to be time consuming for CIW. The publication of personal information could also cause distress to those whose information has been shared without their consent. It could also have safeguarding implications.
- 7.211 Checking the returns for inappropriate information carries a risk in terms of CIW's time. As set out in the costs section, it took CIW staff a total of 400 hours to check the annual returns. This reduces the time that staff can spend on other matters relating to ensuring the quality and safety of services.

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## **Option 2:**

### **Amend the 2016 Act to:**

- I. require service providers to publish annual returns on their website,**
- II. include a regulation-making power to prescribe the time limit for publication of the annual return,**
- III. create an offence for failing to publish an annual return, and**
- IV. enable that offence to be dealt with via a penalty notice with a penalty equivalent to that of failing to submit an annual return.**

### **Costs**

7.212 One of the issues highlighted in the consultation responses was the cost for service providers in developing and maintaining a website. We are aware that at least 66% of providers already have a website, as they included their website addresses within their annual returns for 2023-24. However, as this data is voluntary, the actual percentage of providers with a website could be higher as they may have chosen not to include this information within their annual return.

7.213 The cost of developing and maintaining a website varies widely based on a range of factors, including the complexity of the site, its features, style, and functionality. A basic website can be set up for free without any web development skills by using a website builder which provides a template for users to add details about their services. Some website builders will provide a subscription option for a small fee for additional features and the removal of their advertisement banner. A more sophisticated website which has been designed by a web designer with bespoke features, better functionality and search engine optimisation is likely to cost thousands of pounds.

7.214 We consider that a basic website would be sufficient for the purpose of publishing an annual return and that providers may also derive some benefit from having a website to make public available details of their service(s).

7.215 We estimate that it would take a small business around 20 hours to set up a basic website. The Annual Survey of Hours and Earnings (ASHE) provides figures on hourly earnings for different occupations across the different regions. The below table sets out the figures for the three most relevant occupations in the survey data. The cost to set up a website is therefore likely to be between £410 and £700. Based on there being 1,060 providers in Wales and an assumption that one-third of those do not currently have website, the aggregate cost for establishing websites is estimated to be between £144,730 and £247,100. This one-off cost is expected to be incurred in 2025-26. The time required to upload the annual report to the website each year will be negligible and is not expected to generate an additional financial burden.

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**Table 7.41**

Occupation	Hourly gross pay (Wales, median, 2022)	Hourly gross pay including on-costs (30%)	Cost to build website (assumes 20 hours, rounded to nearest £10)
H&SS Managers and Directors	27.15	35.30	700
Managers and Proprietors in Health and Care Services	20.07	26.09	520
Administrative occupations – Office managers and supervisors	15.88	20.64	410

Source: [Earnings and hours worked, region by occupation by four-digit SOC: ASHE Table 15 - Office for National Statistics \(ons.gov.uk\)](#)

#### *Offences*

- 7.216 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).
- 7.217 Under section 52 of the 2016 Act, the Welsh Ministers may impose a penalty notice if they are satisfied that the service provider has committed a prescribed offence. This includes a failure to submit an annual return. The Regulated Services (Penalty Notices) (Wales) Regulations 2019 sets out that the penalty to be paid is an amount corresponding to level 4 on the standard scale (this is equivalent to £2,500).
- 7.218 Therefore, the Welsh Ministers consider it prudent to create an offence of failing to publish an annual return, equivalent to that under section 48 of failing to submit an annual return, with the penalty for the new offence being the same as that for the current offence.
- 7.219 We anticipate that any breaches of this new offence – failure to publish an annual return - would be the same as breaches of the current offence under section 48 - failure to submit an annual return. 2022-23 is the first year that annual returns have been required, due to the delay in implementing this provision in the Act. We are aware that 150 providers have failed to submit their annual return by the required deadline, thus breaching the requirement within the Regulations. Although this could be dealt with by a penalty notice the scheme has not yet been implemented by CIW. CIW is using its civil enforcement powers to address breaches of this requirement, such as reflecting this non-compliance within inspection reports.

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7.220 As 2022-23 was the first year that annual returns are required, it is possible that compliance will be higher in 2023-24 once service providers are more familiar with the requirement.

### **Benefits**

7.221 Option two maintains the original policy intention of providing objective and comparable information about regulated services to citizens. Placing the requirement to publish annual returns on service providers will save time for the inspectorate as it will not need to deploy staff to check the returns for potential data breaches or other information that may not be appropriate to publish. This will greatly reduce the burden on CIW staff, enabling them to focus on their core role of regulating services. Staff carrying out these checks would be at Team Support level, with a staff cost of approximately £33,900 per year (including on-costs). This works out as £20.84 per hour. A saving of 400 hours would therefore equate to approximately £8,300 per year. This represents an opportunity cost-saving rather than a cash-releasing benefit. The cost-saving is expected to accrue from 2025-26.

### **Disbenefits**

7.222 Requiring service providers to have a website to publish annual returns would require a small investment in time and potentially incur costs if they do not have one already.

### **Risks**

7.223 Neither the 2016 Act nor the Regulated Services (Annual Returns) (Wales) Regulations 2017, as amended, include a timescale for the publication of annual returns by the Welsh Ministers. It is anticipated that placing the requirement on service providers without specifying a timescale will lead to inconsistencies in the timing of publication across services. To mitigate this risk the intention is to include a regulation-making power enabling the Welsh Ministers to set a timescale for publication. This is more appropriate for Regulations than the face of the Act.

### Cancellation of service provider's registration without application: notice procedures

#### **Options, costs and benefits**

7.224 Two options have been considered as part of this assessment. These are:

##### **Option 1: Do not amend the 2016 Act**

7.225 This is the no change or baseline option which would maintain the current processes.

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### **Costs**

7.226 Under option one, CIW would continue to be required to follow the improvement notice procedures (in sections 16 and 17 of the 2016 Act) when cancelling a service providers registration without application, under section 15 of the Act even where such action would lack practical efficacy or relevance, the grounds for cancellation being such that no improvement can be made. Option one maintains unnecessary steps in CIW's enforcement processes, slowing the system down and leading to cost implications in terms of CIW's time.

### **Benefits**

7.227 We do not consider there to be any benefits of retaining steps within CIW's enforcement processes which have no discernible advantages.

### **Disbenefits**

7.228 Option one maintains unnecessary steps in CIW's enforcement processes, slowing the system down and reducing time for CIW inspectors to focus on other more important matters.

### **Risks**

7.229 Under option one, there is a risk that maintaining unnecessary enforcement processes will reduce the time that inspectors could spend on more valuable work.

## **Option 2: Amend the 2016 Act to change unnecessary processes and provide greater flexibility for CIW when cancelling registration without application in certain circumstances**

### **Costs**

7.230 Option 2 will provide that the notice of proposal procedure (see section 18 and section 19 of the 2016 Act), rather than the improvement notice procedure (see section 16 and section 17 of the Act), must be followed where cancellation of a service provider's registration under section 15 of the 2016 Act (without application) is on one of the following grounds:

- iv. The service provider has been convicted of, or has been given a caution in respect of, a relevant offence.
- v. The Welsh Ministers are no longer satisfied that the service provider is a fit and proper person to be a service provider.
- vi. The service provider no longer provides any regulated services.

7.231 This will ensure the notice procedure used is that which is most appropriate to the circumstance. As such, we do not consider there will be any additional costs associated with this option.



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### **Benefits**

7.232 These changes serve to address issues which did not become apparent until the Act was established. These changes will enable CIW to take a more appropriate approach in particular circumstances, thus saving time for both them and providers.

### **Disbenefits**

7.233 We do not consider there to be any disbenefits associated with this option.

### **Risks**

7.234 CIW will be required to send a provider a notice of proposal instead of an improvement notice if any of the three grounds defined in section 15 (1), as amended, apply. These grounds are:

- i. The service provider has been convicted of, or has been given a caution in respect of, a relevant offence.
- ii. The Welsh Ministers are no longer satisfied that the service provider is a fit and proper person to be a service provider.
- iii. The service provider no longer provides any regulated services.

7.235 A notice of proposal is a notice informing the provider of the decision the Welsh Ministers propose to take and giving the service provider the opportunity to make written representations within a certain time period, which must be at least 28 days. Such a notice may also give the provider the opportunity to rectify the situation by providing a time limit within which certain things must be done to avoid the action being taken. This will mitigate any risk that the regulator is mistaken in its evidence.

### Application for cancellation of service provider's registration: information to be provided

### **Options, costs and benefits**

7.236 Two options have been considered as part of this assessment. These are:

#### **Option 1: Do not amend the 2016 Act**

7.237 This is the no change or baseline option which would maintain the current processes.

### **Costs**

7.238 Under option one, service providers who are applying to cancel their registration are not required to provide information to CIW setting out how they intend to continue to comply with the *Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017* until their service ceases to be provided. This creates a disparity between providers who are applying to vary their registration to remove a service

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under section 11 of the 2016 Act (who *are* required to submit such information by virtue of the regulation-making power contained within that section).

7.239 We do not consider there to be any direct costs associated with option one.

### **Benefits**

7.240 Under option one, providers who are applying to cancel their registration will not have to provide CIW with information about how they intend to continue to comply with the *Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017* until their service ceases to be provided. This is likely to be time consuming for providers who may prefer not to have to submit this information.

### **Disbenefits**

7.241 If providers seeking registration cancellation do not need to submit information to CIW setting out how they will maintain quality standards until service cessation, this is inconsistent with the requirement for such information when providers apply to vary their registration to remove a service. This gap in information hinders CIW's ability to be assured about the ongoing safety and well-being of individuals using the service until it closes.

### **Risks**

7.242 If providers seeking to cancel their registration do not need to provide information to CIW setting out how they will maintain quality standards until service cessation, this is inconsistent with the requirement for such information when providers apply to vary their registration to remove a service. This gap in information hinders CIW's ability to be assured about the ongoing safety and well-being of individuals using the service until it closes.

### **Option 2: Amend the 2016 Act**

**- give the Welsh Ministers a regulation-making power to require information from providers applying to cancel their registration.**

### **Costs**

7.243 This option will create a regulation-making power under section 14 to allow the Welsh Ministers (CIW) to require that an application for cancellation of registration as a service provider contains specified information, and be made in a prescribed form. This will enable the Welsh Ministers to require information from service providers about how they intend to comply with the *Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017*, until the service closes and to specify the form in which the information is to be provided. This will create a cost in terms of time for the Welsh Government in drafting Regulations to bring this into effect. Requiring providers to submit

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a statement about how they will comply with quality standards is estimated to take around 4 hours to complete.

7.244 The Annual Survey of Hours and Earnings (ASHE) provides figures on hourly earnings for different occupations across the different regions. The below table sets out the figures for health and social services managers and directors, who would be required to complete this statement. Based on the estimate that a statement would take 4 hours to complete, the cost per statement is therefore likely to be approximately £140. At this stage it is not possible to determine how many service providers will exit the market in Wales in the future and so it is not possible to aggregate this cost. The aggregate cost is therefore unknown.

**Table 7.42**

Occupation	Hourly gross pay (Wales, median, 2022)	Hourly gross pay including on-costs (30%)	Cost to complete statement (assumes 4 hours, rounded to nearest £10)
H&SS Managers and Directors	27.15	35.30	140

### **Benefits**

7.245 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. The information will provide assurance to CIW that the service can continue to support the safety and well-being of individuals at the service. 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.

### **Disbenefits**

7.246 We do not consider there to be any disbenefits associated with this option.

### **Risks**

7.247 We do not consider there to be any risks under this option.

### Information and inspections: power to require information

### **Options, costs and benefits**

7.248 Two options have been considered as part of this assessment. These are:

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### **Option 1: Do not amend the 2016 Act**

7.249 This is the baseline option and, as such, there are no additional costs under this option.

#### **Costs**

7.250 There are no additional costs under this baseline option.

7.251 Investigating services operating without registration is a key role for CIW, which is well understood by the sector, given that these powers were clear under the Care Standards Act. The overarching objectives in section 4 of the 2016 Act to protect, promote and maintain the safety and well-being of all people who use regulated services, indicate that the National Assembly did not intend to reduce the powers available to an inspector compared with the Care Standards Act. At an operational level, CIW continues to request information from services believed to be operating without registration.

#### **Benefits**

7.252 We do not consider there to be any benefits associated with this option.

#### **Disbenefits**

7.253 Under the current provision CIW does not have any power to require the information if it is not provided voluntarily.

#### **Risks**

7.254 Retaining the current wording presents a risk that CIW may be unable to effectively exercise their functions, particularly those under section 5 of the Act, under which it is an offence to operate a regulated service without being registered.

### **Option 2:**

**Amend the 2016 Act to confer a power on the Welsh Ministers to require information from a person who is providing a regulated service in respect of which they are not registered in accordance with section 7 of the 2016 Act**

#### **Costs**

7.255 We do not consider there to be any additional direct costs associated with this proposal, as the inspectorate is already fulfilling this function in practice, by requesting information from persons providing a regulated service without registration.

#### **Benefits**

7.256 These amendments will restore the previous position under the Care Standards Act 2000 by providing the Welsh Ministers (CIW in practice)

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with the legal powers to require information from individuals who are operating a regulated service without registration.

7.257 This will support the aim of safeguarding vulnerable individuals 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.

### Disbenefits

7.258 We do not consider there to be any disbenefits under this option.

### Risks

7.259 We do not consider there to be any risks under this option.

## **Amendments to the Regulation and Inspection of Social Care (Wales) Act 2016 in relation to service providers - Summary of costs and cost-savings**

Tables 7.43 and 7.44 below summarise the additional costs and cost-savings associated with the proposed amendments to the Regulation and Inspection of Social Care (Wales) Act 2016.

**Table 7.43: Additional costs**

£	2025-26	2026-27	2027-28	2028-29	2029-30	2030-31	2031-32	2032-33	2033-34	2034-35
Providers	144,700 – 247,100									

**Table 7.44: Additional cost-savings**

	2025-26	2026-27	2027-28	2028-29	2029-30	2030-31	2031-32	2032-33	2033-34	2034-35
CIW	8,300	8,300	8,300	8,300	8,300	8,300	8,300	8,300	8,300	8,300

Based on these figures, this option has a Net Present Value of between £-71,000 and £-170,000 over the ten-year appraisal period. However, it is considered that the unquantifiable benefits identified above justify this cost.

## **Regulation of the social care workforce: Extension of interim orders during Fitness to Practise investigations**

### Options, costs and benefits

#### Option 1 - Do nothing - retain the status quo

#### Social Care Wales (SCW)

7.260 Currently, panels (interim orders panels or fitness to practise panels before which the interim order proceedings are brought) can make an interim order in relation to a registered person for a period of no more than 18 months.

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- 7.261 Panels do not currently have the power to extend an interim order. Should there be a need to extend an interim order, SCW is required to apply to the First-tier Tribunal (the tribunal) to request an extension.
- 7.262 In 2022, SCW made 56 applications to the tribunal to extend interim orders with each application costing SCW £2,000 in administrative and legal costs. This cost the regulator a total of £112,000. These costs are met from the regulator's grant-in-aid allocation from the Welsh Government as part of its regulatory responsibilities.
- 7.263 In 2024, as a result of the increase in numbers of workers required to register with SCW, the regulator estimates that the number of applications to the tribunal for an extension of an interim order will increase to 90, increasing SCW's costs to £180,000.

### **Welsh Government**

- 7.264 There are no additional direct costs for the Welsh Government, as these costs are met as part of our annual grant-in-aid package to the regulator.

### **Social care workforce/Employers**

- 7.265 Individuals who are made the subject of an interim suspension order are unable to work within the social care sector in Wales whilst the interim suspension order remains in place. This has a significant impact on the individual and their employer.
- 7.266 If the amendment is not made, there is an incentive for SCW to routinely make interim orders for the maximum period of 18 months, to avoid the administrative burden of repeated applications to the tribunal. This could increase stress and anxiety for both registered workers and their employers, as it would suspend that worker for over a year. This could be exacerbated by any necessity to prolong the investigation, including a request by a fitness to practise panel for an extension beyond 18 months to the tribunal. This would add further delay to the completion of the investigation whilst the individual awaits the case for the extension to be heard by the tribunal and for it to make its determination.
- 7.267 In respect of conditional registration orders, any request by a panel for an extension could significantly impact the individual, who may find their pay affected by any restrictions placed upon the work they may undertake.
- 7.268 However, it is difficult to quantify the impact, as it will vary on a case-by-case basis, for example, depending on whether the individual's contract of employment allows them to continue to be paid whilst subject to the suspension order.

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7.269 It is also difficult to quantify the costs of the amendment to employers, as there are indirect costs for employers in having to invest in seeking temporary cover (e.g. agency workers) when a worker/employee is subject to an interim suspension order.

7.270 Agency costs are hard to quantify as these vary across the range of workforce roles – e.g. domiciliary care workers, adult care home workers, managers, etc. – or can vary from one geographical area to another depending on demand. A search has identified that agency hourly charges for domiciliary care workers can range between £20 and £30 per hour.<sup>72</sup> For illustrative purposes, if an employer needed to cover a member of staff who works a 42-hour week and is suspended for 6 months, if they employed an agency worker at a cost of £25 per hour this would mean a cost of £27,300<sup>73</sup> to cover this suspension.

## **Option 2: Making the amendments**

### **Costs, savings, benefits and disbenefits**

#### **Social Care Wales**

7.271 The amendment will provide panels with the power to extend an interim order up to a maximum of 18 months, without an application being required to the tribunal.

7.272 In 2022, SCW made 56 applications to the First-tier Tribunal. With the increase of a further 20,000 workers with the registration of adult care home workers from 1 April 2022, SCW estimates that a further 34 applications are likely to be required to be made to the tribunal by 1 April 2024.

7.273 SCW have explained that each application to the tribunal to extend an interim order costs approximately £2,000 in administrative and legal costs. The cost to SCW of making such applications is therefore estimated to rise from £112,000 in 2022 to £180,000 in 2024.

7.274 Some of these increased costs are offset by the collection of registration fees, which are already collected from approximately 42,000 registrants and provided an income of almost £2 million to the workforce regulator in December 2022. This income will rise to over £2.2 million in 2023 when the remaining 8,000 adult care home workers were to be registered. However, even with this increased revenue stream, this funding will still not cover the full cost of regulating the workforce.

7.275 Whilst the overall costs are likely to continue to rise as a result of the increase in the number of persons required to register with SCW, the proposed amendment will reduce the number of applications required to

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<sup>72</sup> <https://www.homecare.co.uk/advice/paying-for-care-at-home> - Home Care UK estimates

<sup>73</sup> £25 an hour x 42 hours a week over 26 weeks

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be made to the tribunal, as SCW will no longer need to apply to the tribunal to extend an interim order other than where an extension is required beyond the maximum 18-month timeframe, and this will result in both a financial and administrative saving to SCW.

7.276 For example, if 30% (17) of the 56 cases submitted by SCW in 2022 did not require an application to the tribunal, this would have saved £34,000 in costs.

7.277 The proposed amendment will allow panels to take proportionate action, extending an interim order up to a maximum of 18 months where necessary. The cost and time saving will provide a benefit to SCW and to the sector.

### **Welsh Government**

7.278 There are no immediate additional costs for the Welsh Government, as the proposals will be met from within existing budgets.

7.279 Any savings generated by the proposals will be reinvested into regulating and supporting the social care sector, so we do not expect a need for additional funding.

### **UK Government (Ministry of Justice/HM Courts and Tribunals Service)**

7.280 The proposed amendment is likely to have a positive impact upon the UK justice system, presenting some potential resource savings for HM Courts and Tribunals Service (HMCTS) and the workforce regulator, SCW.

7.281 Currently, SCW must apply to the tribunal if it wishes to extend an interim order.

7.282 The tribunal will have administrative costs relating to managing and overseeing of cases, including those relating to the collation of evidence, notifying all interested parties of the date and time of the proceedings, arranging a panel of judges to hear the case and providing staff to manage and record the proceedings. Whilst we do not have estimated figures for these costs, the amendment will reduce the number of applications required to be made to the tribunal for an extension of time and is therefore likely to reduce the administrative and cost burden upon the tribunal.

### **Social care workforce/Employers**

7.283 The making of an interim order has a significant impact upon the registered person and/or employer, as set out in paragraphs 7.268 – 7.273 above. Whilst a number of these impacts will remain whether or not the amendment is made, the amendment will enable the panel to take a more proportionate response and enable SCW to avoid the need to make



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an application to the tribunal where an extension of an interim order is within the 18-month period.

- 7.284 This will ensure that interim orders remain in place for the minimum period necessary and will avoid any stress and/or administrative/cost burden to the registered person that may result from an application being made to the tribunal.
- 7.285 The proposed changes around interim orders might provide some benefits for the individual who is made subject to the order and their employer, as investigations and the determination of them may potentially see some cases be disposed of more rapidly. If an interim order panel has the power to set a shorter initial order – e.g. 6 months - and feels it needs only a further short extension – e.g. 3 months – to complete its investigations instead of setting the full 18-month limit, the result would be a shorter suspension or conditional registration period.
- 7.286 The resulting more streamlined system will remove some of the stresses that such investigations bring and can provide a quicker resolution that could mean that individuals can return to work earlier and employers incur less costs regarding the hiring of replacement/substitute workers (e.g. agency workers).
- 7.287 It is difficult to quantify the costs of our proposed changes to the interim order proposals for employers, as there are indirect costs for employers in either having to invest in seeking temporary cover from agency staff to cover the worker's suspension or, if serious enough, recruiting a new member of staff if the investigation determined that individual should be removed from the register.
- 7.288 As mentioned above, it is difficult to accurately quantify the full costs of agency staff as these vary across the range of workforce roles – e.g. domiciliary care workers, adult care home workers, managers, etc. – or can vary from one geographical area to another depending on demand. A rough estimate has shown a variety of charges between £20 and £30 per hour, which could mean an employer forced to pay approx. £26,300 to cover a 6-month suspension.
- 7.289 Recruitment costs can also be difficult to quantify, as larger companies can afford to spend more on recruitment than smaller ones; making it hard to provide an illustration for the purposes of this assessment.

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**Table 7.45: Summary for options one and two for extension of interim orders during Fitness to Practise investigations**

	2025-26	2026-27	2027-28	2028-29	2029-30	2030-31	2031-32	2032-33	2033-34	2034-35
	£	£	£	£	£	£	£	£	£	£
<b>No change costs</b>										
<b>Welsh Govt.</b>										
Grant-in-Aid <sup>74</sup>	32,846,000	34,846,000	36,846,000	38,846,000	40,846,000	42,846,000	44,846,000	46,846,000	48,846,000	50,846,000
<b>Social Care Employers</b>										
Agency staff costs to cover staff absence – extension to interim orders <sup>75</sup>	1,064,700	1,171,170	1,288,287	1,417,116	1,558,827	1,714,710	1,886,181	2,074,799	2,282,279	2,510,507

<sup>74</sup> On average, SCW's grant-in-aid package has increased by £2m per annum and includes funding for additional requirements placed on the regulator. For illustrative purposes, we have continued this trend.

<sup>75</sup> For illustrative purposes, we have shown that 70% (39) of cases are extended, and for these cases, employers will have to employ agency workers to cover the absence. E.g. for six months of cover, £25 an hour x 42 hours a week over 26 weeks x 39 cases. We have assumed that these costs could increase by 10% per annum.

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<b>Option 1 – no change</b>										
<b>SCW</b>										
FtP hearing costs <sup>76</sup>	1,808,000	2,350,400	3,055,520	3,972,176	5,163,829	6,712,977	8,726,871	11,344,932	14,748,411	19,172,935
FtP cases discharged as paper cases <sup>77</sup>	125,000	156,250	195,313	244,141	305,176	381,470	476,837	596,046	745,058	931,323
<b>Add costs of extra Applic. To HM Courts<sup>78</sup></b>	281,250	351,563	439,453	549,316	686,646	858,307	1,072,884	1,341,105	1,676,381	2,095,476
<b>Net Costs</b>	<b>2,214,250</b>	<b>2,858,213</b>	<b>3,690,286</b>	<b>4,765,633</b>	<b>6,155,650</b>	<b>7,952,754</b>	<b>10,276,591</b>	<b>13,282,083</b>	<b>17,169,850</b>	<b>22,199,733</b>

<sup>76</sup> See para 1.13 and 1.14 above (30% (113) of 377 cases going to full hearings). For illustrative purposes we have kept a 30% increase for subsequent years.

<sup>77</sup> See para. 1.15 above (for illustrative purposes we have added a 25% increase year on year).

<sup>78</sup> See para. 1.17 above (for illustrative purposes we have added a 25% increase year on year).

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	2025-26	2026-27	2027-28	2028-29	2029-30	2030-31	2031-32	2032-33	2033-34	2034-35
	£	£	£	£	£	£	£	£	£	£
<b>Option 2 – making the amendments</b>										
<b>SCW</b>										
<b>Potential savings – not bringing cases to HMCTS<sup>79</sup></b>	68,000	85,000	106,250	132,813	166,016	207,520	259,399	324,249	405,312	506,639

7.290 These costs do not cover the costs incurred by the HM Courts and Tribunal Service (HMCTS) to consider and convene Tribunals, administer and make a judgement. However, we can assume that the number of cases that SCW could amend without making an application to the HMCTS would be removed from this process would constitute a saving for the service.

7.291 The present value of the cost-saving (benefit) to SCW is £1.8million over the period from 2025-6 to 2034-5.

<sup>79</sup> For illustrative purposes, we have used the figure of 34 new cases that are to go to HMCTS for extension at para. 1.16 and added a 25% increase year on year to show a saving to SCW of being able to extend the interim orders without the need to apply to HMCTS.

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## **Amendment to RISCA 2016: Extending the definition of ‘social care worker’ to include childcare and playworkers**

### **Options, costs and benefits**

7.292 The two options are:

#### **Option 1:**

##### **Do nothing: retain the status quo**

7.293 Under this option, Social Care Wales could continue to support those working in the childcare sector, there would be no statutory basis for this. The Welsh Government would continue to agree a remit with Social Care Wales on an annual basis and fund this work accordingly.

7.294 Whilst legally there is no distinction between persons who work/are employed within daycare and play settings (play settings being included within the meaning of day care in section 19 of the Children and Families (Wales) Measure 2010) in practice the support provided by Social Care Wales has not extended to persons working within play settings (play workers). Without regulations made in accordance with the amendment, the support Social Care Wales provides to the sector as a whole (including play workers) would not be formalised.

7.295 Anticipated **risks** of this option include the following:

- This could create the risk of legal challenge given the practical interpretation of the Act (that SCW support both providers and workers) is not definitively outlined on the face of the Act and its Regulations.
- If SCW proceeded to only support childminders and providers of childcare, this could create an inconsistency across the workforce with the potential to exclude large portions of the workforce from support and improvement activity. This could see a two-tier workforce within the sector which could be de-stabilising if it is perceived that support is available for some but not all.
- Similarly, if SCW are unable to support playworkers the issues outlined in the [Ministerial Review of Play](#) concerning the lack of sector skills support for playworkers will persist.
- This could also significantly damage the Welsh Government’s reputation given public commitments already made to this proposal and the consultation responses which welcomed this proposal.
- There could be continued calls on SCW to provide support to those outside the current definition.

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## Option 2:

### **Amendment to RISCA: Extending the definition of ‘social care worker’ to include childcare workers.**

- 7.296 Section 79(3)(d) of the 2016 Act currently provides that the Welsh Ministers may by regulations provide that a person ‘registered under the part 2 of the Children and Families (Wales) Measure 2010 (nawm 1) as – (i) a childminder, or (ii) a provider of day care for children’ may be treated as a social care worker.
- 7.297 The Social Care Wales (Extension of Meaning of “Social Care Worker”) Regulations 2016/1251, made in accordance with s.79 (3)(d) (ii) extend the meaning of ‘social care worker’ to include persons registered under part 2 of the Measure as a day care provider.
- 7.298 However, there is currently no provision within the Act allowing regulations to be made specifying that persons who are employed by (or work for) a day care provider registered under Part 2 of the Measure, are to be treated as social care workers.
- 7.299 The role of SCW as a strategic partner of the Welsh Government, has historically seen them providing support to all workers in the childcare sector.
- 7.300 Whilst legally there is no distinction between persons who work/are employed within daycare and play settings (play settings being included within the meaning of day care in section 19 of the Measure) in practice the support provided by SCW has not extended to persons working within play settings (play workers). It is proposed that any regulations made in accordance with the amendment will formalise the support currently provided by SCW to the sector and ensure that this is provided to the sector as a whole (including play workers).
- 7.301 The purpose of the proposed amendment is to allow regulations to be made specifying that childcare workers are to be treated as social care workers, and to provide a legal basis for the support SCW provide to the childcare workforce. Furthermore, the amendment is required to make clear that playwork workers are also covered by the remit of SCW as part of the childcare workforce.
- 7.302 The amendment will also ensure that SCW are able to support the childcare workforce as a whole. For the purpose of this amendment childcare workers are individuals who are employed by or who work (including as agency workers) for, a person registered under Part 2 of the Children and Families (Wales) Measure 2010 (the Measure) as a day care provider to provide care and supervision for children.
- 7.303 In taking this option, **risks** include:

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- Over recent years, in the absence of a dedicated body to oversee the playwork qualifications framework and development of the playwork workforce, PETC Wales<sup>80</sup> has carried out functions relative to a body such as SCW. As a result, they may feel that they should retain some of the functions which should fall to SCW if playworkers are recognised as social care workers.
- The amendment would mean that SCW could fully support playworkers. This would require SCW to develop their capacity and expertise in playwork which would take time and resources to develop. There is a risk that SCW may not be able to offer the same level of support to playworkers as childcare workers initially.

7.304 In not taking this option, anticipated **risks** include:

- The 10 Year Childcare, Play and Early Years Workforce Plan very clearly identifies SCW as Welsh Government's key strategic delivery partner given the history of SCW providing key workforce support and leading qualification developments and assurance processes across the sector. A refreshed version of the plan will be published in 2024 and will reaffirm this strategic role which could be weakened with this legal ambiguity.
- Prior to this proposed amendment, SCW understood that their role *covered all those* working in the sector and was not limited to only the responsible individual and childminder. Without the amendment, although unlikely, they could seek to only offer support to those who are covered by the existing legal definition, which would have significant impact on the support provided to the childcare workforce.

## **Costs associated with each option**

### **Option 1**

#### **Workforce/Service Providers (Employers)**

7.305 There would be no additional costs for the workforce and employers, as SCW support is free at the point of access.

#### **Welsh Government**

7.306 Work plan delivery and funding are reviewed on an annual basis. In general, costs increase on a year by year basis due to staff costs and /or delivery of specific projects. Taking option 1 would incur no costs above

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<sup>80</sup> The Playwork Education and Training Council for Wales (PETC Wales) is a group that discusses issues of strategic importance to all aspects of playwork education, training and qualifications in Wales. PETC Wales' functions include approving playwork qualifications that will be included in the List of Required Qualifications to work within the Playwork Sector in Wales and providing advice and guidance to the Welsh Government, Qualifications Wales, Social Care Wales and Care Inspectorate Wales on issues relating to education, training and qualifications.

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and beyond this for Welsh Government, as SCW would not be undertaking any additional work to support playworkers.

### **Social Care Wales**

7.307 No additional costs are anticipated as their remit would not be expanded to include coverage of playworkers.

### **Option 2**

#### **Workforce/Service Providers (Employers)**

7.308 There would be no additional costs for the workforce or employers as SCW support is free at the point of access.

### **Welsh Government**

7.309 The proposed amendment, and the making of any future regulations specifying that childcare and playworkers be treated as social care workers would enable playworkers to access more of the support and advice provided by SCW.

7.310 While SCW's existing arrangements to support childcare workers would continue, their work could increase in scope to support playwork workers. The shape and extent of that support is to be determined by Welsh Government in partnership with relevant sector partners and within available funding.

7.311 Officials will look to explore all potential options with a view to developing a sustainable and cost-effective approach to support the childcare and playwork workforce, utilising existing knowledge and experience in the playwork sector.

### **Option 1 Benefits**

7.312 We do not consider there to be any benefits associated with this option.

### **Option 2 Benefits**

7.313 This option will allow regulations to be made providing a legal basis for the functions SCW currently carry out to support the childcare workforce. It is anticipated that as a result the support provided by SCW will be extended to the childcare workforce as a whole, including to play workers. This will result in play workers feeling better represented and valued and will action relevant recommendations of the Ministerial Review of Play.

7.314 Playwork staff often have dual roles, providing both childcare and play opportunities and as such, this amendment is seen to offer a consistency in terms of support to those workers.



## **Amendments to the Social Services and Well-being (Wales) Act 2014**

### **Options, costs and benefits**

#### **Option 1 - Do nothing - retain the status quo**

7.315 The amendments are intended to ensure that current practice aligns with the provisions of the Social Services and Well-being (Wales) Act 2014 (“the 2014 Act”), specifically:

- Amending section 47 of the 2014 Act in order to ensure that the boundaries of health and social care are maintained;
- Reconfiguring the provisions in Part 4 of the 2014 Act that enable the making of direct payments by local authorities in order to enable a direct payment to be made to a third party nominated by an individual entitled to receive such a payment in cases where the individual person has mental capacity to make that decision;
- Amending sections 76 and 81 to clarify references to “child arrangement orders”;
- Amending the Welsh text of section 124(9) to add reference to circumstances where a local authority is placing a child in secure accommodation in Scotland in accordance with section 25 of the Children Act 1989 to the cases in which the provision in section 124 is disapplied. This will restore the equivalence of the English and Welsh texts of that provision.

7.316 There are no expected additional costs or benefits associated with retaining the status quo, if these amendments are not made. In addition, the amendments to sections 76, 81 and 124(9) are necessary in order to correct errors in the statutory framework created by previous enactments, and so maintaining the status quo is not a realistic option.

7.317 If the amendments to section 47 and to Part 4 of the Act are not made, there will remain a risk that some aspects of current practice could change in future in a way that is not compatible with the policy intentions of the Act as agreed by the Senedd. In particular, it is possible that:

- there could be a shift in future in the perception of the limits of a local authority’s powers to meet health care needs and therefore in relation to the boundaries between health and social care;
- some local authorities could decide to discontinue some direct payments to nominated third parties if the opportunity is not taken to secure that this practice is compatible with the wording (as well as the intent) of the 2014 Act.

#### **Option 2 – Make amendments to the Social Services and Well-being (Wales) Act 2014 (“the 2014 Act”) to align this legislation with current practice**

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7.318 As explained above, these amendments are intended to ensure the current practice aligns with the legislation as well as possible in a number of areas.

7.319 There are no expected additional costs or benefits associated, if these amendments are made.

7.320 However, in making these amendments, it is intended to remove the risk that some aspects of current practice could change in future.

## 8. Competition Assessment

8.1 The Competition Assessment focuses on the element of the Bill which aims to eliminate profit from the care of looked after children. Other elements of the Bill do not have identifiable impacts upon competition.

### Competition Assessment for Eliminating Profit from the care of looked after children:

#### The competition filter test

Question	Answer yes or no
<b>Q1:</b> In the market(s) affected by the new regulation, does any firm have more than 10% market share?	Yes
<b>Q2:</b> In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
<b>Q3:</b> In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
<b>Q4:</b> Would the costs of the regulation affect some firms substantially more than others?	Yes
<b>Q5:</b> Is the regulation likely to affect the market structure, changing the number or size of firms?	Yes
<b>Q6:</b> Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q7:</b> Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q8:</b> Is the sector characterised by rapid technological change?	No
<b>Q9:</b> Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	Yes

8.2 This Bill proposes that only not-for-profit providers will be able to register with Care Inspectorate Wales (CIW) as a care home service for children or a fostering service. This would mean that only not-for-profit providers would be permitted to operate within Wales. It is self-evident that this will profoundly impact the children's social care market.

8.3 However, the children's residential and fostering sector is not comprised of homogenous for-profit companies. It encompasses a broad spectrum of businesses differing in size, scope, and objectives with vastly different commercial models. These will be impacted differently.

8.4 There are many Small and Medium-sized Enterprises (SMEs) in the sector. These are typically owned and operated by people with experience in

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children's social care and tend to focus on a tight geographical footprint. The motivation for these entrepreneurs initially entering the market often goes beyond financial gain; they are driven by a passion for making a tangible difference in young people's lives and have sought to leverage their expertise to fill specialist gaps within the children's social care market. As with many smaller companies, these social care businesses are particularly vulnerable to changes in customer behaviour. In this case, their success depends on good commissioning relationships and strong market signals. The ownership of these companies is almost always based in Wales, and they are part of the foundational economy. The ability of these companies to remain in the sector by converting to a not-for-profit commercial model will depend on many factors including the level of debt.

8.5 Larger companies in the sector frequently expand their focus beyond children's social care, venturing into related fields such as education or health. These companies aim to create commercial and operational synergies between children's and adult services. They work on a regional footprint and often have services on either side of the Welsh border. They have the scale to develop and run specialist services. These companies are less vulnerable to Welsh local authority customer behaviour and have the corporate knowledge and regulatory experience to quickly switch away from children's residential care to adult residential care or supported living services. This would enable them to retain profitable assets which they have invested in. They could also continue to exist as profit-making companies by ceasing their operations in Wales, closing services wholly or transferring operations into England, where these services exist close to the border.

8.6 Medium-sized residential social care providers have invested in existing services or new growth from shareholder funds, and others have funded expansion through debt. They also often operate on very long investment cycles. It is also less likely that companies with external debt or significant shareholder investment will convert to a not-for-profit arrangement unless this is incentivised. Companies that deliver foster care may convert to not-for-profit arrangements as the investment cycle is much shorter and requires less capital investment.

8.7 On the other end of the spectrum are entities that run multiple services owned by public limited companies or owned by private equity. These organisations provide a significant market share of Welsh children's social care but operate across vast geographies and industrial sectors. The reasons these companies invest in children's social care include:

- There is a consistent and non-cyclical demand for children's social care services, making it an attractive sector for investment. The need for these services does not diminish significantly during economic downturns, providing a stable revenue stream.
- Children's social care is publicly funded, offering a secure long-term source of income and attracting private investors who see a lower risk in their investment.

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- Private equity firms often seek to invest in sectors with opportunities for consolidation, operational improvements, and scaling. The children's social care market is fragmented, offering opportunities for investors to buy smaller providers, streamline operations, and create larger, more efficient organisations with higher profit margins.

8.8 A typical trajectory involves the acquisition of SMEs by larger companies, which in turn may be bought out by private equity firms. This process often unfolds over many years as medium-sized companies organically look to broaden their services and market reach. Subsequently, these larger entities become attractive targets for private equity firms, which specialise in leveraging financial strategies to maximize returns. Private equity borrows money to finance their acquisitions. This strategy allows them to invest in companies with the potential for high returns while minimising the initial capital required.

8.9 Private equity investors will consider their continued presence in the Welsh social care market based on the potential for continued profit through recharge arrangements. Many have a track record of investing in highly regulated markets and, therefore, have the size and scope to create complex company structures that can successfully deliver not-for-profit care within an overall for-profit group. Provisions in the Bill regarding unreasonable or disproportionate financial arrangements seek to mitigate against profit being extracted via such complex structures.

## 9. Impact Assessments

### **Eliminating Private Profit from the Care of Looked After Children**

9.1 A series of impact assessments or screening processes have been completed on the Bill as part of our Integrated Impact Assessment., alongside the Explanatory Memorandum and Regulatory Impact Assessment. The impact assessments included:

- Equalities Impact Assessment
- Children’s Rights Impact Assessment
- Welsh Language Impact Assessment
- Biodiversity Impact Assessment
- Socio-Economic Duty
- Justice Screening Tool
- Health Impact Screening Tool
- Data Protection Screening Tool

9.2 A number of these assessments have highlighted specific issues to consider. These will be kept under review as the legislation progresses through the Senedd. Where the assessments have highlighted negative impacts, consideration has been given as to how these can be mitigated. Discussions are also ongoing with external stakeholders on the impacts of the Bill and associated mitigating actions.

#### **Equality Impact Assessment**

9.3 The proposal will positively impact equality by enabling consistent care opportunities and experiences for children, young people and the families that care for them. The availability and quality of existing care services varies significantly and providers from the different sectors may currently have different sets of rules and arrangements e.g. fees or allowances. This can lead to feelings of unfairness and inequity.

#### **Children's Right Impact Assessment (CRIA)**

9.4 In exercising their functions, the Welsh Ministers are required to have due regard to the UNCRC<sup>81</sup>. This duty is imposed by section 1 of the Rights of Children and Young Persons (Wales) Measure 2011<sup>82</sup> and in relation to those carrying out functions under the 2014 Act, section 7(2)<sup>83</sup> also applies.

9.5 The recommendations arising from the proposal to eliminate profit are intended to have a positive impact on the lives of looked after children and young people. It is in part due to what children and young people have told Ministers, the Children’s Commissioner for Wales and Voices from Care, that the commitment to eliminate private profit has been made. The impact

<sup>81</sup> <https://www.unicef.org.uk/what-we-do/un-convention-child-rights/>

<sup>82</sup> <https://www.legislation.gov.uk/mwa/2011/2/section/1>

<sup>83</sup> <https://www.legislation.gov.uk/anaw/2014/4/section/7>

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assessment identifies Article 3 (best interest of the child), Article 12 (respect for children's views) and Article 20 (children who cannot be looked after by their own family must be looked after properly, by people who respect their religion, culture and language) of being of particular relevance to the proposal.

9.6 The proposal should have positive impacts on these Articles through the development of a range of good-quality stable placements which meet all of a child's needs and provide a supportive environment in which children are kept safe and receive the care and support they need in order to thrive. These placements will enable a child to be placed close to home and maintain links with family, friends, education and other support services important to their well-being.

9.7 However, it is acknowledged there is a risk to placement sufficiency and stability as we build resilience and there is the potential for this to have a negative impact on children's rights and their outcomes in the short term.

### **Welsh Language Impact Assessment**

9.8 The proposal may have positive impacts on the Welsh language provision in the social care sector, such as stimulating the growth of bilingual or Welsh-medium local and not-for-profit services. However, there are also potential negative impacts, such as the risk of losing Welsh-speaking staff and carers from the private sector.

### **Biodiversity**

9.9 The impact of the Programme and the recommendations it makes on biodiversity, is neutral. However, it may potentially be a consideration when public/not-for-profit agencies decide where to locate any new-build care homes. In practice, though, most care homes are in existing buildings which are then adapted to suit their purpose. If necessary, we will seek to encourage developers of any new build care homes to ensure the consideration of biodiversity in their plans.

### **Socio-Economic Duty**

9.10 The programme aims to improve the well-being of looked after children, who often face multiple disadvantages, by creating a care and support sector that meets their needs and is led by public and not-for-profit providers. This could also benefit social care workers, who would have better pay, conditions, and career prospects. The programme will help local authorities plan their placements, assist existing and new not-for-profit providers, and ensure a smooth transition for staff and carers from the private sector. (This will contribute to the national well-being goal of a more equal Wales).

### **Justice Impact Assessment**

9.11 The proposals may lead to a small increase in the numbers of appeals to the First-tier Tribunal. This is because there are likely to be an increase in decisions to cancel a provider's registration or to vary registration to remove a children's home service or foster care service, as there will be new grounds for cancellation, on the basis that the provider is not eligible to provide the service as they do not meet the not-for-profit criteria. In addition, decisions

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about whether a provider is a fit and proper person will now, where appropriate, take into account whether the provider has entered into a financial arrangement for the benefit of an employee, worker, office or connected person which is unreasonable or disproportionate in all of the circumstances and which in consequence may undermine the service provider's pursuit of its objects or purposes (new section 9A of the 2016 Act). This means that the First-tier Tribunal, may be required, in certain cases, to determine whether a particular financial arrangement falls within section 9A. In addition, it is possible that there could be occasions where an applicant for registration as a provider of a children's home service or fostering service may apply for judicial review of a decision that they do not meet the not-for-profit criteria.

9.12 We do know the family courts are dealing with increasing numbers of cases related to the shortage of therapeutic placements for children with complex needs. Action is being taken in this area via the Programme for Government commitment to '*Fund regional residential services for children with complex needs ensuring their needs are met as close to home as possible and in Wales wherever practicable.*' £4.8m has been invested in RPB areas to pump prime the development of regional residential accommodation for care experienced children with complex needs. A further 20 residential beds have/will come online as a result.

### **Health considerations**

9.13 The programme should also help further develop integrated and innovative and holistic approaches to the commissioning and provision of care and support services for looked after children 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). The programme should have a positive impact upon the lives of the following groups of children and young people:

- looked after children who need care and support;
- children on the edge of care or at risk of going into care; and
- disabled children and young people who need care and support

9.14 Evidence<sup>84</sup> suggests that looked after children are likely to have poorer life chances, experience health inequalities and report poorer outcomes across a wide range of health domains.

9.15 Every looked after child has a health assessment as part of their Part 6 care and support plan, which sets out the child's health and well-being needs and outcomes and how these will be met. This is set out in the Care Planning, Placement and Case Review (Wales) Regulations 2015<sup>85</sup> and the Part 6 Code of Practice.

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<sup>84</sup> P.A. Fisher, L.D. Leve, B. Delker, L.E. Roos, B. Cooper. [A developmental psychopathology perspective on foster care research](#). D. Cicchetti (Ed.), Developmental psychopathology, maladaptation and psychopathology, Vol. 3, Wiley, Hoboken, NJ (2016), pp. 513-554.

<sup>85</sup> <https://www.legislation.gov.uk/wsi/2015/1818/contents/made>



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## **Data Protection**

9.16 The proposal involves new legislation which will require the processing of personal data by local authorities, fostering services and children's homes providers who do not meet the "not for profit" requirements for registration which will be introduced in the Bill.

9.17 The Bill will allow for transitional arrangements under which local authorities will be required to apply to the Welsh Ministers for approval to place children with providers that will no longer be eligible to be registered with Care Inspectorate Wales (CIW) because they do not meet the tests (permitted business models and objects / purposes) but will continue to be so registered on a transitional basis and will be able to provide placements which have been approved by the Welsh Ministers.

9.18 The approvals process will involve applications by local authorities which will be sent to a team in the Welsh Government tasked with considering and determining the applications. The applications will not include names of individual children but it is possible that in some cases a child could be identified from the information provided.

9.19 Provision will also be made that will require these ineligible providers to only accept placements from local authorities outside of Wales in certain prescribed circumstances. This will require processing data about the children who are the subject of these placements.

9.20 These steps will involve processing the personal data of the children who are the subject of approvals and this data being transferred between local authorities, Welsh Government and the regulator, Care Inspectorate Wales.

9.21 A data protection impact assessment is being prepared.

## **Introducing Direct Payments for Continuing Health Care**

9.22 The Bill will deliver the Programme for Government commitment to improve the interface between Continuing Health Care (CHC) and direct payments (DPs). The proposal to introduce direct payments for CHC is intended to reinstate the voice and control of those who have assessed needs under CHC.

9.23 Stakeholders in Wales have highlighted the loss of people's voice and control when transferring from local authority provided social care (with the ability to make direct payments in lieu of service provision) to NHS funded CHC (where the option of direct payments is lost).

9.24 For many, in addition to a loss of voice and control; no longer being able to employ personal assistants they have become familiar with and whom they choose to deliver their care, contributes to the need for Direct Payments.

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9.25 The proposal is strongly aligned with the Healthier Wales and More Equal Wales goals of the Well-being of Future Generations (Wales) Act 2015. As well as health benefits, using direct payments to deliver CHC would also promote equality for disabled people and those with complex health care needs by introducing models of healthcare which are person-centred and allow the individual to have voice and control over their lives.

9.26 The proposal can be linked to other key public health agendas, for example the shift towards Value-Based Health Care (VBHC) - involving patients and clinicians together in making shared informed decisions.

9.27 It will also contribute to wider public policy agendas such as support for the foundational economy, ensuring that money is spent on healthcare in a way that will benefit our people and our economy. Recruiting and employing locally based Personal Assistants to deliver CHC will encourage greater spend of LHB budgets within local communities.

The following full specific impact assessments have been completed:

- Equality
- Rural Proofing
- Welsh language
- Economic / RIA

9.28 If necessary, the relevant impact assessments will be developed alongside the secondary legislation which flows from the Bill.

### **Collaboration and involvement**

9.29 The proposal and options for implementation have been developed with representatives of key stakeholder groups including health boards, local authorities, disabled people's organisations, disabled people and people with lived experience and third sector groups.

9.30 Equalities, human rights and the Social Model of Disability have been very important guiding principles within this policy work and will continue to be in any implementation plan.

### **Impacts and arguments for and against the proposal**

9.31 The main impacts can be summarised as follows:

<b>Strengths</b>	<b>Weaknesses</b>
<ul style="list-style-type: none"><li>• Fairness in terms of mechanisms available to ensure voice and control whether care is provided by local authority or health board</li><li>• Potentially more individuals agreeing to CHC assessments, without fear of losing direct payments, therefore having their</li></ul>	<p>A number of potential issues to resolve have been highlighted by stakeholders, particularly NHS CHC Leads including:</p> <ul style="list-style-type: none"><li>• Resource, time and training to introduce a new system</li><li>• Adapting and enhancing governance &amp; risk management</li></ul>

<p>complex health needs better managed</p> <ul style="list-style-type: none"> <li>• Avoiding the issue of local authorities continuing to meet people’s complex needs, if they have refused CHC assessment due to fear of losing direct payments</li> <li>• More responsive and personalised care, sensitive to a person’s preferences (e.g. cultural and language) and delivered in the person’s own home with resulting wellbeing benefits</li> <li>• Evidence of better value for money than CHC delivered conventionally, and more valued by recipients of the care</li> <li>• The opportunity to learn from guidance, case studies and evaluations of what has worked well in England – since October 2014 people eligible for CHC have been given the legal right to a personal health budget and to access direct payments.</li> </ul>	<p>processes including robust eligibility guidance</p> <ul style="list-style-type: none"> <li>• Ensuring quality and safety of care which has been delegated to Personal Assistants</li> <li>• IT, financial infrastructure, procurement processes and support for those in receipt of direct payments</li> <li>• Choices regarding how healthcare needs are met can be very limited, there is a balance between choice and what is clinically assessed as necessary to meet a health need, therefore there will be a need to manage expectations</li> <li>• The potential for less control over the terms and conditions of staff employed via direct payments as compared to those in the healthcare system, and therefore a worsening of those terms and conditions.</li> </ul> <p>Note - A great deal of time has been spent on identifying any potential issues and planning how they can be resolved and mitigated. Learning from relevant measures in England as well as drawing on existing frameworks in Wales e.g. NHS Delegation Framework, Social Care Direct Payments Code of Practice etc.</p>
<p><b>Opportunities</b></p> <ul style="list-style-type: none"> <li>• Tailor a new approach suitable for Wales, learning from PHBs and rollout of short term measures in Wales and co-producing with stakeholders</li> <li>• Opportunity for unpaid carers and family members to become paid employees as personal assistants – creating jobs and rewarding unpaid carers</li> <li>• Opening up new ways to deliver care, reducing strain on domiciliary care services</li> </ul>	<p><b>Threats</b></p> <ul style="list-style-type: none"> <li>• Potentially higher number of individuals transferring to CHC, especially initially, therefore increased costs for health boards</li> <li>• Potential risks around Personal Assistants (as opposed to registered staff) undertaking care tasks*</li> <li>• Perceived risk of a form of increased privatisation of healthcare, however LHBs already commission services</li> </ul>

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<ul style="list-style-type: none"> <li>• Moving towards more person-centred care and voice and control for individuals receiving health and social care services</li> <li>• Amending the 2006 Act in a broad way to allow LHBs to provide direct payments, would allow the option to expand direct payments to other areas beyond CHC, via Regulations, in the future, if that was desired</li> </ul>	<p>from the private sector under CHC. Also Regulations and Guidance can set out specifically what can and can't be included under direct payments.</p> <p>*Will require clear delegation procedures (already in place). Tasks will be routine, with escalation for any non-routine care needs</p>
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**Key groups affected:**

9.32 The key groups affected are:

- CHC users
- Disabled people
- Older people
- Local Health Boards
- The wider community
- Local authorities
- People in rural areas
- Minority groups

9.33 The key impact on those groups is shown below:

CHC users:

- Wellbeing: significant positive impact on wellbeing (more control over their daily lives and the support they receive), may lead to CHC users being more integrated into their community via clubs etc (combatting social isolation); this increases possibility of re-engagement with education and the world of work.
- Health:
  - Improvement to wellbeing/feeling of being in control of own health care increases engagement with health care treatments and reduces unplanned admissions long term.
  - Independence leads to an improvement in mental wellbeing.
  - Health benefit to those currently refusing CHC as they would receive appropriate complex care.

Disabled people:

- Wellbeing/Health:
  - Individuals from the disabled community will feel listened to, as they have campaigned for this change for many years with a view to enabling disabled people to be able to have maximum control and choice in their own lives.
  - The change will align with the social model of disability's aim of removing societal barriers that prevent disabled people from making decisions for themselves.

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- Disabled people will feel able to go for a CHC assessment and if eligible receive the care they need, rather than staying with social care and potentially compromising on receiving the health interventions they need.

Older people:

Wellbeing/Health:

- The option of direct payments would mean that older people in receipt of CHC could potentially be cared for at home in familiar surroundings and by people chosen by themselves or their families.
- Personalised and timely care regimes would lead to reduced need for emergency admissions to a nursing home or to hospital, avoiding traumatic upheavals

Local Health Boards:

- Whilst LHBs agree with the principle of increasing voice and control for those receiving healthcare, they have shared a number of concerns about the delivery of direct payments in practice. These can be summarised into three main categories as below:

- **Cost concern** – Potential for increased costs (especially initially) at a time of budget constraints for the NHS as a whole.

Proposed mitigations:

1. Proposal for core set up and delivery costs to be absorbed by Welsh Government for a transitional three-year period.
2. After the initial years, the costs of establishing the new approach will begin to be offset by savings from introducing Direct Payments. Analysis in England has evidenced a saving of 16% for CHC packages delivered via Direct Payments. The RIA has modelled a saving range from 11% - 16%.

- **Skillset concern** - New skillsets required to deliver DPs.

Proposed mitigations:

1. Proposal to set up a 'hub model' approach to centralise core administrative DP functions and draw on locally-based expertise/skillsets.

- **Delegation concerns** - Increased governance arrangements needed to ensure safe delegation of care to PAs.

Proposed mitigations:

1. Welsh Risk Pool has agreed to help draft guidance and hold training sessions on the governance / risk elements for LHBs.
2. Insurance will be in place for each Direct Payments package which will substantially reduce risk to the Local Health Boards themselves.

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3. Plans to refresh the Welsh NHS Third Sector delegation guidance during year one of implementation to take account of direct payments.

- The wider community: individuals from the local community will be employed via Direct Payments and money will stay in the community, rather than procurement contracts going to large companies which may not be locally-based or may have headquarters outside Wales.
- Local authorities: the introduction of Direct Payments in CHC will alleviate some of the pressure on local authorities in terms of continuing to manage individuals with complex needs, as those individuals will now be willing to be assessed for CHC. The associated costs should transfer also.
- People in rural areas: Direct payments may offer one route to address challenges within the care sector which are exacerbated by rurality – people may be more likely to find carers themselves than larger agencies which may struggle to recruit and organise care in dispersed areas. Direct Payments will support an individual to choose carers who can work in Welsh in those Welsh speaking parts of Wales which are rural.
- Minority groups including people with protected characteristics: Direct Payments allow members of minority groups to choose carers with the same cultural, linguistic or religious background which will increase confidence/comfort. Will allow LGBTQ+ individuals to employ individuals they feel comfortable with. Freedom of choice will be particularly beneficial for minority groups with intersecting protected characteristics as individuals will have control over the staff they employ to ensure all their needs are met.

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### **Regulatory regime for regulated services, service providers and designated responsible individuals**

9.34 A public consultation on the Bill was undertaken in 2022, and organisations representing groups most likely to be affected by the proposal were engaged with directly, including:

- Service providers and professionals working in social care, health, police and probation, education and childcare, and their representatives.
- People using social care services, their families, and representatives.
- Adults in receipt of Continuing NHS Healthcare, their families, and representatives.
- Care Inspectorate Wales (CIW) and Social Care Wales, and those regulated by or who engage with them.

9.35 The most significant positive impacts are outlined as follows:

- the amendments to enable identifying services operating without registration will support the aim of safeguarding vulnerable individuals 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.
- the amendments to place the requirement to publish annual returns on service providers will greatly reduce the burden on CIW who will not need to check the returns for potential data breaches or other information that may not be appropriate to publish. This will enable CIW to focus on their core role of regulating services.
- the amendments to the procedure to be followed when cancelling a service provider's registration without application serve to create greater consistency in practice and remove unnecessary steps within processes, enabling CIW to take a more agile and nuanced response, saving time for the regulator and for providers.
- the amendments to enable regulations to be made prescribing that an application to cancel a service provider's registration contain prescribed information and be made in a prescribed form will enable regulations to be made allowing CIW to require information from providers seeking to cancel their registration, about how they intend to comply with regulations under section 27 of the 2016 Act until the service ceases to operate. This is consistent with the process already in place for applications to vary a provider's registration. The information will provide assurance to CIW that the service can continue to support the safety and well-being of individuals at the service and create clarity for service providers about the information that is expected in these circumstances.

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9.36 The following could be viewed as negative impacts:

- the amendments to place the requirement to publish annual returns online on service providers could result in time or cost implications in setting up and maintaining websites for any service providers that do not already have their own websites. However, whilst we recognise that a minority number of service providers may not have a website, many platforms enable basic websites to be set up quickly and free of charge or for a small fee. We consider there to be sufficient time before the requirement comes into force for providers to set up a website.

9.37 The proposals relating to these amendments will serve to achieve the original policy intent of the Regulation and Inspection of Social Care (Wales) Act 2016, 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.



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### **Regulation of the Social Care workforce**

9.38 Whilst not implementing the proposals would not have a significant impact upon the regulator, or the sector, implementing the proposals would help streamline the registration and fitness to practise processes. The overall benefits will be long-term and help reinforce the notion of a fair and inclusive regulatory regime in Wales.

9.39 The consequences outlined by Social Care Wales have been unintended and these simple rectifying actions will provide the regulator with powers to provide greater support to the workforce and ensure that our regulatory practices are speedy and proportionate.

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### **Other minor and technical amendments**

9.40 The other minor and technical amendments outlined in Chapter 3 of the Bill are not expected to impact on current practice. Consequently, the RIA does not discuss the costs, benefits or other impacts of these amendments. By ensuring greater legal certainty, however, these amendments are expected to reduce the risk that the policy intentions behind the relevant provisions of the 2014 and 2016 Acts will not be fully realised.

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## **Definition of social care worker to include childcare and play workers**

### **The childcare and playwork workforce**

9.41 The proposal's ultimate goal is to ensure that all those who make up the childcare workforce (including playwork) can be offered ongoing support by an expert body. This will take place on many fronts, through attraction, entry, recruitment, induction, and career progression. At all times the goal of SCW is to develop a highly skilled qualified workforce with a child centred approach at the heart of all they do.

9.42 Where this role has historically been accepted by SCW for the childcare workforce and they are funded to do so, this will now be placed on a more formal footing and expanded to include the playwork workforce.

9.43 The amendment will also ensure that SCW are able to support the childcare workforce as a whole. Whilst legally there is no distinction between persons who work/are employed within daycare and play settings (play settings being included within the meaning of 'day care' in section 19 of the Measure) in practice the support provided by SCW has not extended to persons working within play settings (play workers). It is proposed that any regulations made in accordance with the amendment will formalise the support currently provided by SCW to the sector and ensure that this is provided to the sector as a whole (including play workers).

9.44 SCW already have a strong positive relationship with key sector bodies such as Play Wales. Collaboration will be key in ensuring that the expertise they hold is utilised and that key playwork principles and values are reflected in SCW's support for the whole workforce..

9.45 The proposal will help ensure that the playwork workforce feels valued and supported as they are brought under the umbrella of an expert body.

### **Children**

9.46 In supporting and developing the workforce, SCW are seeking to ensure that all children will have the best start in life supported by high quality, positive staff working across a range of different settings.

### **Parent/Carers**

9.47 Via their WeCare Wales framework, visibility of the childcare and play workforce will be enhanced providing reassurance for parent/carers on the work undertaken by the sector. The key principles and values relating to both childcare and playwork will be placed on a more formal footing and will allow for regular demonstrations of the role and the added value this workforce brings to the development of children.

9.48 The impacts of the proposal are expected to be largely positive for the current and future workforce. The long-term goal of ensuring a sustainable, high quality and valued childcare and playwork sector remains in frame in seeking this amendment.

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9.49 The sustainability of the childcare and playwork sector is a positive impact of the proposed change through the continued support of SCW; as a key part of the foundational economy it enables parents to return to work, increase their hours and support those working irregular hours.

9.50 The proposals bring the playwork sector formally into the support offer provided by SCW to result in a whole childcare and playwork sector that feels included and supported. High quality childcare and playwork provision can have a positive influence on a child's development and help them develop to their full potential. Evidence suggests children from disadvantaged backgrounds benefit more from high quality childcare and that it can help redress both developmental disadvantages and the attainment gap.

## **10. Post implementation review**

### **Eliminating Private Profit from the Care of Looked After Children**

#### **Implementation and Compliance**

10.1 The legislative provisions relating to the elimination of profit will come into force on a day appointed by the Welsh Ministers. The overall timetable previously set out by Ministers is that:

- New providers registering with CIW will have to be a not-for-profit entity (as set out in the Bill) from 1 April 2026
- Any current ‘for profit’ providers will need to transition to, and register with CIW, as a not-for-profit entity (as set out in the Bill) by 1 April 2027 unless benefitting from the transitional provisions set out in the Bill.

10.2 Guidance will be published for local authorities to support implementation and compliance with the Bill and ensure its provisions are clearly understood by those affected.

#### **Formal evaluation and review**

10.3 The implementation of the eliminating profit element of the Bill will be underpinned by a programme of ongoing monitoring and evaluation. This will in part be achieved through the Eliminating Profit Programme Board which was established in 2021 to support delivery of the Welsh Government’s commitment to eliminate profit. Chaired by the Chief Social Care Officer for Wales it brings together representatives from across the sector to help shape and monitor delivery and implementation, to assess and mitigate risks, to inform and review the approach and to deliver market stability. This Programme Board will continue to meet on a regular basis in order to monitor and evaluate implementation.

10.4 More formal evaluation would need to focus on the extent to which the legislation has contributed to delivering the change across the range of key outcomes where we expect it to make a difference. As highlighted above, this includes improving placement planning and capacity management, improving placement stability and ensuring that children can be based locally in a placement that best meets their needs. The evaluation would also focus on how the legislation is being implemented in Wales and the role of key partners in delivering its objectives, as well as any other consequences. Further consideration will be given to the content of the evaluation and review over the coming months.

#### **Data**

10.5 The most relevant administrative data routinely collected by the Welsh Government and partners will be utilised in the monitoring and evaluation of the legislation. Importantly, this will include a range of information collected by local authorities, Care Inspectorate Wales and the Children’s Commissioning Consortium Cymru (the 4 C’s) on the make-up of, and sufficiency within, the children’s social care market, market stability, inspection outcomes and enforcement.

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### **Introducing direct payments for Continuing Healthcare**

10.6 In order to assess this proposal's effectiveness, we will commission an independent evaluation. This evaluation will cover both the implementation and the impact of the proposal. The implementation will be assessed through a process evaluation, which may include the development of a Theory of Change, which maps the inputs and activities undertaken through the proposal into immediate outputs, then into longer term outcomes and impacts.

10.7 The process evaluation will also include interviews with those involved in implementing the proposal to explore any barriers or issues which may have an impact on the effectiveness of the final implementation. This helps shape the proposal's delivery in the future and makes sure that the proposal is being delivered as intended.

10.8 The impact evaluation will then go onto test those outcomes and impacts with the intended recipients of the proposal. This evaluation will make use of a variety of methods, such as using published datasets, a survey and/or in-depth interviews to explore the impact of the proposal. This will then help inform future policy development and assess the final effectiveness of the proposal.

10.9 LHBs' own datasets will also be requested to provide a picture of take-up of direct payments for CHC across Wales, and this will be monitored over time to see if the option remains accessible and if, as was seen in England, demand for the option grows.

### **Regulation of the Social Care workforce**

10.10 The Welsh government will work with Social Care Wales to develop a post-implementation review of the registration programme by 2024.

### **Definition of social care worker to include childcare and play workers**

10.11 If the legal ambiguity is rectified, and SCW's role becomes definitively support for childcare and playwork Welsh Government policy may lead to a requirement for additional Welsh Government funding to SCW in order to grow their capacity and expertise in playwork. Officials will work closely with PETC Wales and Social Care Wales to determine the most cost-effective and sustainable approach as well as the timescales for growth.

10.12 At present, regular monitoring meetings take place with SCW to monitor implementation of activity contained within their annual workplan, identify risks and any necessary mitigations. Any increase in SCW functions in relation to playwork, would be reflected in the workplan and monitoring arrangements. A review takes place to look at lessons learned and focus on a forward look for the next year's workplan including an assessment of costs. This process would continue and would afford an opportunity to look at necessary ongoing costs as SCW becomes more familiar ensuring its functions also cover support for playworkers.

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## 11. Affordability Assessment

### Approach

- 11.1 While the regulatory impact assessment assesses social value and includes cultural, social and environmental impacts alongside economic costs and benefits, this affordability assessment is a purely financial assessment. As such, only cash costs and cash-releasing benefits are included. Any environmental, social, cultural and wider economic costs and benefits identified in the Bill regulatory impact assessment have been removed from this affordability assessment.
- 11.2 The affordability assessment is focused on public bodies in Wales and considers the same time period as the regulatory impact assessment, 2025-26 to 2034-35.
- 11.3 The regulatory impact assessment identified a number of opportunity costs associated with the time spent by existing members of staff on activities related to the implementation of the Bill. Since these opportunity costs do not represent an additional financial outlay to the organisations concerned, they not been included in this affordability assessment.
- 11.4 The cash costs and cash-releasing benefits in this assessment have been adjusted to reflect anticipated inflation during the appraisal period. This adjustment has been made on the basis of the GDP deflator projections included in the Office for Budget Responsibility (OBR) Economic and Fiscal Outlook<sup>86</sup> which was published in March 2024. The OBR's projections extended only to 2028-29 and so the OBR's estimate for the final year of their forecast has been used for the remainder of the appraisal period. Although inflation is currently falling, there remains a degree of uncertainty as to its future path. The Welsh Government will continue to monitor the impact of inflation on the financial costs of the Bill.
- 11.5 Unless otherwise stated, all costs have been rounded to the nearest £1,000. Some of the totals in tables may not sum due to this rounding.

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<sup>86</sup> <https://obr.uk/download/economic-and-fiscal-outlook-march-2024/?tmstv=1709841488>

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11.6 The financial benefits of the Bill have also been assessed and the net cost, after benefits have been taken into account, is included to provide a full picture of the potential final budget requirements.

## Bodies

### *Local Authorities*

11.7 The financial costs attributed to local authorities are summarised in the following table. The costs are based on Scenarios B & C in the 'Eliminating private profit from the care of looked after children' section of the RIA.

**Table 11.1 – Estimated Local Authority costs (£000)**

<b>Local Authority Costs</b>	<b>2025-26</b>	<b>2026-27</b>	<b>2027-28</b>	<b>2028-29</b>	<b>2029-30</b>	<b>2030-31</b>	<b>2031-32</b>	<b>2032-33</b>	<b>2033-34</b>	<b>2034-35</b>	<b>Total</b>
<b>Capital costs</b>											
Scenario B	35,700	35,700	35,700								<b>107,100</b>
Scenario C	47,600	47,600	47,600								<b>142,800</b>
<b>Revenue costs/savings</b>											
Scenario B	30,759	13,994	- 2,773	- 24,441	- 24,441	- 24,191	- 22,943	- 21,695	- 21,695	- 21,695	<b>- 119,121</b>
Scenario C	40,474	18,399	- 3,279	- 32,169	- 32,169	- 31,971	- 30,983	- 29,995	- 29,995	- 29,995	<b>- 161,683</b>
<b>Total Costs</b>											
Scenario B	66,459	49,694	32,927	-24,441	-24,441	-24,191	-22,943	-21,695	-21,695	-21,695	<b>-12,021</b>



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Scenario C	88,074	65,999	44,321	-32,169	-32,169	-31,971	-30,983	-29,995	-29,995	-29,995	<b>-18,883</b>
<b>Total Adjusted for Inflation</b>											
Scenario B	72,273	54,960	37,108	-	-	-	-	-	-	-	-
				28,068	28,601	28,846	27,878	26,862	27,373	27,893	<b>31,181</b>
Scenario C	95,778	72,992	49,949	-	-	-	-	-	-	-	-
				36,943	37,644	38,124	37,647	37,139	37,845	38,564	<b>45,187</b>

11.8 The costs identified in the regulatory impact assessment as falling to local authorities relate to the elimination of profit from the care of looked after children. There are upfront capital costs as the capacity lost when for-profit providers exit the market, is replaced. There will also be revenue costs incurred in order to establish the new services. After the initial costs, local authorities are expected to accrue revenue cost-savings. There is also expected to be a further cost-saving to local authorities as a result of some people moving from social care payments to CHC direct payments.

11.9 The estimated financial costs to local authorities in the first three years are significant, although the estimated revenue savings across the ten-year assessment window are substantial. The Welsh Government anticipates providing support to local authorities during the initial implementation period.

#### *Local Health Boards*

11.10 The costs attributed to Local Health Boards in the regulatory impact assessment relate to the delivery of CHC Direct Payments. As Table 11.2 highlights, there will be an initial increase in costs as people switch from social care payments to CHC direct payments but cost-savings are expected to be realised towards the end of the period since the cost of direct payments is expected to be lower than traditionally commissioned CHC. Local Health Boards will also incur the administrative costs associated with CHC Direct Payments from 2027-28 onwards.

**Table 11.2 – Estimated Local Health Board costs (£000)**

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<b>Local Health Board Costs</b>	<b>2025-26</b>	<b>2026-27</b>	<b>2027-28</b>	<b>2028-29</b>	<b>2029-30</b>	<b>2030-31</b>	<b>2031-32</b>	<b>2032-33</b>	<b>2033-34</b>	<b>2034-35</b>	<b>Total</b>
<b>Total Costs</b>											
Minimum	380	2,240	3,660	4,000	3,440	2,458	-17	-2,536	-3,199	-3,749	<b>6,677</b>
Maximum	418	2,478	4,235	4,738	4,378	3,558	1,083	-1,399	-1,849	-2,224	<b>15,416</b>
<b>Total Adjusted for Inflation</b>											
Minimum	413	2,477	4,125	4,593	4,026	2,931	-21	-3,140	-4,036	-4,820	<b>6,549</b>
Maximum	455	2,741	4,773	5,441	5,124	4,243	1,316	-1,732	-2,332	-2,859	<b>17,167</b>

11.11 In the context of overall local health board expenditure on CHC (£448m in financial year 2022-23), the projected costs are a relatively small proportion. One-off costs of absorbing a cohort of local authority care recipients should be followed in time by cost-savings. To support the affordability of the transition the Welsh Government anticipates covering the projected transitional costs relating to the administration of CHC direct payments between 2025-26 and 2027-28.

### *Care Inspectorate Wales*

11.12 There will be additional costs to Care Inspectorate Wales as the regulator, linked to the registration of new and existing providers following the elimination of profit from the care of looked after children, including the cost to CIW for monitoring and enforcing these provisions.

**Table 11.3 – Estimated Care Inspectorate Wales costs (£000)**

<b>CIW Costs</b>	<b>2025-26</b>	<b>2026-27</b>	<b>2027-28</b>	<b>2028-29</b>	<b>2029-30</b>	<b>2030-31</b>	<b>2031-32</b>	<b>2032-33</b>	<b>2033-34</b>	<b>2034-35</b>	<b>Total</b>
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Total Costs	251	627	627	627	627	627	627	627	627	627	627	<b>5,889</b>
<b>Total Adjusted for Inflation</b>	273	693	706	720	733	747	761	776	791	806		<b>7,004</b>

11.13 The estimated costs are relatively small in the context of Care Inspectorate Wales' budget allocation and it is anticipated that additional provision will be made to meet these costs should they arise.

#### *The Welsh Government*

11.14 The costs falling directly to Welsh Government and summarised in Table 11.5 relate to the transitional costs incurred by Welsh Government from the elimination of profit from the care of looked after children and transitional costs relating to the administration of CHC direct payments between 2025-26 and 2027-28.

**Table 11.5 Estimated Welsh Government costs (£000)**

<b>Welsh Government</b>	<b>2025-26</b>	<b>2026-27</b>	<b>2027-28</b>	<b>2028-29</b>	<b>2029-30</b>	<b>2030-31</b>	<b>2031-32</b>	<b>2032-33</b>	<b>2033-34</b>	<b>2034-35</b>	<b>Total</b>
Total Costs	1,071	1,117	1,210	161	136	136	136	136	136	136	<b>4,378</b>
<b>Total Adjusted for Inflation</b>	1,165	1,235	1,363	185	160	163	166	169	172	175	<b>4,954</b>

11.15 It is anticipated that Welsh Government costs can be absorbed within expected baseline budgets.

#### **Summary**

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11.16 It is anticipated that the proposals with a larger upfront cost, specifically those connected with eliminating profit and direct payments for CHC, transitional financial support will be provided by Welsh Government to those affected, local authorities and local health boards respectively. Over a ten-year period it is anticipated that both proposals will generate revenue savings which will assist in their longer-term affordability.

## **Annex 1**

### **Explanatory Notes**

# **HEALTH AND SOCIAL CARE (WALES) BILL**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes relate to the Health and Social Care (Wales) Bill as laid before Senedd Cymru on 20 May 2024.
2. They have been prepared by the Welsh Government's Health, Social Care and Early Years Group in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Senedd Cymru.
3. The Explanatory Notes should be read in conjunction with the Bill. They are not meant to be a comprehensive description of the Bill. Where an individual section of the Bill does not seem to require any explanation or comment, none is given.

### **POLICY BACKGROUND**

4. Following the 2011 White Paper on Sustainable Social Services, social care law in Wales has been reformed and consolidated through the Social Services and Well-being (Wales) Act 2014 ("the 2014 Act") and the Regulation and Inspection of Social Care (Wales) Act 2016 ("the 2016 Act").
5. The Social Services and Well-being (Wales) Act 2014 established a new framework for local authority social services in Wales.
6. The Regulation and Inspection of Social Care (Wales) Act 2016 provides a statutory framework for the regulation and inspection of social care services and a framework for the regulation of the social care workforce in Wales.
7. This Bill seeks to make further improvements to social care in Wales, by amending the 2014 and 2016 Acts to restrict the extraction of profit from the care of looked after children; and by making a number of amendments to those Acts to ensure that they operate fully and effectively.

*These notes refer to the Health and Social Care (Wales) Bill which was introduced into Senedd Cymru on 20 May 2024*

8. In addition, the Bill enables the introduction of direct payments within NHS Continuing Healthcare (CHC), which is intended to align with the direct payments that can be made in social care.
9. This Bill has been developed following a consultation on proposed changes to primary legislation on social care and continuing health care which ran between August and November 2022. The consultation documents, responses, and a summary of responses, have been published on the Welsh Government's website: [Proposed changes to legislation on social care and continuing health care | GOV.WALES](#).

## **GENERAL OVERVIEW OF THE BILL**

10. The Bill is comprised of 30 sections (within three Parts) and two Schedules.
  - Part 1 of the Bill relates to social care and contains two Chapters:
    - Chapter 1 makes amendments to the 2014 and 2016 Acts intended to restrict the extraction of profit by providers of children's care home services, secure accommodation services and fostering services;
    - Chapter 2 makes a number of miscellaneous amendments in relation to social care services, social care workers and local authority social services, intended to ensure that the 2014 and 2016 Acts can operate fully and effectively.

This Part of the Bill also introduces Schedule 1 which makes minor and consequential amendments in relation to this Part.

- Part 2 of the Bill relates to health care and makes amendments to the National Health Service (Wales) Act 2006 in order to enable the introduction of direct payments within NHS Continuing Healthcare (CHC). This Part of the Bill also introduces Schedule 2 which makes minor and consequential amendments in relation to this change.
- Part 3 of the Bill contains a number of general provisions, including in relation to regulations made under the Bill, interpretation, powers to make consequential and transitional provisions, and coming into force arrangements.

## **COMMENTARY ON SECTIONS**

### **PART 1**

### **SOCIAL CARE**

#### **CHAPTER 1**

#### **PROVISION OF SOCIAL CARE SERVICES TO CHILDREN: RESTRICTIONS ON PROFIT**

## **Section 1 – Overview of Chapter 1**

11. Section 1 provides an overview of the main provisions of Part 1, Chapter 1 of the Bill. It summarises the subjects covered in each subsequent section of the Chapter.

## **Section 2 – Restricted children’s services**

12. Section 2 inserts new provision into Part 1 of the 2016 Act that defines a restricted children’s service for the purposes of that Part. The new provision is inserted in new section 2A and in amendments to Schedule 1 to the 2016 Act. Section 2 also amends section 1 of the Act (overview of Part 1) in consequence of these changes.
13. New section 2A(1) (inserted by section 2(b) of the Bill) defines each of the regulated services to which the new provisions inserted by the Bill into Part 1 of the 2016 Act apply as a “restricted children’s service” for the purposes of that Part. These are a care home service at a place at which the service is provided wholly or mainly to children, a fostering service, and a secure accommodation service.
14. New section 2A(2) (together with amendments made to Schedule 1 by section 2(c)) make provision about the circumstances in which a care home service is provided wholly or mainly to children for the purposes of the Part, by reference to the number of days of accommodation the service provides to children rather than adults.

## **Section 3 – Applications for registration in respect of restricted children’s services**

15. Section 3(3) inserts new sections 6A (registration in respect of a restricted children’s service) and 6B (registration in respect of a restricted children’s service: definitions) into the 2016 Act.
16. Under new section 6A(1), to be registered in respect of a restricted children’s service a person who is not a local authority must be a not-for-profit entity.
17. Section 6A(2), (3) and (4) provide that a “not-for-profit entity” is a person that meets these two tests:
  - the person’s objects or purposes primarily relate to the welfare of children, or to such other public good as the Welsh Ministers may prescribe;
  - the person is one of the following four types of undertaking (that are defined in section 6B, and in relation to which the law restricts the extraction of profit): a charitable company limited by guarantee without a share capital; a charitable incorporated organisation; a charitable registered society; a community interest company limited by guarantee without a share capital.

18. As a consequence of the insertion of sections 6A and 6B into the 2016 Act, section 3(2) inserts a new subsection (1A) into section 6 of the 2016 Act. This new subsection requires a person applying to be registered in respect of a restricted children's service to supply the Welsh Ministers with prescribed information showing that the person is a not-for-profit entity. The power to prescribe the information is to be exercised by regulations made in a statutory instrument under section 187 of the 2016 Act.

#### **Section 4 - Registration in respect of a restricted children's service: transitional arrangements**

19. Section 4 inserts a new Schedule 1A into the 2016 Act to make provision about transitional arrangements in respect of providers of restricted children's services who are already registered prior to the coming into force of new section 6A (as to which see section 3).
20. After the commencement of section 6A, the requirement in respect of a restricted children's service imposed under that section (to be a not-for-profit entity) will apply to all new entrants to the register maintained by the Welsh Ministers under the 2016 Act and all existing service providers for so long as they remain registered. However, paragraphs 1 and 2 of Schedule 1A make provision for a transitional period during which providers of restricted children's services who were registered in respect of the service before it became a restricted children's service (by virtue of section 6A coming into force) are not subject to the requirements in section 6A(1) except for the purposes of any applications that the service provider makes under section 6 to register in respect of a restricted children's service, or under section 11 to vary registration to add a restricted children's service or to provide a restricted children's service at or in relation to a new place.
21. The transitional period begins when section 6A comes into force in respect of the service and ends on a day appointed by the Welsh Ministers in regulations.
22. As provided for by paragraph 3 of the Schedule, the Welsh Ministers may make regulations which impose conditions on existing service providers during the transitional period, including restrictions on the type of service they may provide and the description of looked after children they may accommodate. This would enable Welsh Ministers to impose conditions to restrict providers who are subject to the transitional provisions to providing places for children whose placement has been approved by Welsh Ministers under section 81B of the Social Services and Well-being (Wales) Act 2014, or to limit the circumstances in which such providers may accept placements from local authorities in England. The power could also be used to prevent providers who are subject to the transitional provisions from providing a place for any new child after a certain date.
23. If a service provider fails to comply with these conditions, the Welsh Ministers may vary or cancel their registration in accordance with sections 18 to 20 of the 2016 Act.



24. In the case of a provider of a fostering service to whom paragraph 2 applies a failure by that provider to comply with requirements imposed during the transitional period by regulations made under section 87 of the 2014 Act will also trigger the Welsh Ministers' power to vary or cancel the provider's registration.
25. Section 4(4) amends section 45 of the 2016 Act so that the Welsh Ministers may also prescribe by regulations that it is an offence for a provider to fail to comply with conditions imposed in regulations made under paragraph 3 of the Schedule. The penalties set out in section 51 of the Act will apply where this power is exercised. Section 4(5) amends section 52 of the 2016 Act so that the Welsh Ministers may also issue penalty notices in respect of an offence committed under these regulations.
26. Under paragraph 4 of the Schedule, existing service providers may apply to vary their registration so that they are registered as meeting those requirements and accordingly are no longer subject to any conditions that might otherwise be imposed on them under paragraph 3. Applications under this paragraph are subject to the notice procedures set out in sections 18 to 20 of the 2016 Act and the associated appeal rights under section 26 of the 2016 Act.

#### **Section 5 – Grant or refusal of registration in respect of a restricted children's service**

27. Section 5 amends section 7 (grant or refusal of registration as a service provider) of the 2016 Act in consequence of the introduction of the requirements in respect of restricted children's services set out in new section 6A of the 2016 Act (as inserted by section 3).
28. Subsection (2) inserts new paragraph (aa) into subsection (1) to require that the Welsh Ministers only grant an application for registration in respect of a restricted children's service if the applicant meets the requirement in section 6A(1).
29. Subsection (3) inserts new paragraph (aa) into subsection (3) to provide that a grant of application in respect of a restricted children's service must be subject to a condition that the service provider notify the Welsh Ministers of any circumstances under which the provider no longer meets the requirement in section 6A(1).

#### **Section 6 – Fit and proper person: relevant considerations**

30. As further explained in paragraphs 31 to 33, section 6 amends the 2016 Act to provide that unreasonable or disproportionate financial arrangements entered into by a service provider registered in respect of a restricted children's service are evidence to which the Welsh Ministers must have regard when deciding if the provider is a fit and proper person. (If the Welsh Ministers are no longer satisfied a person is fit and proper, they may cancel the person's registration – see section 15(1)(b) of the 2016 Act.)

31. Section 9 of the 2016 Act provides that in deciding whether a service provider is a fit and proper person, the Welsh Ministers must have regard to all matters they think appropriate but that they must in particular have regard to evidence of various things including whether the service provider has been responsible for, contributed to, or facilitated misconduct or mismanagement in the provision of a regulated service (see section 9(6)).
32. Section 6(2) amends section 9(7) of the 2016 Act so that it specifies that, when the Welsh Ministers are having regard to evidence of whether a service provider (that is registered in respect of a restricted children's service) is unfit on the basis of misconduct or mismanagement, they must consider whether the provider has entered into a financial arrangement that falls within new section 9A.
33. Section 6(3) inserts new sections 9A and 9B into the 2016 Act. New section 9A(1) provides that a financial arrangement falls within section 9A if it is an arrangement with or for the benefit of a "relevant person" (defined in section 9B, and including persons such as the provider's officers and employees) that is unreasonable or disproportionate in all the circumstances and that, in consequence, may undermine the pursuit of the service provider's objects or purposes as determined in accordance with section 6A(3) (i.e. objects or purposes relating to children's welfare or other prescribed public goods). New section 9A(2) sets out matters to which regard must be had when determining whether a financial arrangement of this sort has been entered into.

#### **Section 7 - Providers of restricted children's services: information contained in annual return**

34. Section 7 amends section 10 (annual return) of the 2016 Act to impose new requirements about what must be included in a service provider's annual return.
35. Paragraph (a) inserts a new paragraph (viii) into section 10(2)(a) of the 2016 Act, requiring that the annual return includes information (as prescribed by the Welsh Ministers) about evidence relevant to the fit and proper person test in section 9 of the 2016 Act.
36. Paragraph (b) inserts new subsections (2A) and (2B) into section 10 of the 2016 Act. New subsection (2A) requires that for a service provider, other than a local authority, that is registered in respect of a restricted children's service the annual return must include information (as may be prescribed by the Welsh Ministers) showing that the provider meets the requirement in section 6A(1) (as inserted by section 3 of the Bill - see paragraphs 16 and 17 of these Explanatory Notes for an explanation of new section 6A). Subsection (2B) provides that this does not apply to providers to whom section 6A does not apply by virtue of paragraph 2(3) of Schedule 1A (as inserted by section 4 of the Bill, and specifying transitional arrangements for service providers of these services).

37. Paragraph (c) amends subsection (6) of section 10 of the 2016 Act, with the effect that the first set of regulations made under subsection (2)(a)(viiiia) (prescribing information about evidence relevant to the fit and proper person test) and the first set of regulations made under subsection (2A) (prescribing information to satisfy the Welsh Ministers that the provider meets the requirement in section 6A(1)) will be subject to the draft affirmative procedure in the Senedd.

### **Section 8 – Variation or cancellation of registration as a provider of a restricted children’s service**

38. Section 8 amends the 2016 Act to include new provisions in relation to the variation or cancellation of registration as a provider of a restricted children’s service.
39. Subsection (2) amends section 11 (application for variation of registration as a service provider) by inserting a new subsection (4) which requires that an application to vary registration to provide a restricted children’s service must contain information to satisfy the Welsh Ministers that the service provider meets the requirement in section 6A(1).
40. Subsection (3) amends section 12 (grant or refusal of application for variation) to provide that the Welsh Ministers may only grant an application if they are satisfied that the service provider meets these requirements.
41. Subsection (4) amends section 13 (variation without application) to provide that the Welsh Ministers may vary a service provider’s registration to remove a restricted children’s service if the service provider does not meet the requirement in section 6A(1). Subsection (5) inserts new subsection (3A) which refers to Schedule 1A under which there is provision made concerning the application of section 13 in relation to providers to which paragraph 2 of that Schedule applies.
42. Subsection (6)(a) amends section 15 (cancellation without application) to provide that the Welsh Ministers may cancel a service provider’s registration if each of the services that the service provider is registered in respect of is a restricted children’s service and the service provider does not meet the requirement in section 6A(1). Subsection (6)(b) inserts new subsection (1A) which refers to Schedule 1A under which there is provision made concerning the application of section 15 in relation to providers to which paragraph 2 of that Schedule applies.

### **Section 9 – Restricted children’s services: information contained in the register of service providers**

43. Section 9 amends section 38 (register of service providers) of the 2016 Act by inserting new subsection (2A) which introduces a new requirement in respect of entries in the register of service providers. The new requirement is that the

entry in the register for a provider of restricted services (other than a local authority) must show that the provider meets the requirement in section 6A(1).

### **Section 10 – Local authority duty to secure sufficient accommodation**

44. Section 10 amends section 75 (general duty of local authority to secure sufficient accommodation for looked after children) of the 2014 Act.
45. The wording of subsection (1) is amended to specify that the local authority must take all reasonable steps to secure accommodation for children mentioned in subsection (2). The requirement in subsection (1)(a) that the accommodation to which the local authority duty relates is within the local authority's area is amended to include accommodation that is near to the local authority's area. This enables local authorities to make arrangements with other local authorities to develop new children's homes and foster care placements. It acknowledges that there may be circumstances in which a child placed outside of the local authority's area may be nearer to their home community than if they were placed in a different part of the local authority's area.
46. New paragraph (aa) is added to subsection (1), specifying that, where the accommodation is with a local authority foster parent or a children's home, it should meet the relevant requirement described in new section 81A(3) (not-for-profit placements) (to be inserted by section 13 of the Bill).
47. Subsections (6) and (7) amend subsection (4) and section 197(1) to amend the definition of "children's home" for the purposes of section 75, so that the duty applies only in relation to accommodation in children's homes and with local authority foster parents.

### **Section 11 – Duty to prepare and publish an annual sufficiency plan**

48. Section 11 amends the 2014 Act to insert new sections 75A, 75B and 75C.
49. Section 75A requires local authorities to prepare and publish an annual sufficiency plan before the beginning of each financial year. The plan must detail the steps the local authority will take in that year to fulfil its duty under section 75(1). It must include, for the financial year to which it relates: the estimated number of children the local authority will be looking after who it will be unable to place under section 81(2); an assessment of the extent to which the available accommodation meets the relevant requirements in section 81A(3) as well as the extent to which that accommodation is within, or near to, the local authority's area. The plan must also include prescribed information about for-profit and private providers who are likely to be named in applications for approval of supplementary placements, an estimate of the number of such applications that are anticipated and the reasons why that number of applications is likely to be made. The plan must be in a form prescribed by regulations.

50. Section 75B of the 2014 Act sets out the procedure for the approval of the annual sufficiency plan. Before publishing the plan, a local authority must prepare a draft and submit it to the Welsh Ministers for approval. The first draft must be submitted no later than 4 months before the beginning of the financial year to which it relates, while subsequent drafts must be submitted no later than 2 months before the beginning of the financial year. The Welsh Ministers must notify the local authority of a decision to approve the draft plan.
51. Section 75C of the 2014 Act sets out the procedure to be followed if the Welsh Ministers decide not to approve a draft of an annual sufficiency plan submitted by a local authority under section 75B. In this case, the Welsh Ministers must notify the local authority of their decision and provide the reasons for it. They must also specify a period within which the local authority must submit a further draft of the plan. The local authority must then submit a further draft of the plan, along with a report explaining how the authority has taken into account the reasons provided by the Welsh Ministers. If the Welsh Ministers decide not to approve the further draft, the same procedure applies.

### **Section 12 – Duty to secure accommodation: reporting**

52. Section 12 inserts a new section 75D into the 2014 Act. Section 75D requires local authorities to report on their duty under section 75 to secure accommodation. The annual report prepared by a local authority under section 144A must include information on how the steps taken by the local authority have increased, or are expected to increase, the amount of accommodation available that meets the requirements of section 75(1). The report must also include the number of applications made by the local authority for approval to place children in supplementary placements, as well as the reasons for any difference between the estimated and actual number of applications.

### **Section 13 – Ways in which looked after children are to be accommodated**

53. Section 13 amends section 81 of the 2014 Act and inserts into the 2014 Act new sections 81A, 81B, 81C and 81D (after section 81).
54. Section 81 imposes a duty on a local authority to arrange for a looked-after child to live with a parent, a person with parental responsibility or a person in whose favour a child arrangements order has been made. However, where this is not consistent with the looked-after child's well-being, or is not reasonably practicable, under section 81A, the local authority must accommodate the child in the "most appropriate placement available". (However, this is subject in both cases to any decision made by the authority that it would be appropriate for the child to be placed with a prospective adopter (as to which see section 81C)).
55. In the context of section 81A, a "placement" means accommodating a child:

- with an individual who is a relative, friend or other person connected with the child and who is also a local authority foster parent (commonly referred to as a “kinship placement”),
  - with (another) local authority foster parent,
  - in a children’s home, or
  - in unregistered accommodation (on a temporary basis or in cases of urgency). As in the case of existing section 81 (unamended by this section), decisions about where to place a looked-after child under section 81A are to be made subject to the need to take account of what is referred to as the “principal” duty on local authorities in Part 6 of the 2014 Act. This is set out in section 78 and requires an authority to safeguard and promote the well-being of children it is looking after.
56. The changes made by section 13 reflect changes made to the 2016 Act that restrict the making of profit in the provision of fostering services and children’s care home services as “restricted children’s services”.
57. The key change made by this section (found in section 81A(2)) relates to the decision taken by a local authority as to the most appropriate placement available for a looked-after child. The existing section 81(7) requires a local authority to take a number of matters into account when making this decision. These are expressed as requirements under the existing section 81 at subsections (8) and (9).
58. These matters must still be taken into account under section 81A(5), but section 13 now amends the decision-making process to provide that if the local authority considers that the most appropriate placement (in accordance with new section 81A(2)) is with a foster parent or in a children’s home (giving preference – subject to the principal duty under section 78 – to a kinship placement), as a preliminary consideration, the authority must seek to place the child with a not-for-profit foster parent or in a not-for-profit children’s home (depending on which is most appropriate in the child’s case).
59. A “not-for-profit foster parent” is a local authority foster parent who is authorised as such by the local authority, a different local authority, or an independent fostering agency that is registered as meeting the requirements of section 6A(1) of the 2016 Act. A “not-for-profit children’s home” is a children’s home in respect of which one of the following persons is registered as the provider: the local authority, a different local authority, or a service provider that is registered as meeting the requirements of section 6A(1) of the 2016 Act.
60. If more than one placement with a not-for-profit foster parent or in a not-for-profit children’s home (as appropriate) is available, the amended legislation requires the local authority to once again consider what is the most appropriate placement available in accordance with section 81A(2) – this time to consider *which* placement of this type should be chosen. In doing so it must have regard to a number of factors specific to the needs of the child in question. These

factors are set out in new section 81A(5)(a), which replicate provisions that were previously in section 81(7) and (8).

61. As the factors to be considered reflect interests of a looked-after child that may conflict or overlap, and as they are all subject to the principal duty in section 78, the wording of the duty imposed upon a local authority (previously under s81(7)) has been changed to require the local authority to have regard to these factors (while having to safeguard and promote the well-being of the child). The various aspects of a child's well-being are set out in the definition of "well-being" in section 2 of the 2014 Act.
62. If a placement with a not-for-profit foster parent or children's home provider is not available, or if placing a child in such a placement where one is available would not be consistent with the local authority's principal duty under section 78, the local authority must once again consider what is the most appropriate placement available in accordance with section 81A(2).
63. At this point the local authority must necessarily consider placements that may be available with other providers, again having regard to the factors referred to in section 81A(5)(a), and also giving preference to a kinship placement (subject again to the principal duty under section 78).
64. However, a placement of a looked-after child with a provider who does not meet the requirements of the new section 81A(4) (a) or (b) in this way is subject to the need to make an application to the Welsh Ministers for approval, of what is referred to as a "supplementary placement", under section 81B.
65. Section 81B(3) sets out what information must be provided when making an application for approval of a supplementary placement, which includes (among other matters):
  - a copy of the looked-after child's care and support plan, and
  - an explanation of why the local authority considers that they should not place the looked-after child with any not-for-profit foster parent or not-for-profit children's home provider (as applicable) that is available.
66. The Welsh Ministers must approve the application if they agree that placing a child with any not-for-profit children's home or foster parent approved by a local authority or not-for-profit fostering service (as applicable) is not consistent with the local authority's principal duty under section 78, or if they agree that no such placement is available.
67. However, if the application is rejected as the Welsh Ministers do not agree, the Welsh Ministers must direct the local authority to:
  - take their reasons for rejecting the application into account, and

*These notes refer to the Health and Social Care (Wales) Bill which was introduced into Senedd Cymru on 20 May 2024*

- reconsider whether the child can be placed with a not-for-profit foster care provider or not-for-profit children’s home provider (as applicable).
68. After doing so, the local authority may resubmit the application if they continue to consider that placing the child with a not-for-profit foster care or children’s home provider (as applicable) is not consistent with the local authority’s principal duty under section 78, but they must explain:
- how they have taken the Welsh Ministers’ reasons for rejecting the initial application into account, and
  - why they continue to consider that the child should be placed in a supplementary placement.
69. New section 81C replicates what is currently found in subsections (10) to (12) of section 81, setting out the placement duties that apply in respect of a child that the local authority is satisfied ought to be placed for adoption.
70. New section 81D replicates what is currently found in subsection (13) of section 81, which provides that a local authority may determine the terms of any arrangements or placements it makes in respect of a looked-after child under section 81, 81A, 81B or 81C.

## **CHAPTER 2**

### **MISCELLANEOUS AMENDMENTS IN RELATION TO SOCIAL CARE SERVICES, SOCIAL CARE WORKERS AND LOCAL AUTHORITY SOCIAL CARE FUNCTIONS**

#### **Section 14 – Duty to submit and publish annual return**

71. Section 14 amends section 10 of the 2016 Act which requires a service provider to submit an annual return to the Welsh Ministers who must then publish that return. Section 14 amends section 10 so that the provider (and not the Welsh Ministers) is required to publish its own annual return on its website, and also to make a copy of that return available upon request. The amendments also provide that a service provider must publish its return within a time limit prescribed by the Welsh Ministers and that failure to do so is a summary offence punishable by a fine (see section 14(3) which amends section 48 of the 2016 Act).

#### **Section 15 – Application for cancellation of service provider’s registration: information to be provided**

72. Section 15 amends section 14 of the 2016 Act, to include a regulation-making power to allow the Welsh Ministers to require that an application for cancellation of registration as a service provider contains prescribed information and is made in a prescribed form.



**Section 16 – Cancellation of service provider’s registration without application: notice procedures**

73. Section 16 amends section 15 of the 2016 Act, which sets out the powers of the Welsh Ministers to cancel a service provider’s registration without application, by changing the procedure that must be followed depending on the grounds for cancellation. It provides that the notice of proposal procedure (see section 18 of the 2016 Act) must be followed rather than the improvement notice procedure (see section 16 of the 2016 Act) where cancellation is on certain grounds in respect of which there is no improvement action that a service provider could be required to take.

**Section 17 – Power to require information**

74. Section 17 amends section 32 of the 2016 Act which provides the Welsh Ministers with the power to require information in relation to the exercise of certain functions they have under the 2016 Act, by conferring a power on the Welsh Ministers to require such information from a person who is providing a regulated service in respect of which they are not registered in accordance with section 7 of the 2016 Act.

**Section 18 – Meaning of social care worker: childcare workers**

75. Section 18 amends section 79 of the 2016 Act to provide Welsh Ministers with the power by regulations to extend the definition of social care workers for the purpose of the 2016 Act to include childcare workers.
76. Childcare workers are individuals who are employed by or work (including as agency workers) for a person registered under Part 2 of the Children and Families (Wales) Measure 2010 as a day care provider, to provide care and supervision to children.

**Section 19 – Fitness to practise cases: powers to extend interim orders**

77. Section 19 amends Chapter 4, of Part 6 of the 2016 Act which makes provision in respect of interim orders and review of interim orders in fitness to practise proceedings. Interim orders imposed by the regulator are a means to enable temporary restrictions to be applied to a registered person while investigations are undertaken into fitness to practise allegations made against the person. The amendment provides panel (interim orders panel or fitness to practise panel before which the interim order proceedings are brought) with the power to extend an interim order for up to 18 months in total, removing the need for applications to be made to the First-tier Tribunal for extensions which do not push the total length of the order beyond that limit. An application to the First-tier Tribunal will continue to be required where an interim order is to be extended beyond 18 months (see section 148 of the 2016 Act).

## **Section 20 – Direct payments in social care**

78. Section 20 amends Part 4 of the 2014 Act so as to allow a local authority to make direct payments to a person (an individual or a body) nominated by an adult entitled to receive a direct payment under section 50 of the 2014 Act regardless of whether that adult lacks capacity (within the meaning of the Mental Capacity Act 2005) to receive and manage the direct payments themselves.
79. The amendments made by section 20 are intended to ensure that all persons who are entitled to receive a direct payment under Part 4 of the 2014 Act (including payments made in respect of after-care services under section 117 of the Mental Health Act 1983) have the same entitlement to nominate a person to receive and manage the direct payments on their behalf whether or not they have mental capacity (or in the case of a child under the age of 16, the local authority is satisfied that the child has sufficient understanding to make an informed decision about consenting to receive a direct payment).
80. Those amendments insert new sections 49A and 53A into the 2014 Act and substitute sections 50, 51 and 52.
81. The new section 49A gives the Welsh Ministers power to make regulations which may require or allow a local authority to make direct payments but only where the relevant conditions specified in sections 50 (direct payments: conditions for payment to meet an adult's needs), 51 (direct payments: conditions for payment to meet a child's needs) or 52 (direct payments: conditions for payment to meet a carer's needs) are met by the person who is entitled to receive care and support under Part 4 of the 2014 Act.
82. Section 20 also inserts new section 53A into Part 4 of the 2014 Act. This replaces existing provision made by section 53(11) which currently provides that regulations made under sections 50 and 52 may enable a local authority to discharge its duty to provide after-care services under section 117 of the Mental Health Act 1983 ("the 1983 Act") by making direct payments, and introduces Schedule A1 (which contains modifications to the existing provision made by sections 50, 51 and 53).
83. Section 20 substitutes Schedule A1. New Schedule A1 sets out in full the conditions which must be met before a local authority may make direct payments in discharge of its duty to provide or secure services for a person entitled to after-care under section 117 of the 1983 Act (rather than by making modifications to the relevant provision in Part 4 of the 2014 Act). The substituted Schedule A1 contains provision that enable a person entitled to receive a direct payment in lieu of receiving after-care to nominate a person to receive the direct payments on their behalf.

## **Section 21 – Accommodation of children**

84. Section 21 amends sections 76 and 81 of the 2014 Act to clarify the scope of references in those sections to "child arrangements orders". The references were inserted as consequential amendments when residence orders (to which

these provisions previously referred) were replaced by child arrangements orders (see section 12 and Schedule 2 of the Children and Families Act 2014 (c. 6)). However, child arrangements orders cover a wider range of matters than residence orders, and include contact arrangements for children. The Bill therefore amends the references to “child arrangements orders” in sections 76 and 81 of the 2014 Act to clarify that reference to child arrangements orders only relate to those orders which specify the person with whom a child should live.

## **Section 22 – Social care: minor and consequential amendments**

85. Section 22 introduces Schedule 1 which makes minor and consequential amendments in relation to the provisions in Part 1 of the Bill, in respect of social care.

## **PART 2 HEALTH CARE**

86. This Part contains provisions that amend the National Health Service (Wales) Act 2006 [“the 2006 Act”] which is the principal legislation governing the operation of the National Health Service (NHS) in Wales. The amendments allow the Welsh Ministers to make direct payments to individuals in lieu of the provision of services by or on behalf of the NHS to meet their needs (or to direct Local Health Boards to make such payments on their behalf using existing powers under the 2006 Act).
87. Direct payments within the context of social care are monetary amounts paid by local authorities in accordance with duties under the 2014 Act to individuals (or their representatives) to enable them to secure services to meet their eligible needs for care and support (or the needs of a carer). These payments are made in lieu of the local authority providing or arranging services to meet those needs and are made using under provisions in and by virtue of Part 4 of the 2014 Act<sup>(87)</sup>.
88. It is intended that the new powers will be used to enable the Welsh Ministers to make direct payments (in appropriate cases) in lieu of the provision of services where an individual is eligible to receive NHS Continuing Health Care (“CHC”). CHC is a package of ongoing care that is arranged and funded solely by the NHS where the individual has been found to have a “primary health need” (as opposed to a need for local authority care and support). Such care is provided to an individual aged 18 or over, to meet needs that have arisen as a result of disability, accident or illness. In such cases, the NHS is responsible for providing for all of that individual’s assessed health and social care needs – including accommodation, if that is part of the overall need. Services for persons entitled to CHC can be provided in any setting outside hospital, such as in a person’s own home, in a care home or hospice. The 2006 Act does not

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<sup>(87)</sup> See sections 50 to 53 of the 2014 Act and S.I. 2015/1815 (W. 260).

*These notes refer to the Health and Social Care (Wales) Bill which was introduced into Senedd Cymru on 20 May 2024*

currently allow direct payments to be made in lieu of services, to those eligible to receive CHC or otherwise.

89. The Welsh Government's 2021 *Programme for Government* set out a commitment to "improve the interface between continuing health care and direct payments". Accordingly, in 2022 the Welsh Government consulted on the principle of introducing direct payments as an option within CHC. The consultation responses to the proposal conveyed a high level of support for the principle of introducing direct payments for CHC.

### **Section 23 – Overview of Part 2**

90. This section provides an overview of the main provisions of Part 2 of the Bill. It summarises the subjects covered in each subsequent section of the Part.

### **Section 24 – Direct payments for health care**

91. This section inserts new provision into Part 1 of the 2006 Act in order to allow the Welsh Ministers to make direct payments to individuals in lieu of the provision of services to meet their assessed needs under the 2006 Act.
92. The Welsh Ministers have exercised power under section 12 of the 2006 Act to make regulations which direct Local Health Boards (LHBs) to exercise specified functions of the Welsh Ministers under the 2006 Act on their behalf. These powers may be exercised further to direct the LHBs to exercise the Welsh Ministers' power to make direct payments in lieu of the provision of services.
93. Section 10B(5) contains a regulation-making power which, if exercised by the Welsh Ministers, would enable LHBs to make direct payments in discharge of the LHBs' duty to provide after-care services under section 117 of the Mental Health Act 1983.
94. The amendments also insert section 10C into the 2006 Act, which provides that the Welsh Ministers may make regulations which specify when and how direct payments may be made. Regulations made under this provision may provide that direct payments are to be offered only in specified circumstances, or may prevent such payments being made to specified persons.
95. The amendments also insert section 10D into the 2006 Act, which provides that the Welsh Ministers and LHBs may make arrangements with other organisations to provide assistance with direct payments.
96. Amendments are also made to section 203 of the 2006 Act, the effect of which is that the first set of regulations to be made under section 10B(5) of the 2006 Act will be subject to the draft affirmative procedure in the Senedd.

### **Section 25 – Direct payments for health care: minor and consequential amendments**

*These notes refer to the Health and Social Care (Wales) Bill which was introduced into Senedd Cymru on 20 May 2024*

97. This section introduces Schedule 2, which makes a number of minor and consequential amendments to other Acts as consequence of the new provision in Part 1 of the 2006 Act in relation to direct payments. The Schedule contains amendments to the Mental Health Act 1983 (c. 20), the Disabled Persons (Services, Consultation and Representation) Act 1986 (c. 33), the 2006 Act, the Safeguarding Vulnerable Groups Act (c. 47), and the Public Services Ombudsman (Wales) Act 2019 (anaw 3).

## **Section 26 – Provision of health services by local authorities**

98. This section makes amendments to section 47 of the 2014 Act. These address an unintended consequence arising from the drafting of the 2014 Act, in order to incorporate the full statutory test which is intended to determine the limits of the powers of a local authority to provide health care services.

99. Section 47 of the 2014 Act establishes the limit of health services that a local authority may lawfully be expected to provide to meet health care needs. Sub-sections (1) and (2) contain the exceptions for the provision of health services by local authorities.

100. The “quantity and quality” test, developed by the Court of Appeal as a result of the *Coughlan* case (*R. v. North and East Devon Health Authority, ex parte Coughlan* [1999 EWCA civ 1871], and sometimes referred to as the “*Coughlan test*”, determines the limit of the powers of a local authority to provide health care services. It was intended that the provision made by section 47 of the 2014 Act would follow the Law Commission’s recommendations in its report into Adult Social Care (The Law Commission (LAW COM No. 326) Adult Social Care), including that the *Coughlan* test should be codified in statute. However, the Social Services and Well-being (Wales) Bill as introduced contained the first limb only of the *Coughlan* test which is now set out in section 47 of the 2014 Act.

101. The amendments made by section 26 therefore insert the second limb of the *Coughlan* test into section 47(1) and (2) of the 2014 Act, in order to give effect to the original policy intent.

## Annex 2

### Index of Standing Order requirements

Table A2.1

Standing order	Section	pages/ paragraphs
26.6(i)	Statement the provisions of the Bill would be within the legislative competence of the Senedd	Member's declaration 1
26.6(ii)	Set out the policy objectives of the Bill	Chapter 3 - Purpose and intended effect of the legislation 5-25
26.6(iii)	Set out whether alternative ways of achieving the policy objectives were considered and, if so, why the approach taken in the Bill was adopted	Part 2 – Regulatory Impact Assessment 55-129 Paras 7.42-7.320
26.6(iv)	Set out the consultation, if any, which was undertaken on: (a) the policy objectives of the Bill and the ways of meeting them; (b) the detail of the Bill, and (c) a draft Bill, either in full or in part (and if in part, which parts)	Chapter 4 – Consultation 26-28
26.6(v)	Set out a summary of the outcome of that consultation, including how and why any draft Bill has been amended	Chapter 4 – Consultation 26-28
26.6(vi)	If the bill, or part of the Bill, was not previously published as a draft, state	Chapter 4 – Consultation 27 Para 4.10

Standing order	Section	pages/ paragraphs
	the reasons for that decision	
26.6(vii)	Summarise objectively what each of the provisions of the Bill is intended to do (to the extent that it requires explanation or comment) and give other information necessary to explain the effect of the Bill	Annex 1 – Explanatory Notes  156-172
26.6(viii)	Set out the best estimates of: <ul style="list-style-type: none"> <li>(a) the gross administrative, compliance and other costs to which the provisions of the Bill would give rise;</li> <li>(b) the administrative savings arising from the Bill;</li> <li>(c) net administrative costs of the Bill’s provisions;</li> <li>(d) the timescales over which such costs and savings would be expected to arise; and</li> <li>(e) on whom the costs would fall</li> </ul>	Part 2 – Regulatory Impact Assessment  42-45 for the summary  46-129 for the detailed estimates
26.6(ix)	Any environmental and social benefits and dis-benefits arising from the Bill that cannot be quantified financially	Part 2 – Regulatory Impact Assessment  45, 62-63, 79-81, 86-87, 103-105, 107-129, 133-147  Paras 7.71-7.80, 7.109-7.125, 7.148-

Standing order	Section	pages/ paragraphs
		7.150, 7.189-7.198, 7.206-7.320, 9.1-9.50
26.6(x)	<p>Where the Bill contains any provision conferring power to make subordinate legislation, set out, in relation to each such provision:</p> <ul style="list-style-type: none"> <li>(a) the person upon whom, or the body upon which, the power is conferred and the form in which the power is to be exercised;</li> <li>(b) why it is considered appropriate to delegate the power; and</li> <li>(c) the Senedd procedure (if any) to which the subordinate legislation made or to be made in the exercise of the power is to be subject, and why it was considered appropriate to make it subject to that procedure (and not to make it subject to any other procedure);</li> </ul>	Chapter 5 - Power to make subordinate legislation  29-41
26.6(xi)	Where the Bill contains any provision charging expenditure on the Welsh Consolidated Fund, incorporate a report of the Auditor General setting out	The requirement of Standing Order 26.6(xi) does not apply to this Bill  N/A



Standing order	Section	pages/ paragraphs
	his or her views on whether the charge is appropriate	
26.6(xii)	Set out the potential impact (if any) on the justice system in England and Wales of the provisions of the Bill (a “justice impact assessment”), in accordance with section 110A of the Act.	Part 2 – Regulatory Impact Assessment  119, 134-135  Paras 7.280-7.282 and 9.11-9.12
26.6B	Where provisions of the Bill are derived from existing primary legislation, whether for the purposes of amendment or consolidation, the Explanatory Memorandum must be accompanied by a table of derivations that explain clearly how the Bill relates to the existing legal framework.	The requirement in Standing Order 26.6B for a Table of Derivations is not applicable to this Bill as the Bill is a standalone piece of legislation and does not derive from existing primary legislation for the purposes of amendment or consolidation.  N/A
26.6C	Where the Bill proposes to significantly amend existing primary legislation, the Explanatory Memorandum must be accompanied by a schedule setting out the wording of existing legislation amended by the Bill, and setting out clearly how that wording is amended by the Bill.	Annex 3 – Schedule of Amendments  177-275

## Annex 3

### Schedule of amendments National Health Service (Wales) Act 2006

#### AMENDMENTS TO BE MADE BY THE HEALTH AND SOCIAL CARE (WALES) BILL

This document is intended to show how the provisions of the National Health Service (Wales) Act 2006, as they applied in relation to Wales on 9 March 2024, would look as amended by the Health and Social Care (Wales) Bill (if enacted as introduced on 20 May 2024).

Material to be deleted by the Health and Social Care (Wales) Bill is in strikethrough, e.g. ~~omitted material looks like this~~. Material to be added by the Health and Social Care (Wales) Bill is underlined, e.g. added material looks like this. References to the relevant amending provisions of the Bill are provided in the right-hand column on each page.

A number of related provisions from the Act, although not being amended, are included to aid understanding of the proposed amendments.

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<b><u>National Health Service (Wales) Act 2006</u></b>	<i>Amending section of the <u>Health and Social Care (Wales) Bill</u></i>
<i>Provision of services otherwise than by the Welsh Ministers</i>	
<b>10 Welsh Ministers' arrangements with other bodies</b>	
(1) The Welsh Ministers may arrange with any person or body to provide, or assist in providing, any service under this Act.	
(2) Arrangements may be made under subsection (1) with voluntary organisations.	

<p>(3) The Welsh Ministers may make available any facilities provided by them for any service under this Act—</p> <p>(a) to any person or body carrying out any arrangements under subsection (1), or</p> <p>(b) to any voluntary organisation eligible for assistance under section 64 or section 65 of the Health Services and Public Health Act 1968 (c. 46).</p> <p>(4) Where facilities are made available under subsection (3) the Welsh Ministers may make available the services of any person employed in connection with the facilities by—</p> <p>(a) the Welsh Ministers,</p> <p>(b) . . . . .</p> <p>(c) a Special Health Authority, or</p> <p>(d) a Local Health Board.</p> <p>(5) Powers under this section may be exercised on such terms as may be agreed, including terms as to the making of payments by or to the Welsh Ministers.</p> <p>(6) Goods or materials may be made available either temporarily or permanently.</p> <p>(7) Any power to supply goods or materials under this section includes—</p> <p>(a) a power to purchase and store them, and</p> <p>(b) a power to arrange with third parties for the supply of goods or materials by those third parties.</p>	
<p><i>Procurement</i></p> <p><b>10A Procurement of services etc. as part of the NHS in Wales</b></p> <p>(1) The Welsh Ministers may, by regulations, make provision in relation to the processes to be followed and objectives to be pursued by relevant authorities in the procurement of—</p> <p>(a) services provided as part of the health service in Wales (“health services”), and</p> <p>(b) goods or other services that are connected to those health services.</p> <p>(2) Regulations under subsection (1) must include provision specifying steps to be taken when following a competitive tendering process.</p>	

<p>(3) Regulations under subsection (1) must, in relation to the procurement of the services or goods to which they apply, make provision for the purposes of—</p> <p>(a) ensuring transparency;</p> <p>(b) ensuring fairness;</p> <p>(c) ensuring that compliance can be verified;</p> <p>(d) managing conflicts of interest.</p> <p>(4) Before making regulations under subsection (1), the Welsh Ministers must carry out such consultation as they consider appropriate and publish a summary of the responses they receive.</p> <p>(5) Explanatory material accompanying regulations made under subsection (1) must set out how the regulations make provision for the purposes of subsection (3).</p> <p>(6) The Welsh Ministers must publish such guidance as they consider appropriate about compliance with the regulations.</p> <p>(7) A relevant authority must have regard to guidance published under this section.</p> <p>(8) The Welsh Ministers must—</p> <p>(a) review the operation of the regulations, and</p> <p>(b) publish the conclusions of the review before the end of the period of 5 years beginning with the day on which the regulations come into force.</p> <p>(9) In this section “relevant authority” means—</p> <p>(a) a county council or county borough council in Wales;</p> <p>(b) a local health board established under section 11;</p> <p>(c) a National Health Service trust established under section 18;</p> <p>(d) a special health authority established under section 22.</p>	
<p><u>Direct payments for health care</u></p> <p><b>10B Direct payments for health care</b></p> <p><u>(1) The Welsh Ministers may, for the purpose of securing the provision to a patient of anything to which subsection (3) applies, make payments to the patient or to a person nominated by the patient.</u></p> <p><u>(2) Subsection (1) is subject to any provision made by regulations under section 10C.</u></p> <p><u>(3) This subsection applies to—</u></p> <p><u>(a) anything that the Welsh Ministers may or must provide under section 2(1) or 3(1);</u></p> <p><u>(b) anything for which the Welsh Ministers must arrange under paragraph 8 of Schedule 1;</u></p> <p><u>(c) any vehicles that the Welsh Ministers may provide under paragraph 9 of Schedule 1;</u></p> <p><u>(d) anything the Welsh Ministers may provide under paragraph 10 of Schedule 1 (including anything for which a grant may be made under paragraph 10(3) of Schedule 1).</u></p> <p><u>(4) Payments may not be made under subsection (1) unless the patient consents to the making of the payments, subject to any</u></p>	<p>24(2)</p>

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<p><u>provision made by regulations under section 10C in respect of a patient who lacks capacity or is a child.</u></p> <p><u>(5) Regulations may provide that a Local Health Board may, for the purpose of securing the provision to a patient of after-care services that a Local Health Board must provide under section 117 of the Mental Health Act 1983 (c. 20), make payments to the patient or to a person nominated by the patient.</u></p> <p><u>(6) Regulations under subsection (5) must provide that payments under the regulations cannot be made unless the patient consents to the making of the payments, subject to any provision made by regulations under section 10C in respect of a patient who lacks capacity or is a child.</u></p> <p><u>(7) In section 10C and section 10D, “direct payments” means payments made under subsection (1) or under regulations made under subsection (5).</u></p> <p><u>(8) In this section and section 10C—</u></p> <p><u>(a) “child” means a person who has not attained the age of 16;</u></p> <p><u>(b) references to a person lacking capacity are references to a person lacking capacity within the meaning of the Mental Capacity Act 2005 (c. 9).</u></p>	
<p><b><u>10C Regulations about direct payments</u></b></p> <p><u>(1) Regulations may make provision about direct payments.</u></p> <p><u>(2) The regulations may, in particular, make provision about—</u></p> <p><u>(a) the circumstances in which, and descriptions of persons and services in respect of which, direct payments may, must or must not be made;</u></p> <p><u>(b) the circumstances in which direct payments may, must or must not be made to a person nominated by the patient;</u></p> <p><u>(c) the making of direct payments (and, in particular, as to persons to whom payments may or must be made) if the patient lacks capacity to consent to the making of the payments or is a child;</u></p> <p><u>(d) matters to which the Welsh Ministers or a Local Health Board may or must have regard when making a decision about direct payments;</u></p> <p><u>(e) conditions that the Welsh Ministers or a Local Health Board may, must or must not attach in relation to direct payments;</u></p> <p><u>(f) the steps that the Welsh Ministers or a Local Health Board may or must take before, or after, making a decision about direct payments;</u></p> <p><u>(g) the conditions that the patient or (if different) the payee may or must be required to comply with before, after, or at the time when a direct payment is made;</u></p> <p><u>(h) the amount of any direct payment or how it is to be calculated;</u></p> <p><u>(i) the circumstances in which the Welsh Ministers or a Local Health Board may or must stop making direct payments;</u></p> <p><u>(j) the circumstances in which the Welsh Ministers or a Local Health Board may or must require all or part of a direct payment to be repaid, by the patient or (if different) the payee, or otherwise;</u></p>	24(2)

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<p><u>(k) the monitoring of the making of direct payments, of their use by the patient or (if different) the payee, or of services which they are used to secure;</u>  <u>(l) the review of decisions as whether a direct payment should be made;</u>  <u>(m) the arrangements to be made by the Welsh Ministers or Local Health Board for providing patients, payees or their representatives with information, advice or other support in connection with direct payments;</u>  <u>(n) the extent to which such support is to be treated as a service in respect of which direct payments may be made.</u>  <u>(3) If the regulations make provision about persons who lack capacity to consent to the making of direct payments, the regulations may also make provision about the cases or circumstances where a person who has lacked that capacity but no longer does so (whether because of fluctuating capacity or regaining or gaining capacity).</u>  <u>(4) The regulations may provide for a sum that must be repaid to the Welsh Ministers or Local Health Board (as the case may be) by virtue of a condition or other requirement imposed by or under the regulations to be recoverable as a debt due to the Welsh Ministers or Local Health Board (as the case may be).</u>  <u>(5) The regulations may make provision—</u>  <u>(a) for a service in respect of which a direct payment has been made under section 10B(1) to be regarded as provided or arranged for by the Welsh Ministers under an enactment mentioned in section 10B(3), only to such extent and subject to such conditions as the regulations may specify;</u>  <u>(b) displacing functions or obligations of a Local Health Board with respect to the provision of after-care services under section 117 of the Mental Health Act 1983 (c. 20), only to such extent and subject to such conditions as the regulations may prescribe.</u>  <u>(6) In this section, “service” includes anything in respect of which direct payments may be made.</u></p>	
<p><b><u>10D Arrangements with other bodies relating to direct payments</u></b></p> <p><u>(1) The Welsh Ministers or a Local Health Board may arrange with any person or body to provide assistance in connection with direct payments.</u>  <u>(2) Arrangements may be made under subsection (1) with voluntary organisations.</u>  <u>(3) Powers under this section may be exercised on such terms as may be agreed, including terms as to the making of payments by or to the Welsh Ministers or the Local Health Board.</u></p>	24(2)
<p><b>184 Functions of overview and scrutiny committees</b></p>	Schedule 2, paragraph 3(2)

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<p>(1) This section applies to any local authority, except that it applies to the council of a district only where the district is comprised in an area for which there is no county council.</p> <p>(2) Regulations may, in relation to an overview and scrutiny committee of an authority to which this section applies, make provision—</p> <p>(a) as to matters relating to the health service in the authority's area which the committee may review and scrutinise,</p> <p>(b) as to matters relating to the health service in the authority's area on which the committee may make reports and recommendations to local NHS bodies, <u>direct payment service providers</u> or the Welsh Ministers,</p> <p>(c) as to matters on which local NHS bodies <u>or direct payment service providers</u> must consult the committee in accordance with the regulations (including provision as to circumstances in which the Welsh Ministers or the Independent Regulator of NHS Foundation Trusts may require consultation on those matters in accordance with the regulations),</p> <p>(d) as to information which local NHS bodies <u>or direct payment service providers</u> must provide to the committee,</p> <p>(e) as to information which may not be disclosed by a local NHS body <u>or a direct payment service provider</u> to the committee,</p> <p>(f) requiring any officer of a local NHS body <u>or a direct payment service provider</u> to attend before the committee to answer questions.</p> <p>(3) For the purposes of subsection (2), “local NHS body”, in relation to an overview and scrutiny committee, means an NHS body other than a Special Health Authority which is prescribed for those purposes in relation to the committee.</p> <p><u>(3A) For the purposes of subsection (2) and section 186, “direct payment service provider” in relation to an overview and scrutiny committee of a local authority means a person who provides services to any person residing in the authority’s area in respect of which direct payments have been made under section 10B(1), or under regulations made under section 10B(5).</u></p> <p>(4) “The health service” includes services provided in pursuance of arrangements under regulations under section 33 in relation to the exercise of health-related functions of a local authority.</p>	
<p><b>186 Overview and scrutiny committees: exempt information</b></p> <p>(1) This section applies in relation to any item of business at a meeting of an overview and scrutiny committee which is an item relating to functions of the committee under section 21(2)(f) of the Local Government Act 2000 (c. 22).</p> <p>(2) In relation to any such item, information is exempt information for the purposes of section 100A(4) of the Local Government Act 1972 (c. 70) (exclusion of public from meetings to prevent disclosure of exempt information) if it falls within any of the</p>	<p>Schedule 2, paragraph 3(3)</p>

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<p>descriptions of information specified in Schedule 11, or in Schedule 17 to the National Health Service Act 2006.</p> <p>(3) The Welsh Ministers may by order vary Schedule 11—</p> <p>(a) by adding any description or other provision in connection with a relevant body or services provided by, or under arrangements made by, a relevant body, or</p> <p><u>(ab) by adding any description or other provision in connection with a direct payment service provider or services provided by, or under arrangements made by, a direct payment service provider,</u></p> <p>or</p> <p>(b) by deleting or varying any description or other provision specified or contained in that Schedule.</p> <p>(4) The Welsh Ministers may exercise the power conferred by subsection (3) by amending any Part of Schedule 11, with or without amendment of any other Part.</p> <p>(5) In this section and Schedule 11 “relevant body” means a body in respect of which overview and scrutiny committees exercise functions under regulations under section 184.</p>	
<p><b>203 Orders, regulations and directions</b></p> <p>(1) This section does not apply to Part 10 (as to which, see section 157).</p> <p>(2) Subject to subsection (3), any power under this Act to make an order or regulations is exercisable by statutory instrument.</p> <p>(3) Subsection (2) does not apply to an order under—</p> <p>(a) section 26(2),</p> <p>(b) section 159(4),</p> <p>(c) paragraph 20, 21, 22 or 24 of Schedule 2,</p> <p>(d) paragraph 9, 27 or 29 of Schedule 3, or</p> <p>(e) paragraph 2 of Schedule 12.</p> <p>(4) Subject to subsections (5) to (7), a statutory instrument made by virtue of this Act is subject to annulment in pursuance of a resolution of the National Assembly for Wales.</p> <p>(5) Subsection (4) does not apply to a statutory instrument containing an order under—</p> <p>(a) section 18,</p> <p>(b) Schedule 3, or</p> <p>(c) paragraph 1(1) of Schedule 4.</p> <p>(6) A statutory instrument containing an order under section 141(4) may not be made unless a draft of the instrument has been laid before, and approved by resolution of, the National Assembly for Wales.</p> <p>(6A) <u>A statutory instrument containing regulations under section 10A(1), section 25B(3)(c) or 201A(9) or the first regulations under section 82A (pharmaceutical needs assessments) or the first regulations under section 10B(5) (direct payments by Local Health Boards)</u> may not be made unless a draft of the instrument has been laid before, and approved by resolution of, the National Assembly for Wales.</p>	<p>24(3)</p>



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<p>(7) If a statutory instrument made by virtue of this Act, which is subject to annulment in pursuance of a resolution of the National Assembly for Wales—</p> <p>(a) contains subordinate legislation made by a Minister of the Crown or government department (whether or not jointly with the Welsh Ministers, the First Minister or the Counsel General),</p> <p>(b) contains subordinate legislation relating to an English border area, or</p> <p>(c) contains subordinate legislation relating to a cross-border body (and not relating only to the exercise of functions, or the carrying on of activities, by the body in or with respect to Wales or a part of Wales),</p> <p>the statutory instrument is subject also to annulment in pursuance of a resolution of either House of Parliament.</p> <p>(8) In subsection (7), “English border area” and “cross-border body” have the meaning given by the Government of Wales Act 2006 (c. 32).</p> <p>(9) Any power under this Act to make orders, regulations or schemes, and any power to give directions—</p> <p>(a) may be exercised either in relation to all cases to which the power extends, or in relation to those cases subject to specified exceptions, or in relation to any specified cases or classes of case,</p> <p>(b) may be exercised so as to make, as respects the cases in relation to which it is exercised—</p> <p>(i) the full provision to which the power extends or any less provision (whether by way of exception or otherwise),</p> <p>(ii) the same provision for all cases in relation to which the power is exercised, or different provision for different cases or different classes of case, or different provision as respects the same case or class of case for different purposes of this Act,</p> <p>(iii) any such provision either unconditionally or subject to any specified condition, and</p> <p>(c) may, in particular, make different provision for different areas.</p> <p>(10) Any such power includes power—</p> <p>(a) to make such incidental, supplementary, consequential, saving or transitional provision (including, in the case of a power to make an order or regulations, provision amending, repealing or revoking enactments) as the person or body exercising the power considers to be expedient, and</p> <p>(b) to provide for a person to exercise a discretion in dealing with any matter.</p>	
<p><b>207 Index of defined expressions</b>          In this Act the following expressions are defined or otherwise explained by the provisions indicated—</p>	<p>Schedule 2, paragraph 3(4)</p>
<p>body established under this Act</p>	<p>section 206(2)</p>
<p>commissioner, in relation to an NHS contract</p>	<p>section 7(1)</p>

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contractor, in relation to a general dental services contract	section 57(4)	
contractor, in relation to a general medical services contract	section 42(5)	
<u>direct payment service provider</u>	<u>Section 184(3A)</u>	
fraud case	section 107(3)	
general dental services contract	section 57(2)	
general medical services contract	section 42(2)	
general ophthalmic services	section 71(10)	
NHS body	section 22(6)	
LPS scheme	paragraph 1(2) of Schedule 7	
NHS contract	section 7(1)	
NHS trust order	section 18(2)	
nurse staffing level	section 25B(1)(a)	
ophthalmic list	section 72(7)	
optical appliances	section 128(5)	
pharmaceutical list	section 83(11)	
pharmaceutical services	section 80(8)	
pilot scheme	section 92(2)	
practitioner	section 107(9)	
primary dental services	section 56	
primary medical services	section 41	
purposes of a hospital	section 206(3)	
provider, in relation to an NHS contract	section 7(1)	
relevant dental service	section 125(4)	
section 50 arrangements	section 50(7)	
section 64 arrangements	section 64(7)	

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special trustees	section 160(1)	
supplementary list	section 105(2)	
terms of service	section 104(7)	
unsuitability case	section 107(4)	

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## Schedule of amendments

### Social Services and Well-being (Wales) Act 2014

#### AMENDMENTS TO BE MADE BY THE HEALTH AND SOCIAL CARE (WALES) BILL

This document is intended to show how the provisions of the Social Services and Well-being (Wales) Act 2014, as they applied in relation to Wales on 9 March 2024, would look as amended by the Health and Social Care (Wales) Bill (if enacted as introduced on 20 May 2024).

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<b><u>Social Services and Well-being (Wales) Act 2014</u></b>	<i>Amending section of the <u>Health and Social Care (Wales) Bill</u></i>
<b>47 Exception for provision of health services</b>  (1)A local authority may not meet a person's needs for care and support (including a carer's needs for support) under sections 35 to 45 by providing or arranging for the provision of a service or facility which is required to be provided under a health enactment, unless <u>(a) doing so would be incidental or ancillary to doing something else to meet needs under those sections, and</u> <u>(b) the service or the facility in question would be of a nature that the local authority could be expected to provide.</u>	26(2) and (3)

<p>(2)A local authority may not secure services or facilities for a person under section 15 (preventative services) that are required to be provided under a health enactment, unless</p> <p>(a) doing so would be incidental or ancillary to securing another service or facility for that person under that section, and</p> <p>(b) <u>the service or the facility in question would be of a nature that the local authority could be expected to provide.</u></p> <p>(3)Regulations may specify—</p> <p>(a)types of services or facilities which may, despite subsections (1) and (2), be provided or arranged by a local authority, or circumstances in which such services or facilities may be so provided or arranged;</p> <p>(b)types of services or facilities which may not be provided or arranged by a local authority, or circumstances in which such services or facilities may not be so provided or arranged;</p> <p>(c)services or facilities, or a method for determining services or facilities, the provision of which is, or is not, to be treated as incidental or ancillary for the purposes of subsection (1) or (2).</p> <p>(4)A local authority may not meet a person's needs for care and support (including a carer's needs for support) under sections 35 to 45 by providing or arranging for the provision of nursing care by a registered nurse.</p> <p>(5)A local authority may not secure the provision of nursing care by a registered nurse in discharging its duty under section 15.</p> <p>(6)But a local authority may, despite subsections (1), (2), (4) and (5), arrange for the provision of accommodation together with nursing care by a registered nurse—</p> <p>(a)if the authority has obtained consent for it to arrange for the provision of the nursing care from—</p> <p>(i)whichever Local Health Board regulations require, in the case of accommodation in Wales, Scotland or Northern Ireland, or</p> <p>(ii)whichever English health body regulations require, in the case of accommodation in England, or</p> <p>(b)in an urgent case and where the arrangements are temporary.</p> <p>(7)In a case to which subsection (6)(b) applies, the local authority must seek to obtain the consent mentioned</p>	
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<p>in subsection (6)(a) as soon as is feasible after the temporary arrangements are made.</p> <p>(8) Regulations may require a local authority—</p> <p>(a) to make arrangements in connection with the resolution of disputes between the authority and a health body about whether or not a service or facility is required to be provided under a health enactment;</p> <p>(b) to be involved in the manner specified in processes for assessing a person's needs for health care and deciding how those needs should be met.</p> <p>(9) Nothing in this section affects what a local authority may do under the National Health Service (Wales) Act 2006, including entering into arrangements under regulations made under section 33 of that Act (arrangements with NHS bodies).</p> <p>(10) In this section—</p> <p>an “English health body” (“corff iechyd Seisnig”) means—</p> <p>(a) an integrated care board;</p> <p>(b) NHS England;</p> <p>a “health body” (“corff iechyd”) means—</p> <p>(a) a Local Health Board;</p> <p>(b) an integrated care board;</p> <p>(c) NHS England;</p> <p>(d) a Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978;</p> <p>(e) a Special Health Board constituted under that section;</p> <p>(f) a Health and Social Care trust;</p> <p>a “health enactment” (“deddfiad iechyd”) means—</p> <p>(a) the National Health Service (Wales) Act 2006;</p> <p>(b) the National Health Service Act 2006;</p> <p>(c) the National Health Service (Scotland) Act 1978;</p> <p>(d) the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14));</p> <p>(e) The Health and Social Care (Reform) Act (Northern Ireland) 2009;</p> <p>“nursing care” (“gofal nyrsio”) means a service which involves either the provision of care or the planning, supervision or delegation of the provision of care, but does not include a service which, by its nature and in the circumstances in which it is to be provided, does not need to be provided by a registered nurse.</p>	
<i>Direct payments</i>	20(2)(a)

<p><b><u>49A Direct payments</u></b></p> <p><u>(1) Regulations may require or allow a local authority to make payments to a person towards the cost of meeting the needs of—</u></p> <p><u>(a) an adult (“A”), under section 35 or 36;</u></p> <p><u>(b) a child (“C”), under section 37, 38 or 39;</u></p> <p><u>(c) a carer (“R”), under section 40, 42 or 45.</u></p> <p><u>(2) But regulations under subsection (1) may not require or allow such payments to be made unless—</u></p> <p><u>(a) where the payments are to be made to meet an adult’s needs under section 35 or 36, condition 1, 2 or 3 in section 50 is met;</u></p> <p><u>(b) where the payments are to be made to meet a child’s needs under section 37, 38 or 39, condition 1 or 2 in section 51 is met;</u></p> <p><u>(c) where the payments are to be made to meet a carer’s needs under section 40, 42 or 45, condition 1 or 2 in section 52 is met.</u></p> <p><u>(3) A payment under this section is referred to in this Act as a “direct payment”.</u></p>	
<p><del><b>50 Direct payments to meet an adult's needs</b></del></p> <p><del>(1) Regulations may require or allow a local authority to make payments to a person towards the cost of meeting an adult's needs for care and support under section 35 or 36.</del></p> <p><del>(2) But regulations under subsection (1) may not require or allow such payments to be made unless condition 1 or 2 is met.</del></p> <p><del>(3) Condition 1 is that—</del></p> <p><del>(a) the payments are to be made to the adult who has needs for care and support (“A”);</del></p> <p><del>(b) A has, or the local authority believes that A has, capacity to consent to the making of the payments;</del></p> <p><del>(c) the local authority is satisfied that—</del></p> <p><del>(i) making the payments is an appropriate way of meeting A's needs, and</del></p> <p><del>(ii) A is capable of managing the payments (either by himself or herself or with the support that is available to A), and</del></p> <p><del>(d) A has consented to the making of the payments.</del></p> <p><del>(4) Condition 2 is that—</del></p>	<p>20(2)(b)</p>

<p><del>(a) the adult who has needs for care and support (“A”) does not have, or the local authority believes that A does not have, capacity to consent to the making of the payments,</del></p> <p><del>(b) the payments are to be made to a person (“P”) other than A,</del></p> <p><del>(c) P is a suitable person,</del></p> <p><del>(d) the local authority is satisfied that—</del></p> <p><del>(i) making the payments is an appropriate way of meeting A's needs,</del></p> <p><del>(ii) P is capable of managing the payments (either by himself or herself or with the support that is available to P), and</del></p> <p><del>(iii) P will act in A's best interests in managing the payments, and</del></p> <p><del>(e) the necessary consent has been obtained to make the payments to P.</del></p> <p><del>(5) For the purposes of subsection (4)(c), P is a “suitable person”—</del></p> <p><del>(a) if P is authorised under the Mental Capacity Act 2005 (whether in general or specific terms) to make decisions about A's needs for care and support,</del></p> <p><del>(b) where P is not authorised as mentioned in paragraph (a), if a person who is so authorised agrees with the local authority that P is suitable to receive payments towards the cost of meeting A's needs for care and support, or</del></p> <p><del>(c) where P is not authorised as mentioned in paragraph (a) and there is no person who is so authorised, if the local authority considers that P is suitable to receive payments of that kind.</del></p> <p><del>(6) For the purposes of subsection (4)(e), the “necessary consent” means—</del></p> <p><del>(a) the consent of P, and</del></p> <p><del>(b) where P is a suitable person by virtue of subsection (5)(b), the consent of a person authorised under the Mental Capacity Act 2005 (whether in general or specific terms) to make decisions about A's needs for care and support.</del></p> <p><del>(7) A payment under this section is referred to in this Act as a “direct payment”.</del></p> <p><b>51 Direct payments to meet a child's needs</b></p>	
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Please note: this document has been prepared solely to assist people in understanding the Health and Social Care (Wales) Bill. It should not be relied on for any other purpose.

<p><del>(1) Regulations may require or allow a local authority to make payments to a person towards the cost of meeting a child's needs for care and support under section 37, 38 or 39.</del></p> <p><del>(2) But regulations under subsection (1) may not require or allow payments to be made unless conditions 1 to 4 are met.</del></p> <p><del>(3) Condition 1 is that the payments are to be made to a person ("P") who is—</del></p> <p><del>(a) a person with parental responsibility for a child who has needs for care and support, or</del></p> <p><del>(b) a child who has needs for care and support.</del></p> <p><del>(4) Condition 2 is that—</del></p> <p><del>(a) where P is an adult or a child aged 16 or 17, P has, or the local authority believes that P has, capacity to consent to the making of the payments;</del></p> <p><del>(b) where P is a child aged under 16, the local authority is satisfied that P has sufficient understanding to make an informed decision about receiving direct payments.</del></p> <p><del>(5) Condition 3 is that the local authority is satisfied that—</del></p> <p><del>(a) making the payments is an appropriate way of meeting the child's needs,</del></p> <p><del>(b) the well-being of the child will be safeguarded and promoted by the making of the payments, and</del></p> <p><del>(c) P is capable of managing the payments (either by himself or herself or with the support that is available to P).</del></p> <p><del>(6) Condition 4 is that P has consented to the making of the payments.</del></p> <p><del>(7) A payment under this section is referred to in this Act as a "direct payment".</del></p> <p><b>52 Direct payments to meet a carer's needs</b></p> <p><del>(1) Regulations may require or allow a local authority to make payments to a person towards the cost of meeting a carer's needs for support under section 40, 42 or 45.</del></p> <p><del>(2) But regulations under subsection (1) may not require or allow payments to be made unless conditions 1 to 4 are met.</del></p> <p><del>(3) Condition 1 is that the payments are to be made to the carer who has needs for support ("C").</del></p>	
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<p><del>(4) Condition 2 is that—</del></p> <p><del>(a) where C is an adult or a child aged 16 or 17, C has, or the local authority believes that C has, capacity to consent to the making of the payments;</del></p> <p><del>(b) where C is a child aged under 16, the local authority is satisfied that C has sufficient understanding to make an informed decision about receiving direct payments.</del></p> <p><del>(5) Condition 3 is that the local authority is satisfied that—</del></p> <p><del>(a) making the payments is an appropriate way of meeting C's needs, and</del></p> <p><del>(b) C is capable of managing the payments (either by himself or herself or with the support that is available to C).</del></p> <p><del>(6) Condition 4 is that C has consented to the making of the payments.</del></p> <p><del>(7) A payment under this section is referred to in this Act as a “direct payment”.</del></p> <p><b><u>50 Direct payments: conditions for payment to meet an adult’s needs</u></b></p> <p><u>(1) The conditions referred to in section 49A(2)(a) in relation to making direct payments towards the cost of meeting the needs of an adult (“A”) under section 35 or 36 are as follows.</u></p> <p><u>(2) Condition 1 is that—</u></p> <p><u>(a) the payments are to be made to A,</u></p> <p><u>(b) the local authority believes that A has capacity to consent to the making of the payments,</u></p> <p><u>(c) the local authority is satisfied that—</u></p> <p><u>(i) making the payments is an appropriate way of meeting A’s needs, and</u></p> <p><u>(ii) A is capable of managing the payments (either by themselves or with the support that is available to them),</u></p> <p><u>and</u></p> <p><u>(d) A has consented to the making of the payments.</u></p> <p><u>(3) Condition 2 is that—</u></p> <p><u>(a) the payments are to be made to a person other than A (“B”),</u></p> <p><u>(b) the local authority believes that A does not have capacity to consent to the making of the payments,</u></p> <p><u>(c) B is a suitable person,</u></p>	
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<p><u>(d) the local authority is satisfied that—</u></p> <p><u>(i) making the payments is an appropriate way of meeting A's needs,</u></p> <p><u>(ii) B is capable of managing the payments (either by themselves or with the support that is available to them),</u> <u>and</u></p> <p><u>(iii) B will act in A's best interests in managing the payments,</u> <u>and</u></p> <p><u>(e) the necessary consent has been obtained to make the payments to B.</u></p> <p><u>(4) Condition 3 is that—</u></p> <p><u>(a) the payments are to be made to a person who is nominated by A ("N"),</u></p> <p><u>(b) the local authority believes that A has capacity to consent to the making of the payments,</u></p> <p><u>(c) the local authority is satisfied that—</u></p> <p><u>(i) making the payments is an appropriate way of meeting A's needs, and</u></p> <p><u>(ii) N is capable of managing the payments (either by themselves or with the support that is available to them),</u></p> <p><u>(d) A has consented to the making of the payments, and</u></p> <p><u>(e) N has consented to receive the payments.</u></p> <p><u>(5) For the purposes of subsection (3)(c), B is a "suitable person"—</u></p> <p><u>(a) if B is authorised under the Mental Capacity Act 2005 (whether in general or specific terms) to make decisions about A's needs for care and support,</u></p> <p><u>(b) where B is not authorised as mentioned in paragraph (a), if a person who is so authorised agrees with the local authority that B is suitable to receive payments towards the cost of meeting A's needs for care and support, or</u></p> <p><u>(c) where B is not authorised as mentioned in paragraph (a) and there is no person who is so authorised, if the local authority considers that B is suitable to receive payments of that kind.</u></p> <p><u>(6) For the purposes of subsection (3)(e), the "necessary consent" means—</u></p> <p><u>(a) the consent of B, and</u></p> <p><u>(b) where B is a suitable person by virtue of subsection (5)(b), the</u></p>	
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consent of a person authorised under the Mental Capacity Act 2005 (whether in general or specific terms) to make decisions about A's needs for care and support.

**51 Direct payments: conditions for payment to meet a child's needs**

(1) The conditions referred to in section 49A(2)(b) in relation to making direct payments towards the cost of meeting the needs of a child ("C") under section 37, 38 or 39 are as follows.

(2) Condition 1 is that—

(a) the payments are to be made to a person ("P") who is—

(i) C, or

(ii) a person with parental responsibility for C,

(b) where P is—

(i) an adult or a child aged 16 or 17, the local authority believes that P has capacity to consent to the making of the payments;

(ii) a child aged under 16, the local authority is satisfied that P has sufficient understanding to make an informed decision about consenting to receive the payments,

(c) the local authority is satisfied that—

(i) making the payments is an appropriate way of meeting C's needs,

(ii) C's well-being will be safeguarded and promoted by the making of the payments, and

(iii) P is capable of managing the payments (either by themselves or with the support that is available to them),

and

(d) P has consented to the making of the payments.

(3) Condition 2 is that—

(a) the payments are to be made to a person who is nominated by P ("N"),

(b) where P is—

(i) an adult or a child aged 16 or 17, the local authority believes that P has capacity to consent to the making of the payments;

(ii) a child aged under 16, the local authority is satisfied that P has sufficient understanding to make an informed decision about consenting to the making of the payments,

(c) the local authority is satisfied that—

<p><u>(i) making the payments is an appropriate way of meeting C's needs,</u></p> <p><u>(ii) the well-being of C will be safeguarded and promoted by the making of the payments,</u></p> <p><u>(iii) N will act in C's best interests in managing the payments,</u> <u>and</u></p> <p><u>(iv) N is capable of managing the payments (either by themselves or with the support that is available to them),</u></p> <p><u>(d) P has consented to the making of the payments, and</u></p> <p><u>(e) N has consented to receive the payments.</u></p> <p><b><u>52 Direct payments: conditions for payment to meet a carer's needs</u></b></p> <p><u>(1) The conditions referred to in section 49A(2)(c) in relation to making direct payments towards the cost of meeting the needs of a carer ("R") under section 40, 42 or 45 are as follows.</u></p> <p><u>(2) Condition 1 is that—</u></p> <p><u>(a) the payments are to be made to R,</u></p> <p><u>(b) where R is—</u></p> <p><u>(i) an adult or a child aged 16 or 17, the local authority believes that R has capacity to consent to the making of the payments;</u></p> <p><u>(ii) a child aged under 16, the local authority is satisfied that R has sufficient understanding to make an informed decision about consenting to receive the payments,</u></p> <p><u>(c) the local authority is satisfied that—</u></p> <p><u>(i) making the payments is an appropriate way of meeting R's needs, and</u></p> <p><u>(ii) R is capable of managing the payments (either by themselves or with the support that is available to them),</u></p> <p><u>and</u></p> <p><u>(d) R has consented to the making of the payments.</u></p> <p><u>(3) Condition 2 is that—</u></p> <p><u>(a) the payments are to be made to a person who is nominated by R ("N"),</u></p> <p><u>(b) where R is—</u></p> <p><u>(i) an adult or a child aged 16 or 17, the local authority believes that R has capacity to consent to the making of the payments;</u></p>	
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<p><u>(ii) a child aged under 16, the local authority is satisfied that R has sufficient understanding to make an informed decision about consenting to the making of the payments,</u></p> <p><u>(c) the local authority is satisfied that—</u></p> <p><u>(i) making the payments is an appropriate way of meeting R’s needs,</u></p> <p><u>(ii) where R is a child aged under 16, N will act in R’s best interests in managing the payments, and</u></p> <p><u>(iii) N is capable of managing the payments (either by themselves or with the support that is available to them),</u></p> <p><u>(d) R has consented to the making of the payments, and</u></p> <p><u>(e) N has consented to receive the payments.</u></p>	
<p><b>53 Direct payments: further provision</b></p> <p>(1) Regulations under section 50, <del>51 or 52</del> <u>49A</u> may also make provision about the following matters (among other matters)—</p> <p>(a) the manner in which the amounts of the direct payments are to be determined;</p> <p>(b) the making of direct payments as gross payments or alternatively as net payments;</p> <p>(c) the determination of—</p> <p>(i) the financial resources of specified persons, and</p> <p>(ii) the amount (if any) that it would be reasonably practicable for those persons to pay by way of reimbursement (in the case of gross payments) or contribution (in the case of net payments);</p> <p>(d) matters to which a local authority may or must have regard when making a decision of a specified type about direct payments;</p> <p>(e) conditions which a local authority may or must attach, and conditions which it must not attach, in relation to direct payments;</p> <p>(f) steps which a local authority may or must take before, or after, making a decision of a specified type about direct payments;</p> <p>(g) support which a local authority must provide or arrange for persons to whom it makes direct payments;</p> <p>(h) cases or circumstances in which a local authority may act as an agent on behalf of a person to whom direct payments are made;</p>	<p>Sch. 1, para.4(2)</p>

<p>(i) conditions subject to which, and the extent to which, a local authority's duty or power to meet a person's needs for care and support or a carer's needs for support is displaced by the making of direct payments;</p> <p>(j) cases or circumstances in which a local authority must not, or is allowed not to, make payments to a person or in relation to a person;</p> <p>(k) cases or circumstances in which a person who no longer lacks, or who the local authority believes no longer lacks, capacity to consent to the making of direct payments must or may nonetheless be treated for the purposes of sections <del>50</del><u>49A</u> to 52 as lacking capacity to do so;</p> <p>(l) cases or circumstances in which a local authority making direct payments may or must review the making of those payments;</p> <p>(m) cases or circumstances in which a local authority making direct payments may or must—</p> <p>(i) terminate the making of those payments;</p> <p>(ii) require the repayment of the whole or part of a direct payment;</p> <p>(n) the recovery of any amount due to a local authority in connection with the making of direct payments.</p> <p>(2) In subsection (1)(b) and (c)—</p> <p>“gross payments” means direct payments—</p> <p>(a) which are made at a rate that the local authority estimates to be equivalent to the reasonable cost of securing the provision of the care and support (or, in the case of carers, the support) in respect of which the payments are made, but</p> <p>(b) which may be made subject to the condition that a person specified in regulations pays to the authority, by way of reimbursement, an amount or amounts determined under the regulations;</p> <p>“net payments” means direct payments—</p> <p>(a) which are made on the basis that a person specified in regulations will pay an amount or amounts determined under the regulations by way of contribution towards</p>	
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<p>the cost of securing the provision of the care and support (or, in the case of carers, the support) in respect of which the payments are made, and</p> <p>(c) which are accordingly made at a rate below the rate the local authority estimates to be equivalent to the reasonable cost of securing the provision of that care and support (or, in the case of carers, that support) so as to reflect the contribution to be made by that person.</p> <p>(3) Regulations under section <del>50, 51 or 52</del> <u>49A</u> may make provision in relation to direct payments which corresponds to the provision which is made by, or may be made under, sections 59 to 67 or section 73.</p> <p>(4) For the purposes of subsection (3), provision corresponds to that which is made by or under sections 59 to 67 or section 73 if it makes, in relation to reimbursements or contributions, provision which is in the opinion of the Welsh Ministers equivalent in effect to the provision made by or under those sections in relation to charges for providing or arranging the provision of care and support (or, in the case of carers, support) to meet a person's needs.</p> <p>(5) Regulations under section <del>50, 51 or 52</del> <u>49A</u> must require a local authority to take specified steps to enable relevant persons to make informed choices about the use of direct payments.</p> <p>(6) In subsection (5) "relevant persons" means persons whose consent must be obtained to the making of direct payments under regulations made under section 50, 51 or 52.</p> <p>(7) Regulations under section <del>54</del> <u>49A(1)(b)</u> must specify that where direct payments are made to a person who receives a benefit falling within a specified category, the payments—</p> <p>(a) must be made at a rate that the local authority estimates to be equivalent to the reasonable cost of securing the provision of the care and support in respect of which the payments are made, and</p> <p>(b) must not be made subject to any condition that requires a person to pay any amount to the authority by way of reimbursement.</p> <p>(8) In subsection (7) "benefit" includes any allowance, payment, credit or loan.</p>	
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<p>(9)A person to whom a local authority makes a direct payment may, subject to regulations made under section <del>50, 51 or 52</del> <u>49A</u>, use the payment to purchase care and support (or, in the case of a carer, support) from any person (including, among others, the authority which made the payment).</p> <p>(10)A local authority may impose a reasonable charge for the provision of care and support (or, in the case of a carer, support) to meet needs in respect of which a direct payment has been made.</p> <p><del>(11)The ways in which a local authority may discharge its duty under section 117 of the Mental Health Act 1983 include by making direct payments; and for that purpose Schedule A1 (which includes modifications of sections 50 and 51 and this section) has effect.</del></p>	
<p><b><u>53A Direct payments: after-care under the Mental Health Act 1983</u></b></p> <p><u>The ways in which a local authority may discharge its duty under section 117 of the Mental Health Act 1983 include by making direct payments, and for that purpose Schedule A1 has effect.</u></p>	20(2)(c)
<p><b>75 General duty of local authority to secure sufficient accommodation for looked after children</b></p> <p>(1) A local authority must take <u>all reasonable steps to secure steps that secure, so far as reasonably practicable,</u> that the local authority is able to provide the children mentioned in subsection (2) with accommodation that—</p> <p>(a) is within, <u>or is near to,</u> the authority's area, <del>and</del></p> <p><u>(aa) where the accommodation is with a local authority foster parent or in a children's home, meets the relevant requirement described in section 81A(3) (not for profit placements), and</u></p> <p>(b) meets the needs of those children.</p> <p>(2) The children referred to in subsection (1) are those—</p> <p>(a) that the local authority is looking after,</p>	10(3-6)

<p>(b) in respect of whom the authority is unable to make arrangements under section 81(2), and</p> <p>(c) whose circumstances are such that it would be consistent with their well-being for them to be provided with accommodation that is <del>in</del> <u>within, or is near to,</u> the authority's area.</p> <p>(3) In discharging its duty under subsection (1), the local authority must have regard to the benefit of <del>having—</del></p> <p><del>(a) a number of accommodation providers in its area that is, in the authority's opinion, sufficient to discharge its duty, and</del></p> <p><del>(b) a range of accommodation in its area capable of meeting different needs that is, in its opinion, sufficient to discharge its duty. <u>there being a range of accommodation that —</u></del></p> <p><u>(a) is within, or is near to, the authority's area, and</u></p> <p><u>(b) is capable of meeting the differing needs of the children mentioned in subsection (2).</u></p> <p>(4) In this section “<del>accommodation providers</del>” means—</p> <p><del>(a) local authority foster parents, and</del></p> <p><del>(b) children's homes. <u>“and in section 75A “children's home” means a place in Wales in respect of which a person is registered under Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 to provide a care home service (within the meaning of paragraph 1 of Schedule 1 to that Act) wholly or mainly to children.</u>”</del></p>	
<p><b><u>75A Duty to secure accommodation: preparation and publication of annual sufficiency plan</u></b></p> <p><u>(1) Before the beginning of each financial year a local authority must prepare and publish a plan (an “annual sufficiency plan”) setting out the steps it will take in that year in pursuance of its duty under section 75(1).</u></p> <p><u>(2) An annual sufficiency plan must include, in relation to the financial year to which it relates—</u></p> <p><u>(a) the number of children the local authority estimates—</u></p>	<p>11</p>

<p><u>(i) that it will be looking after, and</u></p> <p><u>(ii) in respect of whom it will be unlikely to be able to make arrangements under section 81(2);</u></p> <p><u>(b) an assessment of the amount of accommodation provided by local authority foster parents and children's homes that will be available to the local authority for the purpose of placing children described in paragraph (a) in accordance with section 81A(2);</u></p> <p><u>(c) an assessment of the extent to which that accommodation meets the requirements in paragraphs (a) to (b) of section 75(1);</u></p> <p><u>(d) in relation to applications the local authority anticipates making for approval of supplementary placements in accordance with section 81B—</u></p> <p><u>(i) an estimate of the number of applications anticipated,</u></p> <p><u>(ii) the reasons why that number of applications is likely to be made,</u></p> <p><u>(iii) information to be prescribed in regulations about for-profit providers who provide accommodation in Wales and who are likely to be named in those applications, and</u></p> <p><u>(iv) information to be prescribed in regulations about private providers who provide accommodation in England and who are likely to be named in those applications.</u></p> <p><u>(e) information about how steps to be taken by the local authority are intended to ensure that the authority has sufficient accommodation that meets the requirements in paragraphs (a) to (b) of section 75(1);</u></p> <p><u>(f) such other information as may be prescribed by regulations.</u></p> <p><u>(3) A sufficiency plan must be in such form as may be prescribed by regulations.</u></p> <p><u>(4) For the purposes of subsection 2(d)(iii) and section 81B, a “for-profit provider” means—</u></p> <p><u>(a) in relation to accommodation provided by local authority foster parents, a service provider that does not fall within the descriptions given in section 81A(4)(a);</u></p> <p><u>(b) in relation to accommodation provided by a children’s home, a service provider that does not fall within the descriptions given in section 81A(4)(b).</u></p> <p><u>(5) For the purposes of subsection 2(d)(iv) and section 81B a “private provider” means—</u></p> <p><u>(a) in relation to accommodation provided by local authority foster parents, a person in England that is registered in respect</u></p>	
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<p><u>of a fostering agency under Part 2 of the Care Standards Act 2000:</u></p> <p><u>(b) in relation to accommodation provided by a children’s home, a person, other than a local authority, that is registered in respect of the children’s home under Part 2 of the Care Standards Act 2000.</u></p> <p><u>(6) In this section and section 81A “service provider” has the meaning given by section 3(1)(c) of the Regulation and Inspection of Social Care (Wales) Act 2016.</u></p> <p><b><u>75B Duty to secure accommodation: procedure for approval of sufficiency plan</u></b></p> <p><u>(1) Before publishing its annual sufficiency plan, a local authority must—</u></p> <p><u>(a) prepare a draft of the plan, and,</u></p> <p><u>(b) submit the draft to the Welsh Ministers for their approval.</u></p> <p><u>(2) The first draft plan must be submitted to the Welsh Ministers no later than 4 months before the beginning of the financial year to which it relates.</u></p> <p><u>(3) Subsequent draft plans must be submitted to the Welsh Ministers no later than 2 months before the beginning of the financial year to which they relate.</u></p> <p><u>(4) Where the Welsh Ministers approve a draft of an annual sufficiency plan they must notify the local authority of their decision.</u></p> <p><b><u>75C Duty to secure accommodation: procedure if draft plan not approved by Welsh Ministers</u></b></p> <p><u>(1) This section applies if the Welsh Ministers decide not to approve a draft of an annual sufficiency plan submitted to them by a local authority under section 75B.</u></p> <p><u>(2) The Welsh Ministers must notify the local authority setting out—</u></p> <p><u>(a) the reasons for the decision;</u></p> <p><u>(b) the period before the end of which the local authority must submit a further draft of the plan to the Welsh Ministers.</u></p> <p><u>(3) The local authority must submit a further draft of the plan together with a report explaining how, in preparing the draft, the local authority has taken account of the reasons set out in the notice given under subsection (2).</u></p>	
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<p><u>(4) Subsections (2) and (3) apply where the Welsh Ministers decide not to approve a further draft submitted to them under this section as they apply where the Welsh Ministers decide not to approve a draft submitted to them under section 75B.</u></p>	
<p><b><u>75D Duty to secure accommodation: reporting</u></b></p> <p><u>In relation to each financial year for which an annual sufficiency plan has been made under section 75A, an annual report prepared by a local authority under section 144A must set out—</u></p> <p><u>(a) how steps taken by the local authority in that financial year have increased (or are expected to increase) the amount of accommodation available to the authority that meets the requirements of paragraphs (a) to (b) of section 75(1);</u></p> <p><u>(b) the number of applications the local authority made in that financial year for approval to place children in a supplementary placement in accordance with section 81B;</u></p> <p><u>(c) the reasons for any difference between the number of applications provided under paragraph (b) and the number of applications the local authority had estimated under section 75A(2)(d)(i) it would make during the year.</u></p>	<p>12</p>
<p><b>76 Accommodation for children without parents or who are lost or abandoned etc</b></p> <p>(1)A local authority must provide accommodation for any child within its area who appears to the authority to require accommodation as a result of—</p> <p>(a)there being no person who has parental responsibility for the child,</p> <p>(b)the child being lost or having been abandoned, or</p> <p>(c)the person who has been caring for the child being prevented (whether or not permanently, and for whatever reason) from providing the child with suitable accommodation or care.</p> <p>(2)Where a local authority provides accommodation under subsection (1) for a child who is ordinarily resident in the area of another local authority, that other local authority may take over the provision of accommodation for the child within—</p> <p>(a)three months of being notified in writing that the child is being provided with accommodation, or</p>	<p>21(2)</p>

<p>(b) such other longer period as may be specified.</p> <p>(2A) Where a local authority in England provides accommodation under section 20(1) of the Children Act 1989 (provision of accommodation for children: general) for a child who is ordinarily resident in the area of a local authority in Wales, that local authority in Wales may take over the provision of accommodation for the child within—</p> <p>(a) three months of being notified in writing that the child is being provided with accommodation, or</p> <p>(b) such other longer period as may be specified.</p> <p>(3) A local authority must provide accommodation for any child within its area who has reached the age of 16 and whose well-being the authority considers is likely to be seriously prejudiced if it does not provide the child with accommodation.</p> <p>(4) A local authority may not provide accommodation under this section for any child if any person objects who—</p> <p>(a) has parental responsibility for the child, and</p> <p>(b) is willing and able to—</p> <p>(i) provide accommodation for the child, or</p> <p>(ii) arrange for accommodation to be provided for the child.</p> <p>(5) Any person who has parental responsibility for a child may at any time remove the child from accommodation provided by or on behalf of a local authority under this section.</p> <p>(6) Subsections (4) and (5) do not apply while any person—</p> <p><del>(a) in whose favour a child arrangements order is in force with respect to the child,</del> <u>(a) named in a child arrangements order (that is in force) as a person with whom the child is to live,</u></p> <p>(b) who is a special guardian of the child, or</p> <p>(c) who has care of the child by virtue of an order made in the exercise of the High Court's inherent jurisdiction with respect to children,</p> <p>agrees to the child being looked after in accommodation provided by or on behalf of the local authority.</p> <p>(7) Where there is more than one such person as is mentioned in subsection (6), all of them must agree.</p>	
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<p>(8)Subsections (4) and (5) do not apply where a child who has reached the age of 16 agrees to being provided with accommodation under this section.</p>	
<p><b>81 Ways in which looked after children are to be accommodated and maintained</b></p> <p>(1)This section applies where a local authority is looking after a child (“C”).</p> <p>(2)The local authority must make arrangements for C to live with a person who falls within subsection (3), but this is subject to <del>subsections (4) and (11)</del> <u>subsection (4) and section 81C(1) and (2)</u>.</p> <p>(3)A person (“P”) falls within this subsection if—</p> <p>(a)P is a parent of C,</p> <p>(b)P is not a parent of C but has parental responsibility for C, or</p> <p>(c)in a case where C is in the care of the local authority and there was a child arrangements order in force with respect to C immediately before the care order was made, P was <del>a person in whose favour the child arrangements order was made</del> <u>named in the child arrangements order as a person with whom the child was to live</u>.</p> <p>(4)Subsection (2) does not require the local authority to make arrangements of the kind mentioned in that subsection if doing so—</p> <p>(a)would not be consistent with C's well-being, or</p> <p>(b)would not be reasonably practicable.</p> <p>(5)If the local authority is unable to make arrangements under subsection (2), it must <del>place C in the placement that is, in its opinion, the most appropriate placement available (but this is subject to subsection (11))</del> <u>make arrangements for C in accordance with section 81A(2) ,but this is subject to section 81C(1) and (2)</u>.</p> <p>(6)In subsection (5) “placement” means—</p> <p>(a)<del>placement with an individual who is a relative, friend or other person connected with C and who is also a local authority foster parent,</del></p> <p>(b)<del>placement with a local authority foster parent who does not fall within paragraph (a),</del></p> <p>(c)<del>placement in a children's home, or</del></p>	<p>13(2) and 21(3)</p>

<p><del>(d)subject to section 82, placement in accordance with other arrangements that comply with any regulations made for the purposes of this section.</del></p> <p><del>(7)In determining the most appropriate placement for C under subsection (5), the local authority must, subject to the other provisions of this Part (in particular, to its duties under section 78)—</del></p> <p><del>(a)give preference to a placement falling within paragraph (a) of subsection (6) over placements falling within the other paragraphs of that subsection,</del></p> <p><del>(b)comply, so far as is reasonably practicable in all the circumstances of C's case, with the requirements of subsection (8), and</del></p> <p><del>(c)comply with subsection (9) unless it is not reasonably practicable to do so.</del></p> <p><del>(8)The local authority must ensure that the placement is such that—</del></p> <p><del>(a)it allows C to live near C's home;</del></p> <p><del>(b)it does not disrupt C's education or training;</del></p> <p><del>(c)if C has a sibling for whom the local authority is also providing accommodation, it enables C and the sibling to live together;</del></p> <p><del>(d)if C is disabled, the accommodation provided is suitable to C's particular needs.</del></p> <p><del>(9)The placement must be such that C is provided with accommodation within the local authority's area.</del></p> <p><del>(10)Subsection (11) applies where—</del></p> <p><del>(a)the local authority is satisfied that C ought to be placed for adoption and proposes to place C for adoption with a particular prospective adopter (“A”),</del></p> <p><del>(b)an adoption agency has determined that A is suitable to adopt a child, and</del></p> <p><del>(c)the local authority is not authorised to place C for adoption.</del></p> <p><del>(11)The local authority must place C with A, unless in its opinion it would be more appropriate—</del></p> <p><del>(a)to make arrangements for C to live with a person falling within subsection (3), or</del></p> <p><del>(b)to place C in a placement of a description mentioned in subsection (6).</del></p> <p><del>(12)For the purposes of subsection (10)—</del></p> <p><del>(a)“adoption agency” has the meaning given by section 2 of the Adoption and Children Act 2002;</del></p>	
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<p><del>(b) a local authority is authorised to place C for adoption only if it has been authorised to do so under—</del>  <del>(i) section 19 of that Act (placing children with parental consent),</del>  or  <del>(ii) a placement order made under section 21 of that Act.</del>  (13) <del>The local authority may determine—</del>  <del>(a) the terms of any arrangements it makes under subsection (2) in relation to C (including terms as to payment), and</del>  <del>(b) the terms on which it places C with a local authority foster parent under subsection (5) or with a prospective adopter under subsection (11) (including terms as to payment but subject to any order made under section 49 of the Children Act 2004).</del></p>	
<p><b><u>81A Ways in which looked after children are to be accommodated and maintained: placements</u></b></p> <p><u>(1) This section applies where a local authority is required, by virtue of section 81(5), to place a child whom it is looking after (“C”) in accommodation.</u></p> <p><u>(2) Where this section applies, subject to subsection (4) the local authority must place C in the placement that is, in its opinion, the most appropriate placement available.</u></p> <p><u>(3) In subsection (2) “placement” means—</u>  <u>(a) placement with an individual who is a relative, friend or other person connected with C and who is also a local authority foster parent,</u>  <u>(b) placement with a local authority foster parent who does not fall within paragraph (a),</u>  <u>(c) placement in a children’s home, or</u>  <u>(d) subject to section 82, placement in accordance with other arrangements that comply with any regulations made for the purposes of this section.</u></p> <p><u>(4) Unless it would not be consistent with the local authority’s duties under section 78, having regard to the matters referred to in subsection (5)(a), the authority must ensure that—</u>  <u>(a) if it places C in a placement falling within paragraph (b) of subsection (3), the placement is with a local authority foster parent who is authorised as such by—</u>  <u>(i) the local authority,</u>  <u>(ii) a different local authority, or</u></p>	<p>13(3)</p>

<p><u>(iii) a service provider that is registered as meeting the requirement in section 6A(1)(b) of the Regulation and Inspection of Social Care (Wales) Act 2016;</u></p> <p><u>(b) if it places C in a placement falling within paragraph (c) of subsection (3), the placement is in a children's home in respect of which one of the following persons is registered—</u></p> <p><u>(i) the local authority,</u></p> <p><u>(ii) a different local authority, or</u></p> <p><u>(iii) a service provider that is registered as meeting the requirement in section 6A(1)(a) of the Regulation and Inspection of Social Care (Wales) Act 2016.</u></p> <p><u>(5) In determining the most appropriate placement for C under subsection (2), the local authority must, subject to the other provisions of this Part, in particular to its duties under section 78—</u></p> <p><u>(a) must have regard to whether—</u></p> <p><u>(i) C would be provided with accommodation within the authority's area or would otherwise be allowed to live near C's home;</u></p> <p><u>(ii) C's education or training would be disrupted;</u></p> <p><u>(iii) if C has a sibling for whom the local authority is also providing accommodation, whether C and the sibling would be able to live together;</u></p> <p><u>(iv) if C is disabled, the accommodation provided is suitable to C's particular needs;</u></p> <p><u>(v) if C is already accommodated in a placement in accordance with subsection (2), C would be disrupted by moving to another placement;</u></p> <p><u>(b) give preference to a placement falling within paragraph (a) of subsection (3) over placements falling within the other paragraphs of that subsection.</u></p> <p><u>(6) In subsection (4)(a) and (b) the reference to a different local authority includes a local authority in England.</u></p> <p><u>(7) A code issued by the Welsh Ministers in accordance with section 145 must include provision on the exercise of a local authority's functions under this section.</u></p> <p><b><u>81B Ways in which looked after children are to be accommodated and maintained: Application for approval of a supplementary placement</u></b></p> <p><u>(1) This section applies where—</u></p>	
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<p><u>(a) a local authority is required to place a child whom it is looking after (“C”) in the most appropriate placement available in accordance with section 81A(2),</u></p> <p><u>(b) in the opinion of the local authority, the most appropriate placement available is a placement falling within paragraph (b) or (c) of section 81A(3), and</u></p> <p><u>(c) the local authority is unable to comply with the relevant requirement in section 81A(4) in respect of that placement.</u></p> <p><u>(2) The local authority must apply to the Welsh Ministers for approval of the placement.</u></p> <p><u>(3) An application under subsection (2) must include—</u></p> <p><u>(a) the name of the for-profit provider or private provider (as applicable) that is providing the placement,</u></p> <p><u>(b) a copy of C’s care and support plan,</u></p> <p><u>(c) the terms of the placement (including terms as to payment),</u></p> <p><u>(d) in the case of a placement falling within paragraph (b) of section 81A(3), a statement setting out—</u></p> <p><u>(i) any available placements falling within that paragraph meeting the requirement described in section 81A(4)(a), and</u></p> <p><u>(ii) in the case of each of those placements, the reasons why the authority considers that the placement is not consistent with the local authority’s duty under section 78,</u></p> <p><u>(e) in the case of a placement falling within paragraph (c) of section 81A(3), a statement setting out—</u></p> <p><u>(i) any available placements falling within that paragraph meeting the requirement described in section 81A(4)(b), and</u></p> <p><u>(ii) in the case of each of those placements, the reasons why the authority considers that the placement is not consistent with the local authority’s duty under section 78,</u></p> <p><u>(f) information about how any requirements relating to the exercise of the local authority’s functions under section 81A in the code issued by the Welsh Ministers in accordance with section 145 have been complied with, and</u></p> <p><u>(g) such other information as the Welsh Ministers may prescribe in regulations.</u></p> <p><u>(4) The Welsh Ministers must approve the placement if they are satisfied—</u></p>	
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<p><u>(a) that the application made under subsection (2) meets the requirements of subsection (3).</u></p> <p><u>(b) in the case of a placement falling within paragraph (b) of section 81A(3), that there is no alternative placement—</u></p> <p><u>(i) that is as appropriate, and</u></p> <p><u>(ii) that meets the condition in section 81A(4)(a).</u></p> <p><u>(c) in the case of a placement falling within paragraph (c) of section 81A(3), that there is no alternative placement—</u></p> <p><u>(i) that is as appropriate, and</u></p> <p><u>(ii) that meets the condition in section 81A(4)(b), and</u></p> <p><u>(d) the placement is reasonable in all the circumstances.</u></p> <p><u>(5) But if they decide they are not satisfied in accordance with subsection (4), the Welsh Ministers must—</u></p> <p><u>(a) notify the local authority,</u></p> <p><u>(b) give the authority written reasons for that decision, and</u></p> <p><u>(c) direct the local authority to reconsider, taking those reasons and any other information specified in the direction into account in doing so.</u></p> <p><u>(6) If the local authority continues to be of the opinion, after reconsidering in accordance with the direction, that the placement is the most appropriate placement for C it must make a further application to the Welsh Ministers for approval of the placement.</u></p> <p><u>(7) Subsections (3) to (6) apply to a further application for approval as they apply to a first application for approval, except that a further application for approval must include a statement from the local authority setting out—</u></p> <p><u>(a) how the authority took the Welsh Ministers’ reasons for not being satisfied in accordance with subsection (4) into account when reconsidering the most appropriate placement for C, and (b) the reasons why the authority continues to be of the opinion that the placement is the most appropriate placement for C.</u></p> <p><u>(8) A placement approved by the Welsh Ministers under this section is referred to as a “supplementary placement”.</u></p> <p><b><u>81C Ways in which looked after children are to be accommodated and maintained: prospective adopters</u></b></p>	
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Please note: this document has been prepared solely to assist people in understanding the Health and Social Care (Wales) Bill. It should not be relied on for any other purpose.

<p><u>(1) Subsection (2) applies where—</u></p> <p><u>(a) a local authority is looking after a child (“C”).</u></p> <p><u>(b) the local authority is satisfied that C ought to be placed for adoption and proposes to place C for adoption with a particular prospective adopter (“A”).</u></p> <p><u>(c) an adoption agency has determined that A is suitable to adopt a child, and</u></p> <p><u>(d) the local authority is not authorised to place C for adoption.</u></p> <p><u>(2) The local authority must place C with A, unless in its opinion it would be more appropriate—</u></p> <p><u>(a) to make arrangements for C to live with a person falling within section 81(3), or</u></p> <p><u>(b) to place C in a placement of a description mentioned in section 81A(3).</u></p> <p><u>(3) For the purposes of subsection (1)—</u></p> <p><u>(a) “adoption agency” has the meaning given by section 2 of the Adoption and Children Act 2002;</u></p> <p><u>(b) a local authority is authorised to place C for adoption only if it has been authorised to do so under—</u></p> <p><u>(i) section 19 of that Act (placing children with parental consent), or</u></p> <p><u>(ii) a placement order made under section 21 of that Act.</u></p> <p><b><u>81D Ways in which looked after children are to be accommodated and maintained: power to determine terms of accommodation arrangements</u></b></p> <p><u>(1) Subsection (2) applies where a local authority is looking after a child (“C”).</u></p> <p><u>(2) The local authority may determine—</u></p> <p><u>(a) the terms of any arrangements it makes under section 81(2) in relation to a child (including terms as to payment), and</u></p> <p><u>(b) the terms on which it places C with a local authority foster parent under section 81A(2) or with a prospective adopter under section 81C(2) (including terms as to payment but subject to any order made under section 49 of the Children Act 2004).”</u></p>	
<p><b>82 Review of child's case before making alternative arrangements for accommodation</b></p>	<p>Sch.1 para. 1(2)</p>

<p>(1)Where a local authority is providing accommodation for a child (“C”) other than in accordance with arrangements falling within <del>section 81(6)(d)</del> <u>section 81A(3)(d)</u>, it must not make such arrangements for C unless it has decided to do so in consequence of a review of C's case carried out in accordance with regulations made under section 102 (review of cases and inquiries into representations).</p> <p>(2)But subsection (1) does not prevent a local authority making arrangements for C under <del>section 81(6)(d)</del> <u>section 81A(3)(d)</u> if it is satisfied that in order to safeguard C's well-being it is necessary—</p> <p>(a)to make such arrangements, and</p> <p>(b)to do so as a matter of urgency.</p>	
<p><b>89 Regulations about placements of a kind mentioned in <del>section 81(6)(d)</del> <u>section 81A(3)(d)</u></b></p> <p>(1)Regulations under section 87 may, for example, make provision as to placements of the kind mentioned in <del>section 81(6)(d)</del> <u>section 81A(3)(d)</u>.</p> <p>(2)Regulations under subsection (1) may, for example, make provision as to—</p> <p>(a)the persons to be notified of any proposed arrangements;</p> <p>(b)the opportunities such persons are to have to make representations in relation to the arrangements proposed;</p> <p>(c)the persons to be notified of any proposed changes in the arrangements;</p> <p>(d)the records to be kept by local authorities;</p> <p>(e)the supervision by local authorities of any arrangements made.</p>	<p>Sch.1 para.1(3)</p>
<p><b>92 Regulations about the placing of children with local authority foster parents and prospective adopters</b></p> <p>(1)Regulations under section 87 may, for example, make provision—</p> <p>(a)with regard to the well-being of children placed with local authority foster parents or prospective adopters;</p> <p>(b)as to the arrangements to be made by local authorities in connection with the health and education of such children;</p> <p>(c)as to the records to be kept by local authorities;</p> <p>(d)for securing that where possible the local authority foster parent or prospective adopter with whom a child is to be placed—</p>	<p>Sch.1 para.1(4)</p>

<p>(i) is of the same religious persuasion as the child, or  (ii) gives an undertaking that the child will be brought up in that religious persuasion;  (e) for securing that children placed with local authority foster parents or prospective adopters, and the premises in which they are accommodated, will be supervised and inspected by a local authority and that the children will be removed from those premises if their well-being appears to require it.  (2) In this section “prospective adopter” means a person with whom a child is placed under <del>section 81(11)</del>. <u>Section 81C(2)</u>.</p>	
<p><b>94A Regulation of the exercise of local authority functions relating to looked after and accommodated children</b></p> <p>(1) Regulations may make provision about the exercise by local authorities of functions conferred on them by—  (a) <del>section 84</del> <u>sections 81 to 81D</u> (ways in which looked after children are to be accommodated and maintained), or  (b) regulations made under section 87 (regulations about looked after children) making provision such as is mentioned in section 92(1), 93 or 94.  (2) Regulations under subsection (1) may, for example, include provision—  (a) as to the persons who are fit to work for local authorities in connection with the exercise of those functions,  (b) as to the fitness of premises to be used by local authorities in exercising those functions,  (c) as to the management and control of the exercise of those functions,  (d) as to the number of persons, or persons of a particular type, working for local authorities in connection with the exercise of those functions,  (e) as to the management and training of such persons, and  (f) as to the fees or expenses which may be paid to persons assisting local authorities in making decisions in the exercise of those functions.  (3) Regulations under subsection (2)(a) may, in particular, make provision specifying that a person is not fit to work for a local authority in such position as may be specified if the person is not registered in, or in a particular part of, the register kept under section 80 of the Regulation and Inspection of Social Care (Wales) Act 2016 (registration of social care workers).</p>	<p>Sch.1  para.1(5)</p>

<p><b>124 Trefniadau i helpu plant i fyw y tu allan i Loegr a Chymru</b></p> <p>(1)Ni chaiff awdurdod lleol drefnu, neu helpu i drefnu, i blentyn yn ei ofal fyw y tu allan i Loegr a Chymru heb gymeradwyaeth y llys.</p> <p>(2)Caiff awdurdod lleol, gyda chymeradwyaeth pob person sydd â chyfrifoldeb rhiant dros y plentyn drefnu, neu helpu i drefnu, i unrhyw blentyn arall sy'n derbyn gofal ganddo i fyw y tu allan i Loegr a Chymru.</p> <p>(3)Ni chaiff y llys roi ei gymeradwyaeth i hyn o dan is-adran (1) oni chaiff ei fodloni—</p> <p>(a)y byddai byw y tu allan i Loegr a Chymru er lles pennaf y plentyn,</p> <p>(b)y gwnaed, neu y gwneir, trefniadau addas i dderbyn y plentyn a threfniadau addas er ei lesiant yn y wlad lle bydd yn byw,</p> <p>(c)bod y plentyn wedi cydsynio i fyw yn y wlad honno, a</p> <p>(d)bod pob person sydd â chyfrifoldeb rhiant dros y plentyn wedi cydsynio bod y plentyn yn byw yn y wlad honno.</p> <p>(4)Pan fo'r llys wedi ei fodloni nad oes gan y plentyn ddealltwriaeth ddigonol i gydsynio neu wrthod cydsynio, caiff anwybyddu is-adran (3)(c) a chymeradwyo os bydd y plentyn yn mynd i fyw yn y wlad sydd o dan sylw gyda rhiant, gwarcheidwad, gwarcheidwad arbennig, neu berson addas arall.</p> <p>(5)Pan fo person y mae angen ei gydsyniad gan is-adran (3)(d) yn methu â chydsynio, caiff y llys hepgor cydsyniad y person hwnnw os yw wedi ei fodloni—</p> <p>(a)nad oes modd dod o hyd i'r person neu nad oes gan y person alluedd i gydsynio, neu</p> <p>(b)bod llesiant y plentyn yn ei gwneud yn ofynnol i'r cydsyniad gael ei hepgor.</p> <p>(6)Nid yw adran 85 o Ddeddf Mabwysiadu a Phlant 2002 (sy'n gosod cyfyngiadau ar fynd â phlant allan o'r Deyrnas Unedig) yn gymwys yn achos plentyn a fydd yn byw y tu allan i Loegr a Chymru gyda chymeradwyaeth y llys a roddir o dan yr adran hon.</p>	24
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<p>(7)Pan fydd llys yn penderfynu rhoi ei gydsyniad o dan yr adran hon, caiff orchymyn nad yw ei benderfyniad i gael effaith yn ystod y cyfnod apelio.</p> <p>(8)Yn is-adran (7) ystyr “y cyfnod apelio” yw—</p> <p>(a)lle y gwneir apêl yn erbyn y penderfyniad, y cyfnod rhwng gwneud y penderfyniad a dyfarnu ar yr apêl, a</p> <p>(b)fel arall, y cyfnod pryd y caniateir apelio yn erbyn y penderfyniad.</p> <p>(9)Nid yw'r adran hon yn gymwys</p> <p><u>(a) i awdurdod lleol sy'n lleoli plentyn mewn llety diogel yn yr Alban o dan adran 25 o Ddeddf Plant 1989, na</u></p> <p><u>(b) i awdurdod lleol sy'n lleoli plentyn i'w fabwysiadu gyda darpar fabwysiadwyr.</u></p>	
<p><b>174 Representations relating to certain children etc</b></p> <p>(1)A local authority must establish a procedure for considering—</p> <p>(a)representations (including complaints) made to the authority by a person to whom subsection (3) applies about its discharge of a qualifying function in relation to a child who is being looked after by it, or who is not being looked after by it but may have needs for care and support;</p> <p>(b)representations (including complaints) made to the authority by a person to whom subsection (4) applies about its discharge of functions under section 14F of the Children Act 1989 (special guardianship support services) which have been specified in regulations;</p> <p>(c)representations (including complaints) made to the authority by a person to whom subsection (5) applies about its discharge of functions under the Adoption and Children Act 2002 which have been specified in regulations.</p> <p>(2)The following are qualifying functions for the purposes of subsection (1)(a)—</p> <p>(a)functions exercisable in relation to a child under Parts 3 to 6 (other than functions which are exercisable in relation to the child as a carer);</p> <p>(b)functions exercisable in relation to a child under Part 7;</p> <p>(c)functions under Part 4 or Part 5 of the Children Act 1989 which have been specified in regulations.</p>	<p>Sch.1 para.1(6)</p>

<p>(3) This subsection (relating to representations about the discharge of qualifying functions) applies to—</p> <ul style="list-style-type: none"><li>(a) the child who is being looked after by the local authority, or who is not being looked after by it but may have needs for care and support;</li><li>(b) a parent of the child;</li><li>(c) a person who is not a parent of the child but who has parental responsibility for the child;</li><li>(d) a local authority foster parent with whom the child is placed under section 81(5);</li><li>(e) a prospective adopter with whom the child is placed under <del>section 81(11)</del> <u>section 81C(2)</u>;</li><li>(f) any other person whom the local authority considers has a sufficient interest in the child's welfare to warrant his or her representations being considered by the authority.</li></ul> <p>(4) This subsection (relating to representations about the discharge of specified functions under section 14F of the Children Act 1989) applies to—</p> <ul style="list-style-type: none"><li>(a) a child in relation to whom a special guardianship order is in force;</li><li>(b) a special guardian or a parent of the child;</li><li>(c) a person who has applied for an assessment under section 14F(3) or (4) of the Children Act 1989;</li><li>(d) any other person whom the local authority considers has a sufficient interest in the welfare of the child to warrant his or her representations being considered by the authority.</li></ul> <p>(5) This subsection (relating to representations about the discharge of specified functions under the Adoption and Children Act 2002) applies to—</p> <ul style="list-style-type: none"><li>(a) a person mentioned in section 3(1) of the Adoption and Children Act 2002 (persons for whose needs provision is made by the Adoption Service) and any other person to whom arrangements for the provision of adoption services (within the meaning of that Act) extend;</li><li>(b) any other person whom the authority considers has sufficient interest in a child who is or may be adopted to warrant his or her representations being considered by it.</li></ul> <p>(6) A local authority must ensure (subject to subsection (8)) that the procedure which it establishes for the purposes of this section secures that at least one person who is not a member or officer of the local authority takes part in—</p> <ul style="list-style-type: none"><li>(a) the consideration of any representation to which this section applies, and</li></ul>	
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<p>(b)any discussions which are held by the authority about the action to be taken, as a result of that consideration, in relation to the person to whom the representation relates.</p> <p>(7)Regulations may make further provision about the procedure which must be established for the purposes of this section.</p> <p>(8)The regulations may provide (among other things) that subsection (6) does not apply in relation to a consideration or discussion which takes place for the purpose of resolving informally the matters raised in a representation.</p> <p>(9)A local authority must give publicity to the procedure which it establishes for the purposes of this section.</p>	
<p><b>186 Children in youth detention accommodation, prison or bail accommodation etc</b></p> <p>(1)In subsection (2), a “relevant child” means a child who, having been convicted of an offence—</p> <p>(a)is detained in youth detention accommodation or in prison,</p> <p>(b)is residing in approved premises, or</p> <p>(c)is residing in any other premises because a requirement to do so has been imposed on the child as a condition of the grant of bail in criminal proceedings.</p> <p>(2)Where a relevant child, immediately before being convicted of an offence—</p> <p>(a)has needs for care and support that are being met by a local authority under Part 4,</p> <p>(b)is looked after by a local authority by virtue of being provided with accommodation by the authority, or</p> <p>(c)is ordinarily resident in the area of a local authority, but does not come within paragraph (a) or (b),the child is to be treated for the purposes of this Act as being within that local authority's area while he or she is a relevant child (and is not to be treated as being ordinarily resident or within any other local authority's area).</p> <p>(3)The provisions set out in subsection (4) do not apply in relation to a child who, having been convicted of an offence—</p> <p>(a)is detained in youth detention accommodation or in prison, or</p> <p>(b)is residing in approved premises.</p> <p>(4)The provisions are—</p> <p>(a)section 79 (provision of accommodation for children in care);</p> <p>(b)section 80 (maintenance of looked after children);</p> <p>(c)<del>section 84</del> <u>sections 81 to 81D</u> (ways in which looked after children are to be accommodated and maintained);</p>	<p>Sch.1 para.1(7)</p>

Please note: this document has been prepared solely to assist people in understanding the Health and Social Care (Wales) Bill. It should not be relied on for any other purpose.

<p>(d)section 82 (review of child's case before making alternative arrangements for accommodation);</p> <p>(e)section 109 (support for category 2 young people);</p> <p>(f)section 114 (support for category 5 young people and former category 5 young people);</p> <p>(g)section 115 (support for category 6 young people and former category 6 young people);</p> <p>(h)paragraph 1 of Schedule 1 (liability to contribute towards maintenance of looked after children).</p> <p>(5)Section 119 (use of accommodation for restricting liberty) does not apply in relation to—</p> <p>(a)a child who, having been convicted of an offence—</p> <p>(i)is detained in youth detention accommodation or in prison, or</p> <p>(ii)is residing in approved premises, or</p> <p>(b)a child who is remanded to youth detention accommodation under section 91 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.</p> <p>(6)The provisions set out in subsection (7) do not apply in relation to a child who—</p> <p>(a)having been convicted of an offence—</p> <p>(i)is detained in youth detention accommodation or in prison, or</p> <p>(ii)is residing in approved premises, and</p> <p>(b)immediately before being convicted, was provided with accommodation by a local authority in England under section 20 of the Children Act 1989.</p> <p>(7)The provisions are—</p> <p>(a)section 21 (duty to assess the needs of a child for care and support);</p> <p>(b)section 37 (duty to meet care and support needs of a child);</p> <p>(c)section 38 (power to meet care and support needs of a child).</p> <p>(8)See also section 187 for further modifications of this Act's provisions in relation to—</p> <p>(a)children who are detained in youth detention accommodation or in prison, and</p> <p>(b)children who are residing in approved premises.</p>	
<p><b>197 General interpretation and index of defined expressions</b></p> <p>(1) In this Act—</p>	<p>12(7)</p>

<p>“abuse” (“camdriniaeth”, “cam-drin”) means physical, sexual, psychological, emotional or financial abuse (and includes abuse taking place in any setting, whether in a private dwelling, an institution or any other place), and “financial abuse” (“camdriniaeth ariannol”) includes—</p> <ul style="list-style-type: none"><li>(a) having money or other property stolen;</li><li>(b) being defrauded;</li><li>(c) being put under pressure in relation to money or other property;</li><li>(d) having money or other property misused;</li></ul> <p>“adult” (“oedolyn”) has the meaning given by section 3;</p> <p>“approved premises” (“mangre a gymeradwywyd”) is defined for the purposes of sections 185 to 187 by section 188(1);</p> <p>“bail in criminal proceedings” (“mechnïaeth mewn achos troseddol”) is defined for the purposes of sections 185 to 187 by section 188(1);</p> <p>“care and support” (“gofal a chymorth”) has the meaning given by section 4;</p> <p>“care home” (“cartref gofal”)</p> <ul style="list-style-type: none"><li>(a) has the same meaning as in the Care Standards Act 2000 in respect of a care home in England; and</li><li>(b) means a place in Wales at which a care home service within the meaning of Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 is provided wholly or mainly to adults;</li></ul> <p>“carer” (“gofalwr”) has the meaning given by section 3;</p> <p>“child” (“plentyn”), except in section 83(2C), has the meaning given by section 3;</p> <p>“children’s home” (“cartref plant”) means, except in section 86,</p> <ul style="list-style-type: none"><li>(a) a children’s home in England within the meaning of the Care Standards Act 2000 in respect of which a person is registered under Part 2 of that Act; and</li><li>(b) <u>except in sections 75 and 75A</u>, a place in Wales in respect of which a person is registered under Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 to provide—</li></ul> <ul style="list-style-type: none"><li>(i) a care home service (within the meaning of paragraph 1 of Schedule 1 to that Act) wholly or mainly to children, or</li><li>(ii) a secure accommodation service (within the meaning of paragraph 2 of Schedule 1 to that Act);</li></ul>	
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<p>“community home” (“cartref cymunedol”) and “controlled community home” (“cartref cymunedol a reolir”) have the meanings given by section 53 of the Children Act 1989;</p> <p>“disabled” (“anabl”) has the meaning given by section 3;</p> <p>“education functions” (“swyddogaethau addysg”) has the meaning given by section 579(1) of the Education Act 1996;</p> <p>“eligibility criteria” (“meini prawf cymhwysra”) means criteria set under section 32;</p> <p>“enactment” (“deddfiad”) means—</p> <p>(a) except in sections 140(2)(b), 172(7) and 198(2)(b), a provision contained in any of the following (whenever enacted or made)—</p> <p>(i) an Act of Parliament;</p> <p>(ii) an Act or Measure of <del>the National Assembly for Wales</del> <u>Senedd Cymru</u>;</p> <p>(iii) an Act of the Scottish Parliament;</p> <p>(iv) Northern Ireland legislation (within the meaning of the Interpretation Act 1978);</p> <p>(v) subordinate legislation made under an enactment falling within sub-paragraphs (i) to (iv);</p> <p>(b) in sections 140(2)(b), 172(7) and 198(2)(b), a provision contained in any of the following (whenever enacted or made)—</p> <p>(i) an Act of Parliament;</p> <p>(ii) an Act or Measure of the National Assembly for Wales;</p> <p>(iii) subordinate legislation made under an enactment falling within sub-paragraph (i) or (ii);</p> <p>“family” (“teulu”), in relation to a child, includes (but is not limited to) any person who has parental responsibility for the child and any other person with whom the child has been living;</p> <p>“financial assessment” (“asesiad ariannol”) has the meaning given by section 63;</p> <p>“financial limit” (“terfyn ariannol”) has the meaning given by section 66(5);</p> <p>“function” (“swyddogaeth”) means power or duty;</p> <p>“harm” (“niwed”), in relation to a child, means abuse or the impairment of—</p> <p>(a) physical or mental health, or</p> <p>(b) physical, intellectual, emotional, social or behavioural development,</p> <p>and where the question of whether harm is significant turns on the child's health or development, the child's health or</p>	
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<p>development is to be compared with that which could reasonably be expected of a similar child;</p> <p>“Health and Social Care trust” (“ymddiriedolaeth lechyd a Gofal Cymdeithasol”) means a Health and Social Care trust established under the Health and Personal Social Services (Northern Ireland) Order 1991 (S.I. 1991/194 (N.I. 1));</p> <p>“hospital” (“ysbyty”) has the meaning given by section 206 of the National Health Service (Wales) Act 2006;</p> <p>“independent hospital” (“ysbyty annibynnol”)—</p> <p>(a) in relation to Wales, has the meaning given by section 2 of the Care Standards Act 2000, and</p> <p>(b) in relation to England, means a hospital as defined by section 275 of the National Health Service Act 2006 that is not a health service hospital as defined by that section;</p> <p>“integrated care board” (“bwrdd gofal integredig”) means a body established under section 14Z25 of the National Health Service Act 2006;</p> <p>“local authority” (“awdurdod lleol”) means the council of a county or county borough in Wales;</p> <p>“local authority foster parent” (“rhiant maeth awdurdod lleol”) means a person authorised as such in accordance with regulations made by virtue of—</p> <p>(a) sections 87 and 93;</p> <p>(b) paragraph 12F of Schedule 2 to the Children Act 1989 (regulations providing for approval of local authority foster parents);]“local authority in England” (“awdurdod lleol yn Lloegr”) means—</p> <p>(a) a county council in England,</p> <p>(b) a district council for an area in England for which there is no county council,</p> <p>(c) a London borough council, or</p> <p>(d) the Common Council of the City of London;</p> <p>“local authority in Scotland” (“awdurdod lleol yn yr Alban”) means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994;</p> <p>“Local Health Board” (“Bwrdd lechyd Lleol”) means a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006;</p> <p>“National Board” (“Bwrdd Cenedlaethol”) is defined for the purposes of Part 7 by section 142;</p> <p>“NHS England” (“GIG Lloegr”) means the body established under section 1H of the National Health Service Act</p>	
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<p>2006;]“needs assessment” (“asesiad o anghenion”) means an assessment under Part 3;</p> <p>“neglect” (“esgeulustod”) means a failure to meet a person's basic physical, emotional, social or psychological needs, which is likely to result in an impairment of the person's well-being (for example, an impairment of the person's health or, in the case of a child, an impairment of the child's development);</p> <p>“NHS Foundation Trust” (“Ymddiriedolaeth Sefydledig GIG”) has the meaning given by section 30 of the National Health Service Act 2006;</p> <p>“NHS Trust” (“Ymddiriedolaeth GIG”) means a National Health Service trust established under section 18 of the National Health Service (Wales) Act 2006;</p> <p>“parental responsibility” (“cyfrifoldeb rhiant”) has meaning given by section 3 of the Children Act 1989;</p> <p>“prison” (“carchar”) is defined—</p> <p>(a) for the purposes of sections 185 to 187 by section 188(1),</p> <p>(b) for the purposes of section 134, by section 134(11), and</p> <p>(c) for the purposes of section 162, by section 162(11);</p> <p>“private children's home” (“cartref plant preifat”) means a children's home which is not—</p> <p>(a) a community home, or</p> <p>(b) a voluntary home (within the meaning given by section 60 of the Children Act 1989);</p> <p>“regulations” (“rheoliadau”), other than in relation to section 101, means regulations made by the Welsh Ministers;</p> <p>“relative” (“perthynas”), in relation to a child, means a step-parent, grandparent, brother, sister, uncle or aunt (including any person who is in that relationship by virtue of a marriage or civil partnership or an enduring family relationship);</p> <p>“Safeguarding Board” (“Bwrdd Diogelu”) is defined for the purposes of Part 7 by section 142;</p> <p>“Safeguarding Board area” (“ardal Bwrdd Diogelu”) is defined for the purposes of Part 7 by section 142;</p> <p>“Safeguarding Board partner” (“partner Bwrdd Diogelu”) is defined for the purposes of Part 7 by section 142;</p> <p>“services” (“gwasanaethau”) includes facilities;</p> <p>“special guardian” (“gwarcheidwad arbennig”) and “special guardianship order” (“gorchymyn gwarcheidiaeth arbennig”) have the meaning given by section 14A of the Children Act 1989;</p> <p>“Special Health Authority” (“Awdurdod Iechyd Arbennig”) means a Special Health Authority established under section</p>	
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<p>22 of the National Health Service (Wales) Act 2006 or section 28 of the National Health Service Act 2006; “specified” (“penodedig”, “a bennir”, “a bennwyd”) and related expressions, unless the context otherwise requires, means specified in regulations; “standard charge” (“ffi safonol”) is defined for the purposes of Part 5 by section 63(3); “upbringing” (“magwraeth”), in relation to a child, includes the care of the child but not the child's maintenance; “voluntary organisation” (“sefydliad gwirfoddol”) means a body (other than a public or local authority) whose activities are not carried on for profit; “well-being” (“llesiant”) has the meaning given by section 2; “Welsh family proceedings officer” (“swyddog achosion teuluol Cymru”) has the meaning given by section 35 of the Children Act 2004; “youth detention accommodation” (“llety cadw ieuenctid”) is defined for the purposes of sections 185 to 187 by section 188(1); “youth offending team” (“tîm troseddwyd ifanc”) means a team established under section 39 of the Crime and Disorder Act 1998.</p> <p>(2) In this Act—</p> <p>(a) a reference to a child looked after by a local authority has the meaning given by section 74;</p> <p>(b) a reference to a child looked after by a local authority in England has the same meaning as a reference in section 22 of the Children Act 1989 to a child who is looked after by a local authority in England;</p> <p>(c) a reference to a child looked after by a local authority in Scotland has the same meaning as a reference in Chapter 1 of Part 2 of the Children (Scotland) Act 1995 to a child who is “looked after” by a local authority (see section 17(6) of that Act);</p> <p>(d) a reference to a child looked after by a Health and Social Care trust has the same meaning as a reference in the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)) to a child who is looked after by an authority (see article 25 of that Order).</p> <p>(3) A reference in this Act to a child who is in the care of a local authority is a reference to a child who is in its care by virtue of a care order (within the meaning given by the Children Act 1989).</p>	
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<p>(4)A reference in this Act to accommodation provided by or on behalf of a local authority is a reference to accommodation so provided in the exercise of functions of that authority or any other local authority which are social services functions.</p> <p>(5)A reference in this Act to a person having, or lacking, capacity in relation to a matter is to be interpreted as a reference to a person having, or lacking, capacity within the meaning of the Mental Capacity Act 2005 in relation to that matter.</p> <p>(6)A reference in this Act to being authorised under the Mental Capacity Act 2005 is a reference to being authorised as—</p> <p>(a)a donee of a lasting power of attorney created under that Act, or</p> <p>(b)a deputy appointed by the Court of Protection under section 16(2)(b) of that Act.</p> <p>(7)The Welsh Ministers may by regulations provide that the Council of the Isles of Scilly is to be treated as a local authority in England for the purposes of this Act, or for the purposes of specified provisions of this Act, with such modifications as may be specified.</p>	
<p><b><del>SCHEDULE A1 Direct payments: after-care under the Mental Health Act 1983</del></b></p> <p><i>General</i></p> <p><del>1Sections 50 (direct payments to meet an adult's needs), 51 (direct payments to meet a child's needs) and 53 (direct payments: further provision) apply in relation to section 117 of the Mental Health Act 1983 but as if the following modifications were made to those sections.</del></p> <p><del><i>Modifications to section 50</i></del></p> <p><del>2For subsection (1) of section 50 substitute—</del></p> <p><del>“(1)Regulations may require or allow a local authority to make payments to an adult to whom section 117 of the Mental Health Act 1983 (after-care) applies that are equivalent to the cost of providing or arranging for the provision of after-care services for the adult under that section.”</del></p> <p><del>3In subsection (3) of that section—</del></p> <p><del>(a)in paragraph (a), for “who has needs for care and support (“A)” substitute “in respect of the provision to the adult (“A”) of</del></p>	<p>20(2)(d)</p>

<p><del>after care services under section 117 of the Mental Health Act 1983 ”, and</del></p> <p><del>(b)in paragraph (c)(i), for “of meeting A's needs” substitute “ of discharging its duty towards A under section 117 of the Mental Health Act 1983 ”.</del></p> <p><del>4In subsection (4) of that section—</del></p> <p><del>(a)in paragraph (a), for “who has needs for care and support (“A”)” substitute “ to whom section 117 of the Mental Health Act 1983 applies (“A”) ”, and</del></p> <p><del>(b)in paragraph (d)(i), for “meeting A's needs” substitute “ discharging its duty towards A under section 117 of the Mental Health Act 1983 ”.</del></p> <p><del>5In subsection (5) of that section—</del></p> <p><del>(a)in paragraph (a), for “A's needs for care and support” substitute “ the provision to A of after care services under section 117 of the Mental Health Act 1983 ”, and</del></p> <p><del>(b)in paragraph (b), for “towards the cost of meeting A's needs for care and support” substitute “ equivalent to the cost of providing or arranging the provision to A of after care services under section 117 of the Mental Health Act 1983 ”.</del></p> <p><del>6In subsection (6)(b) of that section, for “A's needs for care and support” substitute “ the provision to A of after care services under section 117 of the Mental Health Act 1983 ”.</del></p> <p><del><i>Modifications to section 51</i></del></p> <p><del>7For subsection (1) of section 51 substitute—</del></p> <p><del>“(1)Regulations may require or allow a local authority to make payments to a person in respect of a child to whom section 117 of the Mental Health Act 1983 (after care) applies that are equivalent to the cost of providing or arranging the provision of after care services for the child under that section.”</del></p> <p><del>8In subsection (3)(a) and (b) of that section, for “who has needs for care and support” (in each place it occurs) substitute “ to whom section 117 of the Mental Health Act 1983 applies ”.</del></p> <p><del>9In subsection (5)(a) of that section, for “meeting the child's needs” substitute “ discharging its duty towards the child under section 117 of the Mental Health Act 1983 ”.</del></p> <p><del><i>Modifications to section 53</i></del></p>	
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<p><del>10</del>In subsection (1) of section 53—</p> <p><del>(a)</del>in the opening words, for “50, 51 or 52” substitute “ 50 or 51 ”,</p> <p><del>(b)</del>omit paragraphs (a), (b) and (c),</p> <p><del>(c)</del>in paragraph (i), for “a local authority's duty or power to meet a person's needs for care and support or a carer's needs for support is displaced” substitute “ a local authority's duty under section 117 of the Mental Health Act 1983 (after care) is discharged ”, and</p> <p><del>(d)</del>in paragraph (k), for “50 to 52” substitute “ 50 and 51 ”.</p> <p><del>11</del>Omit subsections (2) to (8) of that section.</p> <p><del>12</del>After subsection (8) of that section insert—</p> <p><del>“(8A)Regulations under sections 50 and 51 must specify that direct payments to meet the cost of providing or arranging for the provision of after-care services under section 117 of the Mental Health Act 1983 (after care) must be made at a rate that the local authority estimates to be equivalent to the reasonable cost of securing the provision of those services to meet those needs.”</del></p> <p><del>13</del>In subsection (9) of that section—</p> <p><del>(a)</del>for “, 51 or 52” substitute “ or 51 ”, and</p> <p><del>(b)</del>for “care and support (or, in the case of a carer, support)” substitute “ after-care services ”.</p> <p><del>14</del>In subsection (10) of that section, for “care and support (or, in the case of a carer, support) to meet needs” substitute “ after-care services ”.</p> <p><b><u>SCHEDULE A1 (as introduced by section 53A)</u></b> <b><u>DIRECT PAYMENTS: AFTER-CARE UNDER THE MENTAL HEALTH ACT 1983</u></b></p> <p><u>General</u></p> <p><u>1 Regulations may require or allow a local authority to make payments in respect of a person to whom section 117 of the Mental Health Act 1983 (after-care) applies that are equivalent to the cost of providing or arranging for the provision of after-care services for the person under that section.</u></p> <p><u>2 But regulations under paragraph 1 may not require or allow such payments to be made unless—</u></p>	
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<p><u>(a) where the payment is made in respect of an adult, Condition 1, 2 or 3 in paragraph 4 is met;</u> <u>(b) where the payment is made in respect of a child, Condition 1 or 2 in paragraph 5 is met.</u></p> <p><u>3 A payment under this Schedule is referred to in this Act as a “direct payment”.</u></p> <p><i><u>Direct payments: after-care services for an adult</u></i></p> <p><u>4 (1) The conditions referred to in paragraph 2(a) in relation to making direct payments in respect of an adult (“A”) to whom section 117 of the Mental Health Act 1983 (after-care) applies that are equivalent to the cost of providing or arranging the provision of after-care services for A under that section are as follows.</u></p> <p><u>(2) Condition 1 is that—</u> <u>(a) the payments are to be made to A,</u> <u>(b) the local authority believes that A has capacity to consent to the making of the payments,</u> <u>c) the local authority is satisfied that—</u> <u>(i) making the payments is an appropriate way of discharging its duty towards A under section 117 of the Mental Health Act 1983, and</u> <u>(ii) A is capable of managing the payments (either by themselves or with the support that is available to them), and</u> <u>(d) A has consented to the making of the payments.</u></p> <p><u>(3) Condition 2 is that—</u> <u>(a) the payments are to be made to a person other than A (“B”),</u> <u>(b) the local authority believes that A does not have capacity to consent to the making of payments,</u> <u>(c) B is a suitable person,</u> <u>(d) the local authority is satisfied that—</u> <u>(i) making the payments is an appropriate way of discharging its duty towards A under section 117 of the Mental Health Act 1983,</u> <u>(ii) B is capable of managing the payments (either by themselves or with the support that is available to them), and</u> <u>(iii) B will act in A’s best interests in managing the payments,</u> <u>and</u> <u>(e) the necessary consent has been obtained to make the payment to B.</u></p> <p><u>(4) Condition 3 is that—</u></p>	
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<p><u>(a) the payments are to be made to a person who is nominated by A (“N”),</u> <u>(b) the local authority believes that A has capacity to consent to the making of the payments,</u> <u>(c) the local authority is satisfied that—</u> <u>(i) making the payments is an appropriate way of discharging its duty towards A under section 117 of the Mental Health Act 1983, and</u> <u>(ii) N is capable of managing the payments (either by themselves or with the support that is available to them),</u> <u>(d) A has consented to the making of the payments, and</u> <u>(e) N has consented to receive the payments.</u></p> <p><u>5) For the purposes of sub-paragraph (3)(c), B is a “suitable person”—</u> <u>(a) if B is authorised under the Mental Capacity Act 2005 (whether in general or specific terms) to make decisions about the provision to A of after-care services under section 117 of the Mental Health Act 1983,</u> <u>(b) where B is not authorised as mentioned in paragraph (a), if a person who is so authorised agrees with the local authority that B is suitable to receive the payments, or</u> <u>(c) where B is not authorised as mentioned in paragraph (a) and there is no person who is so authorised, if the local authority considers that B is suitable to receive payments of that kind.</u></p> <p><u>(6) For the purposes of sub-paragraph (3)(e), the “necessary consent” means—</u> <u>(a) the consent of B, and</u> <u>(b) where B is a suitable person by virtue of sub-paragraph (5)(b),</u> <u>the consent of a person authorised under the Mental Capacity Act 2005 (whether in general or specific terms) to make decisions about the provision to A of after-care services under section 117 of the Mental Health Act 1983.</u></p> <p><i>Direct payments: after-care services for a child</i></p> <p><u>5 (1) The conditions referred to in paragraph 2(b) in relation to making direct payments in respect of a child (“C”) to whom section 117 of the Mental Health Act 1983 (after-care) applies that are equivalent to the cost of providing or arranging the provision of after-care services for C under that section are as follows.</u> <u>(2) Condition 1 is that—</u></p>	
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<p><u>(a) the payments are to be made to a person (“P”) who is—</u></p> <p><u>(i) C, or</u></p> <p><u>(ii) a person with parental responsibility for C,</u></p> <p><u>(b) where P is—</u></p> <p><u>(i) an adult or a child aged 16 or 17, the local authority believes that P has capacity to consent to the making of the payments;</u></p> <p><u>(ii) a child aged under 16, the local authority is satisfied that P has sufficient understanding to make an informed decision about consenting to receive the payments,</u></p> <p><u>(c) the local authority is satisfied that—</u></p> <p><u>(i) making the payments is an appropriate way of discharging its duty towards C under section 117 of the Mental Health Act 1983,</u></p> <p><u>(ii) C’s well-being will be safeguarded and promoted by the making of the payments, and</u></p> <p><u>(iii) P is capable of managing the payments (either by themselves or with the support that is available to them), and</u></p> <p><u>(d) P has consented to the making of the payments.</u></p> <p><u>(3) Condition 2 is that—</u></p> <p><u>(a) the payments are to be made to a person who is nominated by P (“N”),</u></p> <p><u>(b) where P is—</u></p> <p><u>(i) an adult or a child aged 16 or 17, the local authority believes that P has capacity to consent to the making of payments;</u></p> <p><u>(ii) a child aged under 16, the local authority is satisfied that P has sufficient understanding to make an informed decision about consenting to the making of payments,</u></p> <p><u>(c) the local authority is satisfied that—</u></p> <p><u>(i) making the payments is an appropriate way of discharging its duty towards C under section 117 of the Mental Health Act 1983,</u></p> <p><u>(ii) the well-being of C will be safeguarded and promoted by the making of the payments,</u></p> <p><u>(iii) N will act in C’s best interests in managing the payments, and</u></p> <p><u>(iv) N is capable of managing the payments (either by themselves or with the support that is available to them),</u></p> <p><u>(d) P has consented to the making of the payments, and</u></p> <p><u>(e) N has consented to receive the payments.</u></p> <p><u><i>Further provision for direct payments: after-care</i></u></p>	
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6 Regulations under this Schedule may also make provision (in particular) about the following—

(a) matters to which a local authority may or must have regard when making a decision of a specified type about direct payments;

(b) conditions that a local authority may or must attach, and conditions that it must not attach, in relation to direct payments;

(c) steps that a local authority may or must take before, or after, making a decision of a specified type about direct payments;

(d) support that a local authority must provide or arrange for persons to whom it makes direct payments;

(e) cases or circumstances in which a local authority may act as an agent on behalf of a person to whom direct payments are made;

(f) conditions subject to which, and the extent to which, a local authority's duty under section 117 of the Mental Health Act 1983 (after-care) is discharged by the making of direct payments;

(g) cases or circumstances in which a local authority must not, or is allowed not to, make payments to a person or in relation to a person;

(h) cases or circumstances in which a person who no longer lacks, or who the local authority believes no longer lacks, capacity to consent to the making of direct payments must or may nonetheless be treated for the purposes of paragraphs 4 and 5 as lacking capacity to do so;

(i) cases or circumstances in which a local authority making direct payments may or must review the making of those payments;

(j) cases or circumstances in which a local authority making direct payments may or must—

(i) terminate the making of those payments;

(ii) require the repayment of the whole or part of a direct payment;

(k) the recovery of any amount due to a local authority in connection with the making of direct payments.

7 Regulations under this Schedule must specify that direct payments to meet the cost of providing or arranging for the provision of after-care services under section 117 of the Mental Health Act 1983 (after-care) must be made at a rate



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<p><u>that the local authority estimates to be equivalent to the reasonable cost of securing the provision of those services to meet those needs.</u></p> <p><u>8 A person to whom a local authority makes a direct payment may, subject to regulations made under this Schedule, use the payment to purchase after-care services from any person (including, among others, the authority that made the payment).</u></p>	
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## **Regulation and Inspection of Social Care (Wales) Act 2016**

### **AMENDMENTS TO BE MADE BY THE HEALTH AND SOCIAL CARE (WALES) BILL**

This document is intended to show how the provisions of the Regulation and Inspection of Social Care (Wales) Act 2016, as they applied in relation to Wales on 9 March 2024, would look as amended by the Health and Social Care (Wales) Bill (if enacted as introduced on 20 May 2024).

Material to be deleted by the Health and Social Care (Wales) Bill is in strikethrough, e.g. ~~omitted material looks like this~~. Material to be added by the Health and Social Care (Wales) Bill is underlined, e.g. added material looks like this. References to the relevant amending provisions of the Bill are provided in the right-hand column on each page.

A number of related provisions from the Act, although not being amended, are included to aid understanding of the proposed amendments.

#### **Warning**

This text has been prepared by officials of the Health, Social Care and Early Years Group of the Welsh Government. Although efforts have been taken to ensure that it is accurate, it should not be relied on as a definitive text of the Act or the Bill.

It has been produced solely to help people understand the effect of the Health and Social Care (Wales) Bill. It is not intended for use in any other context.

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<b>Regulation and Inspection of Social Care (Wales) Act 2016</b>	<i>Amending section of the Health and Social Care (Wales) Bill</i>
<p><b>1 Overview of Part 1</b></p> <p>In this Part—</p> <p>(a) this Chapter defines some key terms including what is meant by a “regulated service” in this Act, and sets out the general objectives of the Welsh Ministers in relation to the regulation of such services;</p> <p>(b) Chapter 2 sets out the Welsh Ministers' functions in relation to registering persons who provide regulated services, including provision about varying and cancelling registrations and provision about notifications and appeals;</p> <p><u>(ba) Chapter 2 also makes provision restricting the entities that may provide care home services at a place at which the service is provided wholly or mainly to children, secure accommodation services and fostering services;</u></p> <p>(c) Chapter 3 sets out the Welsh Ministers' powers to require information and to carry out inspections;</p> <p>(d) Chapter 4 confers some general functions on the Welsh Ministers in relation to regulated services;</p> <p>(e) Chapter 5 makes provision for offences and penalties;</p> <p>(f) Chapter 6 amends the Social Services and Well-being (Wales) Act 2014 (anaw 4) to make provision in respect of the social services functions of local authorities (on which, see Schedule 2 to the 2014 Act) including, in particular, provision about—</p> <p>(i) annual reports by local authorities;</p> <p>(ii) powers for the Welsh Ministers to conduct reviews of the way in which those functions are exercised;</p> <p>(iii) powers allowing for the inspection of premises used in connection with the exercise of those functions;</p> <p>(iv) powers for the Welsh Ministers to require information relating to the exercise of those functions;</p>	2(a)

<p>(v) offences in connection with inspections or requirements to provide information;</p> <p>(vi) powers for the Welsh Ministers to regulate the exercise of those local authority functions which relate to looked after and accommodated children;</p> <p>(g) Chapter 7 makes provision for the Welsh Ministers to monitor the financial sustainability of certain service providers and to prepare and publish reports about the stability of the market for social care services in Wales.</p>	
<p><b><u>2A Meaning of “restricted children’s service”</u></b></p> <p><u>(1) For the purposes of this Part, the following regulated services are a “restricted children’s service”—</u></p> <p><u>(a) a care home service provided at a place at which the service is provided wholly or mainly to children;</u></p> <p><u>(b) a fostering service;</u></p> <p><u>(c) a secure accommodation service.</u></p> <p><u>(2) For the purposes of subsection (1), a care home service is provided wholly or mainly to children if—</u></p> <p><u>(a) it has provided more days of accommodation to children than to adults for any period of 12 months falling within the previous 24 months, or</u></p> <p><u>(b) it intends to provide more days of accommodation to children than to adults for any period of 12 months falling within the following 24 months.</u></p> <p><u>(3) Schedule 1 makes further provision about the meaning of a restricted children’s service.</u></p>	2(b)
<p><b>6 Application for registration as a service provider</b></p> <p>(1) A person who wants to provide a regulated service must make an application for registration to the Welsh Ministers—</p> <p>(a) specifying the regulated service that the person wants to provide,</p> <p>(b) specifying the places at, from or in relation to which the service is to be provided,</p> <p>(c) designating an individual as the responsible individual in respect of each place and stating each such individual's name and address (section 21 sets out who may be designated as a responsible individual), and</p> <p>(d) including such other information as may be prescribed.</p>	3(2)

<p><u>(1A) In the case of a person, other than a local authority, who wants to provide a restricted children’s service, the application must also include such information as may be prescribed to satisfy the Welsh Ministers that the person meets the requirements in section 6A(1).”</u></p> <p>(2) An application must be in the prescribed form.</p> <p>(3) A person who wants to be registered as a service provider in respect of two or more regulated services may make a single application in respect of them.</p>	
<p><b><u>6A Registration in respect of a restricted children’s service</u></b></p> <p><u>(1) To be registered in respect of a restricted children’s service, a person who is not a local authority must be a not-for-profit entity.</u></p> <p><u>(2) For the purposes of this Part, a “not-for-profit entity” is a person that meets conditions 1 and 2 in subsections (3) and (4).</u></p> <p><u>(3) Condition 1 is that the person’s objects or purposes primarily relate to—</u></p> <p><u>(a) the welfare of children, or</u></p> <p><u>(b) such other public good as the Welsh Ministers may prescribe.</u></p> <p><u>(4) Condition 2 is that the person is one of the following types of undertaking (as defined in section 6B)—</u></p> <p><u>(a) a charitable company limited by guarantee without a share capital,</u></p> <p><u>(b) a charitable incorporated organisation,</u></p> <p><u>(c) a charitable registered society, or</u></p> <p><u>(d) a community interest company limited by guarantee without a share capital.</u></p> <p><b><u>6B Registration in respect of a restricted children’s service: definitions</u></b></p> <p><u>(1) The following definitions apply for the purposes of section 6A(4).</u></p> <p><u>(2) A “charitable company limited by guarantee without a share capital” is a company—</u></p> <p><u>(a) that is registered under the Companies Act 2006 (c. 46) in Wales, England, Scotland or Northern Ireland,</u></p> <p><u>(b) whose liability is limited by guarantee and that does not have a share capital, and</u></p>	<p>3(3)</p>

<p><u>(c) that is a charity registered under one or more of—</u></p> <p><u>(i) the Charities Act 2011 (c. 25);</u></p> <p><u>(ii) the Charities and Trustee Investment (Scotland) Act 2005 (asp 10);</u></p> <p><u>(iii) the Charities Act (Northern Ireland) 2008 (c. 12).</u></p> <p><u>(3) A “charitable incorporated organisation” is an organisation registered under—</u></p> <p><u>(a) section 209, 232 or 238 of the Charities Act 2011 or regulations made under section 234 of that Act,</u></p> <p><u>(b) section 55, 58 or 60 of the Charities and Trustee Investment (Scotland) Act 2005, or</u></p> <p><u>(c) section 111, 114 or 117 of the Charities Act (Northern Ireland) 2008 or regulations made under section 115 of that Act.</u></p> <p><u>(4) A “charitable registered society” is—</u></p> <p><u>(a) a society that is—</u></p> <p><u>(i) a “registered society” within the meaning of section 1(1) of the Co-operative and Community Benefit Societies Act 2014 (c. 14), and</u></p> <p><u>(ii) a charity within the meaning of section 1(1) of the Charities Act 2011,</u></p> <p><u>(b) a society that is—</u></p> <p><u>(i) a “registered society” within the meaning of section 1(1) of the Co-operative and Community Benefit Societies Act 2014, and</u></p> <p><u>(ii) a charity registered under the Charities and Trustee Investment (Scotland) Act 2005, or</u></p> <p><u>(c) a society that is—</u></p> <p><u>(i) a “registered society” within the meaning of section 1A(1) of the Co-operative and Community Benefit Societies Act (Northern Ireland) 1969 (c. 24), and</u></p> <p><u>(ii) a charity registered under the Charities Act (Northern Ireland) 2008.</u></p> <p><u>(5) A “community interest company limited by guarantee without a share capital” is a company—</u></p> <p><u>(a) that is registered under the Companies Act 2006 in Wales, England, Scotland or Northern Ireland,</u></p> <p><u>(b) whose liability is limited by guarantee and that does not have a share capital, and</u></p> <p><u>(c) that is a community interest company under Part 2 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27).</u></p> <p><u>(6) In subsections (2) and (5)—</u></p>	
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<p><u>(a) references to a company’s liability being “limited by guarantee” have the meaning given by section 3(3) of the Companies Act 2006, and</u>  <u>(b) a “company having a share capital” has the meaning given by section 545 of that Act.</u></p>	
<p><b><u>6C Registration in respect of a restricted children's service: transitional arrangements</u></b></p> <p><u>Schedule 1A makes provision for transitional arrangements in respect of service providers registered prior to the coming into force of section 6A(1).</u></p>	4(2)
<p><b>7 Grant or refusal of registration as a service provider</b></p> <p>(1) The Welsh Ministers must grant an application under section 6 if satisfied that—</p> <p>(a) the application—</p> <p>(i) contains everything required by or under subsection (1) of that section,</p> <p>(ii) in the case of an application relating to a domiciliary support service, contains the undertaking mentioned in section 8, and</p> <p>(iii) meets the requirements prescribed under section 6(2);</p> <p><u>(aa) in the case of an application in respect of a restricted children’s service, the applicant meets the requirements in section 6A(1);</u></p> <p>(b) the applicant is a fit and proper person to be a service provider (see section 9);</p> <p>(c) each individual to be designated as a responsible individual—</p> <p>(i) is eligible to be a responsible individual in accordance with section 21(2),</p> <p>(ii) is a fit and proper person to be a responsible individual (see section 9), and</p> <p>(iii) will comply with any requirements of regulations under section 28 (so far as applicable);</p> <p>(d) the requirements of—</p> <p>(i) any regulations under section 27 (including any requirements as to the standard of care and support that must be provided), and</p> <p>(ii) any other enactment which appears to the Welsh Ministers to be relevant,</p> <p>will be complied with (so far as applicable) in relation to the provision of the regulated service.</p>	5

<p>(2) In any other case the Welsh Ministers must refuse an application.</p> <p>(3) The grant of an application—</p> <p>(a) must be subject to a condition specifying—</p> <p>(i) the places at, from or in relation to which the service provider is to provide a regulated service, and</p> <p>(ii) the individual designated as the responsible individual for each place, and</p> <p><u>(aa) must, in the case of an application in respect of a restricted children’s service, be subject to a condition that the service provider notify the Welsh Ministers of any circumstances under which the provider no longer meets the requirements in section 6A(1), and</u></p> <p>(b) may be subject to such further conditions as the Welsh Ministers think appropriate.</p> <p>(4) Where a person has made a single application in respect of two or more regulated services the Welsh Ministers may separately grant or refuse the application in respect of each service.</p> <p>(5) But the grant of an application takes effect only if the requirements of sections 18 to 20 are met (so far as applicable).</p>	
<p><b>9 Fit and proper person: relevant considerations</b></p> <p>(1) This section applies to any decision of the Welsh Ministers as to whether—</p> <p>(a) a service provider,</p> <p>(b) a person applying to be a service provider,</p> <p>(c) a responsible individual, or</p> <p>(d) a person to be designated as a responsible individual, is a fit and proper person to be a service provider or, as the case may be, a responsible individual.</p> <p>(2) In making such a decision the Welsh Ministers must have regard to all matters they think appropriate.</p> <p>(3) In particular, the Welsh Ministers must have regard to any evidence falling within subsections (4) to (8).</p> <p>(4) Evidence falls within this subsection if it shows that the person has—</p> <p>(a) committed—</p> <p>(i) any offence involving fraud or other dishonesty, violence, firearms or drugs or any offence listed in Schedule 3 to the Sexual Offences Act 2003 (c.42) (offences attracting notification requirements),</p>	<p>6(2)</p>



<p>(ii) an offence under this Act or regulations made under it, (iii) an offence under Part 2 of the Care Standards Act 2000 (c.14) or regulations made under it, or (iv) any other offence which the Welsh Ministers think is relevant, or (b) practised unlawful discrimination or harassment on the grounds of any characteristic which is a protected characteristic under section 4 of the Equality Act 2010 (c.15), or victimised another person contrary to that Act, in or in connection with the carrying on of any business.</p> <p>(5) Evidence is within this subsection if— (a) it shows that any other person associated or formerly associated with the person (whether on a personal, work or other basis) has done any of the things set out in subsection (4) or (6), and (b) it appears to the Welsh Ministers that the evidence is relevant to the question as to whether the person is a fit and proper person to be a service provider or, as the case may be, a responsible individual.</p> <p>(6) Evidence is within this subsection if it shows that the person has been responsible for, contributed to or facilitated misconduct or mismanagement in the provision— (a) of a regulated service or a service provided outside Wales which, if provided in Wales, would be a regulated service; (b) of a service which would have fallen within paragraph (a) had the regulatory system established by this Part been operating at the time the service was being provided.</p> <p>(7) When having regard to evidence within subsection (6), the Welsh Ministers must, among other things, take account of— (a) the seriousness and duration of the misconduct or mismanagement; (b) harm caused to any person, or any evidence of an intent to cause harm; (c) any financial gain made by the person; (d) any action taken by the person to remedy the misconduct or mismanagement.</p> <p><u>(e) where the person is a service provider that –</u> <u>(i) is registered in respect of a restricted children's service,</u> <u>and</u> <u>(ii) is subject to the requirement in section 6A(1),</u> <u>whether it appears to the Welsh Ministers that the provider has entered into a financial arrangement that falls within section 9A.</u></p>	
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<p>(8) Evidence is within this subsection if it shows that the person has previously failed to comply with—</p> <p>(a) an undertaking given under section 7(1)(a)(ii) or 11(3)(a)(ii),</p> <p>(b) a condition imposed under this Part, or</p> <p>(c) a requirement imposed by regulations under section 27(1) or 28(1).</p> <p>(9) The Welsh Ministers may by regulations amend this section to vary the evidence to which they must have regard.</p>	
<p><b><u>9A Fit and proper person test: financial arrangements relating to restricted children's services</u></b></p> <p><u>(1) For the purposes of the fit and proper person test in section 9, a financial arrangement falls within this section if it is an arrangement with or for the benefit of a relevant person that—</u></p> <p><u>(a) is unreasonable or disproportionate in all of the circumstances, and</u></p> <p><u>(b) (in consequence) may undermine the service provider's pursuit of its objects or purposes as determined in accordance with section 6A(3).</u></p> <p><u>(2) When determining whether such a financial arrangement has been entered into, regard must be had to—</u></p> <p><u>(a) the size or value of the arrangement and its purpose (including the extent to which it relates to the provision of the restricted children's service);</u></p> <p><u>(b) the size or value of the arrangement relative to the amount of income the service provider receives from providing the restricted children's service;</u></p> <p><u>(c) the proportion of the service provider's total income that comes from providing the restricted children's service;</u></p> <p><u>(d) the well-being of children who receive care and support (in the provision of the restricted children's service).</u></p> <p><u>(3) For the purposes of section 9(7)(e) and this section—</u></p> <p><u>(a) "entering into a financial arrangement" includes but is not limited to making a payment or awarding any benefit (direct or indirect) that has monetary value (and references to a financial arrangement are to be read as including a series of arrangements);</u></p> <p><u>(b) "relevant person" means any of the following—</u></p> <p><u>(i) an employee, worker or officer of the service provider;</u></p> <p><u>(ii) a person connected to an employee, worker or officer of</u></p>	<p>6(3)</p>

the service provider.

(iii) where the service provider is part of a group of persons under common ownership or common control, any person within that group.

**9B Financial arrangements relating to restricted children's services: supplementary provision**

(1) In section 9A(3)(b)—

(a) "employee" and "worker" have the meanings given by section 230 of the Employment Rights Act 1996 (c. 18);

(b) an "officer" means—

(i) any director, manager, secretary or other similar officer of the service provider (and, in relation to a service provider whose affairs are managed by its members, "director" means a member of the service provider),

(ii) any other person having the general control and management of the service provider,

and, where the service provider is a charity, this includes any charity trustee within the meaning of section 177 of the Charities Acts .

(2) For the purposes of section 9A(3)(b), the following are connected to an employee, worker or officer of the service provider—

(a) their child, parent, grandchild, grandparent, brother or sister;

(b) their spouse or civil partner;

(c) a person carrying on business in partnership with them or with any person falling within paragraph (a) or (b);

(d) an institution which is controlled—

(i) by them or by any person falling within paragraph (a),

(b) or (c), or

(ii) by two or more persons falling within sub-paragraph (i), when taken together;

(e) a body corporate in which—

(i) the person or any connected person falling within any of paragraphs (a) to (c) has a substantial interest, or

(ii) two or more persons falling within sub-paragraph (i), when taken together, have a substantial interest.

(3) In subsection (2)—

(a) "child" includes a stepchild;

(b) where two people are not married to, or civil partners of, each other but live together as if they were a married couple

or civil partners, each of them is to be treated as the spouse or civil partner of the other;

(c) “institution” has the meaning given by section 9(3) of the Charities Act 2011 and a person controls an institution if the person is able, directly or indirectly, to secure that the affairs of the institution are conducted in accordance with the person’s wishes;

(d) references to having a “substantial interest in a body corporate” have the meaning given by section 352 of the Charities Act 2011.

(4) For the purposes of section 9A(3)(b)(iii), a group of persons is to be treated as being under common control if the group—

(a) is a group of interconnected bodies corporate,

(b) consists of bodies corporate of which one and the same person or group of persons has control, or

(c) consists of one or more bodies corporate and a person who, or a group of persons which, has control of that or those bodies corporate.

(5) In subsection (4), a “group of interconnected bodies corporate” means a group consisting of two or more bodies corporate all of which are interconnected with each other.

(6) For the purposes of subsection (5), any two bodies corporate are interconnected if—

(a) one of them is a body corporate of which the other is a subsidiary, or

(b) both of them are subsidiaries of one and the same body corporate (and “interconnected bodies corporate” is to be construed accordingly).

(7) For the purposes of subsection (4)(b) and (c), a person or group of persons controls a body corporate if the person or group of persons is able, directly or indirectly, to secure that the affairs of the body corporate are conducted in accordance with the wishes of the person or group of persons.

(8) In this section—

“the Charities Acts” (“y Deddfau Elusennau”) means the Charities Act 2011 (c. 25), the Charities and Trustee Investment (Scotland) Act 2005 (asp 10) and the Charities Act (Northern Ireland) 2008 (c. 12);

“person” (“person”) includes a body corporate, a partnership and an unincorporated association;

“subsidiary” (“is-gorff”) has the meaning given by section 1159 of the Companies Act 2006 (c. 46).

<p><b>10 Annual return</b></p> <p>(1) <del>A service provider must submit an annual return to the Welsh Ministers following the end of each financial year during which the provider is registered.</del> <u>following the end of each financial year during which the provider is registered—</u></p> <p><u>(a) submit an annual return to the Welsh Ministers;</u>  <u>(b) publish that return on its website.</u></p> <p><u>(1A) A service provider must make available, on request, a copy of an annual return published on its website.</u></p> <p>(2) An annual return must contain—</p> <p>(a) the following information—</p> <p>(i) the regulated services that the service provider is registered to provide;</p> <p>(ii) the places at, from or in relation to which the provider is registered to provide those services;</p> <p>(iii) the name of the responsible individual registered in respect of each such place;</p> <p>(iv) the date on which the provider's registration took effect in respect of each such regulated service and place;</p> <p>(v) details of any other conditions imposed on the service provider's registration;</p> <p>(vi) details of the number of persons to whom the provider provided care and support during the year in the course of providing each such service;</p> <p>(vii) such information about training offered or undertaken in relation to each such service as may be prescribed;</p> <p>(viii) such information about workforce planning as may be prescribed;</p> <p><u>(viii a) such information about evidence relevant to the fit and proper person test as may be prescribed;</u></p> <p>(ix) such other information as may be prescribed, and</p> <p>(b) a statement setting out how the service provider has complied with any regulations made under section 27(1) specifying the standard of care and support that must be provided by a service provider (see section 27(2)).</p>	<p>7, 14(2) and Sch.1, para.5</p>
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<p><u>(2A) In the case of a service provider, other than a local authority, that provides a restricted children’s service, a return must also contain such information as may be prescribed to satisfy the Welsh Ministers that the provider meets the requirement in section 6A(1).</u></p> <p><u>(2B) But subsection (2A) does not apply in respect of a provider to whom section 6A does not apply by virtue of paragraph 2(3) of Schedule 1A.</u></p> <p>(3) An annual return must be in the prescribed form.</p> <p>(4) An annual return must be submitted to the Welsh Ministers within the prescribed time limit.</p> <p><u>(4A) An annual return must be published within the prescribed time limit.</u></p> <p><u>(4B) But if disclosure of information contained in the annual return is prohibited by any enactment or other rule of law, that information must be redacted from the annual return before it is published.</u></p> <p><del>(5) The Welsh Ministers must publish each annual return submitted under subsection (1).</del></p> <p>(6) Despite section 187(3), a statutory instrument containing—</p> <p>(a) the first regulations made under subsection (2)(a)(vii),</p> <p>(b) the first regulations made under subsection (2)(a)(viii), <del>or</del></p> <p><u>(ba) the first regulations made under subsection (2)(a)(viii),</u></p> <p>(c) the first regulations made under subsection (2)(a)(ix), <u>or</u></p> <p><u>(d) the first regulations made under subsection (2A),</u></p> <p>may not be made unless a draft of the instrument has been laid before and approved by a resolution of <del>the National Assembly for Wales</del> <u>Senedd Cymru</u>.</p>	
<p><b>11 Application for variation of registration as a service provider</b></p> <p>(1) A service provider must apply to the Welsh Ministers for a variation of the provider's registration if—</p> <p>(a) the provider wants to—</p> <p>(i) provide a regulated service which the provider is not already registered to provide,</p>	<p>8(2)</p>

<p>(ii) provide a regulated service at, from or in relation to a place which is not already specified in the provider's registration in relation to that service,</p> <p>(iii) cease to provide a regulated service, or</p> <p>(iv) cease to provide a regulated service at, from or in relation to a place;</p> <p>(b) the provider wants a condition imposed under section 7(3)(b), 12(2) or 13(1) to be varied or removed;</p> <p>(c) the provider wants to designate a different responsible individual in respect of a place or is required to designate a responsible individual because there is no such individual designated in respect of a place at, from or in relation to which the provider provides a regulated service.</p> <p>(2) The Welsh Ministers must by regulations prescribe a time limit within which an application for variation of a provider's registration must be made in circumstances where there is no responsible individual designated in respect of a place at, from or in relation to which the provider provides a regulated service.</p> <p>(3) An application under subsection (1) must—</p> <p>(a) contain—</p> <p>(i) details of the variation sought by the provider,</p> <p>(ii) in the case of an application under subsection (1)(a)(i) to provide a domiciliary support service, the undertaking set out in section 8, and</p> <p>(iii) such other information as may be prescribed;</p> <p>(b) be in the prescribed form.</p> <p><u>(4) In the case of an application under subsection (1)(a)(i) to provide a restricted children's service, the application must also contain such information as may be prescribed to satisfy the Welsh Ministers that the service provider meets the requirement in section 6A(1)</u></p>	
<p><b>12 Grant or refusal of application for variation</b></p> <p>(1) The Welsh Ministers may grant or refuse an application under section 11 (but see <del>subsection (2)</del> <u>subsections (1A) and (2)</u>).</p> <p><u>(1A) In the case of an application under section 11(1)(a)(i) to provide a restricted children's service, the Welsh Ministers may</u></p>	8(3)

<p><u>only grant an application if they are satisfied that the service provider meets the requirement in section 6A(1).</u></p> <p>(2) In the case of an application under section 11(1)(b), the Welsh Ministers may (instead of granting or refusing the application)—</p> <p>(a) vary a condition on different terms to those specified in the application, or</p> <p>(b) impose another condition on the provider's registration (whether in place of or in addition to the condition which the provider applied to have varied or removed).</p> <p>(3) But a variation under this section takes effect only if the requirements of sections 18 to 20 are met (so far as applicable).</p>	
<p><b>13 Variation without application</b></p> <p>(1) The Welsh Ministers may—</p> <p>(a) vary any condition imposed under section 7(3)(b), 12(2) or paragraph (b) of this subsection, or</p> <p>(b) impose a further condition on a service provider's registration.</p> <p>(2) No variation of a provider's registration may be made under subsection (1) unless the requirements of sections 18 and 19 are met (but this does not affect the Welsh Ministers' power to urgently vary a registration under section 25).</p> <p>(3) If a service provider provides more than one regulated service, the Welsh Ministers may vary the provider's registration by removing a regulated service if satisfied that—</p> <p>(a) the service provider no longer provides that service, or</p> <p>(b) the service is not being provided in accordance with the requirements mentioned in section 7(1)(d) so far as applicable to that service, or</p> <p><u>(c) where the service is a restricted children's service, the service provider does not meet the requirement in section 6A(1).</u></p> <p><u>(3A) See also Schedule 1A, in respect of variation of a service provider's registration to remove a restricted children's service during the transitional period defined in that Schedule.</u></p>	<p>8(4)</p>



<p>(4) If a service provider provides a regulated service at, from or in relation to more than one place, the Welsh Ministers may vary the provider's registration by removing a place if satisfied that—</p> <p>(a) the service provider no longer provides a regulated service at, from or in relation to that place,</p> <p>(b) the service provided at, from or in relation to that place is not being provided in accordance with the requirements mentioned in section 7(1)(d) so far as applicable to that service, or</p> <p>(c) there is no responsible individual designated in respect of that place (and the time limit prescribed under section 11(2) has expired).</p> <p>(5) No variation may be made under subsection (3) or (4) unless the requirements of sections 16 and 17 are met (but this does not affect the Welsh Ministers' power to urgently vary a registration under section 23).</p>	
<p><b>14 Application for cancellation of registration as a service provider</b></p> <p>(1) If a service provider applies to the Welsh Ministers for cancellation of the provider's registration, the Welsh Ministers must grant the application unless they have taken action with a view to cancelling the registration under section 15 or 23.</p> <p><u>(1A) An application under subsection (1) must—</u></p> <p><u>(a) contain such information as the Welsh Ministers may prescribe;</u></p> <p><u>(b) be in the prescribed form.</u></p> <p>(2) The Welsh Ministers must give notice of the granting of an application for cancellation under this section to the service provider.</p> <p>(3) Cancellation under this section takes effect—</p> <p>(a) on the day falling 3 months after the day on which the service provider receives the notice, or</p> <p>(b) such earlier day as the Welsh Ministers may specify in the notice.</p>	<p>15(2)</p>

<p><b>15 Cancellation without application</b></p> <p>(1) The Welsh Ministers may cancel the registration of a service provider on any of the following grounds—</p> <p>(a) the service provider no longer provides any regulated services;</p> <p>(b) the Welsh Ministers are no longer satisfied that the service provider is a fit and proper person to be a service provider (see section 9);</p> <p><u>(ba) the service provider has been convicted of, or has been given a caution in respect of, a relevant offence in connection with a regulated service that they provide;</u></p> <p>(c) there is no responsible individual designated in respect of each place at, from or in relation to which the provider provides a regulated service (and the time limit for applying to vary the registration prescribed in regulations made under section 11(2) has expired);</p> <p><u>(d) the service provider or a responsible individual a responsible individual other than the service provider (see section 21(2)(a)),</u> designated in respect of a place at, from or in relation to which the provider provides a regulated service has been convicted of, or has been given a caution in respect of, a relevant offence in connection with a regulated service provided by the service provider;</p> <p>(e) any other person has been convicted of, or has been given a caution in respect of, a relevant offence in connection with a regulated service provided by the service provider;</p> <p>(f) a regulated service provided by the service provider is not being provided in accordance with the requirements mentioned in section 7(1)(d) so far as applicable to that service.;</p> <p><u>(g) each of the services that the service provider is registered in respect of is a restricted children’s service and the service provider does not meet the requirement in section 6A(1).</u></p> <p><u>(1A) See also Schedule 1A, in respect of cancellation of the registration of a service provider in respect of a restricted children’s service during the transitional period defined in that Schedule.</u></p> <p>(2) For the purposes of subsection <del>(1)(d)</del> <u>subsection (1)(ba), (d)</u> and (e), the following are relevant offences—</p> <p>(a) an offence under this Act or regulations made under it;</p>	<p>8(5) and 16</p>
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<p>(b) an offence under Part 2 of the Care Standards Act 2000 (c.14) or regulations made under it;</p> <p>(c) any offence which, in the opinion of the Welsh Ministers, makes it appropriate for the registration to be cancelled (including an offence committed outside England and Wales which, if committed in England and Wales, would constitute a criminal offence).</p> <p>(3) <del>No cancellation may be made under this section unless the requirements of sections 16 and 17 are met (but this does not affect the Welsh Ministers' power to urgently cancel a registration under section 23).</del> —</p> <p><u>(a) in the case of the grounds in subsection (1)(a), (b) and (ba), the requirements of sections 18 and 19 are met;</u></p> <p><u>(b) in the case of the grounds in subsection (1)(c), (d), (e) and (f), the requirements of sections 16 and 17 are met.</u></p> <p><u>(4) But nothing in subsection (3) affects the power of the Welsh Ministers to urgently cancel a registration under section 23.</u></p>	
<p><b>16 Improvement notices</b></p> <p>(1) This section applies where the Welsh Ministers propose to—</p> <p>(a) cancel the registration of a service provider under <u>section 15(1)(c), (d), (e) or (f)</u><del>section 15</del>, or</p> <p>(b) vary a provider's registration under section 13(3) or (4).</p> <p>(2) Before cancelling or varying the registration the Welsh Ministers must give an improvement notice to the service provider.</p> <p>(3) An improvement notice given under subsection (2) must specify—</p> <p>(a) the ground on which the Welsh Ministers propose to cancel or vary the registration and, in the case of a variation, the manner of the variation,</p> <p>(b) action the Welsh Ministers think the provider must take, or information the provider must provide, in order to satisfy them that cancellation or variation on the basis of that ground is not appropriate, and</p> <p>(c) a time limit within which—</p>	<p>Sch. 1, para. 5</p>

<p>(i) the action must be taken or the information must be provided, and</p> <p>(ii) the service provider may make representations.</p> <p>(4) The service provider may make representations to the Welsh Ministers before the expiry of the time limit specified in the improvement notice and the Welsh Ministers must have regard to those representations when deciding what to do under section 17.</p>	
<p><b>18 Notice of proposal</b></p> <p>(1) This section applies where the Welsh Ministers propose to—</p> <p>(a) grant an application for registration as a service provider subject to a condition that has not been agreed in writing with the applicant,</p> <p>(b) refuse an application for registration or for variation of registration as a service provider, or</p> <p>(c) vary the registration of a service provider other than <u>or—</u></p> <p><u>(d) cancel the registration of a service provider under section 15(1)(a), (b) or (ba).</u></p> <p>(i) in accordance with an application for variation made under section 11, or</p> <p>(ii) under section 13(3) or (4), 23(1)(b) or 25(2)(a).</p> <p>(2) The Welsh Ministers must give a notice of the proposal to the service provider—</p> <p>(a) specifying the action the Welsh Ministers propose to take,</p> <p>(b) giving reasons for the proposal, and</p> <p>(c) specifying a time limit of no less than 28 days from the date on which the notice is given within which the service provider may make representations to the Welsh Ministers.</p> <p>(3) A notice of proposal may specify action which, if taken by a provider within the time limit specified in the notice, would result in the Welsh Ministers not taking the action they propose in the notice.</p> <p>(4) In the case of a refusal of an application for registration as a service provider references in this section and section 19 to a</p>	<p>Sch. 1, para. 5</p>

Please note: this document has been prepared solely to assist people in understanding the Health and Social Care (Wales) Bill. It should not be relied on for any other purpose.

<p>“service provider” are to be treated as references to the person who applied to be registered as a service provider.</p>	
<p><b>27 Regulations about regulated services</b></p> <p>(1)The Welsh Ministers may by regulations impose requirements on a service provider in relation to a regulated service.</p> <p>(2)Requirements imposed by regulations under subsection (1) must include requirements as to the standard of care and support to be provided by a service provider.</p> <p>(3)The Welsh Ministers must, when making regulations imposing requirements of the kind mentioned in subsection (2), have regard to—</p> <p>(a)the importance of the well-being of any individuals to whom care and support will be provided, and</p> <p>(b)the quality standards included in any code issued under section 9 of the 2014 Act (codes to help achieve outcomes specified in well-being statements).</p> <p>(4)Before making regulations under this section the Welsh Ministers must—</p> <p>(a)consult any persons they think appropriate, and</p> <p>(b)publish a statement about the consultation.</p> <p>(5)The Welsh Ministers must lay a copy of a statement published under subsection (4)(b) before <del>the National Assembly for Wales</del> <u>Senedd Cymru</u>.</p> <p>(6)But the requirement to consult and publish a statement does not apply to regulations which—</p> <p>(a)amend other regulations made under this section, and</p> <p>(b)do not, in the opinion of the Welsh Ministers, effect any substantial change in the provision made by the regulations to be amended.</p>	<p>Sch.1, para.5</p>
<p><b>32 Power to require information</b></p>	<p>17(2)</p>

<p>(1) The Welsh Ministers may require a relevant person to provide them with any information relating to a regulated service which the Welsh Ministers think necessary or expedient to obtain for the purposes of exercising their functions under Chapter 2 and this Chapter of this Part or under sections 38 to 40.</p> <p>(2) But the Welsh Ministers may not require a person to provide information if disclosure of that information is prohibited by any enactment or other rule of law.</p> <p>(3) For the purposes of subsection (1), “relevant person” means—</p> <p>(a) a service provider,</p> <p>(b) a responsible individual,</p> <p>(c) a person employed by or otherwise working for a service provider, and</p> <p>(d) any person who has held any of those positions.</p> <p>(4) The power to require information under subsection (1) includes—</p> <p>(a) power to require copies of any documents or records (including medical and other personal records), and</p> <p>(b) power to require the provision of information in legible form.</p> <p><u>(5) In this section references to a “service provider” include a person who is providing a regulated service in respect of which they are not registered under section 7.</u></p>	
<p><b>38 Register of service providers</b></p> <p>(1) The Welsh Ministers must maintain a register of service providers.</p> <p>(2) An entry in the register in respect of a service provider must show the following information—</p> <p>(a) the regulated services that the service provider is registered to provide;</p> <p>(b) the places at, from or in relation to which the provider is registered to provide those services;</p> <p>(c) the name of the responsible individual registered in respect of each such place;</p>	<p>9</p>

<p>(d) the date on which the provider's registration took effect in respect of each such regulated service and place;</p> <p>(e) details of any other conditions imposed on the service provider's registration;</p> <p>(f) a summary of any inspection report relating to the service provider which has been published under section 36(3)(a);</p> <p>(g) such other information as may be prescribed.</p> <p><u>(2A) In the case of an entry in respect of a provider that –</u></p> <p><u>(a) is registered in respect of a restricted children's service, and</u></p> <p><u>(b) is subject to the requirement in section 6A(1),</u></p> <p><u>the entry must also show that the provider meets that requirement.</u></p> <p><u>(2B) See also Schedule 1A, in respect of the registration of a provider of a restricted children's service that is not subject to the requirement in section 6A(1) during the transitional period defined in that Schedule.</u></p> <p>(3) The Welsh Ministers must publish the register and make it available for public inspection free of charge, in such manner, and at such times, as they think appropriate (but see subsection (5)(a)).</p> <p>(4) The Welsh Ministers must comply with any reasonable request made by a person for a copy of, or an extract from, the register (but see subsection (5)(b)).</p> <p>(5) The Welsh Ministers may—</p> <p>(a) omit prescribed information from the published register in prescribed circumstances;</p> <p>(b) refuse to comply with a request made under subsection (4) in prescribed circumstances.</p>	
<p><b>41 Engagement with the public</b></p> <p>(1) The Welsh Ministers must—</p> <p>(a) make information about the exercise of their regulatory functions available for the public, and</p>	<p>Sch.1, para.5</p>

<p>(b) prepare and publish a statement of their policy with respect to involving the public in the exercise of those functions (whether by consultation or other means).</p> <p>(2) The Welsh Ministers—</p> <p>(a) may revise a statement of policy and must publish the revised statement, or</p> <p>(b) may publish a new statement of policy.</p> <p>(3) A statement of policy (or revised statement) must, in particular, address—</p> <p>(a) the involvement of the public in inspections carried out under Chapter 3, and</p> <p>(b) the involvement of carers (within the meaning of section 3 of the 2014 Act) in the exercise of the Welsh Ministers' regulatory functions.</p> <p>(4) The Welsh Ministers must lay a copy of a published statement of policy (or revised statement) before <del>the National Assembly for Wales</del> <u>Senedd Cymru</u>.</p> <p>(5) The Welsh Ministers must have regard to the most recent policy statement published under this section when exercising their regulatory functions.</p>	
<p><b>42 Annual report on regulatory functions</b></p> <p>(1) As soon as is reasonably practicable after the end of a financial year, the Welsh Ministers must prepare and publish an annual report about the exercise of their regulatory functions in respect of that financial year.</p> <p>(2) The annual report must include details of—</p> <p>(a) how the Welsh Ministers have exercised those functions during the year,</p> <p>(b) the extent to which they have, in the exercise of those functions—</p> <p>(i) achieved the objectives referred to in section 4, and</p>	<p>Sch.1, para.5</p>



<p>(ii) had regard to the most recent statement of policy published under section 41, and</p> <p>(c) how the duties mentioned in subsection (4) affected the exercise of those functions during the year.</p> <p>(3) The annual report may include any other information the Welsh Ministers think appropriate.</p> <p>(4) The duties referred to in subsection (2)(c) are the Welsh Ministers' duties under—</p> <p>(a) section 149 of the Equality Act 2010 (c.15) (public sector equality duty),</p> <p>(b) section 1(1) of the Rights of Children and Young Persons (Wales) Measure 2011 (nawm 2) (duty to have due regard to the United Nations Convention on the Rights of the Child),</p> <p>(c) section 7(1) of the 2014 Act (duty to have due regard to the United Nations Principles for Older Persons when exercising functions relating to adult social services), and</p> <p>(d) Part 4 of the Welsh Language (Wales) Measure 2011 (nawm 1) (standards).</p> <p>(5) The Welsh Ministers must lay a copy of a published annual report before <del>the National Assembly for Wales</del> <u>Senedd Cymru.</u></p>	
<p><b>45 Failure by service provider to comply with requirements in regulations</b></p> <p>The Welsh Ministers may by regulations provide that it is an offence for a service provider to fail to comply with a specified provision of regulations made under section 27 or 37(2)(a) <u>or</u> under paragraph 3(1) of Schedule 1A.</p>	4(4)
<p><b>48 Failure to submit <u>or publish</u> annual return</b></p> <p>It is an offence for a service provider to <del>fail to submit an annual return to the Welsh Ministers within the time limit prescribed under section 10(4).</del></p> <p><u>(a) fail to submit an annual return to the Welsh Ministers within the time limit prescribed under section 10(4), or</u></p>	14(3)

<p><u>(b) fail to publish an annual return on its website within the time limit prescribed under section 10(4A).</u></p>	
<p><b>52 Penalty notices</b></p> <p>(1) The Welsh Ministers may give a penalty notice to a person if they are satisfied that the person has committed a prescribed offence.</p> <p>(2) Only offences under sections 47, 48 or 49 or under regulations made under section 45 or 46 <u>or under paragraph 3(1) of Schedule 1A</u> may be so prescribed.</p> <p>(3) A penalty notice is a notice offering the person the opportunity of discharging any liability to conviction for the offence to which the notice relates by payment to the Welsh Ministers of a sum specified in the notice in accordance with the terms of the notice.</p> <p>(4) Where a person is given a penalty notice, proceedings for the offence to which the notice relates may not be brought before the end of such period as may be specified in the notice.</p> <p>(5) If a person who is given a penalty notice pays the sum specified in the notice in accordance with the terms of the notice, the person cannot be convicted of the offence to which the notice relates.</p> <p>(6) The Welsh Ministers may by regulations make provision—</p> <p>(a) as to the form and content of penalty notices;</p> <p>(b) as to the sum payable under a penalty notice and the time within which it is to be paid (including provision permitting a different sum to be payable in relation to different offences and according to the time by which it is paid);</p> <p>(c) determining the ways in which a sum may be paid;</p> <p>(d) as to the records to be kept in relation to penalty notices;</p> <p>(e) about the circumstances in which a penalty notice may be withdrawn, including provision about—</p> <p>(i) the repayment of any sum paid before a notice is withdrawn, and</p>	<p>4(5)</p>

<p>(ii) the circumstances in which proceedings for an offence may not be brought despite the withdrawal of a notice.</p> <p>(7) Regulations under subsection (6)(b) may not make provision for a sum to be payable under a penalty notice which exceeds two and a half times level 4 on the standard scale.</p>	
<p><b>64 Interpretation of this Part</b></p> <p>(1) In this Part—</p> <p>“care” (“gofal”) has the meaning given by section 3(1)(a);</p> <p>“care and support” (“gofal a chymorth”) is to be interpreted (other than in section 63(3)(a)(i)) in accordance with section 3(2);</p> <p>“regulated service” (“gwasanaeth rheoleiddiedig”) has the meaning given by section 2(1);</p> <p>“regulatory functions” (“swyddogaethau rheoleiddiol”), in relation to the Welsh Ministers, has the meaning given by section 3(1)(b);</p> <p>“responsible individual” (“unigolyn cyfrifol”) has the meaning given by section 21(1);</p> <p>“restricted children’s service” (“<i>gwasanaeth plant o dan gyfyngiad</i>”) has the meaning given by section 2A;”</p> <p>“service provider” (“darparwr gwasanaeth”) has the meaning given by section 3(1)(c);</p> <p>“support” (“cymorth”) has the meaning given by section 3(1)(d).</p> <p>(2) See section 189 which makes provision for the interpretation of words and phrases applying to the whole Act.</p>	<p>Sch.1 para.2(2)</p>
<p><b>79 Meaning of “social care worker” etc.</b></p> <p>(1) In Parts 3 to 8 of this Act “social care worker” means a person who—</p> <p>(a) engages in relevant social work (referred to in those Parts as a “social worker”);</p> <p>(b) manages a place at or from which a regulated service is provided (referred to in those Parts as a “social care manager”);</p> <p>(c) in the course of his or her employment with a service provider, provides care and support to any person in Wales in connection with a regulated service provided by that provider;</p>	<p>18(2)</p>

<p>(d) under a contract for services, provides care and support to any person in Wales in connection with a regulated service provided by a service provider.</p> <p>(2) The Welsh Ministers may by regulations—</p> <p>(a) except persons of a specified description from the definition of social care worker in subsection (1);</p> <p>(b) provide that persons of any of the descriptions in subsection (3), or categories of person falling within any of those descriptions, are to be treated as social care workers.</p> <p>(3) The descriptions of person are—</p> <p>(a) a person designated under Chapter 2 of Part 1 (registration etc. of service providers) as a responsible individual in respect of a place at, from or in relation to which a regulated service is provided;</p> <p>(b) a person engaged in work for the purposes of a local authority's social services functions (within the meaning of the 2014 Act), or in the provision of services similar to services which may or must be provided by local authorities in the exercise of those functions;</p> <p>(c) a person providing care and support which would, but for paragraph 8(2)(a) of Schedule 1, constitute the provision of a domiciliary support service;</p> <p>(d) a person registered under Part 2 of the Children and Families (Wales) Measure 2010 (nawm 1) as—</p> <p>(i) a child minder, or</p> <p>(ii) a provider of day care for children;</p> <p>(e) a person who manages, or is employed in, an undertaking carrying on an employment business (within the meaning of section 13 of the Employment Agencies Act 1973 (c.35)) which supplies persons to provide <del>care and support to any person in Wales; —</del></p> <p><u>(i) care and support;</u></p> <p><u>(ii) childcare,</u></p> <p><u>to any person in Wales;</u></p> <p>(f) a person who manages, or is employed in, an undertaking carrying on an employment agency (within the meaning of the section mentioned in paragraph (e)) which provides services for</p>	
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<p><del>the purpose of supplying persons to provide care and support to any person in Wales; —</del></p> <p><u>(i) care and support;</u></p> <p><u>(ii) childcare,</u></p> <p><u>to any person in Wales;</u></p> <p>(g) a person undertaking a course approved by SCW under section 114 (courses for persons who are or wish to become social care workers);</p> <p>(h) an inspector carrying out inspections of regulated services on behalf of the Welsh Ministers under Chapter 3 of Part 1 of this Act (information and inspections);</p> <p>(i) an inspector carrying out inspections under section 161 of the 2014 Act (inspections in connection with local authority social services functions);</p> <p>(j) a person employed in connection with the discharge of the functions of the Welsh Ministers under section 80 of the Children Act 1989 (c.41) (inspection of children's homes etc.);</p> <p>(k) staff of the Welsh Government who inspect premises under—</p> <p>(i) section 87 of the Children Act 1989 (welfare of children accommodated in independent schools and colleges), or</p> <p>(ii) section 40 of the Children and Families (Wales) Measure 2010 (inspection of child minding and day care in Wales);</p> <p>(l) a person who manages staff mentioned in paragraph (j) or (k);</p> <p><u>(m) a person employed to provide childcare by a person registered under Part 2 of the Children and Families (Wales) Measure 2010 (nawm 1) as a provider of day care for children.</u></p> <p><u>(3A) In subsection (3), “childcare” means care and supervision that is provided for children.</u></p> <p>(4) For the purposes of Parts 3 to 8 of this Act “relevant social work” means social work which is required in connection with any health, education or social services provided in Wales.</p> <p>(5) See section 2 for the meaning of “regulated service” and section 3 for the meaning of “service provider” and “care and support”.</p>	

<p><b>144 Interim orders</b></p> <p>(1) A panel may in interim order proceedings make an interim order in relation to a registered person.</p> <p>(2) An interim orders panel may make an interim order whether or not the matter has been referred to a fitness to practise panel.</p> <p>(3) Where a matter has been referred to a fitness to practise panel, any interim order must be made before the matter is disposed of by the fitness to practise panel in accordance with any of sections 135 to 138.</p> <p>(4) The two types of interim order are—</p> <p>(a) an interim suspension order, which is an order suspending the registered person's registration;</p> <p>(b) an interim conditional registration order, which is an order imposing conditions on the registered person's registration.</p> <p>(5) A panel may make an interim order only if it is satisfied that the order—</p> <p>(a) is necessary for the protection of the public,</p> <p>(b) is otherwise in the public interest, or</p> <p>(c) is in the interests of the registered person.</p> <p>(6) An interim order—</p> <p>(a) takes effect immediately, and</p> <p>(b) may not have effect for a period of more than 18 months (unless it is extended; <del>see section 148 (extension of interim order by the tribunal)</del> <u>by the tribunal under section 148</u>).</p> <p>(7) Where an interim order is made in respect of a registered person, SCW must give notice to the person of—</p> <p>(a) the decision,</p> <p>(b) the reasons for the decision, and</p> <p>(c) the right of appeal under section 145 against the decision.</p>	<p>Sch.1, para.5</p>
<p><b>146 Reviews of interim orders: timing</b></p> <p>(1) A panel must first review an interim order made under section 144 within six months beginning with the date on which the order was made.</p>	<p>Sch.1, para.5</p>

<p>(2) Where an interim order made under section 144 has been varied or replaced by the tribunal on an appeal under section 145, the reference in subsection (1) to the date on which the order was made is to be read as a reference to the date of the tribunal's decision.</p> <p>(3) Subsection (4) sets out the timing of the first review of an interim order following its extension or further extension by the tribunal (see section 148), and “the tribunal's decision” means the decision to extend or further extend the order (as the case may be).</p> <p>(4) A panel must review the interim order—</p> <p>(a) if no review of the order had taken place before the tribunal's decision, within six months beginning with the date of the tribunal's decision, or</p> <p>(b) if a review of the order had taken place before the tribunal's decision, within three months beginning with that date.</p> <p>(5) Subsection (6) sets out the timing of the first review of a replacement interim conditional registration order or interim suspension order made on a review (“the replacement order”) (see section 147(1)(c) and (d)).</p> <p>(6) A panel must review the replacement order—</p> <p>(a) if no review of the order which has been replaced had taken place before the review which led to the replacement order being made, within six months beginning with the date on which the replacement order was made, or</p> <p>(b) if a review of the order which has been replaced had taken place before the review which led to the replacement order being made, within three months beginning with the date on which the replacement order was made.</p> <p>(7) After the first review of an interim order under subsection (1), (4) or (6), a panel must review the order (for so long as it is in effect)—</p> <p>(a) within six months beginning with the date of the decision of the most recent review, or</p> <p>(b) if after the end of the period of three months beginning with that date, the registered person requests an earlier review, as soon as practicable.</p> <p>(8) A panel may review an interim order at any time if new evidence becomes available which is relevant to the case.</p>	
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<p>(9) In subsections (7) and (8) a reference to an interim order includes a reference to—</p> <p>(a) an interim order as extended or further extended <del>by the tribunal,</del></p> <p>(b) an interim order as varied on a review (see section 147(1)(b)), and</p> <p>(c) a replacement interim conditional registration order or interim suspension order made on a review.</p>	
<p><b>147 Reviews of interim order: possible decisions</b></p> <p>(1) On the completion by a panel of a review of an interim order, the panel may—</p> <p>(a) revoke the interim order;</p> <p>(b) in the case of an interim conditional registration order, revoke or vary any condition;</p> <p>(c) replace an interim suspension order with an interim conditional registration order;</p> <p>(d) replace an interim conditional registration order with an interim suspension order;</p> <p>(e) make no changes to the interim order-;</p> <p><u>(f) in the case of an interim order that has not been extended by the tribunal under section 148, extend the interim order.</u></p> <p>(2) A panel may make a decision specified in subsection (1)(b), (c), (d) or (e) only if the panel is satisfied that the decision—</p> <p>(a) is necessary for the protection of the public,</p> <p>(b) is otherwise in the public interest, or</p> <p>(c) is in the interests of the registered person.</p> <p><u>(2A) A panel may make a decision specified in subsection (1)(f) only if—</u></p> <p><u>(a) the panel is satisfied that the decision meets one or more of the conditions referred to in paragraphs (a) to (c) of subsection (2), and</u></p>	<p>19(2)</p>



<p><u>(b) the extension does not result in the interim order having effect for a period of more than 18 months.</u></p> <p>(3) A replacement order made under subsection (1)(c) or (d) has effect for the remainder of the period for which the order which it replaces had effect (unless it is extended <u>by a panel under subsection (1)(f) or by the tribunal</u> under section 148).</p> <p>(4) In this section—</p> <p>(a) a reference to an interim order includes a reference to—</p> <p>(i) an interim order as extended or further extended by the tribunal;</p> <p><u>(ia) an interim order as extended or further extended by a panel;</u></p> <p>(ii) an interim order as varied under subsection (1)(b);</p> <p>(iii) a replacement interim conditional registration order or interim suspension order made under subsection (1)(c) or (d);</p> <p>(b) a reference to an interim conditional registration order or an interim suspension order includes a reference to—</p> <p>(i) an interim order of that kind as extended or further extended by the tribunal;</p> <p>(ii) in the case of an interim conditional registration order, an interim order as varied under subsection (1)(b);</p> <p>(iii) a replacement order of that kind made under subsection (1)(c) or (d).</p> <p><u>(5) But subsection (4)(a)(i) and (b)(i) do not apply in relation to the reference to an interim order in subsection (1)(f).</u></p>	
<p><b>149 Revocation of interim orders</b></p> <p>(1) This section applies where—</p> <p>(a) a fitness to practise panel disposes of a matter in respect of a registered person in any of the ways set out in sections 135 to 138, and</p> <p>(b) at that time, the registered person is subject to an interim order (see section 144).</p> <p>(2) The fitness to practise panel must, at the same time as it disposes of the matter, revoke the interim order.</p>	Sch.1, para.5

<p>(3) The revocation of the interim order takes effect on the date on which the panel disposes of the matter as described in subsection (1)(a).</p> <p>(4) In this section a reference to an interim order includes a reference to the following (see sections 147 and 148)—</p> <p>(a) an interim order as extended or further extended <del>by the tribunal</del> <u>(whether by a panel or the tribunal)</u>;</p> <p>(b) an interim order as varied on a review;</p> <p>(c) a replacement interim conditional registration order or interim suspension order made on a review.</p>	
<p><b>161 Publication of fitness to practise decisions</b></p> <p>(1) SCW must publish a decision of a fitness to practise panel to make a consensual disposal of a matter under section 135 or 136.</p> <p>(2) SCW must publish a decision of a fitness to practise panel to dispose of a case under section 137 (disposal following a finding of no impairment of fitness to practise).</p> <p>(3) SCW must publish a decision of a fitness to practise panel to dispose of a case under section 138 (disposal following a finding of impaired fitness to practise).</p> <p>(4) SCW must publish a decision of a fitness to practise panel to dispose of a review cases in any of the ways mentioned in sections 152 to 155.</p> <p>(5) SCW must publish a decision of a fitness to practise panel to make an immediate order under section 140.</p> <p>(6) SCW must publish the following decisions of an interim orders panel or a fitness to practise panel—</p> <p>(a) a decision to make an interim order under section 144;</p> <p>(b) a decision to confirm <del>or vary,</del> <u>vary or extend</u> an interim order on a review under section 147.</p> <p>(7) SCW must publish any decision it makes—</p> <p>(a) to issue a warning under section 126(3)(c) (powers of SCW where case is not referred to a fitness to practise panel),</p> <p>(b) to agree undertakings under section 126(3)(d), or</p> <p>(c) to grant an application for removal from the register by agreement under section 126(3)(e).</p>	<p>Sch.1, para.5</p>

<p>(8) Subsections (1) to (7) are subject to subsections (9) and (10).</p> <p>(9) SCW is not required to publish any decision of a fitness to practise panel to take no further action in respect of a registered person under section 137(2), 138(5), 152(8)(a), 153(9)(a), 154(8)(a) or 155(10)(a); but it may do so.</p> <p>(10) SCW must not publish any information about a person's physical or mental health.</p>	
<p><b>163 Suspension: supplementary</b></p> <p>(1) This section applies in respect of a person who is subject to—</p> <p>(a) a suspension order made under section 138(8) (disposals by fitness to practise panel: finding of impairment);</p> <p>(b) a suspension order made, confirmed or varied on review under section 152(8)(d), 153(9)(c) or 154(6) or (7);</p> <p>(c) an indefinite suspension order made or confirmed on review under section 154(10) or 155(9);</p> <p>(d) an interim suspension order made, confirmed <del>or varied</del>, <u>varied or extended</u> under section 144 or 147.</p> <p>(2) The person is to be treated for all purposes other than those mentioned in subsection (3) as not being registered in the register despite the fact that the person's name continues to appear in it.</p> <p>(3) The person is to be treated as registered for the purpose of—</p> <p>(a) any proceedings under this Part (including preliminary consideration or investigation under Chapter 2) which relate to the person's fitness to practise;</p> <p>(b) an application made under rules under section 92 for removal from a part of the register by agreement;</p> <p>(c) proceedings under section 94 (entries based on false or misleading information) which relate to an entry in a part of the register.</p>	<p>Sch.1, para.5</p>

<p><b>186 Power to make consequential etc. provision</b></p> <p>(1) The Welsh Ministers may by regulations make such consequential, incidental, transitional, transitory or saving provision as they think appropriate for the purposes of or in connection with this Act.</p> <p>(2) Regulations under this section may amend, revoke or repeal any enactment contained in, or made under, primary legislation.</p> <p>(3) The power to make regulations under this section is exercisable by statutory instrument.</p> <p>(4) A statutory instrument containing regulations under this section which amend or repeal an enactment contained in primary legislation may not be made unless a draft of the instrument has been laid before and approved by resolution of <del>the National Assembly for Wales</del> <u>Senedd Cymru</u>.</p> <p>(5) A statutory instrument containing regulations under this section to which subsection (4) does not apply is subject to annulment in pursuance of a resolution of <del>the National Assembly for Wales</del> <u>Senedd Cymru</u>.</p> <p>(6) In this section, “primary legislation” means—</p> <p>(a) an Act of Parliament;</p> <p>(b) an Act or Measure of the <del>National Assembly for Wales</del> <u>Senedd Cymru</u> (including this Act).</p>	<p>Sch.1, para.5</p>
<p><b>187 Regulations under this Act</b></p> <p>(1) A power to make regulations under this Act—</p> <p>(a) is exercisable by statutory instrument;</p> <p>(b) includes power to make different provision for different purposes, for different cases and for different areas.</p> <p>(2) A statutory instrument containing regulations made under any of the following provisions of this Act may not be made unless a draft of the instrument containing the regulations has been laid before and approved by resolution of <del>the National Assembly for Wales</del> <u>Senedd Cymru</u>—</p> <p>(a) section 2(1)(i) (regulations specifying other care and support services as regulated services);</p>	<p>Sch.1 para.2(3) and 5(8)</p>

<p>(b) section 2(3) (regulations prescribing things not to be treated as regulated services);</p> <p>(c) section 3(3) (regulations prescribing things not to be treated as care and support);</p> <p>(d) section 9(9) (regulations varying the evidence to be taken into account when determining whether a person is fit and proper);</p> <p>(e) section 11(2) (regulations prescribing a time limit within which an application to designate a replacement responsible individual must be made);</p> <p>(f) section 27(1) (regulations imposing requirements on service providers);</p> <p>(g) section 28(1) (regulations imposing requirements on responsible individuals);</p> <p>(h) section 37(1) (regulations about inspection ratings);</p> <p>(i) section 40(1) (regulations about charging fees);</p> <p>(j) section 45 (regulations creating offences for failure to comply with requirements imposed on service providers);</p> <p>(k) section 46 (regulations creating offences for failure to comply with requirements imposed on responsible individuals);</p> <p>(l) sections 59(1) and (4) and 61(6) and (9) (regulations about the market oversight regime);</p> <p>(m) section 79(2) (regulations prescribing descriptions of persons to be treated as social care workers);</p> <p>(n) section 80(1)(b) (regulations prescribing descriptions of social care worker in respect of whom SCW must keep a register);</p> <p>(o) section 111(2) (regulations prescribing protected titles for social care workers other than social workers);</p> <p>(p) section 117 (amending the grounds on which a registered person's fitness to practise may be regarded as impaired);</p> <p>(q) section 130 (arrangements for mediation);</p> <p>(r) section 136(2)(d) (persons to whom undertakings may be disclosed by SCW);</p> <p>(s) section 142 (amending the ways in which a fitness to practise panel may dispose of matters);</p>	
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<p>(t) section 165 (designation of regulated activities etc. for the purposes of prohibition orders under Part 7);</p> <p>(u) section 171(3) (creation of offences in relation to employment or appointment of persons subject to prohibition orders etc.);</p> <p>(v) section 177(1)(h) (regulations prescribing other persons as relevant authorities for the purposes of Part 9);</p> <p>(w) paragraph 7 of Schedule 1 (regulations specifying certain services as regulated advocacy services).</p> <p><u>(x) paragraphs 1(1)(b) and 3(1) of Schedule 1A (regulations in relation to transitional period for restricted children’s services).</u></p> <p>(3) Any other statutory instrument containing regulations made under this Act is subject to annulment in pursuance of a resolution of the <del>National Assembly for Wales</del> <u>Senedd Cymru</u>.</p> <p>(4) This section does not apply to regulations made under section 186.</p>	
<p><b>SCHEDULE 1 REGULATED SERVICES: DEFINITIONS</b></p> <p><i>Care home services</i></p> <p>1(1) A “care home service” is the provision of accommodation, together with nursing or care at a place in Wales, to persons because of their vulnerability or need.</p> <p>(2) But accommodation together with nursing or care provided at the following places does not constitute a care home service—</p> <p>(a) a hospital;</p> <p>(b) a school (but see sub-paragraph (3));</p> <p>(c) a residential family centre;</p> <p>(d) a place providing a secure accommodation service;</p> <p>(e) a place providing accommodation for an adult arranged as part of an adult placement service.</p> <p>(3) Accommodation together with nursing or care provided at a school does constitute a care home service if, at the time accommodation is provided for children at the school—</p> <p>(a) accommodation has been provided at the school or under arrangements made by the school's proprietor for at least one</p>	<p>2(c)</p>

<p>child for more than 295 days in any period of 12 months falling within the previous 24 months, or</p> <p>(b) such accommodation is intended to be provided for at least one child for more than 295 days in any period of 12 months falling within the following 24 months.</p> <p><u>(3A) But a school that constitutes a care home service by virtue of paragraph (3) does not constitute a restricted children’s service unless—</u></p> <p><u>(a) it has provided more days of accommodation to looked after children than to children who are not looked after children for any period of 12 months falling within the previous 24 months,</u></p> <p><u>or</u></p> <p><u>(b) it intends to provide more days of accommodation to looked after children than to children who are not looked after children for any period of 12 months falling within the following 24 months.</u></p> <p><u>(3B) In paragraph (3A), “looked after children” has the meaning given by section 74 of the 2014 Act.</u></p> <p>(4) The provision of accommodation and care to a child by a parent, relative or foster parent does not constitute a care home service unless paragraph 5A of Schedule 7 to the Children Act 1989 applies (fostering treated as care home service where fostering limit exceeded).</p> <p>(5) In sub-paragraph (2)(b), “school” has the meaning given by section 4 of the Education Act 1996 (c.56).</p> <p>(6) In sub-paragraph (4), “parent” means a person who has parental responsibility for a child (within the meaning given by section 3 of the Children Act 1989 (c.41)).</p> <p>(7) For the purposes of sub-paragraph (4) a person is a foster parent in relation to a child if the person—</p> <p>(a) is a local authority foster parent, or</p> <p>(b) fosters the child privately.</p>	
<p><b><u>SCHEDULE 1A</u></b>  <b><u>(as introduced by section 6C)</u></b></p> <p><b><u>RESTRICTED CHILDREN’S SERVICES: TRANSITIONAL REGISTRATION ARRANGEMENTS FOR EXISTING SERVICE</u></b></p>	<p>4(3)</p>

<b><u>PROVIDERS</u></b>	
<p><i><u>Transitional period in respect of restricted children's services</u></i></p> <p><u>1 (1) In this Schedule, in relation to a regulated service, references to the transitional period are to the period that—</u></p> <p><u>(a) begins with the day on which the service becomes a restricted children's service by virtue of section 6A(1) coming into force in relation to the service, and</u></p> <p><u>(b) ends with the day appointed by the Welsh Ministers by regulations for the purposes of this paragraph.</u></p> <p><u>(2) Regulations made under sub-paragraph (1)(b) may appoint different days for—</u></p> <p><u>(a) different types of restricted children's service;</u></p> <p><u>(b) different descriptions of service provider (for example service providers that specialise in the provision of a particular type of restricted children's service).</u></p> <p><u>(3) But sub-paragraph (2) does not limit the application of section 187 in relation to regulations made under sub-paragraph (1)(b).</u></p> <p><u>(4) Before making regulations under sub-paragraph (1)(b) the Welsh Ministers must consult any persons they think appropriate.</u></p> <p><i><u>Existing service providers: exemption from section 6A(1)</u></i></p> <p><u>2 (1) This paragraph applies to a service provider, other than a local authority, who is registered —</u></p> <p><u>(a) in respect of a care home service provided at a place at which the service is provided wholly or mainly to children, when the transitional period begins in respect of that service;</u></p> <p><u>(b) in respect of a fostering service, when the transitional period begins in respect of that service;</u></p> <p><u>(c) in respect of a secure accommodation service, when the transitional period begins in respect of that service.</u></p> <p><u>(2) And this paragraph applies to such a service provider during the transitional period.</u></p> <p><u>(3) In so far as a service provider to whom this paragraph applies is registered in respect of a service described in sub-paragraph (1)(a) to 1(c)-</u></p> <p><u>(a) the registration of the provider is not subject to the requirement in section 6A(1) (and any reference to that requirement is to be read accordingly), and</u></p>	



<p><u>(b) (in consequence) the entry in the register maintained under section 38 in respect of a provider must show that the provider does not meet the requirement in section 6A(1).</u></p> <p><u>(4) But sub-paragraph (3) does not apply for the purposes of—</u></p> <p><u>(a) an application made by the service provider under—</u></p> <p><u>(i) section 6(1);</u></p> <p><u>(ii) section 11(1)(a)(i);</u></p> <p><u>(b) such other enactments as the Welsh Ministers may prescribe.</u></p> <p><u><i>Regulations about provision of restricted children's services by existing service providers</i></u></p> <p><u>3 (1) The Welsh Ministers may by regulations make provision imposing conditions on a service provider to whom paragraph 2 applies.</u></p> <p><u>(2) Conditions imposed by regulations under sub-paragraph (1) may include—</u></p> <p><u>(a) restrictions on the type of restricted children's service that the service provider may provide;</u></p> <p><u>(b) restrictions on the description of looked after children in respect of whom the provider may provide the restricted children's service, for example by reference to their care and support needs.</u></p> <p><u>(3) Sub-paragraph (4) applies where—</u></p> <p><u>(a) a service provider fails to comply with conditions imposed by regulations under sub-paragraph (1), or</u></p> <p><u>(b) in the case of a service provider described in paragraph 2(1)(b), the provider fails to comply with regulations made under section 87 of the 2014 Act.</u></p> <p><u>(4) Where this sub-paragraph applies the Welsh Ministers may—</u></p> <p><u>(a) exercise their functions under section 13 to vary the provider's registration by removing the service, or</u></p> <p><u>(b) exercise their functions under section 15 to cancel the provider's registration.</u></p> <p><u>(5) Before making regulations under sub-paragraph (1) the Welsh Ministers must consult any persons they think appropriate.</u></p> <p><u>(6) In sub-paragraph (2), "looked after children" has the meaning given by section 74 of the 2014 Act.</u></p>	
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<p><u>Existing service providers: application for variation of registration</u></p> <p>4 (1) This paragraph applies in respect of a service provider to whom paragraph 2 applies.</p> <p>(2) Despite paragraph 2(3), a service provider to whom this paragraph applies may apply to the Welsh Ministers to be registered subject to the requirement in section 6A(1).</p> <p>(3) An application under sub-paragraph (2) must –</p> <p>(a) include such information as may be prescribed to satisfy the Welsh Ministers that the person meets the requirements in section 6A(1), and</p> <p>(b) be in the prescribed form.</p> <p>(4) The Welsh Ministers must grant an application under sub-paragraph (2) if satisfied that –</p> <p>(a) the application—</p> <p>(i) contains everything required under sub-paragraph (3)(a), and</p> <p>(ii) meets the requirements prescribed under sub-paragraph (3)(b), and</p> <p>(b) the provider meets the requirement in section 6A(1).</p> <p>(5) In any other case the Welsh Ministers must refuse the application.</p> <p>(6) Where the Welsh Ministers grant an application under sub-paragraph (4), the Welsh Ministers must vary the provider's registration to –</p> <p>(a) show that the provider meets the requirement in section 6A(1), and</p> <p>(b) impose the condition in section 7(3)(aa) on the provider's registration.</p> <p>(7) Where a variation under this paragraph takes effect, paragraphs 2(3) and 3 do not apply to the service provider.</p> <p>(8) A variation under this section takes effect only if the requirements of section 18 to 20 are met (so far as applicable).</p>	
<p><b>SCHEDULE 2 SOCIAL CARE WALES</b></p> <p><i>Accounting officer</i></p> <p>15(1) The chief executive is to act as SCW's accounting officer.</p>	<p>Sch.1, para.5</p>

<p>(1) The accounting officer has, in relation to SCW's accounts and finances, the responsibilities specified in a direction by the Welsh Ministers.</p> <p>(2) The responsibilities that may be specified include—</p> <p>(a) responsibilities in relation to the signing of accounts;</p> <p>(b) responsibilities for the propriety and regularity of SCW's finances;</p> <p>(c) responsibilities for the economy, efficiency and effectiveness with which SCW uses its resources;</p> <p>(d) responsibilities owed to the Welsh Ministers, <del>the National Assembly for Wales</del> <u>Senedd Cymru</u> or the Public Accounts Committee of <del>the National Assembly</del> <u>Senedd Cymru</u>;</p> <p>(e) responsibilities owed to the House of Commons or the Committee of Public Accounts of that House.</p>	
<p><i>Accounts and audit</i></p> <p>16(1) SCW must for each financial year—</p> <p>(a) keep proper accounts and proper records in relation to them, and</p> <p>(b) prepare a statement of accounts.</p> <p>(2) Each statement of accounts must comply with any directions given by the Welsh Ministers as to—</p> <p>(a) the information to be contained in it,</p> <p>(b) the manner in which the information is to be presented, and</p> <p>(c) the methods and principles according to which the statement is to be prepared.</p> <p>(3) No later than 31 August after the end of each financial year SCW must submit its statement of accounts to—</p> <p>(a) the Welsh Ministers, and</p> <p>(b) the Auditor General for Wales.</p>	<p>Sch.1, para.5</p>

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<p>(4) The Auditor General for Wales must—</p> <p>(a) examine, certify and report on the statement of accounts, and</p> <p>(b) no later than 4 months after the statement was submitted, lay before <del>the National Assembly for Wales</del> <u>Senedd Cymru</u> a copy of the certified statement and report.</p>	
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