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Welsh Government

## White Paper

# The Future of Regulation and Inspection of Care and Support in Wales

Date of issue: **30 September 2013**

Responses by: **6 January 2014**

## Overview

This White Paper sets out changes to the regulation and inspection of care and support regime in Wales that will support the proposals in the Social Services and Well-being (Wales) Bill.

The White Paper aims to support the shift towards a model of care and support founded upon the concept of well-being and improved outcomes for citizens, whilst maintaining assurance that required quality standards are being met by service providers and the workforce.

## How to respond

**Your views are important and we want to hear from you. You can let us know about your views by answering one, a few or all of the questions contained in the White Paper.**

You can respond to this consultation by completing the consultation response form at the back of this document and returning it to us by post to the following address by the 6 January 2014:

Social Services Regulation & Inspection White Paper Team  
Social Services and Integration Directorate  
Department of Health and Social Services  
4.P08  
Welsh Government  
Cathays Park  
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Alternatively the consultation response form is available on our website ([wales.gov.uk/consultations/?lang=en](http://wales.gov.uk/consultations/?lang=en)) and can be returned to us by e-mail to: [socialservicesregulationandinspection@wales.gsi.gov.uk](mailto:socialservicesregulationandinspection@wales.gsi.gov.uk)

## Further information and related documents

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

Sustainable Social Services for Wales:  
A Framework for Action:  
[wales.gov.uk/topics/health/publications/socialcare/guidance1/services/?lang=en](http://wales.gov.uk/topics/health/publications/socialcare/guidance1/services/?lang=en)

Independent Commission on Social Services report:

[www.icssw.org/vision/?lang=en](http://www.icssw.org/vision/?lang=en)

Law Commission Review of Adult Social Care Legislation:

[www.justice.gov.uk/lawcommission/publications/1460.htm](http://www.justice.gov.uk/lawcommission/publications/1460.htm)

Report of the Welsh Safeguarding Children Forum:

[wales.gov.uk/topics/childrenyoungpeople/publications/forum/?lang=en](http://wales.gov.uk/topics/childrenyoungpeople/publications/forum/?lang=en)

Report of the Protection of Vulnerable Adults Project Board:

[wales.gov.uk/topics/health/publications/socialcare/reports/report/?lang=en](http://wales.gov.uk/topics/health/publications/socialcare/reports/report/?lang=en)

Social Services and Well-being (Wales) Bill:

[wales.gov.uk/topics/health/socialcare/bill/?sessionid=D0E0306F52E039010B37D15587B99B72?lang=en](http://wales.gov.uk/topics/health/socialcare/bill/?sessionid=D0E0306F52E039010B37D15587B99B72?lang=en)

Well-being Statement for People Who Need Care and Support and Carers Who Need Support:

[wales.gov.uk/topics/health/publications/socialcare/strategies/statement/?lang=en](http://wales.gov.uk/topics/health/publications/socialcare/strategies/statement/?lang=en)

## Contact details

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## **Data protection**

### **How the views and information you give us will be used**

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document.

We may also publish responses in full.

Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response.

This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

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## Ministerial Foreword

The Welsh Government is seeking to transform social services in Wales, putting citizens' voice at the heart of care and support, building a responsive and sustainable system fit for the challenges ahead.

We published our ground breaking strategy – Sustainable Social Services – in 2011. It recognised that, without radical change, our current care and support systems would not be sustainable within the context of changing social demographics and raised public expectations over quality and safety, in a climate of on-going resource constraint.



To deliver the changes set out in Sustainable Social Services, within the lifetime of one Assembly term, is an ambitious task. We know that to do this, we must reform the social services legislative framework. That work began in 2013, when I laid our Social Services and Well-being (Wales) Bill before the National Assembly for Wales. That Bill sets out how the delivery of care and support will be centred on citizens having a greater voice and greater control, within a much more integrated system of care across Wales.

This White Paper sets out how we propose to complete the legislative framework, which will promote our radical changes to social care and support. It describes how a renewed and revitalised regulation and inspection regime will ensure the new way of delivering care and support outlined in sustainable social services will meet our expected standards and provide public assurance.

Over the past 13 years, since the enactment of the Care Standards Act, social services regulation in Wales has been highly effective. It has delivered a clear baseline of standards and a more professional workforce. Much credit should go to the Care Council for Wales and the Care and Social Services Inspectorate Wales for their important work. They have provided us with a firm foundation to build upon.

This White Paper outlines our proposed programme of new policy and legislation, which we believe will enable the regulators to carry out their functions and duties that will achieve the ambitions we have set for better care and support in Wales.

I ask everyone, especially those who receive care and support services, to consider the ideas within this paper. I hope that you will contribute to the consultation so that we can, together, build the best regulatory system for Wales.

A handwritten signature in black ink that reads "Gwenda Thomas". The script is cursive and fluid, with a period at the end of the name.

Gwenda Thomas  
Deputy Minister for Social Services

## 1. Introduction

1. In 2011, the Welsh Government published Sustainable Social Services for Wales: a Framework for Action<sup>1</sup>. This important strategic document detailed the ambitious programme to reform the provision of care and support for the citizens of Wales.
2. At the heart of this change is the reshaping of the legislative foundation for social services in Wales. In January 2013, the Welsh Government laid before the National Assembly for Wales, the Social Services and Well-being (Wales) Bill. That Bill sets out how social services are to be delivered in Wales. The Bill is currently subject to scrutiny by the National Assembly for Wales.
3. Alongside these planned changes, we recognise the regulation of services needs to change as well. That is why, in June 2012, the First Minister announced that a second piece of major primary legislation dealing with care and support services would be laid in this Government term.
4. This White Paper sets out proposed changes to the regulation and inspection regime that will promote a new reality of care and support in Wales founded upon the concept of well-being and improved outcomes for citizens, whilst maintaining assurance that required quality standards are being met by services and the workforce.

### What is Regulation and Inspection?

5. Regulation means a process whereby services or individuals must demonstrate compliance with required quality standards, set by Government. Establishing and maintaining a **register** of the services or individuals complying with the required quality standards is an essential component of the regulatory process. **Inspection and investigation** are tools used by regulators to check that required levels of service are being maintained. **Enforcement** may result when those levels are not

maintained.

6. Current powers of regulation in relation to social services are largely provided for by the Care Standards Act 2000 (CSA 2000), although other legislation such as the Health and Social Care (Community Health and Standards) Act 2003 and the Local Government (Wales) Measure 2011, are important.
7. At present, regulation of care and support in Wales is largely undertaken by two organisations. The Care Council for Wales (also referred to in this document as CCW and the workforce regulator) is responsible for regulation of the workforce, and the Care and Social Services Inspectorate Wales (also referred to as CSSIW and the service regulator) acts as the service regulator. The former is a sponsored arms-length agency of the Welsh Government, whilst the latter is delivered from inside the Welsh Government with a number of safeguards in place to ensure professional independence.
8. CSSIW currently regulates social care services using regulations and national minimum standards set out by the National Assembly for Wales. The regulations enable CSSIW to regulate the conduct of establishments and agencies in Wales. CSSIW takes enforcement measures when non-compliance with regulations is found as part of their inspection activities.

### **Why Regulate and Inspect?**

9. We believe social services are at the heart of the public services agenda for Wales. Therefore, we have a responsibility to put in place the best arrangements to provide public assurance and ensure these services are of a required standard.
10. Regulation and inspection have an important role to play in the protection of citizens and in the creation of sustainable services and professional excellence, however this does not occur in isolation. Services and



professionals must give citizens a strong voice and real control. The primary responsibility to promote well-being, to safeguard citizens, ensure quality and to deliver improvement lies with service providers, commissioners and professionals.

11. We are of the clear view that there must remain external public assurance due to the personal nature of care and support, the reliance that service users must place on services and staff, and due to the range and complexity of care interventions. In this regard, we recognise that regulation and inspection have delivered real benefits for Wales<sup>2</sup>.
12. Within the care and support system regulation and inspection add value by providing external assurance to citizens that required levels of quality are being met by services and the workforce and, through that assurance, regulation and inspection contribute to their protection. This dual approach of the regulation of both services and the workforce delivers a powerful and interlocking system of assurance.
13. Regulation and inspection contributes to better services by identifying and sharing opportunities for improvement.
14. By providing independent external assurance, regulation makes a unique contribution to securing safe, effective, high quality, respectful care and support.

### **Our Approach and our Aims**

15. Within a clear framework of legislation set by the Welsh Government, and building on the firm foundations established by the Care Standards Act 2000, our policy aims are to:
  - Contribute to safeguarding and promoting the well-being of citizens;

- Reinforce that the primary responsibility for ensuring quality, safeguarding and protecting citizens, and delivering improvement lies with service providers and with professionals;
  - Ensure the citizen is at the heart of our approach;
  - Place a strong emphasis on corporate accountability, service provider governance and quality assurance mechanisms;
  - Recognise the importance of the role of the employer and place an emphasis on the professional responsibilities of individual managers;
  - Provide independent scrutiny of services and an approach which examines and reports on the experience of service users through both outcomes and service specific quality standards;
  - Regulate key staff in the workforce, in order to ensure high standards and clear professional accountability;
  - Increase the transparency and accessibility of information about services, staff and organisations;
  - Ensure effective cross-agency communication and co-operation;
  - Reduce unnecessary complexity; and
  - Deliver value for money.
16. This document sets out the case for changing the arrangements for regulation and inspection of care and support in Wales based on these aims. It sets out the evidence for change and the improvements that will result.
17. Our objectives are to:
- Provide citizens with assurance about the delivery of care and support in Wales;
  - Make a positive difference to the well-being outcomes for citizens in receipt of care and support; and

- Strengthen the voice of the citizen in the work of care and support, and its regulation.
18. In addition we seek to develop:
- A regulatory framework that is proportionate to risk;
  - Approaches that are consistent with other policy developments across the Welsh Government; and
  - Approaches that do not require additional funding to deliver.
19. To achieve these policy aims and objectives we have set out the following areas of change, each will be addressed in subsequent chapters:
- A citizen centred approach;
  - Firm and broad regulation of service delivery;
  - Strong and professional delivery team;
  - Taking the next step to improvement and professionalisation; and
  - Working together.

### **Scope of this White Paper**

20. This White Paper focuses on the regulation and inspection of the workforce and services in Wales that deliver care and support, as described within our Social Services and Well-being (Wales) Bill, currently undergoing scrutiny in the National Assembly for Wales. It also covers how those charged with that regulation can work to support improvement across the sector, particularly in the area of workforce and service development.
21. However, this work has significant dependencies with other areas of Welsh Government work, including childcare, health and education. We also understand that the Bill which will follow this White Paper may require a broader scope. This means that we may include additional areas of policy development - such as Early Years regulation - within the

subsequent Bill. It may also include the duties and powers of the Children's Commissioner for Wales, which currently derive from the Care Standards Act.

22. We are also conscious of important strategic reviews that are currently underway across the Welsh Government that may inform the eventual shape of any legislative proposals. These include the Review of Audit, Inspection and Regulation in Wales<sup>3</sup> and the Welsh Government Commission on Public Service Governance and Delivery<sup>4</sup>, which was established by the First Minister to look at the way public services are governed and delivered in Wales, and how they may be improved.

## 2. The Context for Change

### Sustainable Social Services

23. The Welsh Government set out its policy for social services in Sustainable Social Services for Wales: a framework for action, published in February 2011.
24. This policy followed a number of important reviews, notably the report of the Independent Commission on Social Services in Wales<sup>5</sup>, the reports of the Social Care and Social Work Workforce Task Group<sup>6</sup> and the Wales Safeguarding Children Forum<sup>7</sup>.
25. Sustainable Social Services sets out why we need to change the delivery of care and support in Wales and how we will reshape social services in Wales. The context within which social services is delivered is changing - we are living longer, we expect more from our public services and we face tougher financial realities. Sustainable Social Services sets out that we will respond to these changes through:
  - Strong national leadership;
  - A new improvement framework based on well-being;
  - A strong and professional delivery team;
  - Voice and control for citizens; and
  - Safeguarding and protecting all citizens.
26. Sustainable Social Services also places integration at the heart of the forward agenda. Increasingly, this strategic direction requires closer co-operation across those working in health and social care (including the third sector), and a new approach to delivery based on outcomes for citizens, not on organisational boundaries.

## **The Social Services and Well-being (Wales) Bill**

27. The Social Services and Well-being (Wales) Bill was introduced to the National Assembly for Wales in January 2013. The Bill provides, for the first time, a comprehensive legislative approach to deliver the Welsh Government commitment to sustainable social services that supports citizens of all ages, and supports citizens as part of families and communities. It sets out specific duties and functions in relation to improving the well-being of citizens who need care and support, and carers who need support. It delivers a unique Welsh approach - promoting citizens' independence by providing them with a strong voice and real control, through placing citizens at the heart of the legislation.
  
28. Taken together, Sustainable Social Services and the Social Services and Well-being Bill set out a new legislative framework and approach to delivering social services. It means, of course, that the remit of regulators and inspectors will change. This White Paper sets out how we can deliver the right regulatory regime to match the ambitions of this new landscape for social services in Wales.
  
29. The Bill that follows will, therefore, along with the Social Services and Well-being (Wales) Bill, form a durable and broad legislative base for care and support in Wales.

## **The Case for Change**

30. Since the development and implementation of the Care Standards Act 2000 for England and Wales, the Welsh Government priority has been to ensure care and support services operate to minimum standards and to ensure that key elements of the workforce are registered and trained. This was to provide public assurance that social services were delivered within required levels of safety and quality. This work has been driven by reviews such as the Waterhouse inquiry<sup>8</sup>.

31. A great deal has been achieved by regulators in Wales, principally the Care and Social Services Inspectorate Wales and the Care Council for Wales, and also by the wider social care sector, to achieve the ambitions that were articulated when the CSA 2000 was implemented. The existing framework, whereby CSSIW and CCW are the principal regulators, has worked well for us and we are not proposing to change this. It 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 achieved 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.
  
32. We do not believe, therefore, that the current system of regulation and inspection is failing. However, we recognise that many things are changing and unless we act now our regulatory arrangements will soon become out of date and restrictive. We see five key reasons for change:
  1. The **Social Services Well-being (Wales) Bill**, should it become law, will reform the nature of care and support in Wales. It is important that our regulation and inspection regime is ready for this change;
  2. We believe that the **citizen should be at the heart of the care and support they receive** and that should include its regulation and inspection. The voice and/or the experience of the service user or carer have not always been sufficiently heard in the existing regulatory processes. This must change;
  3. The UK legislative picture has changed. There is less cohesion across the four countries and this applies also to the regulatory frameworks for social care services and staff. The CSA 2000 has ceased to have effect in England in relation to adult social care and this has led to some **legislative anomalies**. We need to develop a coherent and

consistent Welsh approach to regulation and inspection that ensures all relevant activity delivered in Wales is regulated in Wales;

4. In addition, significant concerns have been highlighted by a number of **high profile cases** in Wales and the UK, and it is important that we learn lessons from them. The examples include: the financial collapse of the former residential care provider Southern Cross Healthcare, which put at risk the provision of residential care to thousands of vulnerable citizens across the UK; Operation Jasmine which concerns allegations of abuse in care homes in the Gwent area; the Winterbourne View Hospital serious case review, which highlighted the abuse of vulnerable adults and failings by public bodies; and more recently the Francis report<sup>9</sup>, which produced wide ranging recommendations, following failings at Mid Staffordshire NHS Foundation Trust. We need to ensure that our system of regulation and inspection of care and support services can tackle these sorts of failures as well as support the service changes proposed in the Social Services and Well-being Bill; and
5. Finally, we recognise that the powers now available to the National Assembly for Wales offer the opportunity to provide a fit-for-purpose **legislative framework for Wales** in relation to regulation and inspection of social services. The CSA was an important step but its model of service regulation cannot keep pace with changes to the care sector, and is now outdated. We will seek an enabling Bill that provides future Welsh Governments with the powers to respond swiftly to new models of service and to any emerging concerns over quality of care and support services.



### **3. A Citizen Centred Approach**

#### **An Approach Based on Outcomes**

33. Introducing an outcomes based approach to service regulation is one of the most important and fundamental changes we are proposing in this White Paper. Regulation of social services in Wales will be built around the well-being of citizens and the impact that services have on their lives. We want to ensure that providers, local authority commissioners and professionals can demonstrate how they have put outcomes for citizens at the heart of their work and, if necessary, we will legislate to support the regulators to ensure that this is done.
34. The importance of taking a citizen centred approach was highlighted by the Francis report into the failings at Mid Staffordshire NHS Foundation Trust. The report concludes that there were numerous warning signs which cumulatively, or in some cases individually, could and should have alerted the system to the problems developing. These included: a culture focused on systems, not on the service user; standards and methods of measuring compliance, which did not focus on the effect of a service on patients; and assumptions that monitoring was the responsibility of someone else.
35. Through Sustainable Social Services in 2011, the Welsh Government clearly set out its expectation that the voice of the citizen, adult and child, must move to centre stage. This shift towards a more central role for the citizen experience has already begun through the modernisation programme of CSSIW and the development work of CCW. We want to support and accelerate that shift.
36. In April 2013, we published our Well-being Statement<sup>10</sup>. This was the first stage of translating the principles laid out in Sustainable Social Services and in the Social Services and Well-being (Wales) Bill into a set of expectations and measures which will form the foundation of the

outcomes framework upon which the regulation of care and support must be based. This outcomes framework will be underpinned by a set of service specific quality standards set in legislation.

37. We are considering doing this by putting in place legislation that focuses our service regulation on the well-being approach set out in the Social Services and Well-being (Wales) Bill. We believe that this will challenge the sector to think differently about their services and their role.
38. Standards will continue to have a central place in our regulatory framework. There are fundamental standards that we expect services to meet and these will be set in regulations. However, these service specific quality standards will be set within the context of the outcomes for citizens, not as ends in themselves.
39. This will mean that the service regulator will seek to establish both whether a provider is delivering outcomes for citizens and whether associated standards are being met.

### **Annual Reports and Transparency**

40. We have learnt lessons from important events outside Wales. Reports following failures within Winterbourne View Hospital and Mid Staffordshire NHS Foundation Trust have demonstrated that complaints from users, carers and family members must be listened to and taken seriously. For example, the Winterbourne View Hospital serious case review<sup>11</sup> found the failure of the hospital to listen to patients' complaints was one of the contributing factors which resulted in the violence and abuse experienced by patients.
41. We will, therefore, enhance the existing visiting/inspection regime undertaken by the service regulator by strengthening the requirements for openness and transparency by service providers, including the publication of annual reports. The content of these reports will be required to be

evidence-based and will be laid out in regulations but we believe they should include:

- Evidence about expectations and outcomes for users and carers;
- Staff employed and their development;
- Records of complaints and actions taken – from staff and citizens;
- Appropriate financial information;
- Corporate governance arrangements; and
- Contingency planning arrangements.

42. The format of these reports will be laid out in regulations, but it is anticipated that they will be standardised across services.
43. The submission of this information to the service regulator will be part of the requirement for remaining on the register. Importantly, these reports will also be available to the citizen, alongside the inspection reports from the regulator.
44. We intend to ensure the accuracy of the information provided in the reports produced by the service provider by introducing a new offence concerning the provision of false or misleading information. Further detail on this can be found in the next chapter.
45. This transparency is vital for the citizen to understand the reality of care and support. We will require the regulator to provide citizens with a straightforward way to access meaningful and transparent information about care and support providers and staff. A citizen will then be able to better understand the quality of service of a particular provider through reference to both the provider's annual report and the relevant report from the service regulator.

46. This accessible register of information about care and support provision in Wales will, we believe, make a fundamental difference to how citizens understand and make a judgement about services. We strongly believe citizens have the right to this level of information about the care they can receive and we will use our legislative powers to ensure it is available to them.

### **A Quality Judgement Framework**

47. We can see merit in the argument that it is right to provide citizens with information that identifies differences in quality across service provision. This would mean that inspection reports, publicly available, would include qualitative judgements on that service provision. We would expect CSSIW to express these judgements in the context of the expectations and outcomes for the users of that service and their carers. These judgements would form part of the inspection report from the service regulator and would be available publicly. Ultimately, the format of this framework would be for the service regulator to determine, in conjunction with stakeholders.

### **The Governance of Regulation**

48. We also believe it is important that citizens have a strong voice in the regulation of care and support and we are considering introducing a legislative provision to require the service regulator to ensure citizens are involved in shaping and assessing regulatory activity. The service regulator has already made significant steps in this direction through the CSSIW Participation Plan<sup>12</sup> 2012. We wish to support and facilitate further development through legislation. This would require the service regulator to establish arrangements and report to the Welsh Ministers on the involvement of citizens, including children and young people, in its decision-making and strategic operations.

## **More than just Words**

49. In 2012, the Welsh Government published “More than Just Words.” This important document was developed to strengthen Welsh language services among frontline health and social services. It states:

*It is important for people working in health, social services and social care to recognise that many people can only communicate their care needs effectively through the medium of Welsh. For many Welsh speakers being able to use your own language has to be seen as a core component of care, not an optional extra<sup>13</sup>.*

50. We recognise that, for citizens receiving care and support services, communicating in Welsh is a fundamental need and an essential aspect of a quality service. To achieve a citizen centred approach, the core principles set out in “More than Just Words” will be embedded within our regulatory regime.

## **Independent Visitors**

51. Having citizens at the heart of our regulatory regime is not simply about governance, it is also about practice. We are keen to pursue the idea of extending the role and scope of independent visitors in our regulatory system, with rights to speak to people including staff, and to produce reports alongside the inspection team. The use of independent visitors has been a welcome development by the service regulator and we will seek to support its extension through our legislative and regulatory making powers.

## **The United Nations Convention on the Rights of the Child**

52. The Rights of Children and Young People Measure 2011<sup>14</sup> requires the Welsh Ministers to give due regard to the United Nations Convention on the Rights of the Child<sup>15</sup> in the development of all legislation and policy. The assessment of the impacts that the policies proposed in this White Paper will have on children and young people will be fully considered

when further policy development takes place following this consultation. A young people friendly version of this White Paper has been produced to enable young people to participate.

### **Summary of Key Points**

- **Regulation and inspection will be based on people's outcomes, service specific quality standards and expectations.**
- **Providers will be required to produce an annual report which will include information on outcomes and complaints.**
- **The use of a quality judgement framework linked to outcomes will be considered.**
- **The service regulator will involve citizens and their families/carers in their processes and practices.**

### **Consultation Questions**

1. **What, if any, challenges will there be to introducing an outcomes-based approach to regulation and inspection?**
2. **What, if any, benefits will there be to introducing an outcomes-based approach to regulation and inspection?**
3. **What is your view of our requirement for service providers to produce an annual report?**
4. **What information do you think should be included in the annual reports?**
5. **Do you think a quality judgement framework will be a useful tool for the citizen? Why/why not?**
6. **Are there any other ways we could provide citizens with more control over the care and support they receive?**
7. **How could the service regulator involve citizens further in their work?**
8. **Are there any other ways we could strengthen the voice and control of the citizen in regulation and inspection that you believe we should consider?**

## 4. Firm and Broad Regulation of Service Delivery

### The Requirement for Change

53. Service delivery is a dynamic process that is evolving and adapting, as citizens' expectations change and as innovative ways of meeting needs emerge and services evolve. For example, as third sector, private sector and social enterprises develop new models of service, and as local authorities continue to expand their role as commissioners, rather than service providers, regulation needs to be more flexible. We must ensure that where new service models are developed they can be subjected to regulation.

### The Current Regulatory Model for Service Delivery

54. The current regulation of social care services is set out on Parts I and II of the CSA 2000. Under the Act, both **establishments** (e.g. children's homes, care homes for adults and residential family centres) and **agencies** (e.g. domiciliary care agencies, adoption support agencies and voluntary adoption agencies) are registered with the service regulator. Part II, 11(1) of the Act makes it an offence for any person to carry on, or manage, an establishment or agency of any description without being registered.
55. The CSA 2000 specifies the categories of establishment or agency which require registration, and provides powers for the Welsh Ministers to make regulations specifying the requirements for registration of establishments and agencies. These regulations (e.g. Care Home (Wales) Regulations 2002 and Children's Homes (Wales) Regulations 2002) prescribe criteria for the fitness of registered providers and registered managers.
56. Currently, in cases where an agency has more than one branch from which it carries out activities, each branch must be treated as a separate agency and registered in its own right.

## **A Service Based Model of Regulation**

57. We are considering the introduction of a service based model for regulation, similar to the regimes of Scotland and England (the former introduced by Public Services Reform (Scotland) Act 2010 and the latter introduced by the Health and Social Care Act 2008). This service based regime would create a system of registration of services, as opposed to the registration of individual establishments/agencies. We believe this would offer us the flexibility to respond to emerging models of service, as well as eliminating some of the legislative anomalies in the current system.
58. The service based model will require an individual or organisation to register in respect of each regulated service it intends to carry out. Regulations would prescribe what constitutes a regulated service - that is, which social care and support activities will require registration (for example, accommodation for persons who require nursing or personal care).
59. The registration would include the locations (or areas) at which the regulated service could be carried out. This would allow enforcement action including cancellation of registration to be taken against an individual location without affecting the service delivery at other specified locations.
60. In granting authority to carry out a regulated service, the service regulator would need to be satisfied that the applicant complies with registration requirements as set out in regulations.
61. A switch to a service based regulatory regime would facilitate the streamlining of the regulation and inspection of local authority adoption agencies (necessitated by the establishment of a National Adoption Service as outlined in our Policy Statement for Social Services Regulation and Inspection<sup>16</sup>). The introduction of a service based regime in Wales



would also be a step in the right direction to facilitate the cross-recognition of registrations, where appropriate, and as required by the EU Services Directive 2006/123/EC<sup>17</sup>, given similar approaches to the regulation of social care services in England and Scotland. The EU Services Directive was introduced to make it easier for providers to sell their services anywhere in Europe, whether by establishing premises or operating temporarily across national borders.

62. A service based regime would also allow us to put in place the policy, set out in Sustainable Social Services, to allow the provision of social work as a regulated and registered service. It would also allow us, through regulatory powers, to establish appropriate registration requirements, for advocacy services emerging from the provisions of the Social Services and Well-being Bill (Wales).

### **Time Limited Registration**

63. We believe it is important that the fitness to practice of service providers within the care and support sector should be regularly demonstrated and verified. Our proposed system of annual reports and inspections will contribute to this. We are not proposing to introduce routine licensing to the sector.
64. However, we see value in the regulator having the power to impose a time-limited registration on services where there is evidence of such a need. This might be to secure improvements following an inspection that has raised concerns or where the provider had failed to comply with requirements.

### **Direct Payments**

65. Direct Payments allow an individual in need of care and support to secure their own care and support using public funds. The Social Services and Well-being (Wales) Bill makes provision for regulations to be made setting out the explicit requirements as to how such a scheme will operate and

what duties will be placed upon local authorities as part of that scheme. We envisage that local authorities will need to ensure that citizens who receive direct payments are provided with information about the availability of a police check on individuals they employ via the Disclosure and Barring Service, how they obtain such checks and exactly what information those checks will provide them with.

66. The protection and safeguarding of citizens will remain central to all future arrangements to ensure that citizens can then make informed choices with full knowledge of the extent of the safeguards available in relation to the person or people they choose to provide their care and support.

### **New models of Service Funding and Delivery**

67. On a broader scale, we want additional flexibility to meet emerging models of service provision such as user led services, social enterprise and co-operatives. We recognise that, increasingly, the third sector is delivering care and support not through direct commissioning but through public funding such as grants. We will seek powers to ensure that such publicly funded provision is not excluded from the regulatory framework.
68. We have also seen much wider changes across social care since the current regulatory regime was put in place. We are concerned that a strict and prescribed regulatory framework can become quickly overtaken by changes in service models and new delivery mechanisms. In the current landscape, for example, we have seen the growth of services that support independent living that can provide significant levels of personal care but which are not currently within our regulatory regime. We will, therefore, seek to retain the power of the Welsh Government to require new service models to be added to the regulatory regime, using its regulation-making powers.

### **Provision of False or Misleading Information**

69. As described in the previous chapter we are proposing that as an ongoing requirement for registration, service providers would be required to submit a report to the service regulator on an annual basis.
70. We are considering introducing a legislative provision to make it an offence for providers to make false or misleading statements in any such report, and to give the regulator the power to undertake criminal proceedings against those providers who do not comply.

### **Strengthening Corporate Accountability**

71. We are keen to strengthen arrangements in respect of corporate accountability and the role of the responsible individual. Each service provider must identify, as part of their registration with the service regulator, the individual who will be held accountable for the delivery of those services.
72. We strongly believe that this responsible individual must be able to demonstrate that they are a fit and proper person to hold such an important role, and that they occupy an appropriately senior position within the organisation. We are particularly keen to hear views on how the service regulator may be satisfied that the responsible individual passes both these tests.

### **Relationship of the Service Regulator and Providers**

73. We also want to move to strengthen the relationship between the service regulator and those that it regulates. Under current arrangements registration with the service regulator is free to providers. This is an unusual arrangement and we believe the time may be right to move the relationship onto a more professional basis. We will seek to retain powers for the service regulator to charge an appropriate and proportionate fee for initial and ongoing registration. The purpose of this fee will be to generate a modest income that would be used to offset additional burdens of the

enhanced regulation regime as proposed in this White Paper, whilst also putting the relationship with the provider on a more business-like footing. We believe that this fee would strengthen the relationship between provider and service regulator, demanding from both a new approach to working together. We believe it would ensure that both parties gain the maximum value from the relationship.

### **Local Authorities**

74. We believe that the service regulator has an important role to play in supporting public assurance with regard to the social services responsibilities of local government. This includes services local authorities deliver directly and those they commission from third parties.
75. We will seek to strengthen the role of the service regulator in terms of their relationship with local authorities. We believe that the service regulator should be able to review the strategic and operational approach of the local authority in respect of its duties to provide care and support, and provide publicly available reports on performance across Wales. We will, if necessary, provide the regulator with the appropriate additional powers to ensure they can access the information they need to discharge these important duties.
76. We do not seek to change the current review and enforcement arrangements whereby the service regulator can seek a series of actions in the case of failure within a local authority.
77. We believe that citizens should have the same information available to them regardless who provides their care and support. We want to explore how we might move towards a regime that would involve local authorities being required, on an annual basis, to submit a report akin to that being proposed in this White Paper for service providers. Currently, the service regulator undertakes an inspection of the local authority and produces a report. However, we would seek to move to a system whereby the local

authority must produce an annual report which will then be used by the service regulator as the base for any inspection.

### **Sector Stability**

78. We believe that the regulatory framework can not only provide public assurance but can also contribute to the continued health of the sector and help to avoid or mitigate the effects of provider failure.
79. The assessment of the suitability of providers will remain a fundamental function of local commissioners. It is their responsibility to be proactive in contracting appropriate providers, and in undertaking the requisite checks to deliver value for money and a quality service. Through these activities, local authorities can positively influence the care and support market in their localities.
80. In our policy statement, we said that we recognise the important role commissioners of services within local authorities play. They have a unique view of both the requirement for, and supply of, social care in their areas.
81. We will seek to put that market intelligence to good use in Wales. We will, through the regulator, establish a requirement for local authorities to supplement their local needs assessment work (as specified within the Social Services and Well-being (Wales) Bill) with an annual statement on the market within their areas. This statement will set out the projected care and support needs of the population of that area and seek to compare that against current provision within the market. It will, we believe, prove an invaluable resource for both commissioners and providers within the area. We believe it will allow both commissioners and providers to take steps to ensure that supply and demand are aligned now, and in the future.
82. Nationally, we will expect the regulator to use these local reports to develop an annual report on social care provision within the market in

Wales. We also see value in the information provided in these reports being used at local and regional levels, not just as a national information resource.

83. This new national analysis of the care market will be used to identify where the key risks to provision at a national level lie. That is, which providers present the greatest risk should they fail. These may be providers with a presence in many local authorities, or they may be providers with a specialised service portfolio that is not available elsewhere. These shall be the providers where the service regulator focuses its attention and scrutiny. We will expect the regulator to undertake assessments of these 'strategic' providers and their financial and corporate stability. We will ensure that the regulator has the power to require any information from providers that they need to undertake this task.
84. In this way, we can deliver a proportionate and targeted approach to the regulation of corporate and financial stability.
85. We do not anticipate this will be a simple case of extending the role of current inspectors, but we do believe these skills are available within Wales and can be secured to support the work of the regulator in this area.

### **Local Authority Contingency Planning and Provider Risk Assessment**

86. No amount of due diligence at local level or national regulatory oversight can prevent providers failing. In our mixed economy of social care, this is unavoidable. What we can do is to mitigate the effects of such failures on users and their carers.
87. We have seen, in Southern Cross and elsewhere, the risks posed by unexpected failures in the viability of care providers. The failure of Southern Cross<sup>18</sup> highlighted a lack of effective oversight of the care

market and the need to determine a view on what level of market share represents a risk of provider dominance. The failure also highlighted the need to put in place arrangements to protect users, should a similar situation occur.

88. To respond to the risks highlighted by Southern Cross we are seeking to make amendments to the Social Services and Well-being (Wales) Bill to place a duty upon local authorities in Wales to undertake contingency planning to cater for the immediate care needs of those within its area affected by provider failure.
89. Second, we are keen to explore the option of service providers producing a service continuity risk assessment, which will form part of the annual reporting mechanism. It is envisaged that the risk assessment will identify a number of scenarios that may lead to provider failure (e.g. drop in occupancy or failure to refinance). The service provider would then detail any actions they would take to mitigate the effects of these situations and recover, whilst maintaining quality of care and support. It would also address the situation if recovery was not possible, and set out actions that would be taken to ensure continuity of a sufficient standard of care and support, through to either new ownership or closure.

## **Enforcement**

90. CSSIW have a range of enforcement powers and we do not intend to fundamentally alter those, other than providing a key set of offences linked to the new registration and reporting requirements as described previously in this paper. We are considering creating 'aggravated' versions of those key offences in order to provide stronger sentencing powers to the courts in relation to the most serious regulatory breaches. Such offences would relate to the extent of the harm, or the outcome of the regulatory breach on the service user.

91. We are also keen to explore the option of the courts being able to 'suspend' or 'stay' an order cancelling registration for a short period of time in relation to care home closures, so that safe and appropriate transitional arrangements can be made to relocate residents.

### **Summary of Key Points**

- **A service based regulatory model is our favoured approach.**
- **There will be new offence of provision of false or misleading information in annual reports.**
- **Responsible Individual requirements will be strengthened.**
- **A national sector position statement will be compiled allowing targeted due diligence inspections on strategic providers. At a local and regional level this will be used to supplement local needs assessment work.**
- **A service continuity risk assessment will be required from providers.**
- **We are looking at courts being able to 'stay' or suspend orders cancelling registration of care homes to allow transitional arrangements to be made.**

### **Consultation Questions**

9. **What, if any, risks are there to a service based regulatory system?**
10. **What, if any, benefits are there to a service based regulatory system?**
11. **Are there any services that are not currently regulated that you feel should be? Why/why not?**
12. **Should local authorities be required to produce an annual report which will provide the basis of inspection by the service regulator? Why/why not?**
13. **How could the regulator assess whether the Responsible Individual is a fit and proper person?**
14. **Do you think the requirement for service providers to undertake a risk assessment about continuity of service would help prevent provider failure? Why/why not?**
15. **In the event of provider failure, would local authority contingency plans help ensure the continuity of service provision? Why/why not?**



- 16. Do you think a registration fee should be introduced for organisations registering to provide care and support services? Why/why not?**
- 17. Do you think a fee should be charged for organisations providing care and support services to renew registration?**
- 18. What, if any, challenges would there be to introducing time limited registration, in particular circumstances, for organisations providing care and support services?**
- 19. What, if any, benefits would there be to introducing time limited registration, in particular circumstances, for organisations providing care and support services?**
- 20. Do you think that the service regulator has sufficient enforcement powers? Why/why not?**
- 21. Should the existing offence of providing false or misleading information in an application form be extended to the provider's annual report to the inspector? Why/why not?**
- 22. What are your views in relation to making provision for 'aggravated' versions of certain regulatory breaches which would provide stronger sentencing powers to the courts in relation to the most serious regulatory breaches?**

## 5. Strong and Professional Delivery Team

92. The care and support workforce in Wales is hard working, skilled and committed. It is at the heart of effective social care for our citizens. In 2010, the Deputy Minister for Social Services commissioned a task group to review the development needs of the social care workforce. The final report of the task group states:

*In Wales, there is a strong political tradition that unpredictable social risks, such as poverty, frailty, addiction, mental ill-health, disability, neglect or abuse should be borne by society, not left to the random responsibility of individuals. If service outcomes are poor, if dependency becomes ingrained or harm occurs, individuals, families, communities and our society pay the price. The most important determinant of these outcomes is the workforce. The quality of the interactions, the assessments, the support and care undertaken by the workforce, defines the quality of the service, and it is the workforce rather than technology or buildings, which represent by far the largest cost in the system<sup>19</sup>.*

93. However, the workforce has not always been awarded the status in our society it deserves.
94. The Welsh Government has prioritised the professionalisation of the care and support workforce. It has invested significant resources into the training and development of staff through the Social Care Workforce Development Programme. It has sought, through establishing and sponsoring the Care Council for Wales, to take a more strategic approach to the development of the workforce. This has included the use of regulated training and the registration of specific groups within the workforce that has seen real progress in the professionalisation within the sector.

## **Registration of the Workforce**

95. Our approach to the registration of the regulated workforce will continue to be founded on a professional register. The Register of Social Care Workers was established under the CSA 2000. The aim of the register is to make sure that all social workers and social care workers are suitable for work in social care. The register puts social care workers on a similar footing to other public service professions such as medicine and teaching.
96. Not all care and support workers are required to register with the workforce regulator in order to practice. Groups of the workforce which are currently required to register include:
- People who hold a social work qualification and practice social work or call themselves a social worker;
  - Students participating on an approved social work degree course in Wales;
  - Residential child care managers and workers;
  - Adult care home managers; and
  - Domiciliary care managers<sup>1</sup>.
97. These will continue to be regulated.
98. The register will continue to be qualification based and allow the incorporation of individuals with varying routes into the profession from inside and outside of Wales. Registrants will need to demonstrate continuous professional development in order to renew registration periodically. The regulator will continue to have powers to remove registrants.

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<sup>1</sup> Mandatory registration for domiciliary care managers came into effect on 28 February 2013. Managers are required to register by 31 December 2013.

99. For social workers, protection of title will remain as the statutory basis for regulation. This means that only social workers registered with the workforce regulator can use the term 'social worker' when describing themselves in their work. For others, such as managers, the protection is through the role carried out rather than through title. We would welcome views on whether protection of title should be extended across the register.
100. We believe it would be useful to be able to distinguish between the different levels of social work which could reflect qualifications and practice. We will provide the workforce regulator with the power to establish a register that reflects, and protects, the various roles within the social work profession.
101. We will consider the need for regulating other groups of the workforce as, and when, new service models emerge. We are considering introducing legislation which will allow the inclusion of new workforce groups when necessary and appropriate. For example, responses to the consultation on the Social Services and Well-being (Wales) Bill indicated that there may be a case for the registration of foster carers. There may also be merit in considering the role of staff providing advocacy services when the new advocacy arrangements from the Social Services and Well-being (Wales) Bill are put in place.
102. We have also heard arguments regarding the registration of those who carry out inspections in our sector, and we would be keen to hear views on whether this group should be required to register with the workforce regulator.
103. We will remove the requirement for managers to be registered with both the workforce regulator and service regulator. The current process results in additional work and cost to managers and employers, while at the same time resulting in a lack of clarity regarding the accountability of registered managers, responsible individuals and organisations. We believe that

managers of care services should primarily be accountable for their professional practice and the quality of care delivered. Provision will, therefore, be made so that managers of care services are required to register with the workforce regulator, in line with other groups of the workforce. The service regulator will work with the workforce regulator to ensure managers of regulated services to be registered with the workforce regulator.

### **Voluntary Registration**

104. We do not intend to make provision for voluntary registration because we believe that this does not contribute to public assurance, can cause confusion for the public and allow workers of a low standard to fall through the net.

### **Negative Registration**

105. We have followed with interest, the development of the concept of negative registers through the scheme established in New South Wales, Australia, policy discussions in England and the ongoing review by the Law Commission.

106. As a regulatory model, negative registration sits between voluntary registration and full statutory regulation but is theoretically more targeted, less restrictive and less costly than the latter. It provides the regulator with the ability to remove those whose conduct makes them unsuitable to remain in the workforce, but without imposing an undue burden on the honest, ethical and competent majority. A negative registration scheme of this kind does not restrict entry to practice, but allows effective action to be taken against a person who fails to comply with proper standards of conduct.

107. Stakeholders have raised a number of possible issues with this model of registration within care and support, which will require further consideration. Issues include the potential for confusion with the vetting

and barring system, the opportunity for false assurance for those not on the register and the limitations this approach offers in terms of workforce development. We welcome your feedback on any risks and benefits associated with such registration.

## **Regulation of Training**

108. We believe that the workforce regulator has an important role to play in ensuring that training and development is appropriate. We will, therefore, make provision for the regulation of specific workforce training for those on the register.

### **Summary of Key Points**

- **The current approach to registration of the social care workforce will continue.**
- **We will require social care managers to register only with the workforce regulator.**
- **Voluntary registers will be removed.**
- **The potential for the use of negative registers will be monitored.**

## **Consultation Questions**

- 23. Are there any groups in the care and support workforce that are not currently registered, that you think should be? Why/why not?**
- 24. What, if any, challenges would there be to extending registration of the care and support workforce?**
- 25. What, if any, benefits would there be to extending registration of the care and support workforce?**
- 26. If registration is extended, what are your views about extending protection of title to other groups in the care and support workforce?**
- 27. If registration is extended, what are your views about extending protection of role to other groups in the care and support workforce?**
- 28. What is your view of the proposal to require social care managers to only register with the workforce regulator?**
- 29. What are your views on our plans to remove voluntary registers?**

- 30. What, if any, risks are associated with negative registers?**
- 31. What, if any, benefits are associated with negative registers?**
- 32. Do you think we should adopt negative registration in Wales?  
Why/Why not?**

## 6. Taking the Next Step to Improvement and Professionalisation

109. We have previously set out, in our Policy Statement for Social Services Regulation and Inspection<sup>20</sup>, our ambitions to establish a college of social work and social care in Wales to meet the service and workforce development challenges that lie ahead. This is an important and significant step. It is based on our commitment to provide a framework for improvement which is sector wide. It is our assessment that we have, in Wales, made progress on our long-term aim to develop a more professional workforce and to deliver service improvement. However, we are clear that we must take a more consistent and coherent approach.

110. We are aware of discussions within the sector regarding the name for this important initiative, and the appropriateness of the term 'college'. We do not wish the language we use to become the focus of this debate – we are eager to discuss the functions rather than the name. We are, therefore, proposing that we will, for greater clarity, adopt the working title the **National Institute of Care and Support** to describe our ambitions in this area.

111. We anticipate that the National Institute of Care and Support would carry out the following functions:

1. Providing leadership for the improvement agenda across the sector;
2. Designing and implementing social services improvement schemes to deliver national improvement priorities as identified by Welsh Government through its strategic improvement framework for well-being;
3. Overseeing workforce registration, planning, standards, development and learning schemes including the regulation of training;
4. Supporting the development of research capacity and applied research, and assisting policy makers locally and nationally in developing best practice;



5. Acting as an information hub for best evidence-informed practice and promoting this practice across the sector;
6. Providing information to the public on standards and authoritative frameworks;
7. Providing information on social care and social work to the public, media and government;
8. Learning from and involving citizens who use services; and
9. Enabling collaborative partnership working across the care and support sector, wider local government and health.

112. We do not see this institute as a new further education institution, or a building. This is about leadership and promoting excellence through workforce regulation, professional development and service improvement. It is about harnessing the passion and energy already demonstrated by the workforce to drive forward our commitment to improved well-being for citizens.

113. We see the institute being comprised of a set of functions that can strategically lead the next stage of development in the sector. This will be important in removing the artificial barriers between workforce and service improvement. We envisage that the service regulator will play an important role in providing the information that will be required to lead this service improvement.

114. Such an institute can deliver our commitment to promoting and sustaining excellence in social services, by securing the next steps in service development and the professionalisation of the workforce, without placing any new pressures on our limited resources. Sustainable improvement will only occur where there is integrated thinking across service and workforce development. The institute will, therefore, act as a consolidated improvement hub, replacing the more dispersed and fragmented approach of the past.

115. In terms of wider service improvement, we see the institute as a key mechanism to deliver the agenda set out in our three year plan for improving social services<sup>21</sup>. We will, therefore, seek to work closely with the newly established Strategic Improvement Steering Group in considering the functions of the institute, so that it is configured to be able to fully support national improvement priorities.

116. We see a powerful case to deliver this new vision and associated functions through developing the current workforce regulator. This organisation, with its record of workforce development and citizen led governance is the obvious locus to take forward this approach. We, therefore, propose that the Care Council for Wales will be reconstituted to become the National Institute for Care and Support. The new body would retain its current functions, including workforce regulation, but would be asked to lead the ambitious new improvement agenda we have set out. It would remain lay-led, although we would expect it to regularly demonstrate how it was providing the professions a strong voice and genuine ownership of the improvement development activities.

117. We expect that the institute will both provide and commission activity in order to carry out its functions.

118. We are seeking, through this White Paper, a debate on the functions the institute should take up beyond those currently carried out by the workforce regulator.

### **Summary of Key Points**

- **The Care Council for Wales will be reconstituted as a National Institute of Care and Support to develop a more professional workforce and to deliver service improvement.**

## **Consultation Questions**

**33. What are your views on the proposal for a National Institute of Care and Support?**

**34. What functions should the institute be responsible for?**

## **7. Working together**

119. Regulation of care and support is currently delivered mostly through two organisations, Care Council for Wales (the workforce regulator) and the Care and Social Services Inspectorate Wales (the service regulator). We are not minded at this time to reallocate the current regulatory functions of either organisation.

### **Information Sharing and Working Together**

120. We believe that close co-operation and joint working between these regulatory bodies can deliver real benefits for the Welsh Government, providers and citizens. We have already seen significant improvements in sharing information and intelligence between both regulators over recent times. We want that to continue but at an even greater pace. We see no reason why, with adequate safeguards, these agencies cannot work to create a single approach to information and intelligence sharing. Much progress has already been made, and a number of agreements and concordats exist. These provide the foundation for the next step.

121. However, the regulatory regime of care and support does not sit in isolation. Other regulatory bodies such as the Wales Audit Office, Health Inspectorate Wales and Estyn have an important relationship with care and support regulation, as do the independent commissioners (Older People's Commissioner for Wales, Children's Commissioner for Wales and Welsh Language Commissioner), the Public Service Ombudsman and Community Health Councils. This is also true of organisations outside Wales in England, Scotland and Northern Ireland.

122. The importance of regulatory bodies working together and sharing information was highlighted by, for example, the Winterbourne View Hospital review and the Francis review. The Winterbourne View Hospital review found that whilst there was a considerable body of evidence which pointed to serious failures, the lack of a single accessible body of

information resulted in failures not being recognised by either the local authority or the regulators. Similarly, the Francis report concludes that whilst there were numerous warning signs which cumulatively could, and should, have alerted the system to the problems developing at the trust, there was a failure of communication between the many agencies to share their knowledge of concerns.

123. We will, therefore, ensure our regulators have the legal powers and duties to share relevant information with other agencies and regulators.

### **Regulatory Functions and the Role of the Welsh Ministers**

124. It is our intention to further consider whether the Welsh Ministers should continue to exercise a regulatory function in relation to social care services. That is, whether the functions should be carried out inside or outside of the Welsh Government. We have already indicated that at this time we are not minded to make structural changes but that position may change. We are considering whether a ‘future proof’ provision should be made now, so that if the Welsh Government policy position changes we are able to delegate functions as required.

#### **Summary of Key Points**

- **Sharing of information and intelligence between regulators will be improved.**
- **Powers will be taken to ensure sharing of information across regulators and agencies.**

### **Consultation Questions**

**35. Do you think that the functions of service and workforce regulation should be carried out inside or outside of the Welsh Government? Why?**

## 8. Appendices

### Appendix 1: Outline Timetable

30 September 2013	Publication of White Paper on Regulation and Inspection of Care and Support
Start October – end December 2013	Public consultation on proposals
6 January 2014	Consultation period ends
Early 2014	Analysis of responses
Spring 2014	Summary of consultation responses published
Summer to Winter of 2014	Further development of proposals and consultation with stakeholders  Publication of an Equality Impact Assessment and a Regulatory Impact Assessment
2015	Regulation and Inspection Bill introduced into National Assembly for Wales*
2015	Scrutiny of Bill by the National Assembly*

\*precise timings subject to the National Assembly for Wales timetable.

#### **Equality impact assessment**

The Welsh Government is committed to making sure that as policies, strategies, action plans and legislation are developed, every effort is made to actively contribute to an environment that is free from discrimination. Part of this involves assessing the impact that policies and actions may have on the citizens of Wales, to make sure that the Welsh Government does not discriminate but takes every opportunity to promote equality and good relations.

#### **Regulatory Impact Assessment**

When the proposed legislation is laid before the National Assembly for Wales, the Welsh Government will provide an Explanatory Memorandum including a Regulatory Impact Assessment (RIA). The RIA will set out the costs and benefits associated with achieving the strategic objectives set out in the Bill.

## Appendix 2: How to Respond

We believe the proposals set out in this document will improve the current system of regulation and inspection of care and support in Wales. In the coming months we will be refining our proposals, considering the detail of how any proposed legislation will work in practice, the impacts of our proposals, and how any legislation would be implemented.

**Your views are important and we want to hear from you. You can let us know about your views by answering one, a few or all of the questions contained in the White Paper.**

A full list of the consultation questions and a consultation response form can be found at the end of this document. Comments can be submitted in a number of ways:

Online: <http://wales.gov.uk/consultations/?lang=en>

E-mail: [socialservicesregulationandinspection@wales.gsi.gov.uk](mailto:socialservicesregulationandinspection@wales.gsi.gov.uk)

Post: Social Services Regulation & Inspection Policy Team  
Social Services Directorate  
Department of Health & Social Services  
4.P08  
Cathays Park  
Cardiff  
CF10 3NQ

The consultation will close on **6 January 2014**

Any response you send us will be seen in full by Welsh Government staff involved in work associated with this consultation. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government will publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published as this helps to demonstrate that the consultation was carried out in a proper manner. If you do not want your name or address published, please tell us in writing when you submit your response and we will block out that information prior to publication.

It is possible that the names or addresses we block out could still be published. For example, the Freedom of Information Act 2000 allows the public to ask to see the information held by many public bodies, including the Welsh Government. This includes information which has not been published.

However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, it is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would contact the person in advance of disclosing any information and before any decision is made.



## Appendix 3: Consultation Response Form

Your name:

Organisation (if applicable):

E-mail:

Telephone number:

Your address:

Postcode:

### Consultation Questions

<b>Section 3 – A Citizen Centred Approach</b>
<b>1. What, if any, challenges will there be to introducing an outcomes-based approach to regulation and inspection?</b>
<b>2. What, if any, benefits will there be to introducing an outcomes-based approach to regulation and inspection?</b>
<b>3. What is your view of our requirement for service providers to produce an annual report?</b>
<b>4. What information do you think should be included in the annual reports?</b>
<b>5. Do you think a quality judgement framework will be a useful tool for the citizen? Why/why Not?</b>

<b>6. Are there any other ways we could provide citizens with more control over the care and support they receive?</b>
<b>7. How could the service regulator involve citizens further in their work?</b>
<b>8. Are there any other ways we could strengthen the voice and control of the citizen in regulation and inspection that you believe we should consider?</b>
<b>Section 4 – Firm and Broad Regulation</b>
<b>9. What, if any, risks are there to a service based regulatory system?</b>
<b>10. What, if any, benefits are there to a service based regulatory system?</b>
<b>11. Are there any services that are not currently regulated that you feel should be? Why/why not?</b>
<b>12. Should local authorities be required to produce an annual report which will provide the basis of inspection by the service regulator? Why/why not?</b>
<b>13. How could the regulator assess whether the Responsible Individual is a fit and proper person?</b>

<p><b>14. Do you think the requirement for service providers to undertake a risk assessment about continuity of service would help prevent provider failure? Why/why not?</b></p>
<p> </p>
<p><b>15. In the event of provider failure, would local authority contingency plans help ensure the continuity of service provision? Why/why not?</b></p>
<p> </p>
<p><b>16. Do you think a registration fee should be introduced for organisations registering to provide care and support services? Why/why not?</b></p>
<p> </p>
<p><b>17. Do you think a fee should be charged for organisations providing care and support services to renew registration?</b></p>
<p> </p>
<p><b>18. What, if any, challenges would there be to introducing time limited registration, in particular circumstances, for organisations providing care and support services?</b></p>
<p> </p>
<p><b>19. What, if any, benefits would there be to introducing time limited registration, in particular circumstances, for organisations providing care and support services?</b></p>
<p> </p>
<p><b>20. Do you think that the service regulator has sufficient enforcement powers? Why/why not?</b></p>
<p> </p>
<p><b>21. Should the existing offence of providing false or misleading information in an application form be extended to the provider's annual report to the inspector? Why/why not?</b></p>
<p> </p>

**22. What are your views in relation to making provision for ‘aggravated’ versions of certain regulatory breaches which would provide stronger sentencing powers to the courts in relation to the most serious regulatory breaches?**

## **Section 5 – Strong and Professional Delivery**

**23. Are there any groups in the care and support workforce that are not currently registered, that you think should be? Why/why not?**

**24. What, if any, challenges would there be to extending registration of the care and support workforce?**

**25. What, if any, benefits would there be to extending registration of the care and support workforce?**

**26. If registration is extended, what are your views about extending protection of title to other groups in the care and support workforce?**

**27. If registration is extended, what are your views about extending protection of role to other groups in the care and support workforce?**

**28. What is your view of the proposal to require social care managers to only register with the workforce regulator?**

<p><b>29. What are your views on our plans to remove voluntary registers?</b></p>
<p><b>30. What, if any, risks are associated with negative registers?</b></p>
<p><b>31. What, if any, benefits are associated with negative registers?</b></p>
<p><b>32. Do you think we should adopt negative registration in Wales? Why/why not?</b></p>
<p><b>Section 6 - Taking the next step to Improvement and Professionalisation</b></p>
<p><b>33. What are your views on the proposal to introduce a National Institute of Care and Support?</b></p>
<p><b>34. What functions should the Institute be responsible for?</b></p>
<p><b>Section 7 – Working Together</b></p>
<p><b>35. Do you think that the functions of service and workforce regulation should be carried out inside or outside of the Welsh Government? Why?</b></p>
<p><b>Other</b></p>
<p><b>The Welsh Government is interested in understanding whether the changes proposed in this White Paper will have an impact on groups</b></p>

**with protected characteristics. Protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, and sexual orientation.**

**36. Do you feel that the changes outlined in this White Paper will have any positive impacts on groups with protected characteristics? If so, which changes and why/why not?**

**37. Do you feel that the changes outlined in this White Paper will have any negative impacts on groups with protected characteristics? If so, which changes and why/why not?**

**38. What are your views on any costs associated with the changes outlined in the White Paper?**

**39. What opportunities do the proposed changes set out in this White Paper provide to reduce or replace the current system of regulation and inspection?**

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

**Responses to consultations may be made public – on the internet or in a report. If you would prefer your response to be kept confidential, please enter YES in the box.**

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## Endnotes

<sup>1</sup> Welsh Assembly Government (2011) Sustainable Social Services for Wales: a framework for action (Welsh Assembly Government: Cardiff).

<sup>2</sup> The Independent Commission on Social Services in Wales received a great deal of evidence on the workforce which set out considerable achievements including the positive benefits of regulation of social workers, social care workers and managers as a mechanism for sharpening the focus on practice standards and service improvement. See Independent Commission on Social Services in Wales (2010) From Vision to Action: the report of the Independent Commission on Social Services in Wales.

<sup>3</sup> For further information see:

<http://wales.gov.uk/about/cabinet/decisions/dr2013/aprjun/ips/7325342/?lang=en>

<sup>4</sup> Further information is available at: <http://wales.gov.uk/topics/improvingservices/public-service-governance-and-delivery/?lang=en>

<sup>5</sup> Independent Commission on Social Services in Wales (2010) From Vision to Action: the report of the Independent Commission on Social Services in Wales. Available at:

<http://www.icssw.org/vision/?lang=en>

<sup>6</sup> The Social Care and Social Work Workforce Task Group (2011) The report of the Social Care and Social Work Workforce Task Group (Welsh Assembly Government: Cardiff). Available at:

<http://wales.gov.uk/topics/health/publications/socialcare/reports/workforce/?lang=en>

<sup>7</sup> See appendix two, Welsh Safeguarding Children Forum (2010) Interim Position of the Welsh Safeguarding Children Forum (Welsh Assembly Government: Cardiff) *in* Welsh Safeguarding Children Forum (2011) A Report by the Welsh Safeguarding Children Forum (Welsh Assembly Government: Cardiff). Available at:

<http://wales.gov.uk/topics/childrenyoungpeople/publications/forum/?lang=en>

<sup>8</sup> Waterhouse, R. (2000) Lost in Care: report of the tribunal of inquiry into the abuse of children in care in the former county council areas of Gwynedd and Clwyd since 1974. Available at:

<http://tna.europarchive.org/20040216040105/http://www.doh.gov.uk/lostincare/20102a.htm>

<sup>9</sup> Francis, R. (2010) Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry Executive Summary (TSO:London)

<sup>10</sup> Welsh Assembly Government (2013) Well-being statement for people who need care and support and carers who need support (Welsh Assembly Government: Cardiff). Available at:

<http://wales.gov.uk/topics/health/publications/socialcare/strategies/statement/?lang=en>

<sup>11</sup> Flynn, M. (2012) South Gloucestershire Safeguarding Adults Board Winterbourne View Hospital: a serious case review (South Gloucestershire Council).

<sup>12</sup> CSSIW (2012) Participation Plan: working together to improve social care services. Available at:

<http://wales.gov.uk/cssiwsite/newcssiw/getconnected/pplan/?lang=en>

<sup>13</sup> Page 6, Welsh Government (2012) More than Just Words: strategic framework for Welsh language services in health, social services and social care. Available at:

<http://wales.gov.uk/topics/health/publications/health/guidance/words/?lang=en>

<sup>14</sup> <http://www.legislation.gov.uk/mwa/2011/2/contents/enacted>

<sup>15</sup> [http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=4&cad=rja&ved=0CE4QFjAD&url=http%3A%2F%2Fwww.unicef.org.uk%2FDocuments%2FPublication-pdfs%2FUNCRC\\_PRESS200910web.pdf&ei=WuQyUsH4Lsf07Aaw24DYAQ&usq=AFQjCNftD12trHuJh9q\\_EfELQlzmiiUw&bvm=bv.52164340,d.d2k](http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=4&cad=rja&ved=0CE4QFjAD&url=http%3A%2F%2Fwww.unicef.org.uk%2FDocuments%2FPublication-pdfs%2FUNCRC_PRESS200910web.pdf&ei=WuQyUsH4Lsf07Aaw24DYAQ&usq=AFQjCNftD12trHuJh9q_EfELQlzmiiUw&bvm=bv.52164340,d.d2k)

<sup>16</sup> <http://wales.gov.uk/about/cabinet/cabinetstatements/2013/regulationinspection/?lang=en>

<sup>17</sup> For further information see [http://ec.europa.eu/internal\\_market/services/services-dir/guide/index\\_en.htm](http://ec.europa.eu/internal_market/services/services-dir/guide/index_en.htm)

<sup>18</sup> See House of Commons Committee of Public Accounts (2011) Oversight of User Choice and Provider Competition in Care Markets, Fifty-seventh Report of Session 2010-12 (TSO:London).

<sup>19</sup> Page 5, The Social Care and Social Work Workforce Task Group (2011) The Report of the Social Care and Social Work Workforce Task Group (Welsh Assembly Government: Cardiff). Available at:

<sup>20</sup> <http://wales.gov.uk/about/cabinet/cabinetstatements/2013/regulationinspection/?lang=en>

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<sup>21</sup> Sustainable Social Services for Wales: an approach to social services improvement and an outline three year plan for improvement: 2013/14 – 2015/16. Available at: <http://wales.gov.uk/topics/health/publications/socialcare/strategies/plan/?lang=en>