



Welsh Government
Consultation – summary of response

Phase 1 implementation of the Regulation and Inspection of Social Care (Wales) Act

November 2016

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

Phase 1 implementation of the Regulation and Inspection of Social Care
(Wales) Act 2016 – Consultation Summary

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Section 1

Introduction

The Regulation and Inspection of Social Care (Wales) Act 2016 (“the 2016 Act”) received Royal Assent on 18 January 2016. It reforms the regulation and inspection regime for social care in Wales.

Phased implementation of the Act

On 22 January 2016 the former Minister for Health and Social Services issued a written statement outlining the Welsh Government’s intentions to implement the Act. The statement set out a clear structure within two phases of work:

- The first phase (2016-17) contains regulations relating to the new system of workforce regulation required by the Act and the production of annual reports by local authorities in relation to the exercise of their social services function. Draft regulations relating to the process underpinning the new system of service regulation and the definition of Advocacy Services will also be consulted upon at this stage.
- The second phase (2017-2018) contains regulations relating to the requirements and standards expected of service providers and responsible individuals; regulations in connection with market stability and oversight; and regulations that define ‘Advocacy Services’ for the purpose of regulating these.

A consultation to seek views on the regulations drafted as part of the first phase of implementation ran between 28 June and 20 September 2016. During this phase we also tested proposals about the definition of a regulated advocacy service for the purposes of paragraph 7 of schedule 1 of the Act.

The consultation document was distributed to a wide range of stakeholders and published on the Welsh Government website at:

<https://consultations.gov.wales/consultations/phase-1-implementation-regulation-and-inspection-social-care-wales-act-2016>.

In addition two events were held in North and South Wales to support the consultation. These events were designed to promote engagement with the consultation process and understanding of the regulations being consulted on. They were attended by approximately 130 people representing a range of organisations.

In total 48 responses were received. A list of respondents is attached at Annex A. A summary of consultation responses together with the Welsh Government’s analysis can be found in Section 2.

Background

The 2016 Act provides the statutory framework for the regulation and inspection of social care services and the social care workforce in Wales. It enables the Welsh Ministers to put in place a number of items of subordinate legislation through the making of regulations, the publication of guidance and the issuing of codes of practice to support this framework and put it into practice. When fully implemented it will allow the Welsh Government to:

- reform the regulatory regime for care and support services, to ensure it is focussed on outcomes for service users;
- reform the inspection regime for local authority social services functions;
- re-name and give new powers to the Care Council for Wales; and
- reform the regulation of the social care workforce.

The evidence for change

A great deal has been achieved by regulators in Wales, principally by the Care and Social Services Inspectorate Wales (CSSIW) and the Care Council for Wales (CCW), and also by the wider social care sector, to achieve the ambitions which were articulated when the Care Standards Act 2000 was implemented. This has given us a baseline of standards - both for the workforce and for our care and support services - and has improved public protection. This has enabled much greater consistency, protection from abuse and exploitation, and greater exposure of sub-standard services. We have succeeded in raising performance and continue to use regulation and inspection to eliminate poor standards.

However, we recognised that many things were changing within the sector and identified the need to avoid our regulatory arrangements becoming out of date and restrictive. Our reform of the system for regulation and inspection under the 2016 Act therefore rests on five key principles:

1. Responsiveness to the Social Services and Well-Being (Wales) Act 2014 reforms;
2. Ensuring citizens are at the heart of care and support;
3. Developing a coherent and consistent Welsh approach;
4. Tackling provider failure; and
5. Responsiveness to new models of service and any emerging concerns over the quality of care and support services.

The proposals

In the first phase of implementation we consulted on draft regulations that updated the systems of inspection and regulation of care providers and the regulation of the social care workforce. The draft regulations were intended to:

- achieve a new system of workforce regulation under the Act;
- put in place some of the key processes underpinning the new system of service regulation;
- put in place requirements for annual reports by local authority social services departments on how they discharge their functions; and
- test a definition of a regulated advocacy service for the purposes of inspection and regulation under the Act.

Section 2 - Response to the Consultation Questions

Service Regulations					
Regulations about an Application for Registration as a Service Provider					
1. Do you agree that the requirements for information and documentation as set out in the draft regulations are relevant and proportionate? If not, why not?					
	Agree	Tend to agree	Tend to disagree	Disagree	Not ticked
Total	17	15	3	1	12
<p>Summary</p> <p>The majority of those that registered a view agreed with the proposed approach. 89% of people either agreed or tended to agree with the proposal with only 11% of people disagreeing or tending to disagree.</p> <p>The text of the responses also replicated this broad support. Respondents support the move to a 'single registration per provider' system. They also felt that the suggested requirements for registration were adequate.</p> <p>One of the key themes which emerged was the importance of the statement of purpose, the need to ensure it was kept up to date and requests for a requirement to publish.</p> <p>Respondents also made several suggestions around additional information which should be supplied at the point of registration. We have considered these with the responses to question two.</p> <p>Several responses made reference to operational elements (e.g. welcoming the proposed move to an online system, requesting to see the registration forms and asking for further clarity on some of the terms used).</p> <p>Welsh Government Response</p> <p>The Welsh Government is pleased to see that respondents view the proposed information and documentation as set out in the draft regulations as relevant and proportionate.</p> <p>The statement of purpose will play an important role throughout the system of regulation and inspection; as such providers will need to ensure it is kept up to date as a matter of course. As part of regulations to be made under Section 27 we are intending to require providers to supply their statement of purpose upon request. We believe this will meet the desired outcome of those who would like to see statements of purpose published but will minimise the burden on providers.</p>					

We will bear the requests around operational elements in mind when developing the systems (e.g. in setting ICT requirements) which will support the new regulation and inspection regime.

Regulations about an Application for Registration as a Service Provider

2. Are there any additional requirements which should be considered? If so, what are they and why?

Summary

As mentioned above several recommendations for additional requirements for applicants wishing to register as a provider were provided in answer to both questions one and two.

Several respondents suggested a requirement to include information about specifics of premises, for example adaptations made to the building to make it more accessible. There were also calls for the inclusion of details around the specifics of care, for example how providers would support someone's needs relating to gender.

One respondent suggested that previous names of the Responsible Individual should be provided.

Some respondents suggested details of an applicant's qualifications in, or experience of, management/business management should be outlined in applications.

There was also a call to include details of previously refused applications.

Welsh Government Response

The regulations to be made under Section 27 will require providers to outline the specifics of the person-centred care they will offer. This would include details about modifications they have made to cater for the needs of persons receiving care, covering both physical adaptations to the facilities and procedurally how they will deliver care. We do not believe there is a need to also include this detail when a potential provider is applying.

A business plan is already required as part of the application process. If CSSIW are not satisfied with the business plan they will be able to ask the applicant to provide more evidence around business competence. For this reason we do not believe the inclusion of details of experience of or qualifications in business management would enhance the regulations and the application process.

We will amend the regulations to include details of previous applications refused by other UK regulators (e.g. the Care Quality Commission).

Regulations about Provider Annual Returns

- 3. Do you agree that the requirements for the content of the provider annual returns as set out in the draft regulations are sufficient to provide the public with the information required to determine the best services for their needs and to enable them to make comparisons between services providers? If not, what are the additional requirements?**

	Agree	Tend to agree	Tend to disagree	Disagree	Not ticked
Total	7	18	6	3	14

Summary

Of those that registered a view, the majority of respondents agreed with the proposed approach. 74% of people either agreed or tended to agree with the proposal. 18% of respondents tended to disagree and only 8% disagreed.

Several respondents called for a space for the provider to include context. Whilst respondents welcomed the inclusion of details of the arrangements for consulting service users about the operation of the service some respondents felt that there should also be a place for testimonials or statements on the provision from people who use the service. Respondents also raised the need to separate out nursing staff (i.e. registered nurses and care staff) under staffing information.

Welsh Government Response

The key policy objective of the annual returns is that they provide the necessary information to assist people to make an informed decision. The Welsh Government has also been mindful to ensure that any additional burden on providers is kept to a minimum. To this end information included needs to be straightforward, comparable and the final reports should be of a manageable length.

We are minded to keep the majority of the details in the annual return quantitative. This will make it as easy as possible to compare the information provided in returns. However we agree there should be some scope for providers to include a narrative which will further explain their answers, where this is appropriate. Provider commentary on the information in the return does not need to be specifically included in the regulations. We will address this operationally through the design of the form.

We agree that the views of people who use the services are paramount. These will be reflected in the quality of care review, which is intended to meet the requirement for a statement about how the provider has complied with the requirements of the regulations made under section 27(1) specifying the standard of care and support, which will be outlined in phase two of implementation. In order to minimise duplication we will not include these as a

separate requirement in the annual return as well.

We will include registered nurses as a category of staff under “information about staffing.”

Regulations about Provider Annual Returns

4. Do you agree with the proposed timing for making an annual return (28 days after the end of the financial year)?

	Agree	Tend to agree	Tend to disagree	Disagree	Not ticked
Total	12	7	8	4	17

Summary

Responses provided gave a varied view on the time frame. Several respondents said they supported the proposal of 28 days; however most people taking this position were supporting the idea of a timeframe generally. None of the responses specifically stated they thought 28 days was vital to the operation of the provider annual returns.

Several other respondents felt that 28 days would be hard to meet, particularly as the requirement to complete a return could coincide with other year-end tasks and thereby create additional pressure. This pressure could particularly impact smaller providers.

Welsh Government Response

After considering the responses the Welsh Government is minded to extend the time frame for submitting an annual return to 56 days after the end of the financial year. This will prevent small providers from suffering undue pressure and meet our objective of ensuring the regulations are proportionate.

Regulations about Provider Annual Returns

5. Are any of the requirements unnecessary? If so, which are they and why?

Summary

The vast majority of respondents said they did not feel that any of the requirements were unnecessary. Some minor areas were raised where individuals felt requirements were unnecessary. They included information on domestic staff and information on staff turnover as there could be many reasons for a high turnover and this could present an organisation in a bad light if no context was given, and financial information as this could be sensitive.

Welsh Government Response

The Welsh Government welcomes the support for the requirements in the provider annual return.

We do feel that information about domestic staff is relevant. Although they do not provide direct care, domestic staff play an important role which relates to quality of services provided.

We will be including the opportunity for providers to include context, where appropriate. This will allow providers to offer an explanation if they have a particularly high staff turnover rate.

We understand that financial information is sensitive. We limited the information included in the report to a scale of charges. We feel this strikes the appropriate balance between giving the public relevant information whilst at the same time protecting commercially sensitive information.

We do not propose to remove any of the requirements from the provider annual return.

Regulations about an Application for Variation of Registration as a Service Provider

6. Do you agree that the requirements for information and documentation as set out in the draft regulations are relevant and proportionate? If not, why not?

	Agree	Tend to agree	Tend to disagree	Disagree	Not ticked
Total	13	21	0	0	14

Summary

Support for these proposals was very strong with 100% of respondents who registered a view, either agreeing or tending to agree. The comments mirrored this with most respondents saying they felt that the requirements were relevant and proportionate.

Some calls were made for the consideration of the impact of variation on the people using the service. There were also calls for notices of variation to be issued to representatives and carers of service users as well as the users.

Welsh Government Response

If a service is expanding then providers will be required to continue to meet the requirements placed upon them in the regulations under section 27 (to be

developed as part of phase two), for people who are already using the care and support services. If the service is closing the implication is that the service is no longer viable and CSSIW's priorities will be to ensure that good quality of care is provided for people using the service during their transition to a new provider. For these reasons we do not feel it is necessary to include any statements about the impact on people using the services as part of an application to vary.

Regarding the details of notice given, this section requires the provider to inform CSSIW of the notices it has issued to those who may be affected. The list includes 'any other person' – we envisage that this will include carers and representatives of people using the service.

As the majority of responses supported the proposed regulation and most comments raised can be addressed through guidance and operational procedures we do not intend to make any changes to the regulations relating to variation.

Regulations about an Application for Variation of Registration as a Service Provider

7. Are there any additional requirements which should be considered? If so, what are they and why?

Summary

Of the respondents who did raise issues, as above, including a statement or report on the effect of the variation upon service users was again a key theme.

Some respondents suggested changes around the recording of changes to Responsible Individuals. For example when there is a change of Responsible Individual the reason for this change should be included as this may highlight underlying problems to CSSIW.

Welsh Government Response

A response regarding the effects of variation on people using the service can be found above under Question 6.

CSSIW will be able to identify if a provider makes frequent requests to vary its registration due to changes in Responsible Individual. If this was the case they would investigate to see if this was symptomatic of problems at the provider. We do not feel that including the reason for a Responsible Individual leaving would aid CSSIW in making a decision as to granting the request to vary.

As stated above, the majority of responses supported the proposed regulation and most comments raised can be addressed through guidance and operational procedures. We do not therefore intend to make any changes to the

regulations relating to variation.

Regulations about the Application for Variation of Registration as a Service Provider

8. Do you agree with our proposals for the time limit within which an application to vary must be made where there is no responsible individual?

	Agree	Tend to agree	Tend to disagree	Disagree	Not ticked
Total	16	12	2	1	17

Summary

Again support for the proposed 28 day time limit was strong. 90% of those registering a view indicated agreement with the proposals.

This was also reflected in the text of responses. Around twice as many respondents stated they agreed with the time limit as disagreed. A small number of respondents said the limit was too short – raising concerns around recruitment. However a similar number of respondents felt that it was imperative the deadline was not extended because of the vital safeguarding role of the Responsible Individual.

Welsh Government Response

As highlighted in some responses, the Responsible Individual will play a vital role in ensuring service quality and protection of people using the service. The Welsh Government also expects that being the Responsible Individual will be part of someone's role, not their entire job. To this end the role could be taken on by another senior member of the organisation at short notice if necessary.

Regulations on notifying local authorities

9. Do you agree that the list of notifiable incidents contained in the Act is comprehensive? If not, what additional incidents would you like to see included?

	Agree	Tend to agree	Tend to disagree	Disagree	Not ticked
Total	16	14	1	0	17

Summary

As shown above there was broad support for the proposed list of actions which will be notified to local authorities. Only one respondent indicated a tendency to

disagree with the proposal. A small number of additional actions were proposed – mostly around actions taken following incidents. The responses also mentioned that these notifications are not sent to local health boards who are also commissioners of services.

Welsh Government Response

These notifications will be sent to every local authority in Wales and England. For this reason it is vital that we ensure the list of actions which trigger a notification is kept at a very high level. We have included appeals by providers or individuals and the outcome of those appeals. Where court proceedings have been brought against an individual we have also included details of decisions of the court, appeals and withdrawal of proceedings. We feel these will give local authorities the full picture regarding actions being taken whilst ensuring the number of notifications is limited to a manageable size.

It is not within the scope of these regulations to expand the list of organisations that CSSIW will need to notify. However operationally it would be possible to include commissioning health boards within the notification system. We will pursue this further with CSSIW.

Regulations on notifying local authorities

10. Do you agree that the draft regulations set out a system of notification which will provide local authorities with the information they require? If not, what information would you like to see excluded from the report or what further information do you think would be useful to include?

	Agree	Tend to agree	Tend to disagree	Disagree	Not ticked
Total	12	18	1	0	17

Summary

Again the vast majority of respondents supported the proposed regulations; only one respondent selected “tend to disagree.” A very small number of respondents mentioned additional areas they felt local authorities should be informed of, for example high levels of unexplained deaths. As with the other questions respondents also included operational feedback such as around the necessity to issue notifications promptly.

Welsh Government Response

As mentioned above, these notifications are sent to every local authority in Wales and England; therefore operationally it is important to ensure actions which trigger notifications are kept at a high level. Serious failings in a provider are already likely to trigger one of the actions listed under section 39 of the Act.

As with the other operational feedback received we will discuss these matters with CSSIW.

We do not intend to make any changes to the draft Regulated Services (Notifications) (Wales) Regulations as a result of this consultation.

Workforce Regulations

Regulations on the meaning of “Social Care Worker”

11. Do you agree with the proposed definition of social care worker?

	Agree	Tend to agree	Tend to disagree	Disagree	Not ticked
Total	12	11	4	2	19

Summary

Whilst there was broad support for the proposals outlined within the consultation, there were many that felt that it was time to ensure that the definition better reflected current thinking within the sector, to be more specific to aid the public’s understanding of the roles that these workers play.

The arguments for better defining the workforce included that, as more enabling terms were being used than the usual “care” and “support” descriptors, this should also be incorporated in the regulations. Several reasons were given for this and ranged from acknowledging the roles undertaken by this group to that it would help to remove the stigma attached to the role. In respect of clarification for the public, some respondents felt that the two labels (i.e. social care workers or social workers) were confusing and indistinguishable by the public. It was felt that better defining the roles by the specific work they do would help people understand the varied nature of the work undertaken by the workforce.

Several responses, whilst agreeing with the definition, felt that it would be prudent to review it at a later date to ensure that it encompassed the right groups and that there were no unintended consequences of such a broad definition.

Welsh Government Response

The Welsh Government has continued to utilise the terms social worker and social care worker as they have been widely used since the Care Standards Act 2000, and are generally well established and understood by the sector and the public. We do not agree that the public are confused by the terminology or that changing the definitions would benefit the public understanding of the roles that these workers play in providing care and support. Changing them to identify the roles that they play would only serve to confuse and be more costly in the long term because, as the sector changes at such a rapid pace, there would be a constant need to update the legislation to ensure that the titles reflected the current thinking and work that they deliver.

We also feel that, as the nature of the work can evolve to encompass other aspects of care and support not just the delivery of specific services, an

unintended consequence of identifying the tasks that workers complete could be that they could be interpreted as being the only tasks that workers can complete. As we move to a more person-centred approach to care and support, there needs to be flexibility in the definitions to allow for workers to adapt their roles and tasks to help best meet the needs of those receiving care and support.

Regulations on the meaning of “Social Care Worker”

12. Do you support all those persons listed in the consultation document being considered as social care workers? If not, why not?

	Agree	Tend to agree	Tend to disagree	Disagree	Not ticked
Total	15	11	4	3	15

Summary

The proposals outlined within the regulation were welcomed by the majority of the respondents. Some responses recognised that the definition was deliberately broad in order to future-proof the legislation and allow for the addition of other categories of worker at later date but questioned whether this would be extended to include such roles as cleaners and cooks in residential care homes. There was a call for a review period to be included to ensure that the definition continues to be current and include all of the right groups or at least greater consultation when further categories of worker were proposed to be included within the definition.

In contrast to those that agreed with the definition, a number of responses called for greater clarity and for the definition to be more specific and outline the roles that individuals perform within the respective professions. One response felt that the definition needed to have the clarification that the social care workers were only those who were registered with the Care Council (or Social Care Wales), to better reflect that some workers were registered with other regulatory bodies. Four responses called for personal assistants employed by those receiving direct payments to be included within the definition. Several responses also sought clarification around the level of qualifications that would be required for all roles to register under the new definition, particularly as some qualifications were not transferable outside of Wales. Some respondents noted that the requirement to register could have unintended consequences for agencies working across the border.

Welsh Government Response

The Welsh Government has deliberately left the definitions of social worker and social care worker broad in order to allow, as some of the responses have rightly identified, the future-proofing of the legislation and allow for other categories of worker to be added as and when necessary. However, by

retaining the definitions as they stands we feel it also allows people to adapt to the transition from the Care Standards Act 2000 to the new legislative framework under the 2016 Act. As previously noted, these descriptors have been in use for 16 years and are generally well established and understood by the sector and the public and it is felt that, if the definitions are changed now, this will lead to confusion for the sector and service users.

Whilst we accept that the roles have changed dramatically in the last decade or more, we feel that to focus specifically on the delivery of specific services or tasks would create an unintended consequence for both workers and service users. If we were to set out the tasks that workers deliver, we feel that this could be interpreted as being the only tasks that those workers can complete. This would, we believe, stifle the flexibility that those groups can offer to their clients and could also confuse service users, who might think that they can only receive those services from those workers. This could therefore unintentionally cause anxiety as such users mistakenly think that they need to employ or seek other services from other providers. As we move to a more person centred approach to care and support, we need to ensure that there is enough flexibility in the definitions to allow for workers to adapt their roles and tasks to help best meet the needs of those receiving care and support.

Regulations on the meaning of “Social Care Worker”

13. Do you think that we should exempt certain descriptions of persons? If so, who and why?

	Agree	Tend to agree	Tend to disagree	Disagree	Not ticked
Total	3	10	3	9	23

Summary

Of those that registered a view the responses were almost evenly split on the proposal that certain persons should be exempt from the process of workforce regulation, as it was recognised that many family and friends were carers and bringing them under workforce regulation would therefore be an unfair burden on them. However, even amongst those that agreed that some categories should be exempt, there was a distinct call for greater engagement and debate around the inclusion of personal assistants employed through direct payments within the definition of social care workers, as they felt that there was a clear need to include them in regulation by Social Care Wales.

There was also a strong feeling amongst some respondents that there should be no exemptions and that this was an opportunity to drive forward the recognition of the workforce and push further forward towards a wholly professional and regulated workforce. One respondent felt that there should not be any exemptions for certain categories of the workforce as it could leave

vulnerable children and adults even more vulnerable.

Welsh Government Response

The Welsh Government welcomes the agreement of many of the respondents to the proposal that there should be exemptions to workforce regulations, as we do not wish to include all family, friends and carers into the regulatory regime, as this would not only place an unnecessary burden upon them but could also detract from the vital care and support that these groups provide to vulnerable family members and friends. However, through the regulations, personal assistants are included in the definition of social care worker in order to bring them under the support and development capacity of Social Care Wales.

We note that many respondents have confused the purpose of sections 79 and 80, inferring that the regulations under section 79 bring workers under workforce regulation. However, the section 79 regulations bring workers under the general scope of Social Care Wales and its workforce developmental functions, whereas the regulations under section 80 bring descriptions of workers under workforce regulation, requiring Social Care Wales to maintain a register of them.

Regulations on the meaning of “Social Care Worker”

14. Are there any risks in continuing to have a wide and inclusive approach – for example, are there any groups whom it may be disproportionate to expect to meet the requirements of the Code of Practice? Is there a risk that being too broad will dilute the work of Social Care Wales so that it is insufficiently concentrated upon those at the heart of the sector?

Summary

The majority of the responses to this question indicated that they felt that there would be no risk to an inclusive approach that required particular groups of workers to meet the requirements of a Code of Practice. Some felt that this inclusive approach would help ensure that there are consistent standards and safeguards for all vulnerable people. However, whilst some felt that all groups needed to be aware of the new person-centred approach engendered by the Social Services and Well-being (Wales) Act 2014, and followed through into the 2016 Act, caution was urged that careful consideration of the right standards, measures, etc. was needed.

This was in contrast to some respondents who felt that there was some risk with an inclusive approach unless each group had their own code of practice. If a general one was imposed upon a service such as volunteer-led advocacy services, it was argued this could have a negative impact on this aspect of the sector. Again, some respondents also argued that it would create ambiguity for

the public, who would not be able to discern between social workers and other descriptions of social care workers.

Welsh Government Response

The Welsh Government does not agree that the existence of a “general” code of practice for the social care workforce would have a detrimental effect upon any aspect of the workforce, as there is already positive experience of this practice in Wales. The Social Services and Well-being (Wales) Act 2014 places the individual at the heart of social care and support, so it is only right that those who provide these services are also focused on the needs of the individual. We should strive to deliver the best care and support services that we can to the people of Wales and a single code of practice is one way of ensuring that everyone adheres to a specific set of principles in delivering those services.

The Welsh Government feels that a single code of practice will provide the sector with a clear framework that outlines the highest standards that all social care workers should aspire to. We will work with the sector to develop this code to ensure that we share best practice and ideas to guarantee that there is an inclusive view of what the highest standards should look like.

Regulations on the register

15. Do you consider that the current method for registration of social workers is working well? Are there any issues that have arisen?

	Agree	Tend to agree	Tend to disagree	Disagree	Not ticked
Total	13	10	2	0	23

Summary

Amongst those registering a view there was overwhelming agreement that the current method of registration was working well, with the majority of respondents feeling that there was little need to make any significant changes to it. However, some responses highlighted that it lent itself to some difficulties and delays during the re-registration process or when updating the register, which prompted one respondent to outline the system used by the Nursing and Midwifery Council as offering a more user-friendly experience, which could be something to replicate under the new regime.

Some responses outlined a clear need to remove the voluntary registers that were currently being used and make registration mandatory for all groups that work within regulated services. However, responses acknowledged that the voluntary scheme needs to be brought to an end in a coordinated way so that registrants and their employers understand how this is happening. Another respondent raised concerns that there were still areas where there was a need

for dual registration with more than one regulator, which had consequences and caused confusion for workers. One respondent felt that the time was right to move away from a system that required registrants to have a specific set of qualifications and adopt a system that allowed greater flexibility to recognise transferable professional qualifications or competencies.

Some concerns were also raised with respect to the potential increased costs to register all social care workers.

Welsh Government Response

The Welsh Government welcomes the view that is shared by a number of respondents that all of the workforce should be regulated. However, we want to consider step by step how regulation should be extended so that workers continue to be professional, qualified and dedicated in providing high quality care to those in our society who need care and support. We recognise that this will need to be done in a proportionate and balanced manner that involves all aspects of the sector to help us determine the best way forward.

Whilst the Welsh Government appreciates the issues raised by the respondents, the new system is adjusted to reflect the model recommended by the Law Commission and will build successfully on the history of workforce regulation operated under the Care Standards Act. The Welsh Government has identified that voluntary registers are not providing the necessary safeguards, so we are removing provision for them in future.

The Welsh Government also recognises that the cost of registration could, for some aspects of the workforce, be a costly process, which is why we are proposing a proportionate and gradual approach to registering and regulating the workforce. There continues to be segments of the workforce that are traditionally low paid and it would therefore be unrealistic and unfair to make immediate changes without first undertaking further investigative work to understand the complexities that surround the registration of these groups. This is why we have initiated a gradual approach to this process, and will be working with the sector and the Care Council for Wales (and in time Social Care Wales) to examine and determine what these impacts will be.

Regulations on the register

16. Is there anything unhelpful or problematic about the proposed regulations on the register?

Summary

Many of the respondents indicated that they felt the proposed regulations left ambiguity about what information will be collected in future and how and when it would be published. Some responses urged caution around the information to be published and expressed concerns that publishing too much information could have unintended consequences for workers (i.e. if they were under investigation and this was logged on the system before a verdict had been

reached or if someone maliciously “named and shamed” someone on the register, this could affect their employability, etc.).

One response argued that it should provide better intelligence on workers who move around the system to hide any investigations or disciplinary action by working in another area.

There were several calls for this area to be reviewed after a period of time to ensure that there are no unintended consequences on the workforce, particularly around the UK exit from the European Union and EU workers once it has been implemented.

One response raised the question of whether the register would include a way for employers to interrogate the register to find out more about a registered social worker or social care worker’s employment history to help them determine whether this was someone that they wished to employ.

One response raised the issue of accessibility of the register to those who were not able to read it “online” (e.g. the elderly, visual impairments, those with learning difficulties, etc.), and questioned whether the regulator should also publish this information through other mediums. The respondent also argued that they felt it was not appropriate to leave it to the individual to have to write to the regulator for this information.

Welsh Government Response

The Welsh Government understands the concerns raised by respondents about the publication of the information on the register. The existing registration process already collects information that is published on the register and we do not intend to materially change the scope of information.

We recognise that there is some concern relating to the timescales for updating the information on the register and this is something that the regulator will consider. We will also consider ways in which employers will be able to undertake more detailed interrogation of the information held on potential employees so that they have accurate and relevant information with which to consider employment matters. As previously outlined in response to earlier concerns about the level of information to be published, we feel that the regulations, as drafted, will strike the right balance of the level of information that will be added to the register in future.

In respect of the concerns relating to the publication of fitness to practice rulings, we believe the approach strikes the balance between the need for public protection and respect for the rights of registrants. The register will be managed by Social Care Wales which will have robust measures in place about the publication of information.

As per the response to q. 15, the Welsh Government welcomes the view shared by a number of respondents that all of the workforce should be regulated and we are considering, step by step, how regulation should be

extended so that workers continue to be professional, qualified and dedicated in providing high quality care to those in our society who need care and support. We recognise that this will need to be done in a proportionate and balanced manner that involves all aspects of the sector to help us determine the best way forward.

Regulations on the content of the register

17. Do you agree that the regulations applying to qualifications require the right range of information to be included on the register?

	Agree	Tend to agree	Tend to disagree	Disagree	Not ticked
Total	14	14	2	1	17

Summary

The majority of responses to this question agreed that the regulations applying to qualifications require the right information to be included on the register and that the regulations as drafted were proportionate and relevant. There was recognition that, whilst qualifications increased the professional standing of workers, there must be a balance between academic skills, to reassure public confidence in the workforce, and ensuring that we do not lose sight of safeguarding vulnerable service users. However, there was a call for caution about the balance and level of information that would be made available on the register for the public.

There was also a call to consider placing a note on the register where the registrant was also regulated by another body (i.e. HCPC or NMW) so that where any issues around fitness to practice arose, Social Care Wales would know to pass on the details to the relevant regulator to respond to.

Some respondents, whilst agreeing that qualifications should be included on the register, felt that further discussions were needed to ensure that the level of qualifications for volunteer-led advocates was set at the right level so as not to exclude volunteers from taking on this important role. A small number of other responses called for more clarification of what qualifications are required to be included on the register as there was a fear that the need for qualifications could have an unintended negative impact by detracting from having workers with wider skills or experience.

Welsh Government Response

The Welsh Government welcomes the agreement that respondents have expressed about the content of the register. We feel that the regulations, as drafted, will strike the right balance on the level of information that will be included in the register.

However, the Welsh Government also understands the concerns raised by respondents about the publication of qualifications on the register. Whilst we recognise that qualifications provide assurance that there is a professional and suitably prepared workforce, we do not wish to detract from the wide variety of other “softer” skills that social care workers have that are not quantifiable through academic qualifications. The Welsh Government will continue to work with the sector and the Care Council (and then Social Care Wales) to ensure that we can identify ways to acknowledge these skills so that those who are not fully academically qualified, but who are suitably skilled to carry out their jobs, are not excluded from the workforce. We also continue to work with the sector and the workforce regulator to ensure that all aspects of the workforce receive training to a suitable standard and that the qualifications are set at the appropriate level.

Regulations on the content of the register

18. Should the regulations replicate the existing position in relation to the inclusion of fitness to practice decisions? Are there any disadvantages to this approach?

	Agree	Tend to agree	Tend to disagree	Disagree	Not ticked
Total	16	10	0	1	21

Summary

The majority of responses to this question agreed that the regulations should replicate the existing position and include fitness to practice decisions, as this would provide consistency and a shared understanding of what the term meant. It was also felt that by having it on the register for public access the information was fulfilling a safeguarding role and also promoted public confidence that the workforce was being properly regulated.

However, there was a note of caution from some respondents who felt, as in the answer to the question on the information that should be included in the register, that the scope of information should be proportionate, fair and relevant if it was to fulfil these tests. Five responses felt that there needed to be an agreed set of criteria for the data held on the register, so that it allowed proportionate and accurate information to be viewed by the public.

Welsh Government Response

The Welsh Government welcomes the agreement that respondents have given about the content of the register relating to fitness to practice proceedings. We agree that the regulations, as drafted, will provide useful consistency with the approach under the Care Standards Act 2000.

Regulations on the list of persons removed from the register**19. Do the regulations require the right range of information to be included on the list?**

	Agree	Tend to agree	Tend to disagree	Disagree	Not ticked
Total	16	12	1	1	18

Summary

Of those registering a view, the majority of responses were content with the information listed in the regulations to be included on the list; with several responses agreeing that they set a clear and concise tone. However, there was a small note of caution raised that the list would need to be regularly updated to ensure accuracy.

Welsh Government Response

The Welsh Government welcomes the agreement of the majority of those expressing a view, who have given positive comments about the content of the regulations. We feel that the regulations, as drafted, will strike the right balance in relation to the level of information that will be added to the list in future.

Regulations on the list of persons removed from the register**20. Do the regulations put in place the right approach to publishing the list?**

	Agree	Tend to agree	Tend to disagree	Disagree	Not ticked
Total	20	10	0	1	17

Summary

Again, the majority of responses (97% of those that registered a view) agreed that this was the right approach to the publication of the list, as it provided transparency and accessible information for the public and employers alike. However, as with the previous question (Q19) there was a small note of caution raised that the list would need to be regularly updated to ensure accuracy.

The question of whether the regulator should also publish this information through other mediums was again raised by one respondent, who felt it was not appropriate to leave it to the individual to have to write to the regulator for this

information.

Several respondents felt that there needed to be information sharing protocols put in place to ensure that all regulators and other bodies (Police, Public Services Ombudsman, Children's and Older Person's Commissioners, etc.) are made aware of any potential issues as soon as practicable so that action can be taken without undue delay.

Welsh Government Response

The Welsh Government welcomes the agreement of the majority of respondents, who have given positive comments about the content of the regulations. We feel that the regulations, as drafted, will provide the right approach to the publication of the list. The regulations also allow Social Care Wales the freedom to respond to requests for information from the list in an appropriate way.

Regulations on the duty to establish panels etc.

21. Do you agree with the approach to excluding people from membership of the various panels? If not, please explain why.

	Agree	Tend to agree	Tend to disagree	Disagree	Not ticked
Total	20	7	1	1	19

Summary

Again, the majority of responses (93% of those that registered a view) agreed that the right criteria had been suggested around the constitution of the various panels, as it would prevent conflicts of interests from occurring and strengthen public confidence in the process.

However, three respondents disagreed with the criteria listed in the regulations and sought clarification on why one regulatory body, the National Midwifery Council (NMC), had been listed in the regulations as being excluded from having a member sitting on a panel when it could equally be argued that other workforce regulatory bodies (e.g. HCPC, GMC, etc.) should also be similarly excluded.

Welsh Government Response

The Welsh Government welcomes the agreement of the majority of respondents, who have given positive comments about the content of the regulations. We also welcome the responses questioning why only the NMC has been included in these regulations. In response to this, we intend to adjust the regulations to include other health and social care regulators. This will

strengthen the regulations, ensuring that they strike the right balance to instil confidence that panels are impartial and transparent and provide safeguards to ensure that the make up of the panels will be such that there are no potential conflicts of interest. For example, where a registrant is registered with another workforce regulatory body, if they have been subject to a hearing taken forward by that regulatory body then the regulations would prevent any panel member from that hearing being permitted to be a panel member on one of the Social Care Wales fitness to practice panels.

We do not propose to change the way in which fitness to practice panels operate and the workforce regulator, Care Council for Wales (and Social Care Wales thereafter) will continue to outline the procedures they will follow as part of their rules. The regulations allow for greater control for the regulator in the drafting the rules but set out the safeguards that are intended to ensure that panel members are impartial and not subject to conflicts of interest.

Regulations on proceedings before panels.

22. Do you agree with the content of the regulations relating to the way that panels will operate? If not, please explain why.

	Agree	Tend to agree	Tend to disagree	Disagree	Not ticked
Total	17	11	0	2	18

Summary

There was significant agreement to the general content of the regulations, as it was felt that they ensured fairness and accountability. Many of the responses to this question felt that the regulations were comprehensive and struck the right balance between public protection and confidence in the process on the part of registrants.

However, one respondent felt that the regulations should also consider the timing of such panels and that now was the right time to bring this into line with employment law. Another respondent felt that rather than focusing on the punitive approach of holding an individual to account, the panel should take a more constructive approach to support partnership working and continuous learning and improvement.

Welsh Government Response

The Welsh Government welcomes the agreement of the majority of respondents, who have given positive comments about the content of the regulations. We feel that the regulations ensure that the panels provide continued public protection and promote confidence in a robust decision-making process which holds registrants to account for their actions. We must ensure that the workforce regulator has the right tools to both investigate and

take the appropriate actions to address any concerns raised in respect of a registrant's performance or actions.

Regulation 4(e) sets out that panels should deal with cases fairly and justly "...avoiding delay, so far as that is compatible with a proper consideration of the issues." We believe that this will ensure that panels have sufficient time to gather and consider all of the information relevant to the case and make a more informed decision.

Regulations on proceedings before panels.

23. Do you agree that the regulations are focusing on issues that should be set out in regulations?

	Agree	Tend to agree	Tend to disagree	Disagree	Not ticked
Total	18	12	1	0	17

Summary

There was significant agreement to the general balance of the regulations outlined by this question, as it was felt that they provided for a fair and robust process.

However, one response felt that there were too many issues identified within the regulations, which could lead to confusion and that they would be strengthened with a more refined and focused approach to each issue. Another response highlighted the feeling that the language used should be more aligned and in keeping with that used elsewhere in the regulations to reflect the focus of continuous improvement and in the spirit of support.

Welsh Government Response

The Welsh Government welcomes the agreement of the majority of respondents, who have given positive comments about the content of the regulations. We feel that the regulations provide a clear and robust outline of the process that will lead to proceedings being laid before the respective panels. The regulations mirror the proceedings for current panels as these are well established and have been working well.

Regulations on Local Authority Social Services Annual Reports

24. Do you consider that the proposed approach will adequately support our objectives for Local Authority Social Services Annual Reports?

	Agree	Tend to agree	Tend to disagree	Disagree	Not ticked
Total	14	13	1	1	19

Summary

Overall, respondents supported Welsh Government's intention to develop a template and toolkit in relation to the production of Local Authority Social Services Annual Reports that local authorities would be required to comply with. A number of responses confirmed this approach will support the objective of ensuring Annual Reports are clear and accessible. They also agreed that it will provide for a consistent approach by local authorities that will also allow for easier comparisons across Wales. The Welsh Medical Committee said *"the approach ensures standardisation, clarity and permits inter-local authority comparisons"*, Age Cymru stated it would *"welcome the transparency of having a single template approach"*.

A number of respondents provided suggestions and advice to support the development of the template and toolkit. These included suggestions of good practice and a willingness to be involved in the practical development of the final product.

There were a number of suggestions relating to the necessary themes and sections for the Annual Report. The Older People's Commissioner for Wales drew attention to her office's *Care Home Report, A Place to Call Home* which identifies the key issues the Commissioner would expect to be included in local authority social services annual reports. The Commissioner proposed four key areas that local authorities should report on and suggested the need for regulations to make requirements in relation to the content as well the form of annual reports.

Local authority responses were generally supportive of the proposal that annual reports would have to be consistent with a template and toolkit. Swansea County Borough Council said *"the idea of a template is positive"*, but commented *"it is unclear on the flexibility of the template where there are Regional or Partnership approaches and how to reflect these"*.

Welsh Government Response

Welsh Government is working with the Association of Directors of Social Services Cymru (ADSSC) and other key stakeholders, including the Care and Social Services Inspectorate Wales (CSSIW), the Social Service Improvement Agency and SOLACE Cymru, to develop the template to which the regulations

refer. The template will standardise and make proportionate the reporting requirements across local authorities, ensuring reports are clear and accessible, allowing for the performance of local authorities to be compared and collated easily.

In developing the template and toolkit consideration will be given to all suggestions made via this consultation. The Older People's Commissioner for Wales and the Children's Commissioner for Wales will also be invited to support the development of the template and toolkit.

Work is ongoing to ensure the template and toolkit are fit for purpose in light of the consultation responses received.

Regulation of Advocacy Services

25. Do you agree that the regulation of advocacy services should focus upon Independent Professional Advocacy as defined in the Code of Practice on the exercise of social services functions in relation to advocacy under Part 10 and related Parts of the Social Services and Well-being (Wales) Act 2014?

	Agree	Tend to agree	Tend to disagree	Disagree	Not ticked
Total	17	10	2	1	18

Summary

There was majority agreement by respondents to this question that the regulation of advocacy services should focus upon Independent Professional Advocates (IPA). Regulation was welcomed and the proposed approach was perceived to be appropriate and proportionate.

A number of respondents called for clearer recognition that IPA is not the only form of advocacy available and further clarification of what this proposal means in practice. The consensus was that it was sensible to focus on formal professional advocacy as regulation of informal citizen / peer / volunteer advocacy would potentially discourage the provision of informal advocates. However, a small number of respondents raised concerns that statutory regulation of these services would be potentially damaging to self-advocacy because many local authorities do not understand the difference between advocacy and self-advocacy.

There was a consistent message that there should be recognition that an IPA's role is distinct from other social care work professions as it focusses on giving people a voice and ensuring that their wishes are considered, whether or not this is in their best interests. As a consequence IPAs should be recognised for their professional standards and qualifications.

Some respondents highlighted the need to strengthen the link between the Regulation and Inspection of Social Care (Wales) Act 2016, the 2014 Act and the developing National Approach as it already incorporates the National Standards and Outcomes Framework for children's statutory advocacy and can work towards delivery of the Well-being Statement.

Welsh Government Response

The Welsh Government welcomes the responses that regulation should focus around IPAs. This reflects the preparatory development work undertaken with a small technical group made up of representatives with relevant expertise, technical knowledge and practical experience. Here the role IPAs play in supporting an individual to express their views, wishes and feelings where a

local authority is exercising their functions under the 2014 Act.

Part 10 - Code of Practice on the exercise of social services functions in relation to part 10 (Complaints, Representations and Advocacy services) of the Social Services and Well-being (Wales) Act 2014 sets out the different forms of advocacy available and the Welsh Government continues to recognise the importance of these different forms. Further consideration will be given to ensure there is a clear message around terminology and language and that there is no hierarchy of any form of advocacy and individual choice still remains.

The Welsh Government is clear that an individual's choice should not be limited due to an emphasis on commissioned advocacy services. It must always be the individual's right to choose who advocates for them. As part of the forward work plan the Welsh Government will consider how best to recognise this and link with requirements under different legislation, including more focus on the requirements and standards for service providers and responsible individuals which will be part of the second phase of implementation.

26. Do you consider that the requirements of the 2016 Act should apply to an individual practitioner operating as a stand-alone business? If not, please provide brief evidence.

	Agree	Tend to agree	Tend to disagree	Disagree	Not ticked
Total	21	4	1	0	22

Summary

Whilst there was overall support that the requirements of the 2016 Act should apply to an individual practitioner operating as a stand-alone business a number of points were raised. The main issues raised in the responses were as follows:

If an individual is operating commercially and is paid to fulfil the role of IPA, then they should fall under the same regulations as someone working for an organisation delivering the same services. It has therefore been suggested that registration processes could be included but in a more streamlined way for sole-practitioners.

There was a call for clarification on the implications of being a provider. Specifically the potential for being excluded from providing a service if you are not on a preferred provider list with the local authority. Additionally a better understanding of what this would mean for self-employed advocates.

Regulating all professional advocates was considered to be a good thing as this will ensure safeguards are in place to reassure people of their legitimacy and standards.

Welsh Government Response

The Welsh Government is committed to ensuring proportionality when making regulations under the Act and will continue to consider the feedback and concerns raised.

We recognise that any regulations under this Act must not undermine the ability of the sector to continue to support vulnerable individuals whilst ensuring that these same individuals are offered the protections of the Act.

This will be considered further to inform phase two work examining section 27 of the Act which will focus on standards of care and support provided by service providers.

27. Do you consider that implementation of the requirements of the 2016 Act for advocacy services should be phased by sector e.g. advocacy services for looked after and other specified children followed by independent professional advocacy? If so, please provide brief evidence.

	Agree	Tend to agree	Tend to disagree	Disagree	Not ticked
Total	10	8	4	2	24

Summary

Of those that registered a response to this question 75% indicated that implementation should be phased. In recognition that as this is an area which has not been regulated before there is a significant risk of unknown consequences occurring, it was considered that phased implementation would limit that risk.

Those that did not agree with this proposal raised concerns that some providers may be left behind if others are phased in before them as this may disadvantage some providers in a competitive market-place. All services which are provided to vulnerable individuals should be rolled out within the same timescale.

With regards to phased implementation it was suggested that as the Children's sector has a long history in delivering advocacy support for looked after children and other specified children that they are well placed to lead by example.

Evidence from the work of the Care Council in regulating residential child care workers would support the view of a phased introduction starting with the looked after children sector. The cases dealt with by the Care Council would suggest that it would be in the interest of looked after children and the staff

working with them in the residential child care sector to have effective advocacy for children.

Whilst there was support for a transitional period, it was clear that further discussion with the sector would be welcomed to ensure that changes can be implemented properly and without impacting on service delivery.

Welsh Government Response

There is strong support for phased implementation from the feedback received. The Welsh Government understands the importance of ensuring this is taken forward in an appropriate way which does not disadvantage any service provider or service receiver.

The Welsh Government, through phase two of implementation, will continue to work with the technical working group and wider stakeholder groups to get a better understanding of how best to implement the requirements of the 2016 Act.

28. What is the anticipated impact for advocacy providers as a registered service under the Act?

Summary

Overall feedback focused on the potential impact on long-standing arrangements, existing providers who may be deterred from offering IPA services and the impact of additional costs.

It was clearly articulated that as with other services, front line-provision should not be placed at risk because of available capacity being taken up dealing with administrative requirements. This was seen to be particularly important for lone or small providers as it may limit their ability to deal with referrals and caseload.

Given this is first time that advocacy services have been brought under the regulation and inspection regime questions were raised around registration requirements of services providing independent professional advocacy, specifically whether they would have to register with CSSIW before they were able to be commissioned or would register after being placed on a preferred providers list. Reflection was required on what the consequences of not being on a list of providers meant for IPAs.

There was recognition that the specific approach of only registering IPAs will help commissioners design and issue contracts but there is a perceived danger that long-standing local arrangements might suffer with regard to providers who are not currently able to offer a full IPA service even though they continue to offer valuable preventative services.

Some respondents highlighted a potential danger that existing providers may be deterred from offering IPA services due to perceived regulatory burden. Less formal advocacy services, such as a collective advocacy service and those that offer advice and support to individuals, may be well placed to

position themselves as IPAs, but may not be able to secure contracts as commissioners such as local authorities seek to comply with the 2016 Act by contracting only with registered IPAs. The broader field of advocacy services needs to be supported in the wider context of supporting a person's needs, views, wishes and feelings.

A number of respondents expressed concern that making advocacy services a registered service will result in additional costs. Furthermore, there was the potential for these additional costs to be passed-on to local authorities who will be commissioning these services at a time when budgets are already facing budget pressures.

Welsh Government Response

The Welsh Government has reflected on the responses received and concluded that on moving forward it is necessary to further consider the potential unintended consequences from the regulation of IPAs as highlighted by respondents. Further discussions will be undertaken with stakeholders to examine the points raised in more detail.

29. Do you agree that only those who manage advocacy services, as a regulated service, should be required to register with Social Care Wales? If not, please provide brief evidence.

	Agree	Tend to agree	Tend to disagree	Disagree	Not ticked
Total	10	11	4	4	19

Summary

Whilst the favoured response amongst those registering a view was to agree, or tend to agree, that all advocates should be registered with Social Care Wales, some respondents felt that stand-alone services should not have to register.

There was majority agreement that any new requirements should be the least burdensome possible; therefore just those who manage the service should be required to register with Social Care Wales. Additionally, this would keep the advocacy services under one main umbrella for regulation thereby managing processes effectively.

Responses recognised the importance of monitoring implementation to ensure the approach works, and that other elements can be brought under registration as necessary.

It was highlighted that whilst the role of IPAs may fall within the definition of a social care worker there was some concern about proposals to require IPAs to register with Social Care Wales in addition to having a Manager registered with

Social Care Wales and a Responsible Individual registered with CSSIW. Respondents required a better rationale of the merit of registering both IPAs and Managers with Social Care Wales.

There was some reflection that IPAs working as staff of a registered regulated service would become subject to the Social Care Wales Code of Conduct. It is therefore pertinent to be aware that advocacy services have been undergoing a process of professionalisation and a review of their existing code of conduct alongside that of Social Care Wales should take place to look for inconsistencies and differences in approach and practice that derive from the nature of advocacy as a profession.

There was also a suggestion that this question should be revisited once the regulation of advocacy has been embedded.

Welsh Government Response

The Welsh Government has reviewed and will consider further the comments put forward by respondents.

We continue to be clear that this work should support the principles of the Social Services and Well-being (Wales) Act 2014 in that all people should be able to express their view, wishes and feelings and any work going forward must not dilute this.

30. Do you think that the proposals in this consultation will have any positive impacts on groups with protected characteristics? If so, which and why/why not?

Summary

Overall the respondents felt that the effect of the regulations would have a positive impact on groups with protected characteristics. To support this the responses cited:

- The inclusion of independent professional advocacy within the definition of 'advocacy services' will ensure equitable access of services and support
- On the whole, the proposed regulations will raise standards and provide protection; for example the safeguards surrounding the registers and its related legislation will ensure vulnerable groups are protected against the risks of abuse and malpractice.

Welsh Government Response

We are using the feedback obtained through this consultation to strengthen our proposals and regulations and thereby further ensure that groups with protected characteristics are safeguarded against risks.

We have drafted a suite of impact assessments to cover a range of important areas such as equality, children's rights and Welsh language. It is our intention that the final drafts of the assessments will be published alongside the laying of the regulations to support scrutiny by the National Assembly. These assessments will be made available on the Welsh Government website.

31. Do you think that the proposals in this consultation will have any negative impacts on groups with protected characteristics? If so, which and why/why not?

Summary

Although the majority of responses were content that the proposals would have an overall positive effect for groups with protected characteristics, there were a number of areas that respondents highlighted should be monitored closely. These included:

- Costs of services may generally increase which could be passed on to service users, for example as a result of registering social workers or changes to advocacy services.
- Some services can be volunteer-led and the impact of the service regulations on these volunteer-led services is unclear. This could lead

to a loss of services which could have an impact on groups such as older people.

- Some respondents felt that, in general, the existing process relating to information provision can already be complex and difficult to navigate. Therefore responses suggest that monitoring of any new proposed legislation needs to be implemented to ensure that any new processes are less complex and groups do not lose out.
- A number of the proposed regulations identify that there will be public facing on-line information, for example regulations about provider annual returns. Therefore there must be an awareness strategy to ensure that people know that the information is there and also a mechanism to ensure that people can access the information in alternative formats.

Welsh Government Response

As highlighted above, we intend to publish finalised versions of the full suite of impact assessments alongside the laid regulations to assist scrutiny by the National Assembly. In addition to this the regulations will be supported by Explanatory Memoranda and Regulatory Impact Assessments which will examine the impact on costs and on service competition.

32. We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to tell us about them.

Summary

Outside of the formal consultation respondents reflected on the purpose of the legislation. Specifically whether this proposal improves or assures the quality of independent advocacy or restricts accessibility and service quality.

Consulting on advocacy at this early stage has offered an insight to the issues and provided an opportunity to consider the complexities and detail in more depth in advance of the development of the regulations.

Responses were keen to highlight that person centred care is important, and that key to delivering this is through a happy and valued workforce. Therefore any regulations that impact on this workforce must be carefully considered to ensure they are balanced. On a similar issue responses also indicated that engagement with services users and a co-productive approach are also vital in ensuring that any legislation is developed thoroughly to incorporate the views and opinions of vital stakeholder groups.

Some responses in this section indicated that the regulations place a heavy emphasis on CSSIW and CCW. Respondents felt it was vital that both of these organisations are given the support and time needed to ensure that their infrastructures and understanding of the upcoming changes are in place to be able to hit the ground running.

With standards in mind, respondents considered the level of additionally that further regulation in the area of advocacy would add to the Quality Performance Mark (Advocacy Quality Assurance) and advocacy qualifications that some advocacy organisations currently work to.

Some respondents raised concerns around the capacity of Social Care Wales and CSSIW to fully understand advocacy as a service and the landscape of advocacy provision in Wales if they are to create and maintain standards in this area. There was recognition that the service regulator has a vital part to play in ensuring the successful roll out of regulation for IPAs and that they will therefore need a good understanding of advocacy in order to regulate the sector.

There was the suggestion of a register of advocates. This raised questions regarding who would be best placed to take this forward.

Respondents raised the potential for a perceived legislative gap between the unregistered social care workforce and the unregistered healthcare workforce and their different skill sets. They suggested that the 2016 Act is opening up a potential disparity whereby one group is regulated and the other is not. In particular there is potential for unintended consequences when a registrant is expected to work between two different regulatory frameworks.

There was a call for clarity of terminology around the term “commissioning” to ensure there are no unintended consequences in practice. Specifically, a stringent definition of commissioning should be used in future iterations of the draft regulations.

The scope of legislation was raised, relating to the requirements not extending to advocacy entitlements such as the Mental Health Act, the Mental Capacity Act 2005 nor the National Health Services (Wales) Act 2006. There is a potential risk that individuals could fall in between legislative frameworks between IPAs and IMCA/IMHAs.

Welsh Government Response

The Welsh Government welcomes all responses to this section and continues to be clear that continued stakeholder engagement in relation to the developing area of advocacy is required to provide the sector and regulators the maximum possible scope to further shape the proposals and time to implement them.

The main purpose of the Act is the creation of an effective and responsive system of regulation and inspection, one which is focussed on improvement and on outcomes for people. It is clear that standards and quality are a concern to respondents and will be integral to the new system of regulation and inspection introduced by this Act. Continued consideration will need to be given to potential highlighted gaps within the legislation and whether the current scope is accurate.

The Welsh Government has been working closely with CSSIW and CCW throughout the development of the Act and its subordinate legislation such as

the proposals that were the subject of this consultation. This close working will continue as we finalise the regulations in phase one and move on to develop the regulations in phase two. This cohesive engagement between the organisations, together with other stakeholders, is considered vital to the successful deliver of this Act and to achieve its goals.

Summary of Welsh Government Analysis

Service regulations

The vast majority of responses to the consultation were supportive of the proposals. Registration and Annual Returns elicited the most interest from respondents. Responses were particularly interested in the statement of purpose and the content of the annual return. A compelling minority of responders also highlighted problems that providers, particularly smaller ones, would face as a result of the proposal to set the deadline for annual returns at 28 days after the end of the financial year.

Due to the phased nature of the implementation of the Act several responses raised concerns around or included issues which will be addressed under the regulations to be made in phase two. The regulations to be made under Sections 27 and 28 are particularly relevant here; Section 27 regulations will outline providers' duties around person centred care and Section 28 will establish the duties of the Responsible Individual. For example some responses indicated that reasonable adjustments made should be included in registration documents however we envisage it would be better to address these through the Section 27 regulations.

Several responses included discussion and suggestions around the operational implementation of the regulations – for example several responses discussed the ICT system which will underpin registration and annual returns. This information has been collated and passed on to the relevant officials, for example the ICT feedback has been supplied to the project manager for implementation of the Act in CSSIW.

As a result of this consultation we intend to make three changes to the service regulations. They are:

- Amend the registration regulations to require applicants to provide details of applications refused by the other UK regulators
- Include “registered nurses” as a category of staff on the provider annual return
- Extend the timeframe for submission of the provider annual return from 28 days to 56 days after the end of the financial year in relation to which it is reporting

Regulations on Local Authority Social Services Annual Reports

The consultation responses were generally supportive of the Welsh Government's intention to develop a template and toolkit in relation to the production of Local Authority Social Services Annual Reports, and agreed that this approach would support the objective of ensuring the Annual Reports were consistently structured, clear and accessible. A number of respondents provided suggestions and advice to support the development of the template and toolkit. These included suggestions of good practice and a willingness to be involved in the practical development of the final product.

In developing the template and toolkit, consideration will be given to all suggestions made via this consultation. Work is ongoing to ensure the template and toolkit are fit for purpose in light of the consultation responses received.

Workforce regulations

There was broad support for the draft workforce regulations from the majority of the respondents to this consultation. Indeed, many of them felt that they struck the right balance between proportionality and ensuring that the vulnerable who use social care services were safeguarded.

Where there were some concerns raised, these focused around the need for greater clarity around the descriptors to be used to define social care workers and the data that would be published on the register. We acknowledge the need for careful judgement on these issues and believe that the proposed descriptions of social care workers will both continue the approach used and understood by the sector since the Care Standards Act 2000 and allow flexibility in the workforce as specific roles and job titles change. We also believe the regulations on the content of the register strike an appropriate balance between the rights of registrants and the need for public assurance.

There was also a strong call for people employed as “personal assistants” by individuals receiving direct payments to be included within the definition of “social care workers” in order to improve the safeguarding of these vulnerable people. The regulations will bring personal assistants under the definition of “social care worker” and therefore the development and support capacity of Social Care Wales. However, the Welsh Government is not minded to include personal assistants within the regulatory regime at present as this will detract from the independence that the “direct payment” scheme offers users.

The Welsh Government is proposing to make some changes to the regulations following the consultation. Some of these result from consultation feedback and will ensure that the regulations are strengthened to fulfil their intended purpose. Other amendments are technical drafting amendments that will provide greater clarity to the meaning of some of the regulations.

Definition of Advocacy Services

There was a consistent message that there should be recognition that an IPA’s role is distinct from other social care work professions, and an IPA should be recognised for their professional standards and qualifications.

Some respondents highlighted the need to strengthen the link between the the 2016 Act, the Social Services and Well-Being (Wales) Act 2014 and the developing National Approach as it already incorporates the National Standards and Outcomes Framework for children’s statutory advocacy and can work towards delivery of the Well-being Statement.

Feedback focused on the potential impact of additional costs, and the potential for these additional costs to be passed-on to local authorities who

will be commissioning these services at a time when their budgets are already under pressure. There was call for the Welsh Government to recognise the need to further consider the potential unintended consequences from the regulation of IPAs as highlighted by respondents. Further discussions with stakeholders to examine the points raised in more details will take place.

It is recognised that any regulations under this Act must not undermine the ability of the sector to continue their invaluable work of supporting vulnerable individuals whilst ensuring that these same individuals are offered the protections of the 2016 Act, and this is something that will be considered further to inform work in phase two of implementation.

Support for a phased implementation is emphasised and the Welsh Government understands how important it is to ensure that this is done in a way which does not disadvantage any service provider or receiver, and through phase two of the Act will continue to work with the technical working group and the wider stakeholders groups to get a better understanding of how best to implement the requirements of the 2016 Act.

Next Steps

Welsh Government officials are now taking the necessary steps to update the draft regulations accordingly, as set out throughout this summary report. The following regulations will be re-drafted and finalised before the end of the year:

- The Social Care Wales (List of Persons Removed from the Register) Regulations
- The Social Care Wales (Specification of Social Care Workers)(Registration) Regulations
- The Social Care Wales (Content of Register) Regulations
- The Social Care Wales (Extension of Meaning of “Social Care Workers”) Regulations
- The Social Care Wales (Constitution of Panels: Prescribed Persons) Regulations
- The Social Care Wales (Proceedings Before Panels) Regulations
- Local Authority Social Services Annual Reports (Prescribed Form) Regulations

The Service regulations, listed below, will not be laid as part of phase one, but will be taken forward together with the related service regulations in phase two which is due to commence at the start of 2017:

- Regulated Services (Registration) Regulations
- Regulated Services (Annual Returns) Regulations
- Regulated Services (Notifications) Regulations

The information gathered in relation to the definition of advocacy services will be used to inform the ongoing work to develop related regulations; will also take place in phase two.

Annex A - List of responses

No	Confidential Y / N		Name	Organisation/On behalf of
1	*			
2		*	Tim Jenkins	Expanding Horizons
3	*			
4	*			
5		*	Richard Thomas	Bridgend CBC
6		*	Rachel Evans	Swansea CBC
7		*	Peter Orford	Torfaen Social Care & Housing / Torfaen CBC
8		*	Vikas Lodhi	Welsh Medical Committee
9		*	Ruth Crowder	College of Occupational Therapists
10		*	Gethin Rhys	Cytun
11	*			
12		*	George Jones	Tros Gynnal Plant
13		*	Emmeline Galilee	Health and Safety Executive
14		*	Rachel Harrison	Action on Hearing Loss
15		*	Emma Murphy	Care Home Providers - Flintshire CBC
16		*	Emma Murphy	Domiciliary Care Providers - Flintshire CBC
17		*	Sharon Lovell	NYAS
18		*	Ed Bridges	Alzheimer's Society
19		*	Peter Irvine	Pembrokeshire People First
20	*			
21		*	Hugh Russell	Community Housing Cymru
22		*	Jo Finch	City of Cardiff Council and Social Care Partners
23		*	Prof. Sally Holland	Children's Commissioner for Wales
24	*			
25	*			
26		*	Andrew Belcher	Mirus Wales
27		*	Stewart Blythe	ADSSC & WLGA
28		*	Nicola Evans	Older People's Commissioner
29		*	Rosanne Palmer	Age Cymru
30		*	Louise Davies	Wrexham CBC
31		*	Lisa Turnbull	Royal College of Nursing
32		*	Alison Clements	Gwalia Care & Support
33		*	Maria Bell	North Wales Social Care and Wellbeing Improvement Collaborative

34		*	Sarah Capstick	C3SC
35		*	Linda Davies	Public Health Wales
36	*			
37	*			
38		*	Carol Walker	Conwy Social Care and Education Department.
39		*	Melanie Minty	Care Forum Wales
40	*			
41		*	Joe Powell	All Wales People First
42		*	Cathrin Manning	British Red Cross
43		*	Alison Hulmes	BASW Cymru
44		*	Sean O'Neill	Children in Wales - All Wales Children & Young People's Advocacy Providers Group
45		*	Gerry Evans	Care Council for Wales
46		*	Jane Lane	Advocacy Matters (Wales)
47		*	Sean O'Neill	Children in Wales
48		*	Lynn Howells	Eiriol