

## **Agenda – Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

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Lleoliad:	I gael rhagor o wybodaeth cysylltwch a:
Ystafell Bwyllgora 1 – Y Senedd	Gareth Williams
Dyddiad: Dydd Llun, 2 Mawrth 2020	Clerc y Pwyllgor
Amser: 14.30	0300 200 6362
	<a href="mailto:SeneddDCC@cynulliad.cymru">SeneddDCC@cynulliad.cymru</a>

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**1 Cyflwyniad, ymddiheuriadau, dirprwyon a datgan buddiannau**  
14.30

**2 Offerynnau sy'n cynnwys materion i gyflwyno adroddiad arnynt i'r Cynulliad o dan Reol Sefydlog 21.2 neu 21.3**  
14.30–14.35

Offerynnau'r Weithdrefn Penderfyniad Negyddol

**2.1 SL(5)504 – Rheoliadau Gofal a Chymorth (Gosod Ffioedd) (Cymru) a Rheolau Cofrestru Tir (Diwygiadau Amrywiol) 2020**

(Tudalennau 1 – 16)

CLA(5)–08–20 – Papur 1 – Adroddiad

CLA(5)–08–20 – Papur 2 – Rheoliadau

CLA(5)–08–20 – Papur 3 – Memorandwm Esboniadol

Offerynnau'r Weithdrefn Penderfyniad Cadarnhaol

**2.2 SL(5)501 – Rheoliadau Gofal Cymdeithasol Cymru (Pennu Gweithwyr Gofal Cymdeithasol) (Cofrestru) (Diwygio) 2020**

(Tudalennau 17 – 42)

CLA(5)–08–20 – Papur 4 – Adroddiad

CLA(5)–08–20 – Papur 5 – Rheoliadau

CLA(5)–08–20 – Papur 6 – Memorandwm Esboniadol

**2.3 SL(5)502 – Rheoliadau Deddf Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru) 2016 a Gwasanaethau Rheoleiddiedig (Diwygiadau Amrywiol) (Cymru) 2020**

(Tudalennau 43 – 84)



Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales

CLA(5)-08-20 – Papur 7 – Adroddiad

CLA(5)-08-20 – Papur 8 – Rheoliadau

CLA(5)-08-20 – Papur 9 – Memorandwm Esboniadol

### **3 Is-ddeddfwriaeth nad yw'n cynnwys materion i cyflwyno adroddiad arnynt o dan Reol Sefydlog 21.7**

14.35–14.40

(Tudalennau 85 – 86)

CLA(5)-08-20 – Papur 10 – Is-ddeddfwriaeth sydd ag adroddiadau clir

- 3.1 SL(5)505 – Cod ymarfer ar arfer swyddogaethau gwasanaethau cymdeithasol mewn perthynas â Rhan 4 (taliadau uniongyrchol a dewis o lety) a Rhan 5 (codi ffioedd ac asesiadau ariannol) o Ddeddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014

### **4 Is-ddeddfwriaeth sy'n cynnwys materion i gyflwyno adroddiad arnynt i'r Cynulliad o dan Reol Sefydlog 21.7**

14.40–14.45

- 4.1 SL(5)503 – Cod ymarfer mewn perthynas â pherfformiad a gwella gwasanaethau cymdeithasol yng Nghymru

(Tudalennau 87 – 109)

CLA(5)-08-20 – Papur 11 – Adroddiad

CLA(5)-08-20 – Papur 12 – Cod Ymarfer

CLA(5)-08-20 – Papur 13 – Memorandwm Esboniadol

### **5 Papurau i'w nodi**

14.45–14.50

- 5.1 Datganiad gan Lywodraeth Cymru: Deddfwriaeth yn ymwneud ag ymadael â'r UE

(Tudalennau 110 – 112)

CLA(5)-08-20 – Papur 14 – Datganiad, 26 Chwefror 2020

**5.2 Llythyr gan Weinidog yr Economi a Thrafnidiaeth, Gweinidog yr Amgylchedd, Ynni a Materion Gwledig a'r Gweinidog Addysg: Newyddion diweddaraf ar gysylltiadau rhynglywodraethol**

(Tudalennau 113 – 114)

**CLA(5)–08–20 – Papur 15 – Llythyr gan Weinidog yr Economi a Thrafnidiaeth, Gweinidog yr Amgylchedd, Ynni a Materion Gwledig a'r Gweinidog Addysg, 25 Chwefror 2020**

**6 Cynnig o dan Reol Sefydlog 17.42 i benderfynu gwahardd y cyhoedd o'r cyfarfod ar gyfer y mater a ganlyn:**

14.50

**7 Ymchwiliad i faterion yn ymwneud â chyfiawnder: Trafod penodi cynghorydd arbenigol**

14.50–15.05

(Tudalennau 115 – 123)

**CLA(5)–8–20 – Papur 16 – Papur trafod**

**8 Blaenraglen Waith**

15.05–15.15

(Tudalennau 124 – 125)

**CLA(5)–08–20 – Papur 17 – Blaenraglen Waith**

**9 Bil Llywodraeth Leol ac Etholiadau (Cymru): Adroddiad drafft**

15.15–15.45

(Tudalennau 126 – 183)

**CLA(5)–08–20 – Papur 18 – Adroddiad Drafft**

**10 Biliau'r DU sy'n ymwneud â gadael yr Undeb Ewropeaidd: Briff**

15.45–15.50

(Tudalennau 184 – 191)

**CLA(5)–08–20 – Papur 19 – Papur briffio**

**Dyddiad y cyfarfod nesaf – 9 Mawrth 2020**

# SL(5)504 - Rheoliadau Gofal a Chymorth (Gosod Ffioedd) (Cymru) a Rheolau Cofrestru Tir (Diwygiadau Amrywiol) 2020

## Cefndir a Diben

Mae'r Rheoliadau hyn yn diwygio Rheoliadau Gofal a Chymorth (Gosod Ffioedd) (Cymru) 2015 ("Rheoliadau 2015") a Rheolau Cofrestru Tir 2003 ("y Rheolau").

Mae Rheoliadau 2015 yn nodi'r gofynion y mae'n rhaid i awdurdodau lleol eu dilyn wrth wneud penderfyniad ar swm y taliadau sy'n gymwys mewn perthynas â gofal a chymorth y maent yn eu darparu neu'n eu trefnu neu'n cynnig eu darparu neu eu trefnu wrth gyflawni eu swyddogaethau o dan Ran 4 o Ddeddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014 ("Deddf 2014"). Mae Rheoliadau 2015 hefyd yn cynnwys darpariaethau cyfochrog sy'n nodi gofynion sy'n gymwys pan fydd awdurdod lleol yn gwneud taliadau uniongyrchol i ddiwallu angen unigolyn am ofal a chymorth.

Mae'r Rheoliadau hyn yn diwygio Rhan 2 o Reoliadau 2015 (gosod ffioedd o dan Ran 5 o'r Ddeddf) fel a ganlyn:

- cynnydd yn yr uchafswm ffi wythnosol am ofal a chymorth dibreswyl o £90 i £100; a
- chynnydd yn yr isafswm incwm wythnosol ar gyfer person y darperir llety iddo mewn cartref gofal o £29.50 i £32.00.

Mae'r Rheoliadau hyn yn diwygio Rhan 4 o Reoliadau 2015 (cyfraniadau ac ad-daliadau am daliadau uniongyrchol) fel a ganlyn:

- cynnydd yn yr uchafswm cyfraniad neu ad-daliad wythnosol am ofal a chymorth dibreswyl o £90 i £100; a
- chynnydd yn yr isafswm incwm wythnosol ar gyfer person y darperir llety iddo mewn cartref gofal ac sy'n cael taliadau uniongyrchol o dan y Ddeddf o £29.50 i £32.00.

Mae'r Rheoliadau hyn yn diwygio'r Rheolau i gywiro gwall a wnaed yn Rheoliadau Deddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014 (Diwygiadau Canlyniadol) (Is-ddeddfwriaeth) 2016. Mae'r Rheoliadau hyn yn mewnosod y cyfeiriad cywir at ddarpariaeth berthnasol Deddf 2014 yn Rhan 8 ac Atodlen 4 o'r Rheolau.

## Gweithdrefn

Negyddol.

## Materion technegol: craffu

Nodir y pwynt a ganlyn i gyflwyno adroddiad arno o dan Reol Sefydlog 21.2 mewn perthynas â'r offeryn hwn.

**Rheol Sefydlog 21.2 (vi) - ei bod yn ymddangos bod y gwaith drafftio yn ddiffygiol neu ei fod yn methu â bodloni gofynion statudol**



Cynulliad Cenedlaethol Cymru  
Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

National Assembly for Wales  
Legislation, Justice and Constitution Committee

1. Mae Rheoliad 2(c) yn diwygio rheoliad 22(1) o Reoliadau 2015, ond hepgorir y geiriad 'ym mharagraff (1)' (y dylid ei gynnwys i ddarparu cyfeiriad clir a chyflawn at y ddarpariaeth sy'n cael ei diwygio). Er y gellir dadlau bod modd casglu'r bwriad i ddiwygio paragraff (1), byddai'r dull gweithredu yn anghyson â darpariaethau cyfatebol sydd wedi diwygio rheoliad 22(1) o'r blaen, sef -

a. Rheoliadau Gofal a Chymorth (Gosod Ffioedd) ac (Asesiad Ariannol) (Cymru) (Diwygiadau Amrywiol) 2019,

b. Rheoliad 2(d) o Reoliadau Gofal a Chymorth (Gosod Ffioedd) (Cymru) (Diwygio) 2018, a

c. Rheoliad 3(h) o Reoliadau Gofal a Chymorth (Dewis o Lety, Gosod Ffioedd ac Asesiad Ariannol) (Diwygiadau Amrywiol) (Cymru) 2017.

## Rhinweddau: craffu

Nodir y pwynt a ganlyn i gyflwyno adroddiad arno o dan Reol Sefydlog 21.3 mewn perthynas â'r offeryn hwn.

### **Rheol Sefydlog 21.3(ii) - ei fod o bwysigrwydd gwleidyddol neu gyfreithiol neu ei fod yn codi materion polisi cyhoeddus sy'n debyg o fod o ddiddordeb i'r Cynulliad.**

2. Mae Rheoliad 3(b) yn diwygio'r cofnod 'Ffurflen MM' yn Atodlen 4 i'r Rheolau. Nid yw'n eglur pam y caiff ei ddiwygio yn y gorchymyn a ragnodir gan reoliad 3(b) - 3(b), bod (i) yn diwygio paragraff (2), bod 3(b)(ii) yn diwygio'r pennawd a bod 3(b)(iii) yn diwygio paragraff (1). Mae hyn yn ymddangos yn ffordd afresymegol o ddiwygio gan nad yw'n dilyn trefn ganfyddadwy, ac mae'n arwain felly at ddiffyg eglurder i'r darlennydd.

3. Mae'r Gwasanaethau Cyfreithiol yn nodi'r codiad, o £90 i £100, o ran yr uchafswm ffioedd wythnosol sy'n gymwys i ofal a chymorth dibreswyl, a'r uchafswm cyfraniad neu ad-daliad wythnosol am dderbyn taliadau uniongyrchol i sicrhau hyn. Fel y disgrifir yn y Memorandwm Esboniadol i'r Rheoliadau hyn, mae'r ddarpariaeth hon yn sicrhau, pan fydd awdurdod lleol yn defnyddio ei ddisgresiwn i godi ffioedd ar berson am y gofal a'r cymorth dibreswyl y mae yn eu cael, neu'r cymorth dibreswyl y mae gofalwr yn ei gael, mae uchafswm cyson y gall yr awdurdod lleol ei godi. Yn yr un modd, pan fydd awdurdod lleol yn defnyddio ei ddisgresiwn i bennu cyfraniad neu ad-daliad am dderbyn taliadau uniongyrchol i sicrhau gofal a chymorth dibreswyl, mae uchafswm cyson y gall yr awdurdod lleol ei godi ar gyfer y rhain.

## Y goblygiadau yn sgîl ymadael â'r Undeb Ewropeaidd

Ni nodir dim pwyntiau i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.3 mewn perthynas â'r offeryn hwn.

## Ymateb y Llywodraeth

Mae angen ymateb gan y llywodraeth i bwyntiau adrodd 1 a 2.

### **Cynghorwyr Cyfreithiol**

### **Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

**20 Chwefror 2020**



Cynulliad Cenedlaethol Cymru

**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

National Assembly for Wales

**Legislation, Justice and Constitution Committee**

**Tudalen y pecyn 2**

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OFFERYNNAU STATUDOL  
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**2020 Rhif 131 (Cy. 24)**

**GOFAL CYMDEITHASOL,  
CYMRU A LLOEGR**

**Rheoliadau Gofal a Chymorth  
(Gosod Ffioedd) (Cymru) a  
Rheolau Cofrestru Tir (Diwygiadau  
Amrywiol) 2020**

**NODYN ESBONIADOL**

*(Nid yw'r nodyn hwn yn rhan o'r Rheoliadau)*

Mae'r Rheoliadau hyn yn diwygio Rheoliadau Gofal a Chymorth (Gosod Ffioedd) (Cymru) 2015 (“Rheoliadau 2015”) a Rheolau Cofrestru Tir 2003 (“y Rheolau”).

Mae Rheoliadau 2015 yn nodi'r gofynion y mae rhaid i awdurdodau lleol eu bodloni wrth ddyfarnu swm y ffioedd sy'n gymwys mewn perthynas â gofal a chymorth, y maent yn eu darparu neu'n eu trefnu neu'n cynnig eu darparu neu eu trefnu wrth gyflawni eu swyddogaethau o dan Ran 4 o Ddeddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014 (“y Ddeddf”). Mae Rheoliadau 2015 hefyd yn cynnwys darpariaethau cyfochrog sy'n nodi'r gofynion sy'n gymwys pan fo awdurdod lleol yn gwneud taliadau uniongyrchol i ddiwallu angen person am ofal a chymorth.

Mae'r Rheoliadau hyn yn diwygio Rhan 2 o Rheoliadau 2015 (codi ffioedd o dan Ran 5 o'r Ddeddf) fel a ganlyn:

—cynnydd yn yr uchafswm ffi wythnosol am ofal a chymorth amhreswyl o £90 i £100.

—cynnydd yn yr isafswm incwm wythnosol ar gyfer person y darperir llety iddo mewn cartref gofal o £29.50 i £32.

Mae'r Rheoliadau hyn yn diwygio Rhan 4 o Rheoliadau 2015 (cyfraniadau ac ad-daliadau am daliadau uniongyrchol) fel a ganlyn:

—cynnydd yn yr uchafswm cyfraniad neu ad-daliad wythnosol am ofal a chymorth amhreswyl o £90 i £100.

—cynnydd yn yr isafswm incwm wythnosol net ar gyfer person y darperir llety iddo mewn cartref gofal ac sy'n derbyn taliadau uniongyrchol o dan y Ddeddf o £29.50 i £32.

Mae'r Rheoliadau hyn yn diwygio'r Rheolau i gywiro gwall a wnaed yn Rheoliadau Deddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014 (Diwygiadau Canlyniadol) (Is-ddeddfwriaeth) 2016, ac yn mewnosod darpariaeth gywir y Ddeddf yn Rhan 8 ac Atodlen 4 i'r Rheolau. Mae Rhan 8 ac Atodlen 4 yn ymdrin â chyfyngiadau o fewn ystyr adran 40 o Ddeddf Cofrestru Tir 2002.

Ystyriwyd Cod Ymarfer Gweinidogion Cymru ar gynnal Asesiadau Effaith Rheoleiddiol mewn perthynas â'r Rheoliadau hyn. O ganlyniad, lluniwyd asesiad effaith rheoleiddiol o'r costau a'r manteision sy'n debygol o ddeillio o gydymffurfio â'r Rheoliadau hyn. Gellir cael copi oddi wrth: Y Grŵp Iechyd a Gwasanaethau Cymdeithasol, Llywodraeth Cymru, Parc Cathays, Caerdydd CF10 3NQ.

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**2020 Rhif 131 (Cy. 24)**

**GOFAL CYMDEITHASOL,  
CYMRU A LLOEGR**

**Rheoliadau Gofal a Chymorth  
(Gosod Ffioedd) (Cymru) a  
Rheolau Cofrestru Tir (Diwygiadau  
Amrywiol) 2020**

*Gwnaed 10 Chwefror 2020*

*Gosodwyd gerbron Cynulliad Cenedlaethol  
Cymru 12 Chwefror 2020*

*Yn dod i rym 6 Ebrill 2020*

Mae Gweinidogion Cymru drwy arfer y pwerau a roddir gan adrannau 50, 52, 53(3), 61, 196(2) a 198(1) o Ddeddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014(1), yn gwneud y Rheoliadau a ganlyn.

**Enwi, cychwyn a chymhwyso**

**1.—**(1) Enw'r Rheoliadau hyn yw Rheoliadau Gofal a Chymorth (Gosod Ffioedd) (Cymru) a Rheolau Cofrestru Tir (Diwygiadau Amrywiol) 2020.

(2) Daw'r Rheoliadau hyn i rym ar 6 Ebrill 2020.

**Diwygio Rheoliadau Gofal a Chymorth (Gosod Ffioedd) (Cymru) 2015**

**2.** Mae Rheoliadau Gofal a Chymorth (Gosod Ffioedd) (Cymru) 2015(2) wedi eu diwygio fel a ganlyn—

- (a) yn rheoliad 7 (uchafswm ffi wythnosol am ofal a chymorth amhreswyl), ym mharagraff (1) yn lle “£90” rhodder “£100”;

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(1) 2014 dccc 4.

(2) O.S. 2015/1843 (Cy. 271); fel y'i diwygiwyd gan O.S. 2017/214 (Cy. 58), O.S. 2018/123 (Cy. 29) ac O.S. 2019/234 (Cy. 53).



- (b) yn rheoliad 13 (isafswm incwm ar gyfer person y darperir llety iddo mewn cartref gofal) yn lle “£29.50” rhodder “£32”;
- (c) yn rheoliad 22 (uchafswm cyfraniad neu ad-daliad wythnosol am ofal a chymorth amhreswyl) yn lle “£90” rhodder “£100”;
- (d) yn rheoliad 28 (isafswm incwm ar gyfer person y darperir llety iddo mewn cartref gofal) yn lle “£29.50” rhodder “£32”.

### Diwygio Rheolau Cofrestru Tir 2003

3. Mae Rheolau Cofrestru Tir 2003<sup>(1)</sup> wedi eu diwygio fel a ganlyn—

- (a) yn Rhan 8, rheol 93(x) (personau yr ystyrir bod ganddynt fuddiant digonol i wneud cais am gyfyngiad) yn lle “under the terms of a deferred payment agreement within the meaning of section 68(2)” rhodder “section 71”;
- (b) yn Atodlen 4 (ffurfiau safonol ar gyfyngiad) yn y cofnod sy’n ymwneud â Ffurf MM—
  - (i) ym mharagraff (2) yn lle “under the terms of a deferred payment within the meaning of section 68(2)” rhodder “section 71(1) or (5)”;
  - (ii) yn y pennawd yn lle “under the terms of a deferred payment agreement within the meaning of section 68(2)” rhodder “section 71”;
  - (iii) yn y geiriau o flaen paragraff (1) yn lle “under the terms of a deferred payment agreement within the meaning of section 68(2)” rhodder “section 71”.

*Julie Morgan*

Y Dirprwy Weinidog Iechyd a Gwasanaethau  
Cymdeithasol o dan awdurdod y Gweinidog Iechyd a  
Gwasanaethau Cymdeithasol, un o Weinidogion  
Cymru  
10 Chwefror 2020

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<sup>(1)</sup> O.S. 2003/1417; fel y’i diwygiwyd gan O.S. 2008/1919 ac O.S. 2016/211 (Cy. 84). Mae offerynnau diwygio eraill ond nid yw’r un ohonynt yn berthnasol.

## **Explanatory Memorandum to the Care and Support (Charging) (Wales) and Land Registration Rules (Miscellaneous Amendments) Regulations 2020**

This Explanatory Memorandum has been prepared by the Health and Social Services Group and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Care and Support (Charging) (Wales) and Land Registration Rules (Miscellaneous Amendments) Regulations 2020 in relation to charging for social care and support under Parts 4 and 5 of the Social Services and Well-being (Wales) Act 2014 and in respect of the registration of land charges in connection with this under the Land Registration Rules 2003. I am satisfied that the benefits justify the likely costs.

**Julie Morgan**  
**Deputy Minister for Health and Social Services**  
**12 February 2020**

## **PART 1 - OVERVIEW**

### **1. Description**

The Social Services and Well-being (Wales) Act 2014 (the “Act”) brings together local authorities’ duties and functions in relation to improving the wellbeing of people who need social care and support, and carers who need support. The Act provides the foundation, along with regulations and codes of practice made under it, to a statutory framework for the delivery of social care in Wales to support people of all ages as part of their families and communities.

Under the Act, local authorities have discretion to charge for the care and support they provide or arrange for a person, or the support they provide or arrange for a carer. They also have discretion to set a contribution or reimbursement for direct payments they provide to a person to enable them to arrange their care and support themselves. This applies to care and support in a person’s own home, within the community, or in residential care. Where an authority wishes to apply this discretion to set a charge, contribution or reimbursement, regulations made under the Act govern the arrangements applicable to this.

The Care and Support (Charging) (Wales) Regulations 2015 (“the Charging Regulations”) govern local authorities in discharging their discretion to set a charge, contribution or reimbursement under Part 4 (meeting needs) and Part 5 (charging and financial assessment) of the Act. These came into force on 6 April 2016.

Since then a number of policy changes have been agreed which required amendments to the Charging Regulations. Amending regulations to effect those changes are: the Care and Support (Choice of Accommodation, Charging and Financial Assessment) (Amendment) (Wales) Regulations 2017 that came into force on 10 April 2017; the Care and Support (Charging) (Wales) (Amendment) Regulations 2018 that came into force on 9 April 2018, and; the Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2019 that came into force on 8 April 2019.

The Act, under section 71, enables local authorities to create a charge in its favour over a person’s interest in land to recover costs for care and support where a debt has occurred and the person declines the option of a deferred payment agreement (“DPA”) or does not meet the eligibility criteria for a DPA. To do so local authorities must register such a charge with HM Land Registry under the Land Registration Rules 2003 (“the Rules”).

The regulations subject to this Explanatory Memorandum are required to introduce further updates to the Charging Regulations to reflect uplifted sums of money that apply to specific areas of charging for social care and support. The regulations also introduce an amendment to the Rules to correct an error where local authorities seek to register a charge in the circumstances mentioned above.

### **2. Matters of special interest to the Legislation, Justice and Constitution Committee.**

There are no specific matters of special interest.

### **3. Legislative background**

The powers enabling the making of regulations in relation to setting a contribution or reimbursement for direct payments are contained in Part 4 (sections 50, 52 and 53(3)) of the Act. Powers enabling charging for care and support, and support to a carer, are contained in Part 5 (section 61) of the Act.

The power enabling the amendment to the Rules to correct an error made in the Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) (Secondary Legislation) Regulations 2016 is section 198 of the Act. Section 198 provides for consequential amendments to be made for the purpose of giving full effect to any provision of the Act.

These amending regulations are subject to the negative procedure. They will come into force on 6 April 2020.

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

The overall purpose of the amending regulations is to effect several changes to the existing regulations as a result of certain policy decisions. These existing regulations govern local authorities' determination of a charge for providing or arranging care and support, or support to a carer, where they use their discretion to charge. They also govern authorities' determination of a contribution or reimbursement for a person receiving direct payments to secure their own care and support, or a carer securing their own support, where authorities use their discretion to set these. In addition, the amending regulations will effect a technical correction to the Rules.

The changes the amending regulations make are:

#### **The Care and Support (Charging) (Wales) Regulations 2015**

Regulation 2(a) to 2(d) of the amending regulations amend the Charging Regulations as follows:

- uplift from £90 to £100 - the maximum weekly charge applicable to non-residential care and support, and the maximum weekly contribution or reimbursement for receiving direct payments to secure this, by amending regulations 7(1) and 22(1) of the Charging Regulations. This provision ensures that, where a local authority applies its discretion to charge a person for the non-residential care and support they receive, or the non-residential support a carer receives, there is a consistent maximum amount the local authority can charge. Equally, where a local authority applies its discretion to set a contribution or reimbursement for the receipt of direct payments to secure non-residential care and support, there is a consistent maximum amount the local authority can make for these;
- uplift from £29.50 a week to £32.00 a week - the level of the minimum income amount applied in charging for residential care, or in setting a contribution or reimbursement for direct payments to secure residential care, by amending regulations 13 and 28 of the Charging Regulations. The minimum income amount is the sum of money a person in residential care, and who is supported financially by their local authority, is able to retain from their weekly income to spend on personal items as they choose. The sum is reviewed annually in the light of the weekly uplifts applied to UK state pension and welfare benefits.

## **Land Registration Rules 2003**

Regulation 3(a) to 3(b) of the amending regulations amend the Rules as follows:

- in part 8, rule 93(x), section 68(2) is replaced with section 71 of the Act to reflect the correct provision in relation to persons regarded as having sufficient interest to apply for a restriction.
- in Schedule 4, standard forms of restrictions, under the heading “Form MM”, section 68(2) is replaced with section 71(1) or (5).

### **5. Consultation**

A five week consultation on the principle of the changes being made by the amending regulations to the Charging Regulations was originally held between 21 December 2016 and 25 January 2017. In total 24 responses were received from a range of stakeholders covering individuals, representative groups, local authorities and professional organisations. Overall respondents were supportive of the policy behind these changes, seeing them as rebalancing the impact of charging upon those who are required to pay for their care and support. They did, however, raise a number of questions, such as the level of the eventual increase planned for the maximum weekly charge and how the changes would be communicated to care recipients. These have been addressed in the implementation of the amendments being made since that time.

Consultation on the amendment to the Rules has not been necessary. Welsh Government lawyers and HM Land Registry lawyers have worked together to agree the amendments to resolve the issue identified by the HM Land Registry.

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

### **Introduction**

The changes being introduced by the amending regulations are considered in this Regulatory Impact Assessment. Introducing these changes will ensure the Charging Regulations operate in accordance with the policy intention. They also ensure local authorities can place a charge on a property or land in order to recover costs for care and support through the correct process and at a slightly lower cost than at present.

### **Options and Benefits**

This Regulatory Impact Assessment considers two options in relation to the three changes identified above:

- Option 1 – “do nothing” and not make the amending regulations;
- Option 2 – “make the amending regulations” to introduce several changes to the Charging Regulations in relation to charging for care and support, and to amend the Rules to enable a standard, less complex process to be followed in circumstances where a charge is to be placed on a person’s property or land to recover charges due. This is the preferred option.

### **Maximum Weekly Charge**

Under the Charging Regulations a person assessed as in need of care and support in their own home, or within the community, can be charged by their local authority where the authority provides or arranges this. Those receiving direct payments to secure such care and support for themselves can also have a contribution or reimbursement set by their local authority for receipt of these. Where authorities apply a charge, a contribution or a reimbursement in these circumstances, the Charging Regulations set a limit and provide a maximum amount. This is currently set at £90 per week. This provision was originally introduced in 2011 to address the wide variation which existed then in the charges, contributions and reimbursements authorities applied for non-residential care and support of a similar nature.

Ministers committed to increase the maximum charge to £100 per week by the end of this Assembly. In order to achieve this at a steady pace, and in view of the increases received by care and support recipients through annual uplifts applied to UK state pensions and welfare benefits, Ministers have applied annual uplifts over recent years. To complete this process Ministers have agreed to uplift the level of the maximum by £10 a week to £100 a week from 6 April 2020. The additional income this will secure for local authorities will help meet increasing cost pressures associated with maintaining the level and quality of the care and support they provide or arrange.

#### Option 1 – do nothing

This option retains the maximum charge at its current level and halts completion of Ministers’ intentions to apply a £100 a week maximum charge by the end of the term of this Assembly. In addition, local authorities would have no ability to apply a higher charge, contribution or reimbursement for non-residential care and support or for direct payments, where a person had the financial means to pay a higher amount.

- Costs

There would be no new cost implication for care recipients or local government from this option. It would, however, limit local authorities' ability to collect increased income from charging for care and support to meet the increased costs of maintaining the level and quality of this. This is at a time when recipients' income would have increased as a result of uplifts to state pension and welfare benefits.

- Benefits

This option benefits care and support recipients who, despite their higher level of personal income, would continue to pay no more than £90 a week for the non-residential care and support they receive. It does, however, increase the financial pressures for local authorities in terms of being able to afford to maintain the level and quality of care provided.

#### Option 2 – make the amending regulations

This option would increase the level of the maximum charge by £10, from £90 to £100 per week. This would take account of increases applied from April 2020 to state pensions and welfare benefits and help fund increasing costs local authorities face in maintaining the level and quality of care provided.

- Costs

Under this option there could be an additional cost to some of the 9,165 care recipients local authorities reported as at October 2019 as paying the current maximum charge of £90 a week. This option could generate up to an estimated £4.8 million per annum for local authorities in increased income from charging for care and support through the higher maximum. This increased income would only come from care recipients whose care and support costs more than the current maximum of £90 per week and who have been financially assessed as being able to afford a charge above this up to the higher maximum. Those not in this position would see no change in their charge, contribution or reimbursement as a direct result of this change.

- Benefits

Based on data from local authorities on the number who currently pay the maximum, this option could raise up to £4.8 million per annum in increased income to help address the financial pressure in maintaining the level and quality of care provided. The financial protections in place under the Charging Regulations ensure a person is not required to pay an amount that is unaffordable to them in meeting their daily living costs. The increase in the maximum under this option would not impact on these financial protections so that only those financially assessed as being able to afford the higher maximum would pay this.

#### **Minimum Income Amount (MIA)**

Where a person is in residential care, and is in receipt of financial support from their local authority towards the cost of their care, they are required to contribute towards this cost from the majority of their weekly income. However, under the Charging Regulations a person must be able to retain an amount of their income to spend on personal items as they wish. This is known as the MIA. The level of the MIA is reviewed annually to take account of annual uplifts to UK state pensions and welfare benefit payments, which form the basis of care home residents' weekly income. Taking these uplifts into account, Ministers propose to increase the MIA from 6 April 2020 from its current level of £29.50

per week to £32.00 a week. This will allow residents to retain a slightly higher amount of their income to spend as they wish on personal items.

#### Option 1 – do nothing

This option maintains the level of the MIA at £29.50 per week. As a result all of the increase in a resident's weekly income from April 2020 as a result of uplifted state pension and welfare benefit payments would go to their local authority to pay for their care.

- **Costs**

There are no new cost implications for local government from this option. Instead authorities would receive up to an estimated £4.2 million per annum in increased contributions from the 16,144 care home residents over state pension age as recorded in data published by Welsh Government in October 2019. This would be due to the increased income residents would have resulting from the uplifts in state pensions and welfare benefits. Residents in this position would not retain any of the uplifts applied.

- **Benefits**

Care home residents supported by their local authority would be unable to retain any of the increase applied to their state pensions and welfare benefits and therefore see no benefit. Instead these funds would increase their contributions to local authorities for the cost of their care, so as to benefit the income stream authorities receive from supported care home residents.

#### Option 2 – make the amending regulations

This option would make the amending regulations so as to increase the MIA from its current level of £29.50 to £32.00 per week. This would allow local authority supported residents to retain a proportion of the uplifts to their state pensions and welfare benefits to spend on personal items as they wish.

- **Costs**

This option results in local authorities receiving a smaller increase in charge income than if the regulations were not made, of up to an estimated £2.1 million per annum through contributions from the 16,144 residents over state pension age. This would be due to the increased income residents would have resulting from the uplifts in state pensions and welfare benefits. Residents would retain a proportion of these uplifts to spend on personal items as they wish.

- **Benefits**

This option shares the increased income which local authority supported residents would have from April 2020 as a result of uplifts to their state pensions and welfare benefits. Residents in this position would be able to retain a £2.50 a week of these uplifts to spend on personal items as they wish, while authorities would receive the balance in increased contributions from residents towards the cost of their resident care.

#### **Registration of Land Charges**

Under section 71 of the 2014 Act, local authorities are able to register a charge to be placed on an interest in land in order to recover costs for care and support where a debt has occurred and the person declines the option of a DPA, or does not meet the eligibility criteria for a DPA. However, HM Land Registry has identified that due to the current inaccuracy in the Rules, local authorities are currently required to follow the process for



a non-standard restriction which incurs a slightly higher than standard fee. To enable a more standard process to be followed in such situations requires an amendment to be made to the Rules. Section 198 of the Act provides for consequential amendments to be made for the purposes of giving full effect to any provisions of the Act. Hence the amending regulations that are the subject to this EM seek to correct the Rules and reference the relevant section of the Act by which a charge can be placed over an interest in land.

#### Option 1 – do nothing

No changes will be applied to the Rules and therefore local authorities who wish to place a charge on a person's land or property in order to recover costs for social care and support will need to continue to follow a non-standard restriction process which is more complex and more expensive.

- **Costs**

This option maintains the current position and process local authorities must follow in order to register a charge on land or a property in order to recover costs for care and support. This option incurs no new or additional costs, although local authorities will continue to pay HM Land Registry a higher than necessary fee each time they wish to register a charge, owing to the more complex process that needs to be followed.

- **Benefits**

There are no benefits to this option.

#### Option 2 – make the amending regulations

This option ensure changes are applied to the Rules that will enable local authorities, who wish to place a charge on a person land or property in order to recover costs for social care and support, to do so through a standard process that is clearer, less complex and attracts a lower fee.

- **Cost**

The options incurs no new or additional costs. Instead it will likely reduce the level of the fee local authorities are required to pay HM Land Registry each time a charge is registered.

- **Benefits**

The option provides for an easier registration process and will attract a lower fee for local authorities on registering a charge.

#### **Conclusion**

Due to the financial benefit for local authorities in increasing the maximum weekly charge, the financial benefit for care home residents in increasing the minimum income amount, and the process and financial benefits of making an amendment to the Rules, "Option 2 – make the amending regulations" is recommended in each case. A summary table showing the annual financial impact of the amending regulations is below:

	<b>Welsh Government £m p.a.</b>	<b>Local Authorities £m p.a.</b>	<b>Care Recipients £m p.a.</b>
Maximum Weekly Charge	0	4.8	(-4.8)
Minimum Income Amount	0	2.1	2.1
Registration of Land Charges	0	0.1	0
<b>Total</b>	<b>0</b>	<b>7.0</b>	<b>(-2.7)</b>

### Consultation

A five week public consultation on the principle of the changes planned was held between 21 December 2016 and 25 January 2017.

### Competition Assessment

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

**Post Implementation Review**

The Act contains provisions to allow Welsh Ministers to monitor functions of it carried out by local authorities and other bodies. The Welsh Ministers may require these bodies to report on their duties in implementing these amending regulations.

The Welsh Government will continue to monitor the impact of the amending regulations on areas such as the Welsh language, the UN Convention on the Rights of the Child, Older People and Equality.

# SL(5)501 - Rheoliadau Gofal Cymdeithasol Cymru (Pennu Gweithwyr Gofal Cymdeithasol) (Cofrestru) (Diwygio) 2020

## Item 2.2

### Cefndir a Diben

Mae adran 80 (1)(a) a (b) o Ddeddf Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru) 2016 yn ei gwneud yn ofynnol i Ofal Cymdeithasol Cymru gadw cofrestr o weithwyr cymdeithasol a gweithwyr gofal cymdeithasol o ddisgrifiad a bennir gan Weinidogion Cymru mewn Rheoliadau.

Mae Rheoliadau Gofal Cymdeithasol Cymru (Pennu Gweithwyr Gofal Cymdeithasol) (Cofrestru) 2016 ("Rheoliadau 2016") yn nodi disgrifiadau o weithwyr gofal cymdeithasol y mae'n rhaid cadw cofrestr ar eu cyfer.

Mae'r Rheoliadau hyn yn diwygio Rheoliadau 2016. Mae'r diwygiadau'n darparu bod yn rhaid i Ofal Cymdeithasol Cymru gadw cofrestr o unigolion sy'n cael eu cyflogi neu eu cymryd ymlaen o dan gontract am wasanaethau darparu gofal a chefnogaeth mewn cysylltiad â:

- (i) Gwasanaeth cartref gofal a ddarperir yn gyfan gwbl neu'n bennaf i oedolion;
- (ii) Gwasanaeth cartref gofal a ddarperir yn gyfan gwbl neu'n bennaf i blant;
- (iii) Gwasanaeth llety diogel,
- (iv) Gwasanaethau cymorth cartref; neu
- (v) Gwasanaeth canolfan breswyl i deuluoedd,

Ar hyn o bryd, mae gofyniad i Ofal Cymdeithasol Cymru gadw cofrestr o unigolion mewn cysylltiad â gwasanaeth cartref gofal a ddarperir yn gyfan gwbl neu'n bennaf i blant, a gwasanaeth llety diogel. Caiff y gofyniad hwn ei estyn gan y Rheoliadau hyn i'w gwneud yn ofynnol cofrestru unigolion sydd wedi eu cymryd ymlaen o dan gontract am wasanaethau, yn ychwanegol at unigolion sydd wedi eu cyflogi gan y darparwr gwasanaeth.

Ychwanegir y gofyniad i Ofal Cymdeithasol Cymru gadw cofrestr o unigolion sydd wedi eu cyflogi neu sydd wedi eu cymryd ymlaen o dan gontract am wasanaethau mewn cysylltiad â gwasanaeth cartref gofal a ddarperir yn gyfan gwbl neu'n bennaf i oedolion, a gwasanaeth canolfan breswyl i deuluoedd, gan y Rheoliadau hyn.

### Gweithdrefn

Cadarnhaol.

### Materion technegol: craffu

Nodir y pwynt a ganlyn i gyflwyno adroddiad arno o dan Reol Sefydlog 21.2 (vii) (ei bod yn ymddangos bod anghysondebau rhwng ystyr testun Cymraeg a thestun Saesneg) mewn perthynas â'r offeryn hwn.

Mae testun Cymraeg y Rheoliadau yn colli'r testun mewn llythrennau italig, ar frig tudalen gyntaf y Rheoliadau, a'r Nodiadau Esboniadol, sy'n egluro bod y rheoliadau drafft yn cael eu gosod gerbron y Cynulliad, i'w cymeradwyo drwy benderfyniad y Cynulliad. Yn y pennawd o dan lle byddem fel arfer yn



gweld y testun mewn llythrennau italig, mae'r gair "DRAFFT" hefyd ar goll. Mae'r testun Saesneg yn cynnwys y geiriad hwn.

Mae'r rhaglith i'r testun Cymraeg a'r testun Saesneg yn nodi bod drafft wedi'i osod o'r blaen, a'i gymeradwyo gan benderfyniad y Cynulliad. Ar yr olwg gyntaf ar y testun Cymraeg, fodd bynnag, gall darllenydd feddwl bod y Rheoliadau wedi'u gwneud yn ddarostyngedig i'r weithdrefn negyddol.

## Rhinweddau: craffu

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Ni nodir dim pwyntiau i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.3 mewn perthynas â'r offeryn hwn.

## Y goblygiadau yn sgîl ymadael â'r Undeb Ewropeaidd

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Ni nodir dim pwyntiau i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.3 mewn perthynas â'r offeryn hwn.

## Ymateb y Llywodraeth

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Mae angen ymateb gan y llywodraeth.

### Cynghorwyr Cyfreithiol

### Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

Chwefror 2020



Cynulliad Cenedlaethol Cymru

**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

—  
National Assembly for Wales

**Legislation, Justice and Constitution Committee**

**2020 Rhif (Cy. )**

**GOFAL CYMDEITHASOL,  
CYMRU**

**Rheoliadau Gofal Cymdeithasol  
Cymru (Pennu Gweithwyr Gofal  
Cymdeithasol) (Cofrestru)  
(Diwygio) 2020**

**NODYN ESBONIADOL**

*(Nid yw'r nodyn hwn yn rhan o'r Rheoliadau)*

Mae adran 80(1)(a) a (b) o Ddeddf Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru) 2016 ("y Ddeddf") yn ei gwneud yn ofynnol i Ofal Cymdeithasol Cymru gadw cofrestr o weithwyr cymdeithasol a gweithwyr gofal cymdeithasol o unrhyw ddisgrifiad arall a bennir gan Weinidogion Cymru mewn rheoliadau.

Mae Rheoliadau Gofal Cymdeithasol Cymru (Pennu Gweithwyr Gofal Cymdeithasol) (Cofrestru) 2016 ("Rheoliadau 2016") yn pennu'r disgrifiadau o weithwyr gofal cymdeithasol y mae rhaid cadw cofrestr ar eu cyfer.

Mae'r Rheoliadau hyn yn diwygio rheoliad 3 o Rheoliadau 2016 drwy amnewid paragraff (2)(b) a mewnosod paragraff newydd (2)(bb) i ddarparu bod rhaid i Ofal Cymdeithasol Cymru gadw cofrestr o unigolion sydd wedi eu cyflogi (pa un ai fel cyflogai neu fel gweithiwr), neu sydd wedi eu cymryd ymlaen o dan gontract am wasanaethau i ddarparu gofal a chymorth mewn cysylltiad â gwasanaeth cartref gofal a ddarperir yn gyfan gwbl neu'n bennaf i oedolion, gwasanaeth cartref gofal a ddarperir yn gyfan gwbl neu'n bennaf i blant, gwasanaeth llety diogel, gwasanaeth cymorth cartref neu wasanaeth canolfan breswyl i deuluoedd.

Caiff y gofyniad i Ofal Cymdeithasol Cymru gadw cofrestr o unigolion sydd wedi eu cyflogi neu sydd wedi eu cymryd ymlaen o dan gontract am wasanaethau mewn cysylltiad â gwasanaeth cartref gofal a ddarperir yn gyfan gwbl neu'n bennaf i

oedolion a gwasanaethau canolfannau preswyl i deuluoedd ei ychwanegu gan y Rheoliadau hyn.

Caiff y gofyniad i Ofal Cymdeithasol Cymru gadw cofrestr o unigolion mewn cysylltiad â gwasanaeth cartref gofal a ddarperir yn gyfan gwbl neu'n bennaf i blant, a gwasanaeth llety diogel, ei estyn gan y Rheoliadau hyn i'w gwneud yn ofynnol cofrestru unigolion sydd wedi eu cymryd ymlaen o dan gontract am wasanaethau (gan gynnwys gweithwyr asiantaeth) yn ychwanegol at unigolion sydd wedi eu cyflogi gan y darparwr gwasanaeth.

Ystyriwyd Cod Ymarfer Gweinidogion Cymru ar gynnal Asesiadau Effaith Rheoleiddiol mewn perthynas â'r Rheoliadau hyn. O ganlyniad, lluniwyd asesiad effaith rheoleiddiol o'r costau a'r manteision sy'n debygol o ddeillio o gydymffurfio â'r Rheoliadau hyn. Gellir cael copi oddi wrth: Yr Adran Iechyd a Gwasanaethau Cymdeithasol, Llywodraeth Cymru, Parc Cathays, Caerdydd, CF10 3NQ.

**2020 Rhif (Cy. )**

**GOFAL CYMDEITHASOL,  
CYMRU**

**Rheoliadau Gofal Cymdeithasol  
Cymru (Pennu Gweithwyr Gofal  
Cymdeithasol) (Cofrestru)  
(Diwygio) 2020**

*Gwnaed*

\*\*\*

*Yn dod i rym*

*1 Ebrill 2020*

Mae Gweinidogion Cymru, drwy arfer y pwerau a roddir iddynt gan adran 80(1)(b) o Ddeddf Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru) 2016(1), yn gwneud y Rheoliadau a ganlyn.

Yn unol ag adran 187(2)(n) o'r Ddeddf honno, gosodwyd drafft o'r offeryn hwn gerbron Cynulliad Cenedlaethol Cymru ac fe'i cymeradwywyd ganddo drwy benderfyniad.

**Enwi, cychwyn a dehongli**

1.—(1) Enw'r Rheoliadau hyn yw Rheoliadau Gofal Cymdeithasol Cymru (Pennu Gweithwyr Gofal Cymdeithasol) (Cofrestru) (Diwygio) 2020.

(2) Daw'r Rheoliadau hyn i rym ar 1 Ebrill 2020.

(3) Yn y Rheoliadau hyn, ystyr "Rheoliadau 2016" yw Rheoliadau Gofal Cymdeithasol Cymru (Pennu Gweithwyr Gofal Cymdeithasol) (Cofrestru) 2016(2).

**Diwygio Rheoliadau 2016**

2.—(1) Mae Rheoliadau 2016 wedi eu diwygio fel a ganlyn.

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(1) 2016 dccc 2.

(2) O.S. 2016/1235 (Cy. 293), a ddiwygiwyd gan O.S. 2018/192 (Cy. 43).



(2) Yn rheoliad 2 (dehongli), yn y lle priodol mewnosoder—

“mae i “cyflogaeth” yr un ystyr ag a roddir i “employment” yn adran 230(5) o Ddeddf Hawliau Cyflogaeth 1996<sup>(1)</sup> ac mae’n cynnwys unigolion sydd wedi eu cyflogi pa un ai fel cyflogai neu fel gweithiwr;”;

“mae i “gwasanaeth canolfan breswyl i deuluoedd” (“*residential family centre service*”) yr un ystyr ag a roddir yn adran 2(1)(c) o’r Ddeddf a pharagraff 3 o Atodlen 1 iddi, yn ddarostyngedig i reoliad 4 o Reoliadau 2017;”;

“mae i “gwasanaeth cartref gofal” (“*care home service*”) yr un ystyr ag a roddir yn adran 2(1)(a) o’r Ddeddf a pharagraff 1 o Atodlen 1 iddi, yn ddarostyngedig i reoliad 2 o Reoliadau 2017;”.

(3) Yn rheoliad 3 (pennu gweithwyr gofal cymdeithasol)—

(a) ym mharagraff (2)—

(i) yn lle is-baragraff (b) rhodder—

“(b) sydd, yn ystod eu cyflogaeth gyda darparwr gwasanaeth, yn darparu gofal a chymorth i unrhyw berson yng Nghymru mewn cysylltiad—

(i) â gwasanaeth cartref gofal a ddarperir yn gyfan gwbl neu’n bennaf i oedolion,

(ii) â gwasanaeth cartref gofal a ddarperir yn gyfan gwbl neu’n bennaf i blant,

(iii) â gwasanaeth llety diogel o fewn ystyr paragraff 2 o Atodlen 1 i’r Ddeddf,

(iv) â gwasanaeth cymorth cartref er mwyn darparu gofal a chymorth i berson y cyfeirir ato ym mharagraff 8(1) o Atodlen 1 i’r Ddeddf, neu

(v) â gwasanaeth canolfan breswyl i deuluoedd,

a ddarperir gan y darparwr hwnnw;”;

(ii) ar ôl is-baragraff (b) fel y’i hamnewidir gan y Rheoliadau hyn mewnosoder—

“(bb) sydd, o dan gontract am wasanaethau, yn darparu gofal a chymorth i unrhyw berson yng Nghymru mewn cysylltiad—

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(1) 1996 p. 18.

- (i) â gwasanaeth cartref gofal a ddarperir yn gyfan gwbl neu'n bennaf i oedolion,
  - (ii) â gwasanaeth cartref gofal a ddarperir yn gyfan gwbl neu'n bennaf i blant,
  - (iii) â gwasanaeth llety diogel o fewn ystyr paragraff 2 o Atodlen 1 i'r Ddeddf,
  - (iv) â gwasanaeth cymorth cartref er mwyn darparu gofal a chymorth i berson y cyfeirir ato ym mharagraff 8(1) o Atodlen 1 i'r Ddeddf, neu
  - (v) â gwasanaeth canolfan breswyl i deuluoedd,
- a ddarperir gan ddarparwr gwasanaeth;  
”;
- (iii) hepgorer is-baragraff (d);
  - (b) hepgorer paragraff (3).

*Enw*

Y Dirprwy Weinidog Iechyd a Gwasanaethau  
Cymdeithasol o dan awdurdod y Gweinidog Iechyd a  
Gwasanaethau Cymdeithasol, un o Weinidogion  
Cymru  
Dyddiad

## **The Social Care Wales (Specification of Social Care Workers) (Registration) (Amendment) Regulations 2020**

This Explanatory Memorandum has been prepared by the Health and Social Services Department and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Social Care Wales (Specification of Social Care Workers) (Registration) (Amendment) Regulations 2020.

I am satisfied that the benefits justify the likely costs.

**Julie Morgan**  
**Deputy Minister for Health and Social Services**  
11 February 2020

## **Part 1 – OVERVIEW**

### **1. Description**

- 1.1 These Regulations make amendments to The Social Care Wales (Specification of Social Care Workers) (Registration) Regulations 2016, made under Section 80 (1) (b) of the Regulation and Inspection of Social Care (Wales) Act 2016 (“the 2016 Act”).
- 1.2 These Regulations provide that a register must be kept by Social Care Wales (SCW) of individuals employed (whether as an employee or a worker) or who are engaged under a contract for services to provide care and support in connection with a care home service provided wholly or mainly for adults, a care home service provided wholly or mainly for children, a secure accommodation service, a domiciliary support service or a residential family centre service.
- 1.3 The amendment will enable Social Care Wales (SCW) to open the workforce register to individuals who are employed or engaged under a contract for services in connection with a care home provided wholly or mainly for adults and/or a residential care service on a voluntary basis from 2020.
- 1.4 It will also open up the workforce register to individual ‘engaged under a contract for service’ in connection with a care home service provided wholly or mainly for children or a secure accommodation service. This will align the registration requirements in respect of each specification of social care worker.

### **2. Matters of special interest to the Legislation, Justice and Constitution Committee**

- 2.1 None.

### **3. Legislative background**

- 3.1 Section 80(1) (b) of the Regulation and Inspection of Social Care (Wales) Act 2016 (“the 2016 Act”) requires Social Care Wales to keep a register of social workers and social care workers of any other descriptions specified by the Welsh Ministers in regulations. These Regulations amend the Social Care Wales (Specification of Social Care Workers) (Registration) 2016, and are made under section 80(1) (b) of the Act.
- 3.2 These Regulations are made under the affirmative procedure.
- 3.3 Implementation of the registration of adult residential care workers and residential family centre workers will be carried out by SCW through the amendment of the Social Care Wales Rules made under sections 83 (registration requirements) and 84 (qualification requirements) of the 2016 Act.

#### **4. Purpose & intended effect of the legislation**

- 4.1 The Welsh Government has made a commitment to the mandatory registration of adult residential care workers by 2022. This commitment was expressed in written statements in October 2015<sup>1</sup> and November 2016<sup>2</sup>.
- 4.2 These regulations, proposed as part of the Phase II implementation process of the Regulation and Inspection of Social Care (Wales) Act 2016 (“the 2016 Act”), will allow for the opening of the register held by SCW to this latest group on a voluntary basis in advance of a proposed deadline of 2022 for mandatory registration.
- 4.3 The intention is to afford the workforce regulator, SCW, ample lead-in time to engage and work with the workforce prior to a proposed deadline of 2022 for mandatory registration. This is consistent with the approach taken to the registration of domiciliary care workers in 2018, and would allow time for this new group to understand the process and comply with the respective requirements and qualifications needed as part of registration.

#### **5. Consultation**

- 5.1 A formal 12 week consultation on the proposed regulations was undertaken between 26 July and 14 October 2019 and received 55 responses from various stakeholders ranging from representative bodies, local authorities, health boards, service providers and individuals.
- 5.2 The consultation focused on asking a series of questions relating to mandating the registration of all domiciliary care workers from April 2020 and the opening of the workforce register to permit the voluntary registration of individuals employed or engaged under a contract of services within a care home provided wholly or mainly for adults and in residential family centre services from April 2020 in advance of their mandatory registration in 2022.
- 5.3 An analysis of the responses received has shown that:
- a. The majority of responses felt that social care workers working for agencies should be subject to the same standards and rules as those directly employed by a service provider (i.e. not personal assistants) to deliver care and support services.
    - Our consultation asked whether individuals employed under contract in domiciliary support services, residential family centre services, care homes provided wholly or mainly for adults, homes provided wholly or mainly for children and in secure accommodation should be required to register with the workforce regulator. The question sought stakeholder views regarding the need for consistency across the social care workforce, as although we have placed regulatory requirements

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<sup>1</sup> <http://www.senedd.assembly.wales/documents/s45151/15%20October%202015.pdf> - lines 125 and 126.

<sup>2</sup> <http://www.assembly.wales/en/bus-home/pages/rop.aspx?meetingid=3488&assembly=4&c=Record%20of%20Proceedings#C259695>

on those in connection with domiciliary care and propose to do the same for those in adult residential care and residential family centre service; agency workers in homes provided wholly or mainly for children and in secure accommodation are currently exempt from registration due to an anomaly in earlier legislation. The responses felt that all workers, whether employees or engaged under a contract for services (e.g. “agency workers”), should be treated equally.

- b. That greater clarity was needed about whether volunteers should be required to register, with some respondents suggesting they should, but a small majority tending to disagree with this.
- We have not included volunteers in the scope of our draft regulations, despite some respondents suggesting that they should be. The primary rationale for this is that it could put unnecessary barriers in the way of those that wish to volunteer. Additionally, many volunteers provide a type of support that falls outside of the definition of care and support outlined in the 2016 Act, in addition Regulation 35 of the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 already place clear requirements on providers of regulated services with regard to not to allow a volunteer to work at the service unless that person is fit to do so.
- c. The majority of respondents agreed that guidance should be provided to support domiciliary support services in complying with the regulations. Responses indicated that any guidance should be simple, concise and easy to find and use “...*supportive, clear and encouraging language*...” It was felt that guidance would be useful for a number of audiences including new entrants to the sector, current employees, employers/providers and agencies.
- We will give careful consideration as to what type of guidance might be helpful, and that we will work with Social Care Wales and Care Inspectorate Wales to consider how we might take this suggestion forward. This will include considering how any such guidance would fit alongside the information already available on the Social Care Wales and Care Inspectorate Wales websites.
- d. The majority of respondents agreed that a two year lead-in time for voluntary registration for individuals employed or engaged under a contract for services in connection with a care home service provided wholly or mainly for adults and residential family centre services from 2020 allowed sufficient time for the sector to begin the process ahead of mandatory registration. Some recognised that it struck a balance between providing a reasonable lead-in period that could “...*lead to complacency, and then a blockage of the system as the deadline looms*...” and a lead-in period which is too short and does not realistically allow individuals and providers enough time to prepare, which could ultimately compromise “*patient safety*”.
- We have acknowledged that there is a fine balance to be found between providing individuals sufficient time to engage with the

process of registration before it becomes mandatory, and one which avoids introducing complacency into the system. However, there has not been a strong case made for a lead-in period that is either shorter, or of longer than, two years.

- 5.4 Officials propose that the draft Social Care Wales (Specification of Social Care Workers) (Registration) (Amendment) Regulations 2020 are further amended to require SCW to keep a register of individuals engaged under a contract for services (i.e. agency staff) in connection with a residential care service provided wholly or mainly for children or a secure accommodation service, and thus close the current anomaly about these workers aligning the registration requirements with those already in place relating to domiciliary support workers.
- 5.5 This will present a consistent requirement to all employers to employ social care workers who meet the registration requirements and ensure that these aspects of the workforce are regulated and have similar standards and Codes of Practice. This will both hold them accountable for failings and ensure that they are suitably skilled to deliver care and support to a high quality.
- 5.6 The consultation document also asked questions on proposals to allow the service regulator, Care Inspectorate Wales to require information from the directors, trustees and members of boards or committees of any applicant organisation (that is not a local authority or Local Health Board) about any previous applications to register and registrations of a regulated service in the UK as well as relevant identifying information when determining whether the organisation is fit to deliver a service. A separate Regulatory Impact Assessment (RIA) covering this aspect of the consultation will be provided and this aspect will not be included in this RIA.

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

### **Background**

The registration of the social care workforce began with the Care Standards Act 2000 (the 2000 Act), which mandated the professional registration of social workers, managers of adult residential care homes and managers and workers of children's residential care homes with the then workforce regulator, Care Council for Wales. In 2013, the Welsh Government also legislated for the mandatory registration of managers of domiciliary support services, to bring these into line with other managers in the sector.

The Regulation and Inspection of Social Care (Wales) Act 2016 ("the 2016 Act") was passed by the National Assembly for Wales on 24 November 2015 and received Royal Assent on 18 January 2016. It provides the statutory framework for the regulation and inspection of social care services and the social care workforce, including the establishment of Social Care Wales (SCW) – the workforce regulator.

During the passage of the Regulation and Inspection of Social Care (Wales) Bill through the National Assembly for Wales in 2015, consideration was given to the registration and professionalisation of other groups within the social care workforce to nurture the profile of the sector and improve standards and quality of care. In light of this discussion, the Welsh Government made several statements that indicated the next groups of the workforce to be registered would be domiciliary care workers and workers in regulated care home services provided wholly or mainly for adults.

In April 2018 regulations came into effect requiring Social Care Wales (SCW), to keep a register of individuals who are employed or engaged under a contract of services in connection with a domiciliary support service. The effect of this was to allow voluntary registration of domiciliary support workers. This was done in order to provide a two year period for SCW to work with the sector to understand and prepare for registration requirements, ahead of mandatory registration from 2020. These Regulations deliver a similar approach for both employees (whether as an employee or worker) and individuals engaged under a contract for services, who provide care and support in connection with a care home service provided wholly or mainly for adults from 2020 ahead of their proposed mandatory registration from 2022.

The regulations also open the register on a voluntary basis to individuals engaged under a contract for services (e.g. agency workers), who provide care and support in connection with a care home service provided wholly or mainly for children or a secure accommodation service. Including these categories of workers in these regulations represents a proportionate approach that will allow these workers sufficient time to understand the implications of registration and provide consistency across the workforce and minimise the uncertainty whether these individuals are required to register with SCW.

This Regulatory Impact Assessment examines the proposal to change regulations in order to open the workforce register voluntarily to adult residential care workers and agency workers contracted to deliver services in children's residential care and secure accommodation services.



## *The Regulations*

The Social Care Wales (Specification of Social Care Workers) (Registration) (Amendment) Regulations 2020 amend the Social Care Wales (Specification of Social Care Workers) (Registration) Regulations 2016, to require SCW to keep a register of individuals employed (whether as an employee or worker) or engaged under a contract for services in connection with a care home service provided wholly or mainly for adults, or a residential family centre service. It also specifies that SCW are required to keep a register of individuals engaged under a contract for services in connection with a care home provided wholly or mainly for children or a secure accommodation service. Previously the workforce register was only open to employees, which left uncertainty around whether these individuals were required to register.

## *Registration fees*

Under sections 74 and 83 of the Regulation and Inspection of Social Care (Wales) Act 2016, Social Care Wales has the power to make provision of the payment of fees in connection with registration to the register. These fees must be specified in rules made by Social Care Wales.

The responsibility for setting these fees rests with Social Care Wales and not with the Welsh Government. The proposed regulations do not change the powers for Social Care Wales to charge a fee, or the level of those fees. However as these are costs which are associated with the implementation of the regulations, they are considered as part of this Regulatory Impact Assessment.

## *Background to the current level of fee charged*

The current registration fees were set in 2018, following a consultation by Social Care Wales. Whilst other nations in the UK had revised their fee levels at various times since early 2000, fee levels in Wales had not changed since they were originally set in Wales in 2003 and had become the lowest of all comparable UK social care workforce regulators. According to Social Care Wales, the new fees were aimed at bringing the registration fee regime in Wales in line with other social care regimes across the UK.

Following the consultation Social Care Wales determined to raise the fees on a sliding scale over four years from 2018-2019 and ending in 2021-2022. This scale increases social workers and social care manager fees over that period by increments of £10 starting from £50 to £80; and social care workers by increments of £5 beginning at £15 and rising to a maximum of £30. Students of social work studying towards a career in social care would pay a set fee of £15 over the same period.

The Welsh Government worked with the regulator on the issue of registration fees to ensure that there were a number of options considered and that these were set at a level that is both affordable and proportionate in accordance with Welsh Ministerial commitments made in 2015.

## OPTIONS CONSIDERED

The two options are:

- **Option one:** Do nothing - retain the status quo;
- **Option two:** Open the workforce register for adult residential care workers and residential family care service workers to join on a voluntary basis.

**Option one:** Do nothing - retain the status quo

In this scenario, Individuals employed or engaged under a contract for services in connection with a care home provided wholly or mainly for adults and residential family care services in Wales would not need to register in order to be able to continue to work in care home settings.

**Option two:** Open the workforce register for adult residential care workers to join on a voluntary basis.

Social Care Wales are required to keep a register of individuals employed or engaged under a contract for services in connection with a care home provided wholly or mainly for adults or residential family centre services. The effect of the Regulations allows the workforce to register with SCW on a voluntary basis prior to proposed mandatory registration.

Social Care Wales are responsible for maintain the workforce register and would be tasked with promoting registration to this section of the workforce.

Registration of the workforce will incur a fee, which may be paid either by the individual registrant or by their employer.

### **Costs associated with each option**

**Option one:** Do nothing - retain the status quo

#### **Workforce / Employers**

If the status quo is maintained, individuals employed or engaged under a contract for services in connection with a care home provided wholly or mainly for adults or residential family centre services will not incur any additional costs relating to registration. Employers do not currently incur the cost of registration fees but if we retained the status quo, but are responsible for costs associated with mandatory training for their employees.

The status quo would also mean that individuals employed or engaged under a contract for services in connection with a care home provided wholly or mainly for children or secure accommodation services would also be unable to register which would result in neither the workforce nor their employers having to meet any associated costs of registration or mandatory training.

The costs associated with registration are outlined below under the workforce costs included in option two.

### **Workforce regulator (Social Care Wales (SCW))**

Under option one the regulator would not occur any additional costs. Any costs already incurred in making changes in anticipation of changes to the workforce register would be sunk costs.

However, should mandatory registration be introduced in 2022, the cost pressures on the regulator will be focussed on a much shorter period of time and this could increase the risk of failing to register the workforce. This is because the workforce, which is estimated to consist of around 20,000 workers, would be required to register within the six month grace period and the associated costs of promotion, additional staff and office space would be concentrated around the period of registration.

### **Welsh Government**

There will be no additional costs under this scenario.

**Option two:** Open the workforce register for adult residential care workers and residential family care service workers to join on a voluntary basis.

### **Workforce**

When individuals employed or engaged under a contract for services in connection with a care home provided wholly or mainly for adults or residential family centre services enter the register in 2020, they will fall within the category of social care workers and be subject to an increased registration fee of £25 in 2020-2021 and £30 in 2021-2022. The workforce regulator, Social Care Wales (SCW) has estimated that approximately 40% of the workforce will register in the first year, with the remaining 60% of workers following suit in the second year. If we take this assumption as following this pattern by 2021/22, it has been estimated that this would equate to a total maximum cost to the workforce and generation of income for SCW to the tune of:

- 2020/21: estimated 8,000<sup>3</sup> workers at £25 per worker = £200,000
- 2021/22: estimated 20,000 workers at £30 per worker = £600,000

Social Care Wales (SCW) has confirmed that there will be a number of payment options available to registrants to help spread the cost of the registration fee, including direct debits for either a single payment or monthly instalments over the course of the respective annual registration period.

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<sup>3</sup> Social Care Wales estimates of the likely numbers of registrants would see 40% in the first year and the remaining 60% in year two.

As with domiciliary support workers voluntarily registering currently, new registrants can also apply to HMRC to reclaim a proportion of this fee back as a tax deduction<sup>4</sup>. The guidance provided by the UK Government's "Gov.UK" website outlines that an individual can claim tax relief on fees or subscriptions you pay to approved professional organisations if it relates to your job. However, an individual would not be able to claim fees or subscriptions that they have not paid for themselves (e.g. an employer has paid for them). This may have a marginal impact on the Welsh tax base and the Welsh Government's new tax raising powers but given that voluntary registration is to be phased in over two years, we envisage this to be negligible.

Social Care Wales has confirmed that there will be a number of payment options available to registrants, including direct debits for either a single payment or monthly instalments spread out over a year.

In addition to the fee, there is an associated cost relating to the time taken to complete the registration process. It is difficult to determine the extent to which this cost is likely to fall on individual workers or their employers, and if it were to fall on individual workers, it becomes increasingly difficult to quantify. Therefore, for the purposes of this RIA while the fee is assumed to be a cost to the workforce, the assumption is that work of registration will be undertaken in work hours. On this basis, an estimated cost has been produced based on the burden being incurred by employers is set out below.

In respect to the potential impacts on agency staff in the children's residential care and secure accommodation services, it is not possible to identify exact costs as we do not have accurate data on the numbers of these staff currently working in the sector. For illustrative purposes we have therefore estimated the number of agency workers as being 25% (723) of the current employed workforce of 2,894 as reported by Social Care Wales<sup>5</sup> (SCW) in 2019. This would provide SCW with a further revenue stream of £18,075 of funding from fees in 2020/21 and £21,690 in 2021/22.

## **Social Care Providers (employers)**

### *Cost of Registration*

There may be a potential financial cost for employers, who may pay the registration fee on behalf of their staff either as an inducement to join or remain with their company. However, we have no information on how common this practice is and the workforce regulator is unable to breakdown the split due to the variety of payment methods used. We have therefore simply noted that this practice might occur, as any assumption would risk double counting possible costs.

### *Cost to Complete the Registration Process*

#### *Time to complete registration*

Based on an estimate of approximately two hours to complete the registration process and using the Low Pay Commission's predicted national living wage for people aged 25

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<sup>4</sup> Guidance on what can be claimed back can be found at <https://www.gov.uk/tax-relief-for-employees>

<sup>5</sup> [https://socialcare.wales/cms\\_assets/file-uploads/RCCW-factsheet-ENG.pdf](https://socialcare.wales/cms_assets/file-uploads/RCCW-factsheet-ENG.pdf)

and over of £8.67 per hour in 2020 as a baseline (plus £2.60 on-costs for NI contributions, pensions etc.), we can calculate that cost to complete one individuals employed or engaged under a contract for services in connection with a care home provided wholly or mainly for adults or residential family centre services registration would be approximately £22.54 ( $£8.67 + £2.60 \times 2$ ) per worker.

This reflects that the majority of individuals employed or engaged under a contract for services in connection with a care home provided wholly or mainly for adults or residential family centre service workers are likely to be on the minimum wage but in the over 25 bracket<sup>6</sup>. Therefore the cost for completing the registration process for these categories of the workforce (estimated to be 20,000 workers) would equate to a sum of £450,800, if it is assumed that employers are meeting these costs themselves.

Applying this methodology for agencies employing staff under contract to deliver care and support in connection with a care home provided wholly or mainly for children or a secure accommodation service the costs would be similar for individual costs but for the whole workforce the registration process would equate to a cost of £16,296. However, it could be that these costs would be passed on by their agency employers to those service providers requiring agency staff to back-fill for staff either completing their own training, who are off sick or on maternity leave, etc.

Additional costs could include time for managers to learn about and to manage the record keeping requirements for the registration process. This is more difficult to quantify as it will vary depending on the previous knowledge and experience of the manager, the number of staff they manage, and their salary level. However in order to mitigate any of these costs, Social Care Wales (SCW) will be tasked with making the registration and record-keeping processes as accessible as possible. SCW have confirmed that it will employ a similar engagement process of briefings and visits to help employers, and employees, understand the process and take them through it. This will also include learning from the process that was undertaken during the registration of domiciliary care workers to help make this process as easy as possible.

### *Training Costs*

Linked to the registration of staff is the cost of meeting the required qualification requirements. A new suite of qualifications was launched in September 2019, and SCW has determined that the minimum qualification requirements will be level 2 in Health and Social Care (Diploma, QCF or NVQ) or equivalent. Social Care Wales estimate that it will take a notional 475 hours to complete this training, which includes “on-the-job training” and “off-site”<sup>7</sup> learning. The amount of “off-site” learning needed will vary greatly depending on the individual. For example, employers are already likely to have invested heavily in more experienced workers who are then unlikely to require as much “off-site” learning (which could include, for example, first aid training). Workers employed straight from school however are likely to require a greater investment in learning that cannot be undertaken “on-the-job”.

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<sup>6</sup> Accurate data is not available on the average age of the workforce, therefore we are reliant on parallels drawn from evidence collected on other areas of the workforce in similar roles i.e. residential child care workers – where the average age is 38 – see SCW factsheet on Residential child care workers on the Register (1 April 2018) [https://socialcare.wales/cms\\_assets/file-uploads/RCCW-factsheet.pdf](https://socialcare.wales/cms_assets/file-uploads/RCCW-factsheet.pdf)

<sup>7</sup> While described as ‘off-site’, this learning may take place in the workplace but not on-the-job.

The cost to employers of paying salaries for time spent learning “off-site” is difficult to estimate given the individualised nature of the learning.

However, if we take a standardised notion of 1 day training off-site per week of the total notional 475 hours of training, we can estimate that the cost would equate to 95 hours at a cost of approximately £1,071 (i.e. 95 hours of training at the national minimum wage of £8.67 and on-costs (at 30% of salary costs)). This does not reflect what may actually be happening on the ground, where in fact the likely cost is expected to be much lower for the reasons outlined above.

Based on current figures for registration of domiciliary care staff, this assumes that 22% of the workforce will require the qualification<sup>8</sup> and to bring this number of the workforce up to the required qualifications would equate to a cost of £4.7 million for the sector in salary costs<sup>9</sup>.

In answer to some concerns from the domiciliary support sector that there were some employees who would not be interested in acquiring a qualification and could therefore leave the sector, SCW worked with that sector to find a solution to help retain these staff but allow them to register. SCW will use a conferred competence route – where employees endorsed by their managers that they have the right skills and competences – and where workers are new and will not have time to complete the qualification requirements by the mandatory deadline, they could complete the first module (and associated assessment) of the induction framework on skills and values for working in social care prior to registration. It is expected that this process will also be utilised with the individuals employed or engaged under a contract for services in connection with a care home provided wholly or mainly for adults or residential family centre service so that, as well as the qualification route. This would help ease the immediate pressure on employers around the cost of training to ensure staff are registered by the mandatory deadline, but there will still be costs relating to continued professional development for staff going forward. It is difficult to quantify the savings that these options would give employers.

It is not possible to identify the number of Individuals engaged under a contract for services in children’s residential care and secure accommodation services who might require the necessary qualifications, as we do not currently have any accurate data on these workers. Applying the same methodology as above and assuming that 25% of the estimated number are working towards more permanent employment, the cost of training 181 workers to meet the registration requirements would equate to a sum of £149,081 in staff time and a further £44,724 (30% on-costs (i.e. NI contributions,

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<sup>8</sup> Adult residential care workers have yet to register therefore we are drawing parallels from the SCW figures for domiciliary care workers. These show that as at January 2020, of around 12,500 registrants 76% of the domiciliary workforce has registered with a qualification, with 13% of these registering through the confirmed competence route and 11% of these using the Principles and Values route (or 8% of the total). Based on an assumption that the remaining workers left to register will not be qualified, that approx. half of these may come through on the confirmed competence route, this gives us a calculation of a total 22% of the workforce registering that need to be trained (i.e. 8% already registered through confirmed competence and 14% potentially to register through confirmed competence)

<sup>9</sup> This figure is based upon the current National Living Wage of £8.67 + £2.60 employer on-costs x 95 hours to complete a Level 2 qualification x 3,800 workers needing to attain this qualification.

Pensions, etc.) equating to a total cost of £193,805.

However, these costs are not a consequence of this regulation alone. Even without mandatory registration, there is a cost to employers for training staff and ensuring that they have the right skills to do the job. Employers already have a legal obligation placed upon them under the Regulation and Inspection of Social Care (Wales) Act 2016 to ensure that their staff receive “appropriate training to understand behaviours and adopt strategies to support individuals with their behaviours to achieve positive well-being and outcomes.” In addition to this, the voluntary registration of domiciliary support workers which preceded this proposal means that many of these costs will already have been met. However we do not have access to data on the current (pre-registration) cost to employers of training staff.

Overall, a more consistent approach to training across the sector is likely to result in greater value for money to employers. It could even introduce some cost savings, for example where workers move from one employer to another.

### **Workforce regulator (Social Care Wales (SCW))**

The costs associated with maintaining the register and regulating adult residential care workers and residential family care service (and domiciliary care workers) include:

- Direct staffing costs arising from the demands of managing the registration process
- Direct staffing costs arising from additional staff needed to oversee an anticipated increased number of conduct and fitness to practice processes,
- Indirect costs such as for venue hire for conduct committees, and conduct committee expenses.

SCW estimate that the costs associated with maintaining the register and regulating adult residential care workers and residential family care service (and domiciliary care workers) would increase year on year as more of the workforce enter the register and the increase would rise from £1,130,738 in 2018-2019 to 2,995,000 in 2021-2022. Some of these costs would be offset by the collection of registration fees. The following table estimates the income anticipated to SCW from registration, under option 2.

<b>Group</b>	<b>2018/19</b>	<b>2019/20</b>	<b>2020/21</b>	<b>2021/22</b>
<b>Current registrants 11,000</b>	£455,755 (a)	£550,015 (b)	£644,275	738,535
<b>Domiciliary support workers</b>	£120,000	£400,000 (c)	£500,000	£600,000 (d)
<b>Care Home workers etc.</b>	n/a	n/a	£200,000 (e)	£600,000 (f)

<b>Agency workers<sup>10</sup></b>	n/a	n/a	£18,075	£21,690
<b>Total Income</b>	£575,755	£950,015	£1,362,350	£1,960,225

Registration fees are collected from the approximately 11,000 registrants currently registered with SCW; up to 2017/18 this provided the regulator with a total of £271,970 worth of income. The figure shown at (a) represents the increased revenue stream when registration fees across all categories were increased in 2018/19.

(b) reflects the first of a series of incremental increases in fee levels for all categories of registered workers.

With the registration of the domiciliary support workforce, it is estimated that a further £400,000 (c) will be added to the regulator's revenue stream by the time that exercise is completed in 2020 (based on 16,000 workers charged a fee of £25). This will be in addition to a further incremental increase on the registration fees of the initial 11,000 registrants. The figure shown at (d) represents the final planned incremental increase in registration fees across all categories.

With the registration of Individuals engaged under a contract for services, SCW estimate that 8,000 adult residential care workers to register in the first year of the register being opened in 2020-2021 with the majority following up throughout 2021-2022. This would equate to revenue totalling £200,000 in 2020-2021 (e) and £600,000 (f) by 2021-2022 and also includes the incremental fees for those periods.

### *Fitness to Practice*

On the regulatory side of its work, SCW have estimated that it would expect the number of fitness to practise investigations to increase as more groups of workers are added to the register. SCW has provided an estimated cost for the increase in fitness to practise investigations based on the numbers associated with the 11,000 current registrants currently on its workforce register.

Currently, 25 cases per annum go to a full Fitness to Practice hearing at a cost of £13,000 per case (a total of £325,000 per annum). Social Care Wales estimates that, with the inclusion of the full domiciliary care, adult residential care and residential family care service workforce (approximately 36,000 workers) this number could increase by a further 84 cases going to full hearing by 2022. Whilst it is difficult to accurately estimate the numbers that may be involved, if we take this estimate as a starting point it would mean that the regulator could incur an additional expenditure of £1,092,000 to their overall regulatory costs, equating to a total of £1,417,000 per annum. In total, the figures provided show that SCW have estimated increase in its conduct panel activity costs to increase to £1,741,000 by 2021-2022.

In order to provide additional staff resources to cover the expected increase in activity, SCW estimate that 27 whole time equivalent (WTE) members of staff would need to be

<sup>10</sup> This includes those employed under contract to provide care and support in residential services wholly or mainly for children and secure accommodation services.



employed to cover the increase in activity (6 WTE in the Registration department, 17 in the Fitness to Practice department and 4 in the Committee management team). This would also require £200,000 of additional funding to cover the costs of running the three regulation departments and £170,000 to cover accommodation costs to house the new staff and a further £80,000 of support costs.

### **Care Inspectorate Wales (CIW)**

Care Inspectorate Wales has confirmed that questions have been developed and incorporated into their existing procedures for service inspections to check on staff and confirm that they have registered with SCW and therefore do not foresee any additional costs as part of these Regulations. The existing Memorandum of Understanding between the regulators already provides for the exchange of information to allow for the verification of data and sharing of intelligence.

### **Welsh Government**

#### *Sponsorship funding to Social Care Wales*

The ability for the workforce regulator to set the level of fees and collect these costs has a direct impact on the amount of funding provided to SCW by Welsh Government through our grant-in-aid sponsorship funding. In order to facilitate the opening of the workforce register for domiciliary care workers (and in preparation for the registration of adult residential care workers) the Welsh Government has already provided the regulator with almost £1 million to meet the direct costs associated with this exercise to cover additional staffing and IT costs. There are therefore no additional costs required to cover the administration of extending the workforce register.

This sum was on top of its grant-in-aid sum of £18,008 million to deliver a robust regulation system for the social care workforce and supporting the professionalisation of the social care workforce through effective training and development.

Further funding may be required to offset the additional costs of option two to Social Care Wales as set out above if numbers are significantly higher than expected for either registration or fitness to practice cases. The costs set out above are, however, estimated costs and are for illustrative purposes only as it is not possible to accurately predict the numbers of new cases that may be brought forward. The Welsh Government will continue to work with the regulator to monitor the potential impacts as the process of increasing the workforce register unfolds and any additional fitness to practise costs arise.

#### *Increased training costs*

The Welsh Government currently also funds apprenticeships for Level 2 in Health and Social Care and Child Care and it is estimated that growth in the take up of apprenticeships is likely to be seen mostly in the private and voluntary sectors but that it is difficult to predict what that growth will look like. However, for illustrative purposes we have taken the current estimate that around 54% of those registering are trained, and that a further 23% of the workforce are being registered through the confirmed

competency route. This would leave a potential 22% increase in those seeking to access the apprenticeship programme due to registration. The current cost of an individual apprenticeship through the programme is £5,449 per individual, so the estimated cost of the 22% increase would equate to 4,400 workers being added to the programme at a cost of £23,975,600 over the 5 year period assuming mandatory registration in 2022 and a further three years before registration renewal is required.

### **Benefits associated with each option**

**Option one:** Do nothing - retain the status quo

The most significant benefit to option one is a reduction in costs to the workforce, employers and the workforce regulator.

**Option two:** Open the workforce register for adult residential care workers and residential family care service workers to join on a voluntary basis.

The registration of the Individuals engaged under a contract for services will further build on steps taken to professionalise the sector, which is the overall objective of the work. Although difficult to quantify, the anticipated benefits of registration include:

- Improved trust and confidence in social care workers among both users and the general public;
- Workers in social care feel they are valued which can lead to improved job satisfaction;
- A happier and more supported workforce could lead to improvements in the quality of care;
- Showing that, as the work force professionalise, a career in social care can be attractive which helps to build capacity to meet future demand;
- Highlighting to service users, their families and friends that a professional workforce has the proper skills to do the job and reassure them that they are overseen by a regulator if things fail or fall below expectations.

Additionally, should mandatory registration be implemented in 2022, opening the register early will mitigate the potential risks of registering a large number of workers overnight. It will also allow for the development of a robust communications strategy around registration, and greater engagement with the sector to help workers and employers understand the process and its benefits.

The opening of the register on a voluntary basis will also afford greater opportunity to identify any potential resource issues and utilise any best practice learned during the registration of domiciliary care workers.

As outlined above, the proposal will also afford Individuals engaged under a contract for services greater time to understand what it means for them and prepare for the process. The preparations can help to explain all aspects of the registration process, including the need for registration fees and certain qualifications, which might be new to

many in the sector. This preparatory work could also clarify how having a specific set of skills or qualifications will help reassure potential employers or service users that the worker has attained required standard to deliver care and support.

Employers may choose to use the early registration of its workforce as a demonstration of commitment to quality, or to provide a degree of reassurance to users that workers are registered with SCW and as such will be held accountable if their conduct is called into question.

The workforce can also be assured that, should their conduct be questioned, they would be afforded a fair opportunity to defend themselves before a panel of their peers. Registration should also empower workers to take charge of their own personal development and pursue opportunities with SCW to further their skills or qualifications through the SCW's various training and development programmes and drive continued improvement in the quality of service.

### **Risks associated with each option**

**Option one:** Do nothing - retain the status quo

The primary risk relating to option one is connected with the proposal to introduce mandatory registration in 2022.

If voluntary registration is not introduced and mandatory registration comes in to force in 2020, SCW would have to register all 20,000 estimated adult residential care workers overnight and additional resources may be required to cope with a potentially overwhelming temporary burden that would be placed upon it in 2022. This could lead to undue stress on staff and risks introducing errors in data recording which could have serious implications for both the regulator and adult residential care workers.

Even where a great deal of attention is directed at planning and communications, a further risk of not having a long lead-in period to mandatory registration is that workers or their employers will delay registration and that greater numbers may miss the deadline.

This could lead to a risk of confusion about the status of those workers not yet added to the register, for example, whether they could continue to deliver services if they are not registered. In the longer term this could require further investment to correct or mitigate the potential damage that might have been caused by any errors or oversights.

Whilst SCW has planned for managing the application process by recruiting more staff and office space and equipment, it might still have to redirect additional staff to help process a mass influx of applications, which could draw staff away from other tasks to meet the demand. This could place strains on other aspects of its workload that again could have potential reputational impacts.

If mandatory registration does not proceed then the risks outlined above are reduced significantly. However, in this scenario the key risk is that there will be an inconsistent approach to different parts of the social care workforce, which could lead to a devaluing

of the work undertaken in the care home sector compared to that undertaken in domiciliary care.

**Option two:** Open the workforce register for adult residential care workers and residential family care service workers to join on a voluntary basis.

The risk remains that Individuals will delay registration until a mandatory deadline is introduced, although it is felt that this is significantly mitigated by opening the register for voluntary registration.

Failure to meet the requirements and qualifications when registering mean that some of the workforce decide that the procedure is too cumbersome or costly and opt to leave the sector, placing greater pressure on those that remain to deliver services or undermining services to the point of collapse.

A large portion of individuals consider that the requirement for qualifications are not something they wish to undertake and/or that registration fees are too costly and decide to leave the sector. The loss of a significant portion of the workforce because they believe that the required qualifications are not for them or are something they do not wish to acquire could have devastating consequences for the adult residential care sector.

SCW is currently undertaking a number of actions to mitigate these risks in respect of domiciliary support services where a similar approach to registration of the workforce has been introduced. This includes employer and employee engagement events to help clarify the process, and several routes to registration that reflect that while some workers may be able to demonstrate the skills they have, they may not already hold the appropriate qualifications. This also includes extending the amount of time that workers have to obtain those qualifications.

Although the sector is aware of the proposals, there is still likely to be some in the sector who will have not given this any further consideration or put off engaging with the regulator as 2022 is still a few years off. As time goes on, there is the potential for this to be forgotten so SCW are preparing plans to implement a further information exercise for the adult residential care and residential family care service sectors along similar lines to those used for the domiciliary care sector. Even with the mitigating actions, careful consideration will need to be given to the potential risks around failing to secure the workforce “buy in” to the benefits of registration. The loss of any significant numbers of the workforce will have substantial impacts on the delivery of services and the sector as a whole. The Welsh Government has provided additional funding to SCW to help with this process and in the previous financial year to cover preparatory work including funding to help employ additional staff and resources to meet the costs of registration. However, any significant influx of registration applications or delays in processing these applications could have knock on effects for those that seek to register closer to the deadline. The Welsh Government will continue to work with the workforce regulator, SCW, to monitor and manage the process to mitigate these possible impacts and risks.

## Summary and preferred option

Two options have been considered. Option one is to retain the existing system whereby the workforce would not be required to register with the regulator until the mandatory date in 2022. This option has significant implications if all 20,000 estimated workers decide to leave registration to the last minute, or fail to register in time for mandatory registration, which could have serious consequences for the sector, the regulator and the Welsh Government. Not entering into any form of registration of the workforce could also lead to a two-tier system where higher expectations are placed on domiciliary care workers compared to care home staff which could also impact on workers' ability to move between the two sectors.

Option two demonstrates a clear commitment to moving towards mandatory registration, with the benefits as outlined. While there remain some associated risks in terms of the rate of registration these can be better managed with a longer lead in time prior to the proposed mandatory registration requirement in 2022.

Therefore option two is the preferred option.

## Competition Assessment

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

The filter test shows that it is not likely that the regulation will have any detrimental effect on competition; therefore a detailed assessment has not been conducted.

We do not consider it necessary to undertake a competition assessment for these Regulations since they will not affect the business sector in any significant way.

# SL(5)502 - Rheoliadau Deddf Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru) 2016 a Gwasanaethau Rheoleiddiedig (Diwygiadau Amrywiol) 2020

## Cefndir a Diben

Mae'r Rheoliadau hyn wedi eu gwneud o dan Ddeddf Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru) 2016 ("y Ddeddf") ac yn gwneud nifer o ddiwygiadau mewn perthynas â goruchwyllo sefydliadau darparwyr gwasanaeth rheoleiddiedig, a chofrestru'r gweithlu cymorth cartref.

Mae'r diwygiad yn Rhan 2 yn caniatáu i Weinidogion Cymru ystyried tystiolaeth bod unrhyw berson sy'n gysylltiedig â pherson perthnasol neu a oedd gynt yn gysylltiedig â pherson perthnasol wedi bod yn gyfrifol am gamymddwyn neu gamreoli, neu wedi cyfrannu ato neu wedi ei hwyluso, wrth ddarparu gwasanaeth rheoleiddiedig yng Nghymru neu wasanaeth cyfatebol y tu allan i Gymru, wrth asesu a yw person yn addas ac yn briodol i fod yn ddarparwr gwasanaeth neu'n unigolyn rheoleiddiedig.

Mae Rhan 3 yn cynnwys diwygiadau i Reoliadau Gwasanaethau Rheoleiddiedig (Cofrestru) (Cymru) 2017 i bennu'r wybodaeth ychwanegol sydd i'w darparu gan ymgeisydd sy'n gwneud cais i gofrestru fel darparwr gwasanaeth ar gyfer gwasanaeth rheoleiddiedig.

Mae Rhan 4 yn diwygio cyfres o reoliadau gwasanaethau rheoleiddiedig i'w hychwanegu at y rhestr o ddiwyddiadau y mae'n rhaid i'r darparwr gwasanaeth hysbysu'r rheolydd gwasanaeth ohonynt.

Mae Rhan 5 yn ei gwneud yn ofynnol i bersonau a gaiff eu cyflogi neu eu contractio i ddarparu gwasanaethau cymorth cartref gael eu cofrestru fel gweithiwr gofal cymdeithasol gyda Gofal Cymdeithasol Cymru cyn pen 6 mis ar ôl dechrau eu cyflogaeth/ymgysylltiad.

## Gweithdrefn

Cadarnhaol drafft.

Oherwydd y gwahanol bwerau galluogi a ddefnyddir wrth wneud y Rheoliadau hyn, byddai rhai o'r darpariaethau, pe cânt eu gwneud mewn offeryn ar wahân, yn ddarostyngedig i'r weithdrefn negyddol, tra byddai eraill yn ddarostyngedig i'r weithdrefn gadarnhaol ddrafft.

Yn rhinwedd adran 40 o Ddeddf Deddfwriaeth (Cymru) 2019, gellir cyfuno darpariaethau sy'n denu'r weithdrefn negyddol a'r darpariaethau sy'n denu'r weithdrefn gadarnhaol ddrafft mewn un offeryn, ar yr amod bod offeryn cyfan yn ddarostyngedig i'r weithdrefn gadarnhaol ddrafft.

## Materion technegol: craffu

Ni nodwyd unrhyw bwyntiau i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.2 mewn perthynas â'r offeryn hwn.

## Rhinweddau: craffu

Nodwyd un pwynt i gyflwyno adroddiad arno o dan Reol Sefydlog 21.3 mewn perthynas â'r offeryn hwn:



**Rheol Sefydlog 21.3 (ii) – ei fod o bwysigrwydd gwleidyddol neu gyfreithiol neu ei fod yn codi materion polisi cyhoeddus sy'n debyg o fod o ddiddordeb i'r Cynulliad.**

1. Er bod enw'r Rheoliadau yn gyson drwy'r Rheoliadau eu hunain, mae cwpl o gyfeiriadau at y Rheoliadau yn y Memorandwm Esboniadol nad ymddengys eu bod yn gywir, ac un ohonynt yw'r teitl ar y dudalen flaen. Mae'r Memorandwm Esboniadol yn cynnwys cyfeiriad at "Rheoliadau Deddf Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru) 2016 a Gwasanaethau Rheoleiddiedig (Diwygiadau Amrywiol) (Cymru) 2020" (ychwanegwyd pwyslais) tra nad yw'r 'Cymru' wedi'i danlinellu yn ymddangos yn y teitl yn y Rheoliadau.

## Y goblygiadau yn sgil gadael yr Undeb Ewropeaidd

Ni nodwyd unrhyw oblygiadau i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.3 mewn perthynas â'r offeryn hwn.

## Ymateb y Llywodraeth

Mae'r pwynt craffu ar rinweddau wedi ei nodi. Mae Llywodraeth Cymru wedi ailosod y memorandwm esboniadol gyda'r gwall wedi ei gywiro.

### Cynghorwyr Cyfreithiol

**Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**  
**26 Chwefror 2020**



Cynulliad Cenedlaethol Cymru

**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

—  
National Assembly for Wales

**Legislation, Justice and Constitution Committee**

*Rheoliadau drafft a osodwyd gerbron Cynulliad Cenedlaethol Cymru o dan adran 187(2)(d) ac (f) o Ddeddf Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru) 2016, i'w cymeradwyo drwy benderfyniad gan Gynulliad Cenedlaethol Cymru.*

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**2020 Rhif (Cy. )**

**GOFAL CYMDEITHASOL,  
CYMRU**

**Rheoliadau Deddf Rheoleiddio ac  
Arolygu Gofal Cymdeithasol  
(Cymru) 2016 a Gwasanaethau  
Rheoleiddiedig (Diwygiadau  
Amrywiol) 2020**

**NODYN ESBONIADOL**

*(Nid yw'r nodyn hwn yn rhan o'r Rheoliadau)*

Mae'r Rheoliadau hyn wedi eu gwneud o dan Ddeddf Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru) 2016 ("y Ddeddf").

Mae Rhan 2 yn cynnwys diwygiad i adran 9 o'r Ddeddf. Mae adran 9 o'r Ddeddf yn ymwneud ag unrhyw benderfyniad y mae Gweinidogion Cymru yn ei wneud ynghylch a yw darparwr gwasanaeth, person sy'n gwneud cais i fod yn ddarparwr gwasanaeth, unigolyn cyfrifol neu berson sydd i'w ddynodi'n unigolyn cyfrifol (y cyfeirir atynt ar y cyd o hyn ymlaen fel "person perthnasol") yn berson addas a phriodol i fod yn ddarparwr gwasanaeth neu, yn ôl y digwydd, yn unigolyn cyfrifol.

Mae rheoliad 4 yn diwygio adran 9 i estyn cymhwysiad is-adran (6) i gynnwys unrhyw berson arall sy'n gysylltiedig â pherson perthnasol neu a oedd gynt yn gysylltiedig â pherson perthnasol.

Effaith y diwygiad hwn yw caniatáu i Weinidogion Cymru ystyried tystiolaeth bod unrhyw berson sy'n gysylltiedig â pherson perthnasol neu a oedd gynt yn gysylltiedig â pherson perthnasol wedi bod yn gyfrifol am gamymddwyn neu gamreoli, neu wedi cyfrannu ato neu wedi ei hwyluso, wrth ddarparu gwasanaeth



rheoleiddiedig yng Nghymru neu wasanaeth cyfatebol y tu allan i Gymru.

Mae Rhan 3 yn cynnwys diwygiadau i Reoliadau Gwasanaethau Rheoleiddiedig (Cofrestru) (Cymru) 2017 (“y Rheoliadau Cofrestru”). Mae’r Rheoliadau Cofrestru wedi eu gwneud o dan adrannau 6 ac 11 o’r Ddeddf.

Mae adran 6(1) o’r Ddeddf yn nodi’r wybodaeth y mae rhaid ei chynnwys mewn cais i gofrestru fel darparwr gwasanaeth mewn cysylltiad â gwasanaeth rheoleiddiedig ac yn galluogi Gweinidogion Cymru i ragnodi gwybodaeth ychwanegol y mae rhaid ei chynnwys mewn cais i gofrestru.

Mae rheoliad 3 o’r Rheoliadau Cofrestru yn pennu’r wybodaeth ychwanegol sydd i’w darparu gan ymgeisydd sy’n gwneud cais i gofrestru. Mae hyn yn cynnwys yr wybodaeth a restrir yn Atodlen 1 i’r Rheoliadau Cofrestru.

Mae rheoliad 6 yn mewnosod rheoliad 3A yn y Rheoliadau Cofrestru.

Mae rheoliad 3A yn nodi’r wybodaeth ychwanegol y mae rhaid ei darparu, yn achos corff corfforedig, gan bob cyfarwyddwr, ymddiriedolwr neu aelod o’r pwyllgor rheoli; yn achos partneriaeth, gan bob partner; ac yn achos corff anghorfforedig, gan bob person sy’n ymwneud â rheoli a rheolaeth y corff.

Mae rheoliad 8 yn cynnwys darpariaeth drosiannol sy’n berthnasol i’r rheoliad 3A a fewnosodir.

Mae Rhan 4 yn diwygio pob un o’r setiau a ganlyn o Reoliadau (y cyfeirir atynt ar y cyd o hyn ymlaen fel “y Rheoliadau Gwasanaethau Rheoleiddiedig”) sydd wedi eu gwneud o dan adrannau 27 ac 28 o’r Ddeddf:

- (a) Rheoliadau Gwasanaethau Rheoleiddiedig (Darparwyr Gwasanaethau ac Unigolion Cyfrifol) (Cymru) 2017,
- (b) Rheoliadau Gwasanaethau Lleoli Oedolion (Darparwyr Gwasanaethau ac Unigolion Cyfrifol) (Cymru) 2019,
- (c) Rheoliadau Gwasanaethau Eirioli Rheoleiddiedig (Darparwyr Gwasanaethau ac Unigolion Cyfrifol) (Cymru) 2019,
- (d) Rheoliadau Gwasanaethau Maethu Rheoleiddiedig (Darparwyr Gwasanaethau ac Unigolion Cyfrifol) (Cymru) 2019, ac
- (e) Rheoliadau Gwasanaethau Mabwysiadu Rheoleiddiedig (Darparwyr Gwasanaethau ac Unigolion Cyfrifol) (Cymru) 2019.

Mae’r Rheoliadau Gwasanaethau Rheoleiddiedig yn nodi’r gofynion rheoleiddiol sy’n gymwys i ddarparwyr gwasanaethau a reoleiddir o dan y Ddeddf.

Y gwasanaethau hyn yw gwasanaethau cartrefi gofal, gwasanaethau llety diogel, gwasanaethau canolfannau preswyl i deuluoedd, gwasanaethau cymorth cartref, gwasanaethau lleoli oedolion, gwasanaethau eirioli, gwasanaethau maethu a gwasanaethau mabwysiadu.

Ym mhob set o'r Rheoliadau Gwasanaethau Rheoleiddiedig, mae Atodlen 3 yn rhestru'r digwyddiadau y mae rhaid i'r darparwr gwasanaeth hysbysu'r rheoleiddiwr gwasanaethau, sef Gweinidogion Cymru, amdanynt.

Mae rheoliad 10 yn rhoi paragraff 3 newydd a pharagraff newydd 3A yn lle'r paragraff 3 presennol o Atodlen 3 i bob set o'r Rheoliadau Gwasanaethau Rheoleiddiedig.

Y digwyddiad a restrir ym mharagraff 3 newydd yw unrhyw newid i'r personau sy'n rhan o'r corff a gyfansoddir (yn ffurfiol neu'n anffurfiol) fel corff gwneud penderfyniadau'r sefydliad, megis cyfarwyddwyr, ymddiriedolwyr neu aelodau pwyllgor rheoli'r darparwr gwasanaeth pan fo'r darparwr gwasanaeth yn gorff corfforedig.

Y digwyddiad a restrir ym mharagraff newydd 3A yw unrhyw newid i'r personau sy'n ymwneud â rheoli a rheolaeth corff y darparwr gwasanaeth pan fo'r darparwr gwasanaeth yn gorff anghorfforedig.

Mae Rhan 5 yn diwygio Rheoliadau Gwasanaethau Rheoleiddiedig (Darparwyr Gwasanaethau ac Unigolion Cyfrifol) (Cymru) 2017 ("Rheoliadau 2017").

Mae Rheoliadau 2017 yn nodi'r gofynion rheoleiddiol sy'n gymwys i ddarparwyr gwasanaethau cartrefi gofal, gwasanaethau llety diogel, gwasanaethau canolfannau preswyl i deuluoedd a gwasanaethau cymorth cartref.

Mae Rhan 10 o Reoliadau 2017 yn cynnwys gofynion penodol o ran addasrwydd unigolion sy'n gweithio yn y gwasanaeth.

Mae rheoliad 13 yn diwygio rheoliad 35 o Reoliadau 2017.

Mae paragraff (a) yn amnewid paragraff 2(f) o reoliad 35 o Reoliadau 2017 sy'n darparu, pan fo darparwr gwasanaeth yn cyflogi person ac eithrio fel rheolwr i ddarparu gofal a chymorth mewn cysylltiad â chartref gofal a ddarperir yn gyfan gwbl neu'n bennaf i blant, gwasanaeth llety diogel neu wasanaeth cymorth cartref, fod rhaid i'r person fod wedi ei gofrestru fel gweithiwr gofal cymdeithasol â Gofal Cymdeithasol Cymru o fewn 6 mis i ddechrau ei gyflogaeth.

Mae paragraff (b) yn mewnosod paragraff newydd 2(g) o reoliad 35 o Reoliadau 2017 sy'n darparu, pan fo person wedi ei gymryd ymlaen o dan gontract ar

gyfer gwasanaethau (sy'n cynnwys gweithwyr asiantaeth) ac eithrio fel rheolwr, i ddarparu gofal a chymorth i unrhyw berson mewn cysylltiad â gwasanaeth cartref gofal a ddarperir yn gyfan gwbl neu'n bennaf i blant, gwasanaeth llety diogel neu wasanaeth cymorth cartref, fod rhaid i'r person hwnnw fod wedi ei gofrestru â Gofal Cymdeithasol Cymru o fewn 6 mis i'r dyddiad y cymerir y person ymlaen gyntaf o dan gontract ar gyfer gwasanaethau i ddarparu gofal a chymorth o'r fath.

Mae paragraff (d) yn mewnosod paragraff newydd 11 i ddarparu nad yw'r gofyniad bod person wedi ei gofrestru â Gofal Cymdeithasol Cymru yn unol â rheoliad 35(2)(f) ac (g) yn gymwys pan fo'r person hwnnw wedi ei gyflogi neu ei gymryd ymlaen o dan gontract ar gyfer gwasanaethau i weithio fel nyrs, neu broffesiynolyn cofrestredig sydd wedi ei gofrestru â'r Cyngor Proffesiynau Iechyd a Gofal.

*Ystyriwyd Cod Ymarfer Gweinidogion Cymru ar gynnal Asesiadau Effaith Rheoleiddiol mewn perthynas â'r Rheoliadau hyn. O ganlyniad, lluniwyd asesiad effaith rheoleiddiol o'r costau a'r manteision sy'n debygol o ddeillio o gydymffurfio â'r Rheoliadau hyn. Gellir cael copi oddi wrth: Yr Adran Iechyd a Gwasanaethau Cymdeithasol, Llywodraeth Cymru, Parc Cathays, Caerdydd CF10 3NQ.*

*Rheoliadau drafft a osodwyd gerbron Cynulliad Cenedlaethol Cymru o dan adran 187(2)(d) ac (f) o Ddeddf Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru) 2016, i'w cymeradwyo drwy benderfyniad gan Gynulliad Cenedlaethol Cymru.*

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**2020 Rhif (Cy. )**

**GOFAL CYMDEITHASOL,  
CYMRU**

**Rheoliadau Deddf Rheoleiddio ac  
Arolygu Gofal Cymdeithasol  
(Cymru) 2016 a Gwasanaethau  
Rheoleiddiedig (Diwygiadau  
Amrywiol) 2020**

*Gwnaed*

\*\*\*

*Yn dod i rym*

*1 Ebrill 2020*

Mae Gweinidogion Cymru yn gwneud y Rheoliadau a ganlyn drwy arfer y pwerau a roddir gan adrannau 6(1)(d), 9(9), 27(1) a 187(1)(b) o Ddeddf Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru) 2016 (“y Ddeddf”)(1).

Mae Gweinidogion Cymru wedi ymgynghori â'r personau hynny y maent yn meddwl eu bod yn briodol, fel sy'n ofynnol gan adran 27(4)(a) o'r Ddeddf ac wedi cyhoeddi datganiad ynghylch yr ymgynghoriad fel sy'n ofynnol gan adran 27(4)(b) o'r Ddeddf honno. Mae Gweinidogion Cymru wedi gosod copi o'r datganiad gerbron Cynulliad Cenedlaethol Cymru fel sy'n ofynnol gan adran 27(5) o'r Ddeddf honno.

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(1) 2016 dccc 2; gweler y diffiniad o “a ragnodir” a “rhagnodedig” yn adran 189. Gweler hefyd adran 40 o Ddeddf Deddfwriaeth (Cymru) 2019 (dccc 4) am ddarpariaeth ynghylch y weithdrefn sy'n gymwys i'r offeryn hwn.

Gosodwyd drafft o'r Rheoliadau hyn gerbron Cynulliad Cenedlaethol Cymru o dan adran 187(2)(d) ac (f) o'r Ddeddf ac fe'i cymeradwywyd ganddo drwy benderfyniad.

## RHAN 1

### Cyffredinol

#### Enwi, cychwyn a dehongli

2.—(1) Enw'r Rheoliadau hyn yw Rheoliadau Deddf Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru) 2016 a Gwasanaethau Rheoleiddiedig (Diwygiadau Amrywiol) 2020.

(2) Daw'r Rheoliadau hyn i rym ar 1 Ebrill 2020.

(3) Yn y Rheoliadau hyn—

ystyr “y Ddeddf” (*“the Act”*) yw Deddf Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru) 2016,

ystyr “Rheoliadau 2017” (*“the 2017 Regulations”*) yw Rheoliadau Gwasanaethau Rheoleiddiedig (Darparwyr Gwasanaethau ac Unigolion Cyfrifol) (Cymru) 2017<sup>(1)</sup>,

ystyr “y Rheoliadau Cofrestru” (*“the Registration Regulations”*) yw Rheoliadau Gwasanaethau Rheoleiddiedig (Cofrestru) (Cymru) 2017<sup>(2)</sup>,

ystyr “y Rheoliadau Gwasanaethau Rheoleiddiedig” (*“the Regulated Services Regulations”*) yw—

(a) Rheoliadau 2017,

(b) Rheoliadau Gwasanaethau Lleoli Oedolion (Darparwyr Gwasanaethau ac Unigolion Cyfrifol) (Cymru) 2019<sup>(3)</sup>,

(c) Rheoliadau Gwasanaethau Eirioli Rheoleiddiedig (Darparwyr Gwasanaethau ac Unigolion Cyfrifol) (Cymru) 2019<sup>(4)</sup>,

(d) Rheoliadau Gwasanaethau Maethu Rheoleiddiedig (Darparwyr Gwasanaethau ac Unigolion Cyfrifol) (Cymru) 2019<sup>(5)</sup>,

(e) Rheoliadau Gwasanaethau Mabwysiadu Rheoleiddiedig (Darparwyr Gwasanaethau ac Unigolion Cyfrifol) (Cymru) 2019<sup>(6)</sup>.

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(1) O.S. 2017/1264 (Cy. 295) fel y'i diwygiwyd gan O.S. 2019/757 (Cy. 142).  
(2) O.S. 2017/1098 (Cy. 278) y mae diwygiadau iddo nad ydynt yn berthnasol i'r Rheoliadau hyn.  
(3) O.S. 2019/163 (Cy. 40).  
(4) O.S. 2019/165 (Cy. 41) y mae diwygiadau iddo nad ydynt yn berthnasol i'r Rheoliadau hyn.  
(5) O.S. 2019/169 (Cy. 42).  
(6) O.S. 2019/762 (Cy. 145).

## RHAN 2

### Diwygiad i'r Ddeddf

#### Diwygiad i'r Ddeddf

3. Mae'r Ddeddf wedi ei diwygio yn unol â rheoliad 4.

#### Person addas a phriodol: ystyriaethau perthnasol

4. Yn adran 9(5)(a), ar ôl “is-adran (4)” mewnosoder “neu (6)”.

## RHAN 3

### Diwygiadau i'r Rheoliadau Cofrestru

#### Diwygiadau i'r Rheoliadau Cofrestru

5. Mae'r Rheoliadau Cofrestru wedi eu diwygio yn unol â rheoliadau 6 a 7 ac mae rheoliad 8 yn cyflwyno darpariaeth drosiannol.

#### Yr wybodaeth sydd i'w darparu gan ymgeisydd

6. Ar ôl rheoliad 3 mewnosoder—

“3A.—(1) Mae'r rheoliad hwn yn gymwys pan fo'r ymgeisydd, o fewn ystyr paragraff (a) o'r diffiniad o “ymgeisydd” yn rheoliad 2, yn sefydliad.

(2) Rhaid i ymgeisydd y mae'r rheoliad hwn yn gymwys iddo, yn ychwanegol at yr wybodaeth a bennir yn rheoliad 3, ddarparu i Weinidogion Cymru yr wybodaeth ym mharagraff (3).

(3) Rhaid i'r ymgeisydd ddarparu, mewn perthynas â'r personau a restrir ym mharagraff (4)—

(a) eu henw llawn, eu dyddiad geni, eu cyfeiriad cartref, eu cyfeiriad post electronig a'u rhif ffôn, a

(b) yr wybodaeth a restrir ym mharagraffau 13 i 22 o Atodlen 1.

(4) Y personau y mae rhaid darparu'r wybodaeth ym mharagraff (3) mewn perthynas â hwy yw—

(a) pan fo'r sefydliad yn gorff corfforaethol ac eithrio awdurdod lleol neu Fwrdd Iechyd Lleol—

(i) pob person sydd wedi ei benodi'n gyfarwyddwr o'r corff corfforaethol,

- (ii) pob person sydd wedi ei benodi'n ymddiriedolwr o'r corff corfforaethol,
- (iii) pob aelod o bwyllgor rheoli'r corff corfforaethol,
- (b) pan fo'r sefydliad yn gorff anghorfforedig, pob person sy'n ymwneud â rheoli a rheolaeth y corff,
- (c) pan fo'r sefydliad yn bartneriaeth, pob partner."

**7. Yn Atodlen 1—**

- (a) ym mharagraff 45—
  - (i) ar ddiwedd is-baragraff (b), yn lle “.” rhodder “;”,
  - (ii) ar ôl is-baragraff (b) mewnosoder—
    - “(c) unrhyw berson sy'n aelod o bwyllgor rheoli'r corff corfforaethol.”, a
- (b) yn nhestun Saesneg paragraff 48, yn lle “application” rhodder “declaration”.

**Darpariaeth drosiannol**

**8.** Mae cais i gofrestru sydd wedi ei gyflwyno yn unol â'r Rheoliadau Cofrestru cyn i'r Rheoliadau hyn ddod i rym, i'w benderfynu fel pe na bai'r Rheoliadau hyn wedi eu gwneud.

## RHAN 4

### Diwygiadau i'r Rheoliadau Gwasanaethau Rheoleiddiedig

**Diwygiadau i'r Rheoliadau Gwasanaethau Rheoleiddiedig**

**9.** Mae'r Rheoliadau Gwasanaethau Rheoleiddiedig wedi eu diwygio yn unol â rheoliad 10.

**10. Yn Atodlen 3—**

- (a) yn lle paragraff 3 rhodder—
  - “**3.** Pan fo'r darparwr gwasanaeth, ar neu ar ôl 1 Ebrill 2020, yn gorff corfforaethol, unrhyw newid i—
  - (a) cyfarwyddwyr,
  - (b) ymddiriedolwyr, neu
  - (c) aelodau pwyllgor rheoli,
 y corff corfforaethol.
- 3A.** Pan fo'r darparwr gwasanaeth, ar neu ar ôl 1 Ebrill 2020, yn gorff anghorfforedig,

unrhyw newid i'r personau sy'n ymwneud â rheoli a rheolaeth y corff.”

- (b) ym mharagraff 5 yn lle “cwmni” rhodder “corff corfforaethol”.

## RHAN 5

### Diwygiadau i Reoliadau 2017

#### Diwygiadau i Reoliadau 2017

**11.** Mae Rheoliadau 2017 wedi eu diwygio yn unol â rheoliadau 12 a 13.

#### Dehongli

**12.** Yn rheoliad 1(3), mewnosoder y canlynol yn y lle priodol—

“ystyr “nyrs” (“*nurse*”) yw nyrs gymwysedig neu fydwraig gymwysedig sydd wedi ei chofrestru â'r Cyngor Nyrsio a Bydwreigiaeth yn unol ag erthygl 5 o Orchymyn Nyrsio a Bydwreigiaeth 2001(1);”;

“mae i “proffesiynolyn cofrestredig” yr ystyr a roddir i “registered professional” ym mharagraff 1 o Atodlen 3 i Orchymyn Proffesiynau Iechyd 2001(2);”.

#### Addasrwydd staff

**13.** Yn rheoliad 35—

- (a) yn lle paragraff (2)(f) rhodder—

“(f) yn ddarostyngedig i baragraff (11) o'r rheoliad hwn, pan fo'r person wedi ei gyflogi gan y darparwr gwasanaeth (pa un ai fel cyflogai neu fel gweithiwr) ac eithrio fel rheolwr er mwyn darparu gofal a chymorth i unrhyw berson mewn cysylltiad—

- (i) â gwasanaeth cartref gofal a ddarperir yn gyfan gwbl neu'n bennaf i blant,
- (ii) â gwasanaeth llety diogel, neu
- (iii) â gwasanaeth cymorth cartref er mwyn darparu gofal a chymorth i berson y cyfeirir ato ym mharagraff 8(1) o Atodlen 1 i'r Ddeddf,

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(1) O.S. 2002/253, a ddiwygiwyd gan O.S. 2018/838 ac O.S. 2009/1182; mae offerynnau diwygio eraill ond nid yw'r un ohonynt yn berthnasol.

(2) O.S. 2002/254, y mae offerynnau diwygio iddo.



fod y person wedi ei gofrestru fel gweithiwr gofal cymdeithasol â Gofal Cymdeithasol Cymru heb fod yn hwyrach na'r dyddiad perthnasol (gweler paragraff (8) am ystyr "y dyddiad perthnasol")."

- (b) ar ôl is-baragraff (f) fel y'i hamnewidir gan y Rheoliadau hyn mewnosoder—

“(g) yn ddarostyngedig i baragraff (11) o'r rheoliad hwn, pan fo'r person wedi ei gymryd ymlaen o dan gontract ar gyfer gwasanaethau ac eithrio fel rheolwr, i ddarparu gofal a chymorth i unrhyw berson mewn cysylltiad—

- (i) â gwasanaeth cartref gofal a ddarperir yn gyfan gwbl neu'n bennaf i blant,
- (ii) â gwasanaeth llety diogel, neu
- (iii) â gwasanaeth cymorth cartref er mwyn darparu gofal a chymorth i berson y cyfeirir ato ym mharagraff 8(1) o Atodlen 1 i'r Ddeddf,

fod y person wedi ei gofrestru fel gweithiwr gofal cymdeithasol â Gofal Cymdeithasol Cymru heb fod yn hwyrach na'r dyddiad perthnasol (gweler paragraff (8A) am ystyr "y dyddiad perthnasol")."

- (c) ar ôl paragraff (8) mewnosoder—

“(8A) Ym mharagraff (2)(g) o'r rheoliad hwn, "y dyddiad perthnasol" yw naill ai—

- (a) 6 mis o'r dyddiad y cymerir person ymlaen gyntaf o dan gontract ar gyfer gwasanaethau i ddarparu gofal a chymorth mewn cysylltiad—

- (i) â gwasanaeth cartref gofal a ddarperir yn gyfan gwbl neu'n bennaf i blant,
- (ii) â gwasanaeth llety diogel,
- (iii) â gwasanaeth cymorth cartref er mwyn darparu gofal a chymorth i berson y cyfeirir ato ym mharagraff 8(1) o Atodlen 1 i'r Ddeddf, neu

- (b) unrhyw ddyddiad diweddarach y mae'r rheoleiddiwr gwasanaethau yn cytuno arno o dan amgylchiadau eithriadol.”

- (d) ar ôl paragraff (10) mewnosoder—

“(11) Nid yw'r gofyniad bod person wedi ei gofrestru fel gweithiwr gofal cymdeithasol â Gofal Cymdeithasol Cymru yn unol â pharagraff (2)(f) ac (g) yn gymwys pan fo'r person wedi ei gyflogi (pa un ai fel cyflogai neu

fel gweithiwr) neu ei gymryd ymlaen o dan  
gontract ar gyfer gwasanaethau i weithio fel—

- (a) nyrs, neu
- (b) proffesiynolyn cofrestredig.”

*Enw*

Y Dirprwy Weinidog Iechyd a Gwasanaethau  
Cymdeithasol o dan awdurdod y Gweinidog Iechyd a  
Gwasanaethau Cymdeithasol, un o Weinidogion  
Cymru  
Dyddiad

## **The Regulation and Inspection of Social Care (Wales) Act 2016 and Regulated Services (Miscellaneous Amendments) (Wales) Regulations 2020**

This Explanatory Memorandum has been prepared by the Health and Social Services Department and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of *the Regulation and Inspection of Social Care (Wales) Act 2016 and Regulated Services (Miscellaneous Amendments) Regulations 2020*

I am satisfied that the benefits justify the likely costs.

Julie Morgan  
**Deputy Minister for Health and Social Services**  
11 February 2020

## Part 1 – OVERVIEW

### 1. Description

This Explanatory Memorandum relates to the *Regulation and Inspection of Social Care (Wales) Act 2016 and Regulated Services (Miscellaneous Amendments) Regulations 2020* (“The 2020 Regulations”). Due to the range of areas covered in the 2020 Regulations, this Explanatory Memorandum has been grouped into two parts – ensuring adequate oversight of service provider organisations, and registration of the domiciliary support workforce.

#### Ensuring adequate oversight of service provider organisations

The Regulation and Inspection of Social Care (Wales) Act 2016 (“the 2016 Act”) reforms the regulation and inspection regime for social care in Wales. It also provides the statutory framework for the regulation and inspection of social care services and the social care workforce, enabling 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.

The 2016 Act establishes a more streamlined and flexible model of registering service providers. Providers are required to register with the service regulator, Care Inspectorate Wales (CIW), if they intend to deliver regulated services in Wales. Whilst providers are still required to identify the place(s) at, from or in relation to which a service is being provided, the new system only requires individuals or organisations to register once with CIW. This registration will cover a provider’s entire portfolio of services.

Under the 2016 Act the following types of providers can submit an application to be registered to provide regulated services:

- Individuals,
- Partnerships,
- Corporate bodies (including limited companies, incorporated charities, local authorities, co-operative societies and community benefit societies), and
- Unincorporated bodies, such as unincorporated charities or committees.

In the case of an individual provider the application must be made by the individual. In the case of a partnership it must be made by one of the partners. For corporate bodies or unincorporated bodies the application must be submitted by someone authorised to do so by the organisation.

The process of registering service providers is one of the mechanisms through which CIW can assure themselves that people running care services are fit and proper to do so. The information provided at registration enables CIW to monitor the ongoing activity of regulated services to ensure standards are being upheld. Organisations wishing to provide a regulated service in Wales must provide a range of information to CIW which is set out on the face of the 2016 Act and within the *Regulated Services (Registration) (Wales) Regulations 2017* (“The Registration Regulations”), as amended. This

information is taken into account when CIW determines the fitness of the service provider, in line with the requirements set out under section 9 of the 2016 Act.

The Registration Regulations apply to all regulated services under the 2016 Act. Schedule 1 of the 2016 Act lists these services, as follows:

- Care home services
- Domiciliary support services
- Advocacy services
- Adoption services
- Fostering services
- Residential family centre services
- Secure accommodation services
- Adult placement services

The suite of service regulations created under sections 27 and 28 of the 2016 Act<sup>1</sup> place requirements on service providers and responsible individuals in relation to the standards of care and support to be provided. The 2020 Regulations include a range of notifications that service providers must make to CIW including when there is a change in the directors of a company or partners of a partnership organisation. These notifications are an additional mechanism by which CIW can monitor the activity of a regulated service.

#### Registration of the domiciliary support workforce

The proposed Regulations will bring into force a mandatory requirement on all domiciliary support service providers to employ only domiciliary care workers (both employees (whether as an employee or worker) and individuals engaged under a contract for services) who are registered with the social care workforce regulator, Social Care Wales (SCW) from 1 April 2020.

A further amendment has been added to the draft Regulations to include the requirement to register with SCW any person who is engaged under a contract for services to provide care and support to any person in connection with a care home service provided wholly or mainly for children, a secure accommodation service or a

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- <sup>1 1</sup> These are:
    - The Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017;
    - The Regulated Adoption Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019;
    - The Regulated Fostering Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019;
    - The Adult Placement Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019; and
    - The Regulated Advocacy Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019.

domiciliary support service within six months of the date the person is first engaged under a contract for services to provide such care and support. This amendment seeks to close the current legislative anomaly where these workers are not required to register with SCW. This will present a consistent requirement to all employers to employ social care workers who meet the registration requirements and ensure that these aspects of the workforce are regulated and have similar standards and Codes of Practice that will both hold them accountable for failings and ensure that they are suitably skilled to deliver care and support to a high quality.

## **2. Matters of special interest to the Legislation, Justice and Constitution Committee**

The 2020 Regulations are being made under the affirmative procedure and while they include provisions which are subject to the negative procedure, section 40 of the Legislation (Wales) Act 2019 enables subordinate legislation subject to different Assembly procedures to be combined.

## **3. Legislative background**

The 2020 Regulations are being made under the powers within the following sections of the 2016 Act:

- Section 6(1)(d) which allows the Welsh Ministers to prescribe further information required in an application for registration to provide a regulated service. Regulations made under this section are subject to the negative procedure;
- Section 9(9) which allows the Welsh Ministers to make regulations which amend section 9 of the 2016 Act to vary the evidence to which Welsh Ministers (in practice CIW) must have regard when determining whether a service provider, a person applying to be a service provider, a responsible individual or a person designated to be a responsible individual, is a fit and proper person to be a service provider or, as the case may be, a responsible individual. Regulations made under this section are subject to the affirmative procedure;
- Section 27(1) which allows Welsh Ministers to, by regulations, impose requirements on a service provider in relation to a regulated service. Regulations made under this section are subject to the affirmative procedure; and
- Section 187(1)(b) allows Welsh Ministers to make different provision for different purposes, for different cases and for different areas.

As mentioned above the Regulations are to be made under the Assembly's affirmative procedure.

### Ensuring adequate oversight of service provider organisations

The Registration Regulations provide the detail about how individuals and organisations must register to provide a regulated service. The 2020 Regulations set out:

- i. the additional information that must be contained in an application for registration;
- ii. the form the application for registration must take;
- iii. the additional information that must be contained in an application to vary a registration;
- iv. the form the application to vary a registration must take; and
- v. the time limit within which an application for variation must be made in circumstances where there is no Responsible Individual designated.

The information required by the Registration Regulations is used by CIW to determine whether the applicant is a fit and proper person to be a service provider, the relevant considerations of which are set out under section 9 of the 2016 Act. Section 9 states that, in determining the fitness of:

- a service provider,
- a person applying to be a service provider,
- a responsible individual, or
- a person to be designated as a responsible individual,

Welsh Ministers must have regard to all matters they think appropriate and in particular to any evidence falling within subsections (4) to (8) of section 9<sup>2</sup>.

This includes whether the person has committed a range of offences including fraud, violence, firearms, drugs or sexual offences. It also includes offences in relation to the 2016 Act or regulations made under it, as well as offences under the previously applicable legislation, the Care Standards Act 2000 or regulations made under it, as set out in subsection (4). Evidence of association or former association with a person who has done any of the things set out in subsection (4) is also considered relevant.

Subsection (6) requires Welsh Ministers to have regard to whether the person has been responsible for, contributed to or facilitated misconduct or mismanagement in the provision of a regulated service (or of service provided in England, Scotland or Northern Ireland, which if provided in Wales would be a regulated service, or of a service which would have been a regulated service had the regulatory system established under Part 2 of the 2016 Act been operating at the time the service was being provided). In doing so Welsh Ministers must take into account the seriousness and duration of the misconduct or mismanagement, any harm caused, any financial gain made by the person, and any action taken to remedy the misconduct or mismanagement (subsection (7)).

Schedule 3 of the suite of service provider regulations lists the notifications that service providers must make to CIW. These include:

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<sup>2</sup> <http://www.legislation.gov.uk/anaw/2016/2/section/9/enacted>

- Where the service provider is a company, any change in the directors of the company.
- Where the service provider is a partnership, any change in the partners.

These notifications ensure CIW is made aware of any changes of the key decision makers of companies and partnership organisations. However there is currently no similar notification requirement in relation to persons concerned in the management and control of organisations of a different legal entity, such as unincorporated organisations and corporate bodies which are not companies.

#### Registration of the domiciliary support workforce

The amendments made to the *Social Care Wales (Specification of Social Care Workers) (Registration) Regulations 2016*, made under Section 80 of the 2016 Act changed the definition of a social care worker to include domiciliary care workers and allowed SCW to open up the workforce register to these workers on a voluntary basis from 1 April 2018.

This not only advanced the Welsh Government's commitment to further professionalise the workforce and raise the profile of domiciliary care workers but also afforded SCW the opportunity to engage with employers and their employees to help understand the registration process and the requirements that need to be met as part of this procedure in advance of the mandatory registration of this group from 2020.

Implementation of the registration of domiciliary care workers was carried out by SCW through the amendment of the Social Care Wales rules made under sections 83 (Registration Requirements) and 84 (Qualification Requirements) of the 2016 Act.

The 2020 Regulations would amend the 2017 Regulations, placing a requirement on domiciliary care and support service providers to only employ workers (both employees (whether as an employee or worker) and individuals engaged under a contract for services) registered with the workforce regulator, Social Care Wales (SCW) from 2020. They also place a similar requirement on those they employ under contract (i.e. agency staff) who work in residential care services wholly or mainly for children (i.e. children's residential care workers) and those employed in secure accommodation and thus close the current anomaly about these workers.

## **4. Purpose & intended effect of the legislation**

#### Ensuring adequate oversight of service provider organisations

The purpose of amending the Registration Regulations is to strengthen the legal basis on which CIW, acting on behalf of the Welsh Ministers, can obtain certain additional information from persons who form part of the body constituted (formally or informally) as the decision-making body of the organisation, such as the directors, trustees or any person concerned in the management and control of the organisation applying to be a service provider (other than a local authority or health board). Local authority and health board providers are not included as they are accountable via a different route.



For corporate or unincorporated bodies (other than a local authority or health board) seeking to register as a service provider, the person submitting the application may not be the sole decision maker for the service. Because of this shared governance role, CIW considers it important to take into account the fitness of all individuals who form part of the decision-making body of the organisation when determining a provider's application for registration. In the case of partnerships the fitness of each partner is relevant. Therefore the 2020 Regulations amend the Registration Regulations to require certain additional information from each of these individuals.

The information proposed to be sought from each these individuals via the 2020 Regulations is consistent with the information already requested of applicants, other than organisations, seeking registration, which is set out in paragraphs 13 to 22 of Schedule 1 of the Registration Regulations. This is set out as follows:

***Information required about all applicants***

- 13. Details of any previous applications for registration as a service provider under the Act.*
- 14. Details of any registrations as a service provider under the 2016 Act.*
- 15. Details of any previous application for registration under Part 2 of the Care Standards Act 2000.*
- 16. Details of any registrations under Part 2 of the Care Standards Act 2000.*
- 17. Details of any previous applications for registration as a service provider under the Health and Social Care Act 2008.*
- 18. Details of any registrations as a service provider under the Health and Social Care Act 2008.*
- 19. Details of any previous applications for registration as a person providing a care service under Part 5 of the Public Services Reform (Scotland) Act 2010(4).*
- 20. Details of any registrations as a person providing a care service under Part 5 of the Public Services Reform (Scotland) Act 2010.*
- 21. Details of any previous applications for registration under Part 3 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003(5).*
- 22. Details of any registrations under Part 3 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003.*

The 2020 Regulations will also require certain contact information from these individuals including their date of birth, telephone number, correspondence address and electronic mail address.

We also intend to use the regulation-making power under section 9(9) of the 2016 Act to amend part 9 of the 2016 Act to vary the evidence to which Welsh Ministers (in practice CIW) must have regard. This will enable CIW to take the information set out above into account when determining the fitness of a service provider which is an organisation.

In addition, the 2020 Regulations will amend the suite of service regulations to require service providers which are organisations to notify CIW when there are changes in the persons who form part of the body constituted (formally or informally) as the decision-making body of the organisation, not just the directors of companies or partners of partnership organisations. This is to ensure that CIW is made aware of any changes of an organisation's governing body, regardless of the type of organisation that is registered.

### Registration of the domiciliary support workforce

The purpose of the proposed legislation is to deliver on the Welsh Government's commitment to raising the profile and to continue to professionalise the social care workforce. This includes proportionately registering additional categories of social care workers as outlined under the 2016 Act with the workforce regulator, Social Care Wales (SCW). This commitment was expressed in written statements in November 2015<sup>3</sup> and November 2016<sup>4</sup>.

At present, registration with SCW is a mandatory requirement for social workers, social work students, managers and care workers in regulated care homes for children, managers of regulated care homes for adults and managers of domiciliary care services. The 2020 Regulations would extend mandatory registration to domiciliary care workers, both employees (whether as an employee or worker) and individuals engaged under a contract for services.

The aim of introducing mandatory registration for domiciliary care workers is that it will bring benefits both to users of domiciliary care services and to the workforce. These intended benefits include a consistent standard for training, and the introduction of governance around ensuring fitness to practice for the registered section of the workforce. SCW was granted the power to charge a fee for registration in the 2016 Act, and is responsible for setting the fee.

In order to enter on the register, a person must be appropriately qualified. This means that they must have successfully completed a course approved by SCW.

In advance of the proposed mandatory registration date, the Welsh Government implemented a voluntary registration process for domiciliary care workers. This was implemented through amendments made to the Social Care Wales (Specification of Social Care Workers) (Registration) Regulations 2016. The voluntary period of registration for the domiciliary care workforce opened on 1 April 2018 and SCW has been working with the sector to help disseminate information and guidance to employers and the workforce on how to register their current workforce ahead of the proposed deadline for mandatory registration. Despite a slow start, this process has begun to see a greater flow of registrations through the three routes that SCW has developed with the sector to help ease the transition to a registered workforce.

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<sup>3</sup> <http://www.senedd.assembly.wales/documents/s45151/15%20October%202015.pdf> (lines 125 and 126).

<sup>4</sup> <http://www.assembly.wales/en/bus-home/pages/rop.aspx?meetingid=3488&assembly=4&c=Record%20of%20Proceedings#C259695>

These latest regulations, proposed as part of the implementation process of the 2016 Act, will require social care providers delivering a domiciliary care service only to recruit those domiciliary care workers who are registered with SCW after that date. Workers who enter the sector for the first time after that date will have six months from their date of employment to register with SCW and will be required to complete the Level 2 Diploma (if they do not have any transferable qualifications) within a 3 year period at which point they are required to re-register within six months of commencing their employment.

## **5. Consultation**

A formal twelve week consultation on proposals to amend the Registration regulations, create regulations under section 9(9) and proposals in relation to the registration of domiciliary support workers took place between 24 July and 16 October 2019. The consultation received 55 responses from various stakeholders ranging from representative bodies, local authorities, health boards, service providers and individuals.

The consultation summary of responses document was published on the Welsh Government website on 20 January and can be found here: <https://gov.wales/implementation-regulation-and-inspection-social-care-wales-act-2016>

### Ensuring adequate oversight of service provider organisations

As part of the analysis of the impact of the proposals in relation to the oversight of service provider organisations, it became apparent that the requirement for service providers to notify CIW of changes to an organisation's governing body only applied to directors of companies and partners of partnership organisations, as set out in Schedule 3 of the suite of regulations which place requirements on providers and responsible individuals of all regulated services in Wales.

We considered it important for CIW to be notified about any changes in the persons who form part of the body constituted (formally or informally) as the decision-making body of the organisation, regardless of its legal entity. This would provide consistency across the range of organisation types and enable CIW to maintain sufficient oversight of all service providers.

As such we wrote directly to all regulated service providers that are unincorporated organisations using CIW's communication channels in December, allowing them a month to respond. We also published this proposal together with information on how to respond on CIW's website, accessible to all providers, and included this information in CIW's newsletter which is issued to all providers who are signed up to these communications. No responses to this consultation were received.

### Registration of the domiciliary support workforce

In drafting our proposals to open the workforce register to more categories of worker, it was discovered that there was an anomaly in that, those employed under contract (i.e. agency workers) in children's residential care and secure accommodation services

were not included under current legislation. We therefore posed a question as part of the consultation as to whether “agency workers” employed under contract in these areas should be required to register with the workforce regulator. The majority of responses agreed that there should be consistency within the social care sector. However, in order to be proportionate we are proposing to close this legal loophole and to include those employed under contract in both these categories as part of regulations opening the register on a voluntary basis for adult residential care workers. This will therefore be subject to a separate set of draft regulations and not picked up in greater detail here.

## **Impact Assessments**

The required Impact Assessments (Regulatory Impact Assessment (RIA)) and Integrated Impact Assessment (IIA)) have been completed alongside the drafting of the 2020 Regulations and the RIA and relevant sections of the IIA will be published alongside the draft 2020 Regulations when they are laid before the Senedd.

## **PART 2.1 – REGULATORY IMPACT ASSESSMENT**

This Regulatory Impact Assessment (RIA) relates to the *Regulation and Inspection of Social Care (Wales) Act 2016 and Regulated Services (Miscellaneous Amendments) Regulations 2020*. Due to the range of areas covered in the 2020 Regulations, this RIA has been grouped into two parts – ensuring adequate oversight of service provider organisations, and registration of the domiciliary support workforce.

### **ENSURING ADEQUATE OVERSIGHT OF SERVICE PROVIDER ORGANISATIONS**

The options considered by the Welsh Government are as follows:

- **Option one:** Do nothing: do not amend the Registration Regulations, create regulations under section 9(9) of the 2016 Act or amend the suite of service provider regulations.
- **Option two:**
  - Amend the Registration Regulations to enable CIW to obtain information from persons who form part of the body constituted (formally or informally) as the decision-making body of an organisation (other than a local authority or Local Health Board) when registering as providers of regulated services,
  - Use the regulation-making power under section 9(9) to vary the evidence which CIW may have regard to in deciding whether a person is fit and proper to be a service provider, and
  - amend the suite of service provider regulations to require service providers to notify CIW of any changes in the persons who form part of the body constituted (formally or informally) as the decision-making body of the organisation.

### **Costs**

#### **Option one: do nothing**

This is the baseline option and as such there are no additional costs associated with this option.

#### **Option two: create and amend regulations under the 2016 Act**

CIW is already requesting information about “organisational officers” of organisations seeking registration via its online form, as follows:

- Has the organisation previously been registered to provide any other regulated care service(s) in Wales?

- Has the organisation ever been refused registration to provide a regulated service in Wales and the rest of the UK?
- Has the organisation previously had a registration cancelled by enforcement action in Wales and the rest of the UK?
- Has the organisation ever been prosecuted in relation to a regulated service in Wales and the rest of the UK?

Under this option CIW would continue to request this information. However, the Registration Regulations would be amended to reinforce this on a legal basis by requiring applicant organisations to submit the following information about persons who form part of the body constituted (formally or informally) as the decision-making body of the organisation:

- *Details of any previous applications for registration as a service provider under the 2016 Act.*
- *Details of any registrations as a service provider under the 2016 Act.*
- *Details of any previous application for registration under Part 2 of the Care Standards Act 2000*
- *Details of any registrations under Part 2 of the Care Standards Act 2000.*
- *Details of any previous applications for registration as a service provider under the Health and Social Care Act 2008.*
- *Details of any registrations as a service provider under the Health and Social Care Act 2008.*
- *Details of any previous applications for registration as a person providing a care service under Part 5 of the Public Services Reform (Scotland) Act 2010.*
- *Details of any registrations as a person providing a care service under Part 5 of the Public Services Reform (Scotland) Act 2010.*
- *Details of any previous applications for registration under Part 3 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003.*
- *Details of any registrations under Part 3 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003.*
- *Date of birth, telephone number, correspondence address and electronic mail address of each individual designated by the applicant to be a responsible individual.*

The regulation-making power under section 9(9) would be used to vary the evidence which CIW may have regard to in deciding whether a person is fit and proper to be a service provider. This would ensure CIW takes into account the information above when determining a provider's fitness.

The changes to the registration regulations and the creation of regulations under section 9(9) will not affect in practice how organisations register with CIW. CIW is

already requesting this information via its online form and there have been no challenges from organisations so far. Therefore there will not be any additional administrative costs for either organisations or CIW under option two.

Under this option all organisations would have to notify CIW when there is a change in the persons who form part of the body constituted (formally or informally) as the decision-making body of the organisation. This will create a very small additional burden on organisations that are not companies or partnerships, in terms of staff time to make the notification, quantified below.

According to data from CIW, as at 28 October 2019, there have been 80 notifications from a total of 47 providers about changes in their governing bodies since the registration of their services under the 2016 Act from April 2017. 32 of these providers have submitted just one notification and 15 providers have submitted between two and five. It is likely to take around 30 minutes to make a notification to CIW via their online system. Even for the provider with the most notifications (five), this would only equate to 2 1/2 hours over a period of up to 2 ½ years<sup>5</sup>.

According to data from the [Annual survey of Hours and earnings \(ASHE\)](#) the median hourly wage for managers in the health and social services sector in Wales in 2019 was £22.77. Uprating this by 30% to reflect on-costs gives an hourly cost of £29.60. As managers are most likely to be the ones making this notification, this equates to £14.80 per notification, based on a notification taking around half an hour to make. If a service provider makes between one and five notifications over a 2 ½ year period this would cost them between £14.80 and £74 over this period of time, or between £6 and £30 per year.

Based on a breakdown of service provider types in the table below, as of 31 January 2020, there are 23 additional organisations which would have to make a notification, as these organisations are not companies or partnerships. The additional cost for these providers in total would be between £138 and £690 per year.

Provider Type and Sub Type	No. of Providers
<b>Body Corporate</b>	<b>846</b>
Charitable Company	64
Charitable Incorporated Organisation	3
Charitable Trust	1
Limited Company	759
Limited Liability Partnership	4
Other	1
Other Corporate Body	14
<b>Individual Provider</b>	<b>52</b>
Individual Provider	52
<b>Local Authority</b>	<b>28</b>
Local Authority	28

<sup>5</sup> Due to the phased approach to registration it is not possible to say exactly when this provider was registered under the 2016 Act.

<b>Local Health Board</b>	<b>2</b>
Local Health Board	2
<b>Partnership</b>	<b>40</b>
Partnership	40
<b>Unincorporated Body</b>	<b>4</b>
Charitable Trust	4
<b>Grand Total</b>	<b>972</b>

## **Risks**

### **Option one: do nothing**

Without a robust legal basis on which to request information about the persons who form part of the body constituted (formally or informally) as the decision-making body's background in running regulated services there is a risk that applicants may challenge CIW and refuse to provide this information. In these circumstances CIW would not contest the challenge and would have to determine the fitness of the provider based solely on information about the applicant and the person applying to be the designated responsible individual for the service.

This could lead to CIW approving a provider's application despite the fact there may be individuals who had previously operated a failed regulated service that caused harm to people. This, in turn, may lead to poor decisions being made about the operation of the new service which could lead to harm to people using the service.

By not requiring all providers to notify CIW of any changes to persons who form part of the body constituted (formally or informally) as the decision-making body of the organisation, it creates a disparity between providers because of their organisation's legal status, which is not the policy intention. It also means that CIW would not be made aware of when a member of an organisation's governing body changes, which could lead to an organisation recruiting someone that was unsuitable. This could lead to poor decisions being made about the running of the service and may pose a risk to the individuals at those services.

### **Option two: create and amend regulations**

Under option two there is a small risk that, if the regulations are drafted in a way which enables CIW to request information from people within all tiers of governance within an organisation that the Welsh Government could be seen to be extending its reach too far into an organisation. This was a concern raised during the consultation. However, this issue has been considered whilst developing the regulations to ensure it is clear that the requirement for information is limited persons who form part of the body constituted (formally or informally) as the decision-making body of the organisation.

Providing the requirement for information is limited to the "top tier" of governance of an organisation there do not appear to be any risks in relation to this option, considering CIW is already asking for this information in practice.



Requiring providers to submit a notification to CIW when there is a change in persons who form part of the body constituted (formally or informally) as the decision-making body of the organisation will place a small additional burden on organisations which are not already within the scope of the current regulations, i.e organisations which are not companies or partnerships. There is a small risk that some providers will raise this as an issue and may be concerned about why this was not included in the initial proposals during the consultation. However, of the 80 notifications that CIW has received from service providers in relation to changes in organisational officers, three of them are in relation to trustees, which shows that some providers are interpreting the requirement in a broad way and are already making these notifications.

We have mitigated this risk by writing directly to all regulated service providers that are unincorporated organisations using CIW's communication channels in December, allowing them a month to respond. We also published this proposal together with information on how to respond on CIW's website, accessible to all providers, and included this information in CIW's newsletter which is issued to all providers who are signed up to these communications. No responses to this consultation were received.

## **Benefits**

### **Option one: do nothing**

There do not appear to be any benefits under this option.

### **Option two: create and amend regulations**

Under this option there will be a firm legal basis on which CIW can require information from organisational officers. CIW will also be able to take this information into account when determining the fitness of the provider.

This will enable CIW to make a more informed decision about the fitness of people making key decisions about services for vulnerable people in Wales. This should prevent individuals with a poor track record of running regulated services – such as having registrations cancelled or being prosecuted – from being able to register as service providers in the future, if CIW determines it is not appropriate for them to do so. This will increase public confidence in the way in which care services are regulated and will provide a greater safeguard for individuals using regulated services.

Requiring providers to submit a notification to CIW when there is a change in persons who form part of the body constituted (formally or informally) as the decision-making body of the organisation ensures that the requirements are consistent across the range of regulated services, regardless of the legal entity of the organisation. It ensures that CIW maintains an overview of the key decision makers of all services, not just those run by companies, individuals or partnerships.

This change also provides additional clarity to providers as to the notifications required, considering some providers with trustees are already making these notifications.

## **Competition Assessment**

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

In relation to the questions answered “yes” above, the below table provides more supporting information. It shows that although five providers have more than 50% market share in Wales this is because the number of providers of these services is so low, necessarily giving them each a larger share of the market. The filter test therefore shows that the regulations will not have any detrimental effect on competition and a detailed assessment has not been conducted.

#### **Data from CIW on services regulated under the 2016 Act, as of 17 January 2020**

	Service Type	No. of Providers	Max Provider Market Share	No. of Providers with more than 10% market share	No. of Providers with more than 20% market share	Do the largest 3 firms have at least 50% market share?
Based on Capacity of Services	<b>Care Home Services for Adults</b>	<b>623</b>	2.64%	0	0	No
	<b>Care Home Services for Children</b>	<b>71</b>	7.54%	0	0	No
	<b>Residential Family Centre</b>	<b>2</b>	89.74%	2	1	Yes
	<b>Secure Accommodation</b>	<b>1</b>	100.00%	1	1	Yes
Based on Number of Services	<b>Adoption Services</b>	<b>3</b>	33.33%	3	3	Yes
	<b>Adult Placement</b>	<b>6</b>	16.67%	6	0	Yes
	<b>Advocacy</b>	<b>1</b>	100.00%	1	1	Yes

	<b>Domiciliary Support Services</b>	<b>339</b>	1.38%	0	0	No
	<b>Fostering Services</b>	<b>15</b>	6.67%	0	0	No

## **PART 2.2 REGULATORY IMPACT ASSESSMENT**

### **REGISTRATION OF DOMICILIARY SUPPORT WORKERS**

#### **Background**

The registration of the social care workforce began with the Care Standards Act 2000 (the 2000 Act), which mandated the professional registration of social workers, managers of adult residential care homes and managers and workers of children's residential care homes with the then workforce regulator, Care Council for Wales. In 2013 the Welsh Government also legislated for the mandatory registration of managers of domiciliary support services, to bring these into line with other managers in the sector.

The 2016 Act was passed by the National Assembly for Wales on 24 November 2015 and received Royal Assent on 18 January 2016. It provides the statutory framework for the regulation and inspection of social care services and the social care workforce, including the establishment of Social Care Wales (SCW) – the workforce regulator.

During the passage of the Regulation and Inspection of Social Care (Wales) Bill through the National Assembly for Wales in 2015, consideration was given to the registration and professionalisation of other groups within the social care workforce to nurture the profile of the sector and improve standards and quality of care. In light of this discussion, the Welsh Government made several statements that indicated the next groups of the workforce to be registered would be domiciliary care workers and workers in regulated care home services provided wholly or mainly for adults.

In April 2018 regulations came into effect allowing the new workforce regulator, Social Care Wales (SCW), to open the workforce register on a voluntary basis to domiciliary care workers. This was done in order to provide a two year period for SCW to work with the sector to understand and prepare for registration requirements, ahead of the proposed deadline for mandatory registration from 2020.

*The Regulation and Inspection of Social Care (Wales) Act 2016 and Regulated Services (Miscellaneous Amendments) (Wales) Regulations 2020* would amend the 2017 Regulations, placing a requirement on domiciliary care and support service providers only to employ workers registered with the workforce regulator, SCW, from 2020.

To implement this action, we have already amended the SCW rules made under sections 83 (registration requirements) and 84 (qualification requirements) of the 2016 Act through the Social Care Wales (Specification of Social Care Workers) (Registration) Regulations 2016 (the 2016 Regulations). The Social Care Wales (Specification of Social Care Workers) (Registration) (Amendment) Regulations 2018 included domiciliary care workers as a category under the heading social care worker and included an RIA on the impact of that proposal.

This regulatory impact assessment focuses on the impacts of mandatory registration from 2020 onwards.

## *Registration fees*

Under sections 74 and 83 of the 2016 Act 2016, SCW has the power to make provision of the payment of fees in connection with registration to the register. These fees must be specified in rules made by SCW.

The responsibility for setting these fees rests with SCW and not with the Welsh Government. The proposed regulations do not change the powers for SCW to charge a fee, or the level of those fees. However as these are costs which are associated with the implementation of the regulations, they are considered as part of this RIA.

## *Background to the current level of fee charged*

The current registration fees were set in 2018, following a consultation by SCW. Whilst other nations in the UK had revised their fee levels at various times since early 2000, fee levels in Wales had not changed since they were originally set in Wales in 2003 and had become the lowest of all comparable UK social care workforce regulators. According to SCW, the new fees were aimed at bringing the registration fee regime in Wales in line with the other social care regimes across the UK.

Following the consultation SCW determined to raise the fees on a sliding scale over four years from 2018-2019 and ending in 2021-2022. This scale increases social workers and social care manager fees over that period by increments of £10 starting from £50 to £80; and social care workers by increments of £5 beginning at £15 and rising to a maximum of £30. Students studying towards a career in social care would pay a set fee of £15 over the same period.

The Welsh Government worked with the regulator on the issue of registration fees to ensure that there were a number of options considered and that these were set at a level that is both affordable and proportionate in accordance with Welsh Ministerial commitments made in 2015.

## **OPTIONS CONSIDERED**

The two options are:

**Option one:** Do nothing - retain the status quo of voluntary registration;

**Option two:** Extend the social care register to require domiciliary care workers to be registered with SCW from 2020

**Option one:** Do nothing - retain the status quo

Under this scenario all domiciliary care workers in Wales would be able to continue to register voluntarily with the social care workforce regulator, Social Care Wales (SCW). However, this would remain a voluntary option only.

**Option two:** Extend the social care register to require domiciliary care workers to be registered with SCW from 2020.

This proposal places a requirement on service providers that are engaging workers or employees under a contract for services, to provide care and support to any person in connection with a domiciliary support service, only to employ workers registered with Social Care Wales as a social care worker.

Employees or workers that join the register must be ‘appropriately qualified’, which means that they would need to have successfully completed a course approved by Social Care Wales. In practice, this currently means that they would need to hold the necessary Level 2 or 3 Diploma in Health and Social Care or Level 2 award for Social Care Induction (Wales).

The Care Inspectorate Wales (CIW) is the independent regulator of social care and childcare in Wales and is responsible for registering and inspecting domiciliary care services in Wales. CIW will take action to ensure services meet legislative and regulatory requirements. Any provider employing workers or employees that are not registered could be subject to a sanction imposed by Care Inspectorate Wales if it was found not to be meeting the requirements of this regulation. The powers to introduce a sanction are set out in Chapter 5 of the Regulation and Inspection of Social Care (Wales) Act 2016.

### **Costs associated with each option**

#### **Option one: Do nothing - retain the status quo**

##### **Workforce/Employers**

If the status quo is maintained, domiciliary care workers will not incur any additional costs relating to mandatory registration. This also means that employers will not face any additional costs, relating to either a registration fee or any associated costs such as mandatory training.

The costs associated with registration are outlined below under option two.

##### **Workforce regulator (Social Care Wales)**

Under option one, as the regulator has already received some additional funding from the Welsh Government to help with its preparations for extending the register, it would be unlikely to incur any further additional costs associated with registration. If the scheme continues as a voluntary process, it is unlikely that any large numbers of social care workers in domiciliary care settings would continue to register.

##### **Service Regulator (Care Inspectorate Wales)**

Under this option, as registration of domiciliary care workers would be voluntary, no additional duties would be placed on the service regulator as part of its inspection of services and therefore there would be no additional costs incurred.

## **Option two: Extend the social care register to require domiciliary care workers to be registered with SCW from 2020.**

### **Workforce**

Social care workers employed in domiciliary care who opt to register voluntarily will be subject to paying an annual fee for registration. This is currently £20 but in 2020/21 this will increase to £25 and in 2021/22 to £30. This follows a consultation exercise undertaken by SCW.

Under mandatory registration, all domiciliary care workers will be required to pay the registration fee. With an estimated 17,000 workers in domiciliary care, the cost to the workforce will be (17,000 x £25) £425,000 in 2020/21 and (17,000 x £30) £510,000 in 2021/22.

As with domiciliary care workers voluntarily registering currently, new registrants can apply to HMRC<sup>6</sup> to reclaim a proportion of this fee back as a tax deduction. The guidance provided by the UK Government website outlines that an individual can claim tax relief on fees or subscriptions you pay to approved professional organisations if it relates to your job. However, an individual would not be able to claim fees or subscriptions that they have not paid for themselves (e.g. an employer has paid for them). This may have a marginal impact on the Welsh tax base and the Welsh Government's new tax raising powers but given that voluntary registration has been phased in over two years, we envisage this to be almost negative.

SCW has confirmed that there will be a number of payment options available to registrants, including direct debits for either a single payment or monthly instalments spread out over a year.

In addition to the fee, there is an associated cost relating to the time taken to complete the registration process. It is difficult to determine the extent to which this cost is likely to fall on individual workers or their employers, and if it were to fall on individual workers, it becomes increasingly difficult to quantify. Therefore, for the purposes of this RIA while the fee is assumed to be a cost to the workforce, the assumption is that work of registration will be undertaken in work hours. On this basis, an estimated cost has been produced based on the burden being incurred by employers is set out below.

### **Social Care Providers (Employers)**

#### *Cost of Registration*

There may be a potential financial cost for employers, who may pay the registration fee on behalf of their staff either as an inducement to join or remain with their company. However, we have no information on how common this practice is and the workforce regulator is unable to breakdown the split because of the variety of payment methods

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<sup>6</sup> Guidance on how and what can be claimed back can be found at <https://www.gov.uk/tax-relief-for-employees>

used. We have therefore simply noted that this practice might occur, as any assumption would risk double counting possible costs.

### *Cost to Complete the Registration Process*

Based on an estimate of approximately two hours to complete the registration process and using the Low Pay Commission's predicted national living wage for people aged 25 and over of £8.67 per hour in 2020 as a baseline, we can calculate that cost to complete one registration would be approximately £17.34 per worker. However, when factoring in an employer's on-costs for such things as national insurance and pension contributions, we estimate this would add an extra 30% (or £5.20) equating to a total cost of £22.54.

This reflects the evidence gathered as part of Care and Social Services Inspectorate Wales' (CSSIW) national review of domiciliary care in Wales<sup>7</sup> in 2016 that the majority of workers are on the minimum wage but in the over 25 bracket<sup>8</sup>. Therefore, the cost of mandatory registration, which in this scenario is assumed to be an opportunity cost falling on employers, will be as follows: (£8.67 x 2 + £5.20 x 17,000) £383,000 (rounded to nearest £1,000) for completing the registration process.

Additional costs could include time for managers to learn about and to manage the record keeping requirements for the registration process. This is more difficult to quantify as it will vary depending on the previous knowledge and experience of the manager, the number of staff they manage, and their salary level. However in order to mitigate any of these costs, SCW will be tasked with making the registration and record-keeping processes as accessible as possible.

### *Training Costs*

Linked to the registration of staff is the cost of meeting the required qualification requirements. A new suite of qualifications was launched in September 2019, and SCW has determined that the minimum qualification requirements will be level 2 in Health and Social Care (Diploma, QCF or NVQ) or equivalent. Social Care Wales estimate that it will take a notional 475 hours to complete this training, which includes "on-the-job training" and "off-site" learning<sup>9</sup>. However the amount of time in "off-site" learning will vary greatly depending on the individual's learning needs. For example, employers are already likely to have invested in more experienced workers, who are less likely to need additional training off-site to meet the requirements of the qualification (for example, they may already have received first aid training). A worker that is new to the sector, and who may for example come straight from formal education may have greater needs in terms of learning that needs to be undertaken "off-site". It is worth noting that employers are already required to invest in training and that to some degree, this is not a new requirement. The qualification places a more formal structure around the training and allows workers to evidence their learning,

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<sup>7</sup> <https://careinspectorate.wales/sites/default/files/2018-03/161027aboveandbeyonden.pdf> - page 94

<sup>8</sup> Accurate data is not available on the average age of the workforce, therefore we are reliant on parallels drawn from evidence collected on other areas of the workforce in similar roles i.e. residential child care workers – where the average age is 38 – see SCW factsheet on Residential child care workers on the Register (1 April 2018) [https://socialcare.wales/cms\\_assets/file-uploads/RCCW-factsheet.pdf](https://socialcare.wales/cms_assets/file-uploads/RCCW-factsheet.pdf)

<sup>9</sup> Although described here as "off-site" learning the learning may be undertaken on the premises.



Employers may be expected to pay employees for the time spent on training, including "off-site" training, but the cost of this is difficult to estimate given the individualised nature of the learning. However, if we take a standardised notion of 1 day training off-site per week of the total notional 475 hours of training, we can estimate that the cost would equate to 95 hours at a cost of approximately £1,071 (i.e. 95 hours of training at the current (2019) national minimum wage of £8.21 and on-costs (at 30% of salary costs)). However, for the reasons outlined above this does not reflect what may actually be happening on the ground, where in fact the likely cost is expected to be much lower.

Based on current figures for registration of domiciliary care staff, this assumes that 22% of the workforce will re the qualification.<sup>10</sup> To bring this number of the workforce up to the required qualifications would equate to a cost of £3.9 million for the sector in salary costs<sup>11</sup>.

In answer to some concerns from the sector that there were some employees who would not be interested in acquiring a qualification and could therefore leave the sector, SCW worked with the sector to find some solutions to help retain these staff but allow them to register. As well as the qualification route, SCW developed two other options to help the current workforce register which included a conferred competence route – where employees endorsed by their managers that they have the right skills and competences – and where workers are new and will not have time to complete the qualification requirements by the mandatory deadline, they could complete the first module (and associated assessment) of the induction framework on skills and values for working in social care prior to registration. This would help ease the immediate pressure on employers around the cost of training to ensure staff are registered by the mandatory deadline, but there will still be costs relating to continued professional development for staff going forward. It is difficult to quantify the savings that these options would give employers.

However, these costs are not a consequence of this regulation alone. Employers already have a legal obligation placed upon them under the Regulation and Inspection of Social Care (Wales) Act 2016 to ensure that their staff receive "*appropriate training to understand behaviours and adopt strategies to support individuals with their behaviours to achieve positive well-being and outcomes.*" Even without mandatory registration, employers will meet the cost of training staff to ensure that they comply with this requirement and this will include training that cannot be undertaken "on-the-job". However we do not have data available on the current (pre-registration) cost to employers of training staff.

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<sup>10</sup> SCW figures show that as at January 2020, of around 12,500 registrants 76% of the domiciliary workforce has registered with a qualification, with 13% of these registering through the confirmed competence route and 11% of these using the Principles and Values route (or 8% of the total). Based on an assumption that the remaining workers left to register will not be qualified, that approx. half of these may come through on the confirmed competence route, this gives us a calculation of a total 22% of the workforce registering that need to be trained (i.e. 8% already registered through confirmed competence and a further 14% potentially to register through confirmed competence)

<sup>11</sup> This figure is based upon the current National Living Wage of £8.21 + £2.60 employer on-costs x 95 hours to complete a Level 2 qualification x 3,800 workers needing to attain this qualification.

Overall, a more consistent approach to training across the sector is likely to result in greater value for money to employers. It could even introduce some cost savings, for example where workers move from one employer to another.

### **Workforce Regulator (Social Care Wales (SCW))**

The costs associated with maintaining the register and regulating domiciliary care workers include:

- Direct staffing costs arising from the demands of managing the registration process
- Direct staffing costs arising from additional staff needed to oversee an anticipated increased number of conduct and fitness to practice processes,
- Indirect costs such as for venue hire for conduct committees, and conduct committee expenses.

As outlined above, the workforce regulator has already received funding to help cover the initial costs associated with preparing for the inclusion of more social care workers to the workforce register. The Welsh Government provided an in principle commitment to additional funding outside of SCW's revenue grant-in-aid funding to cover additional staffing costs to help with the registration process and also provided an in principle agreement to provide a further increase in the costs to help with any potential significant rise in the number of fitness to practice hearings for the regulator, which would be a substantial financial and administrative cost.

SCW estimate that the costs associated with maintaining the register and regulating domiciliary care workers (and adult residential care workers) would increase year on year as more of the workforce enter the register and the increase would rise from £1,130,738 in 2018-2019 to 2,995,000 in 2021-2022. Some of these costs would be offset by the collection of registration fees. The following table estimates the income anticipated to SCW from registration, under option 2.

<b>Group</b>	<b>2018/19</b>	<b>2019/20</b>	<b>2020/21</b>	<b>2021/22</b>
<b>Current registrants 11,000</b>	£455,755 (a)	£550,015 (b)	£644,275	738,535
<b>Domiciliary care workers</b>	£120,000	£400,000 (c)	£500,000	£600,000 (d)
<b>Care Home workers etc</b>	n/a	n/a	£200,000 (e)	£600,000 (f)
<b>Total Income</b>	<b>£575,755</b>	<b>£950,015</b>	<b>£1,344,275</b>	<b>£1,938,535</b>

Registration fees are collected from the approximately 11,000 registrants currently registered with SCW; up to 2017/18 this provided the regulator with a total of £271,970 worth of income. The figure shown at (a) represents the increased revenue stream when registration fees across all categories were increased in 2018/19.

(b) reflects the first of a series of incremental increases in fee levels for all categories of registered workers.

With the registration of the domiciliary care workforce, it is estimated that a further £400,000 (c) will be added to the regulator's revenue stream by the time that exercise is completed in 2020 (based on 16,000 workers charged a fee of £25). This will be in addition to a further incremental increase on the registration fees of the initial 11,000 registrants. The figure shown at (d) represents the final planned incremental increase in registration fees across all categories.

With the registration of adult residential care workers, SCW estimate that 8,000 adult residential care workers to register in the first year of the register being opened in 2020-2021 with the majority following up throughout 2021-2022. This would equate to revenue totalling £200,000 in 2020-2021 (e) and £600,000 (f) by 2021-2022 and also includes the incremental fees for those periods.

### *Fitness to practice hearings*

Fitness to practice proceedings are held when a failing of standards has occurred that has led to poor quality of care or malpractice. These investigations take up a significant amount of the regulator's resources and SCW estimate that the costs associated with maintaining the register and regulating domiciliary care workers (and adult residential care workers) will increase from £1,136,000 in 2019/2020 to £2,994,000 in 2021/2022<sup>12</sup>. Whilst it is difficult to estimate the numbers that may be involved, or split them between domiciliary care workers and other care workers for this exercise, SCW predicts that, with the inclusion of both the full domiciliary care workers and adult residential care workers (approximately 36,000 workers) this number could increase by a further 84 cases going to full hearing by 2022. If we take this estimate as a starting point, this would mean that the regulator would incur an additional expenditure of £1,092,000 to their overall regulatory costs, equating to a total of £1,417,000 per annum. In total, the figures provided show that SCW expect to see an increase in its conduct panel activity costs to increase to £1,741,000 by 2021-2022.

In order to provide additional staff resources to cover the expected increase in activity, SCW have estimated that it would require the employment of 27 whole time equivalent (WTE) members of staff to cover the increase in activity (6 WTE in the Registration department, 17 in the Fitness to Practice department and 4 in the Committee management team). SCW estimate it would also require additional funding to cover the costs of running the three regulation departments; to cover accommodation costs to house the new staff and associated support costs. Some of these costs have been offset with additional funding from the Welsh Government and whilst the regulator will use some of the income generated by the registration fee to offset these costs, these funds will not meet the entire cost of regulation.

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<sup>12</sup> Figures provided by Social Care Wales to aid the Regulatory Impact Assessment on costing the proposed regulation to open the register early in 2018.

## **Care Inspectorate Wales (CIW)**

Care Inspectorate Wales has confirmed that questions have been developed and incorporated into their existing procedures for service inspections to check on staff and confirm that they have registered with SCW and therefore do not foresee any additional costs as part of the 2020 Regulations. The existing Memorandum of Understanding between the regulators already provides for the exchange of information to allow for the verification of data and sharing of intelligence.

## **Welsh Government**

The Welsh Government currently provides funding to the regulator through grant-in-aid funding. In preparation for the opening up of the voluntary register, the Welsh Government provided the regulator with £1 million to meet the direct costs associated with this exercise to cover additional staffing and IT costs. Whilst it is expected that the additional revenue generated by the increase in registration fees will go some way to offsetting the need for further funding, as sponsor body, the Welsh Government accepts that it will not meet all of the costs associated with registration and regulation of the workforce. The Welsh Government will continue to work with SCW to monitor what additional costs may arise from the demand for fitness to practice reviews and hearings that may arise from the increase to the workforce register.

The Welsh Government currently also funds apprenticeships for Level 2 in Health and Social Care and Child Care and it is possible that extending the register could see potential increased in demand for this route. It is estimated that growth in the take up of apprenticeships is likely to be seen mostly in the private and voluntary sectors but that it is difficult to predict what that growth will look like. However, for illustrative purposes if we take current estimates that around 54% of those registering are trained, and that a further 23% of the workforce are being registered through the confirmed competency route, there could be a potential 22% increase in those seeking to access the apprenticeship programme due to registration. The current cost of an individual apprenticeship through the programme is £5,449 per individual, which would, taking 22% of the estimated domiciliary care workforce equates to 4,250 workers being added to the programme, equate to a cost of £6,910,494 per year of training over the three year period before registration renewal is required (or £20,731,483 over three years).

## **Benefits associated with each option**

### **Option one: Do nothing - retain the status quo**

It could be argued that the primary benefit of retaining the status quo is that there will be no obligation on workers or employers in the social care sector to register staff, and therefore no associated costs of doing so.

### **Option two: Extend the social care register to require domiciliary care workers to be registered with SCW from 2020.**

The mandatory registration of the domiciliary care workforce will further build on steps taken to professionalise the sector, which is the overall objective of the work. The anticipated benefits of registration include:

- Improved trust and confidence in social care workers among both users and the general public;
- Workers in social care feel they are valued which can lead to improved job satisfaction;
- A happier and more supported workforce could lead to improvements in the quality of care;
- Ensuring that the workforce is trained and has the proper skills to do the job can provide additional protection and assurance for users.

Requiring workers to register will ensure a consistent approach to registration, which means that the above benefits are more likely to materialise.

'Fitness to Practice' governance surrounding registration means that workers will have recourse to a panel should they wish to defend themselves against allegations of malpractice, and users will be assured by the existence of formal recourse should they have serious concerns about the practice of an individual worker.

Mandatory registration is aimed at building trust in the skills and qualifications of the workforce, between workers, employers and individuals receiving support and care. Domiciliary care workers would also receive greater recognition from people receiving their care. By being subject to regulation, users will be reassured that greater safeguards are in place if conduct or actions could be investigated by an independent body.

Although mandatory registration is not the only route to ensuring greater support from SCW for workers in the sector, it does mean that they would be more likely to access the advice, access to training programmes and online training tools and guidance that will be made available.

A benefit to employers of recruiting registered workers is that they would have clear evidence that the worker meets the necessary requirements to deliver that role, as this forms a basis of registration. This would also help employers to better understand the skills of their employees and focus their workforce planning around longer term aims and requirements. It would also afford them the opportunity of checking with the regulator to see whether a potential employee has been subject to any disciplinary action in the past, which they may not have disclosed and that would warrant concern.

Professionalisation of the workforce could help improve recruitment and retention as the sector is seen as one in which skills are developed, valued and can be evidence through the holding of a professional qualification and title.

### **Risks associated with each option**

#### **Option one: Do nothing - retain the status quo**

The primary risk to option one is that workers will not engage with the registration process. This means that the benefits of registration will not be obtained.

Given the significant efforts to promote registration, not proceeding to mandatory registration could lead to a risk of confusion about the status of workers not on the register, for example whether they are suitable to employ.

There is also a risk of reputational damage to the Welsh Government which has committed to professionalising and raising the profile the social care workforce. Stakeholders in the sector have been supportive of the registration of the workforce and have understood the benefits therefore not proceeding could result in some of these stakeholders becoming disengaged with future policy development.

Workers that are accused of failings or misconduct will have no recourse to defend themselves from such accusations. The option to be able to present their side of events to an independent Fitness to Practice panel that would afford them some protection from any negative impacts of such allegations on their reputations if these are then found to be untrue.

A system which only supports voluntary registration could also lead to a 'two-tier' approach to the workforce, with a perception that workers that are not registered are not as skilled as those that are.

Additionally if employers are not obliged to invest in workers' training there is a risk of an inconsistent approach to training in the sector and less investment in the workforce.

**Option two: Extend the social care register to require domiciliary care workers to be registered with SCW from 2020.**

Concerns have been raised in the consultation process about the risk that mandatory registration will cause an increase in the existing turnover level (currently estimated at 34% per annum). The risk is considered to be particularly acute in the first six months of employment for individuals if there is a perception that registration is too costly to either workers or employers, or if the benefits were not considered to be of sufficient value. This could have significant impacts upon the retention of staff as they could leave the sector or move to another area which are not registered (i.e. personal assistants); or that recruitment could become increasingly difficult and there may be fewer entrants to the market. This was considered to be a particular concern in a sector that is already perceived as having very low wages.

However, evidence from the introduction of mandatory registration in Scotland has not shown signs of increased staff losses there<sup>13</sup>. In addition to this, SCW will be working hard to minimise these risks through communicating the benefits of registration and making it as accessible as possible through developing different routes to qualification and different options for payment of registration fees.

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<sup>13</sup> <https://data.sssc.uk.com/images/WDR/WDR2017.pdf> - Scottish Social Service Sector: Report on 2017 Workforce Data, published 29 August 2018

## Summary and preferred option

Two options have been considered. Option one is to retain the existing system whereby the workforce would not be required to register with the regulator but can do so voluntarily. This option could lead to an inconsistent approach to registration in the sector, with many 'opting out'. This means that the full benefits of registration of the workforce will not be achieved.

Option two will ensure a consistent approach to registration of the domiciliary care workforce, and would ensure that the benefits of registration are realised fully including the associated investment in workforce skills on the part of employers.

Therefore option two is the preferred option.

## Competition Assessment

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

The filter test shows that it is not likely that the regulation will have any detrimental effect on competition; therefore a detailed assessment has not been conducted.

We do not consider it necessary to undertake a competition assessment for the 2020 Regulations since they will not affect the business sector in any significant way.

02 Mawrth 2020

## SL(5)505 – Cod ymarfer ar arfer swyddogaethau gwasanaethau cymdeithasol mewn perthynas â Rhan 4 (taliadau uniongyrchol a dewis o lety) a Rhan 5 (codi ffioedd ac asesiadau ariannol) o Ddeddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014

### Cefndir a Phwrrpas

Cyhoeddir y cod ymarfer hwn o dan adran 145 o Ddeddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014 (y "Ddeddf").

Mae'r cod hwn, a'r rheoliadau y mae'n cyfeirio atynt, yn nodi'r gofynion ar awdurdodau lleol mewn perthynas â'r canlynol:

- pennu cyfraniad neu ad-daliad mewn cysylltiad â thaliadau uniongyrchol o dan adrannau 50-53 o'r Ddeddf (Taliadau uniongyrchol);
- y dewis o lety i'r rhai mewn cartref gofal, gan gynnwys talu costau ychwanegol o dan amgylchiadau penodol, o dan adran 57 o'r Ddeddf (Achosion pan fo person yn mynegi ei fod yn ffafrio llety penodol);
- codi ffioedd ac asesiadau ariannol o dan adran 59 o'r Ddeddf (Pŵer i osod ffioedd) ar y rhai sy'n cael gofal a chymorth, neu gymorth yn achos gofalwyr;
- gohirio taliadau gan y rhai mewn cartref gofal o dan adran 68 o'r Ddeddf (Cytundebau ar daliadau gohiriedig);
- codi ffi o dan adran 69 o'r Ddeddf (Codi ffi am wasanaethau ataliol a chynhorthwy) am ddarparu neu drefnu gwasanaethau ataliol a chynhorthwy;
- adennill dyledion o dan adran 70 o'r Ddeddf (Adennill costau, llog etc) a throsglwyddo asedau i osgoi ffioedd o dan adran 72 o'r Ddeddf (Trosglwyddo asedau i osgoi ffioedd);
- adolygiadau o dan adran 73 (Adolygiadau sy'n ymwneud â chodi ffioedd) sy'n ymwneud â dyfarniadau ynghylch codi ffi a wneir o dan y Ddeddf neu ffioedd a godir o dan y Ddeddf.

Mae'r cod hwn yn cwmpasu'r canlynol:

- llunio polisi ynghylch codi ffioedd;
- materion cyffredin mewn perthynas â chodi ffioedd;
- codi ffi am ofal a chymorth mewn cartref gofal;
- dewis o lety wrth drefnu gofal mewn cartref gofal;
- gwneud taliadau am gostau ychwanegol ar gyfer y llety sy'n cael ei ffafrio;





- codi ffi am ofal a chymorth yn y gymuned;
- codi ffi am gymorth i ofalwyr.

## Gweithdrefn

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Rhaid gosod drafft o'r cod gerbron y Cynulliad. Os, o fewn 40 diwrnod (heb gynnwys unrhyw amser pan fydd y Cynulliad wedi ei ddiddymu neu pan fydd ar doriad am fwy na phedwar diwrnod) o osod y drafft, bydd y Cynulliad yn penderfynu peidio â chymeradwyo'r drafft, ni chaniateir i Weinidogion Cymru ddyroddi'r cod.

Os na wneir penderfyniad o'r fath cyn diwedd y cyfnod hwnnw, rhaid i Weinidogion Cymru ddyroddi'r cod (neu'r cod diwygiedig) ar ffurf y drafft, a daw'r cod (neu'r cod diwygiedig) i rym ar y dyddiad a bennir drwy orchymyn Gweinidogion Cymru.

**Rhiant-Ddeddf:** Deddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014

**Fe'u gwnaed ar:**

**Fe'u gosodwyd ar:** 12 Chwefror 2020

**Yn dod i rym ar:** 06 Ebrill 2020



Cynulliad Cenedlaethol Cymru

**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

—

National Assembly for Wales

**Legislation, Justice and Constitution Committee**

**Tudalen y pecyn 86**

# SL(5)503 – Cod ymarfer mewn perthynas â pherfformiad gwasanaethau cymdeithasol yng Nghymru a gwella'r gwasanaethau hynny

## Cefndir a diben

Mae'r cod ymarfer hwn yn ymwneud â'r modd y mae awdurdodau lleol Cymru yn arfer eu swyddogaethau gwasanaethau cymdeithasol, ac mae'n nodi sut y bydd awdurdodau lleol yn hybu, yn mesur ac yn cynnal y broses o wella gwasanaethau, ac yn gwella bywydau unigolion.

Dyma brif ddibenion y cod:

- pennu safonau ansawdd,
- cyflwyno fframwaith perfformiad a gwella,
- nodi'r data a'r dystiolaeth y mae'n rhaid i awdurdodau lleol eu casglu i ddangos cynnydd o ran cyflawni'r safonau ansawdd,
- sicrhau bod awdurdodau lleol yn defnyddio data a thystiolaeth yn effeithiol,
- sicrhau bod awdurdodau lleol yn deall eu cyfrifoldeb dros wella canlyniadau lles y rhai y mae angen gofal a chymorth arnynt, a dros gynorthwyo gofalwyr.

## Gweithdrefn

Rhaid gosod y cod gerbron y Cynulliad. Os yw'r Cynulliad, cyn pen 40 diwrnod ar ôl gosod y cod drafft (ac eithrio unrhyw gyfnod pan fydd y Cynulliad wedi'i ddiddymu neu yn ystod toriad o dros 4 diwrnod), yn penderfynu peidio â chymeradwyo'r cod drafft, ni chaiff Gweinidogion Cymru gyhoeddi'r cod.

Os na fydd y Cynulliad yn gwneud penderfyniad o'r fath, rhaid i Weinidogion Cymru gyhoeddi'r cod (ar ffurf y drafft) a daw'r cod i rym ar ddiwrnod a nodir mewn gorchymyn a wneir gan Weinidogion Cymru.

## Craffu o dan Reol Sefydlog 21.7

**Nodwyd dau bwynt i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.7 mewn perthynas â'r cod hwn.**

1. Mae'r cod yn rhoi pwyslais cryf ar gasglu, defnyddio a rhannu data, a hynny er mwyn gwella gwasanaethau cymdeithasol yng Nghymru. Fodd bynnag, nid yw'n cyfeirio at unrhyw asesiad a gynhaliwyd, neu y bydd angen ei gynnal, i fesur effaith y cod ar ddiogelu data.

Deallwn fod y Rheoliadau Diogelu Data Cyffredinol yn gosod gofynion llymach mewn perthynas ag asesu'r effaith ar ddiogelu data, fel y gellir dadansoddi, nodi a lleihau risgiau diogelu data'n well.

2. Mae'r Memorandwm Esboniadol yn nodi mai Llywodraeth Cymru basiodd Deddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014. Er mai Llywodraeth Cymru oedd yn gyfrifol am ddrafftio, dylunio a chyflwyno'r ddeddfwriaeth, cafodd ei gwneud/pasio gan Gynulliad Cenedlaethol Cymru.



Cynulliad Cenedlaethol Cymru  
**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

National Assembly for Wales  
**Legislation, Justice and Constitution Committee**

## Y goblygiadau yn sgil gadael yr Undeb Ewropeaidd

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Ni nodwyd unrhyw bwyntiau i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.7 mewn perthynas â'r cod hwn.

## Ymateb y Llywodraeth

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Nid oes asesiad o'r effaith ar ddiogelu data wedi ei gynnal, gan nad yw'r Cod Ymarfer yn ei gwneud yn ofynnol casglu, prosesu na rhannu unrhyw ddata personol newydd o dan Erthygl 35(1), 35(3) a 35(4) o'r GDPR. Mae unrhyw wybodaeth newydd a gesglir ac a rennir yn unol â'r Cod Ymarfer wedi ei chyfyngu i ddata rhifiadol ac nid yw'n dangos pwy yw unrhyw unigolion.

Ystyrir a yw Asesiad o'r Effaith ar Ddiogelu Data yn ofynnol wrth ddyroddi neu ddiwygio unrhyw ganllawiau yn y dyfodol sy'n nodi'r gofynion data o dan y fframwaith perfformiad a gwella.

### Cynghorwyr Cyfreithiol

### Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

17 Chwefror 2020



Cynulliad Cenedlaethol Cymru

**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

—  
National Assembly for Wales

**Legislation, Justice and Constitution Committee**

# **Cod ymarfer mewn perthynas â pherfformiad a gwella gwasanaethau cymdeithasol yng Nghymru**

# **Cod ymarfer mewn perthynas â pherfformiad a gwella gwasanaethau cymdeithasol yng Nghymru**

*Mae'r cod hwn yn diddymu'r cod ymarfer mewn perthynas â mesur perfformiad gwasanaethau cymdeithasol a gyhoeddwyd ym mis Ebrill 2016*

## **Mynegai**

# **Cod ymarfer mewn perthynas â pherfformiad a gwella gwasanaethau cymdeithasol yng Nghymru**

## **1. Cyflwyniad**

1.1 Cyhoeddir y cod ymarfer hwn o dan adran 145 o Ddeddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014.

1.2 Mae Deddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014 ar gael yn:

<http://www.legislation.gov.uk/cy/anaw/2014/4/enacted>

1.3 Mae'r cod ymarfer hwn yn diddymu'r cod ymarfer mewn perthynas â mesur perfformiad gwasanaethau cymdeithasol a gyhoeddwyd ym mis Ebrill 2016.

1.4 Dylid darllen y cod ar y cyd â'r holl godau ymarfer perthnasol o dan Ddeddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014.

1.5 Wrth arfer eu swyddogaethau gwasanaethau cymdeithasol, rhaid i awdurdodau lleol weithredu yn unol â'r gofynion yn y cod hwn. Nid yw adran 147 (Gwyo oddi wrth ofynion mewn codau) yn berthnasol i unrhyw ofynion yn y cod hwn.

1.6 Rhaid i awdurdodau lleol roi sylw i unrhyw ganllawiau a amlinellir yma. Yn y cod ymarfer hwn, mae gofyniad yn cael ei fynegi fel "rhaid" neu "rhaid peidio". Mae canllawiau'n cael eu mynegi fel "gall/ni all" neu "dylai/ni ddylai".

1.7 Mae'r cod ymarfer hwn yn berthnasol i awdurdodau lleol yn unig mewn perthynas â'u swyddogaethau gwasanaethau cymdeithasol a nodwyd yn Neddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014.

1.8 Dylai cyrff partneriaeth dalu sylw i'r cod ymarfer hwn a'i ddefnyddio i ddeall sut y mae eu gwaith yn hwyluso gwelliant mewn gofal cymdeithasol, yn benodol wrth gydweithio ag awdurdodau lleol neu gyfrannu at ganlyniadau llesiant pobl sydd angen gofal a chymorth neu ofalwyr sydd angen cymorth.

1.9 Datblygwyd y cod diwygiedig hwn yn dilyn ymgynghoriad ffurfiol a thrwy gydweithredu ag awdurdodau lleol a rhanddeiliaid allweddol eraill ar draws Cymru. Mae'r cod newydd yn amlinellu'r gofynion perfformiad a gwella ar gyfer awdurdodau lleol o ran Deddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014 ac yn sefydlu set ddiwygiedig o safonau ansawdd y mae'n rhaid i bob awdurdod lleol anelu i'w cyrraedd. Mae'r cod wedi'i gryfhau i sicrhau bod perfformiad a gwelliant yn gyfartal o ran y gefnogaeth a ddarperir gan awdurdodau lleol i bobl sydd angen gofal a chymorth a gofalwyr sydd angen cymorth. Gwnaed y fframwaith perfformiad a gwella yn fwy hyblyg hefyd trwy gyhoeddi'r holl ofynion data mewn canllawiau ar wahân i alluogi awdurdodau lleol i gasglu ystod ehangach o ddata.

## **2. Y Weledigaeth**

2.1 Mae'r cod ymarfer hwn yn nodi sut y bydd gwelliannau mewn gwasanaethau ac ar gyfer unigolion yn cael eu cefnogi, eu mesur, a'u cynnal gan awdurdodau lleol. Trwy weithredu'r cod ymarfer hwn yn effeithiol, a thrwy ddefnyddio'r ystod eang o ddulliau a nodwyd yn y fframwaith perfformiad a gwella, bydd Cymru yn gallu datblygu'n genedl gyfoethog o ran data lle bydd data a thystiolaeth yn cael eu defnyddio fel mater o drefn i lywio penderfyniadau polisi a gwella canlyniadau.

2.2 Mae gan Gymru hanes o ymarfer uchelgeisiol ac arloesol wrth gefnogi pobl sydd angen gofal a chymorth a gofawyr sydd angen cymorth. Rhaid i bob awdurdod lleol yng Nghymru barhau i geisio cyflawni'r gwelliant parhaus hwn.

2.3 Mae'r dulliau a'r gofynion a nodwyd yn y cod ymarfer hwn yr un mor berthnasol i awdurdodau lleol ag i Lywodraeth Cymru. Bydd y cod ymarfer hwn yn cael ei ddefnyddio i:

- sicrhau bod awdurdodau lleol yn canolbwyntio ar berfformiad **a** gwelliant
- amlinellu'r gwahanol fathau o ddata y mae'n rhaid i awdurdodau lleol eu casglu a chael mynediad atynt i lywio eu perfformiad a'u gwelliant
- codi disgwyliadau mewn perthynas ag ansawdd a chysondeb data a gesglir gan awdurdodau lleol
- sicrhau bod awdurdodau lleol yn cyflawni eu swyddogaethau craidd fel y nodwyd yn Neddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014, y ddeddfwriaeth gysylltiedig, a'r codau ymarfer
- sicrhau bod dull clir, a ddeallir yn genedlaethol, o lywio perfformiad a gwelliant sy'n cael ei rannu rhwng Llywodraeth Cymru ac awdurdodau lleol
- sicrhau bod awdurdodau lleol, Llywodraeth Cymru a phartneriaid eraill yn y sector gofal cymdeithasol yn gallu cael mynediad at ddata cyson a chymaradwy sy'n darparu tystiolaeth glir o gynnydd, yn nodi meysydd lle mae angen gwneud gwaith pellach ac yn llywio polisiau yn ddibynadwy ar lefel leol a chenedlaethol
- llywio strwythur a chynnwys Adroddiad Gwasanaethau Cymdeithasol Blyneddol Llywodraeth Leol<sup>1</sup> (y cyfeirir ato fel Adroddiad y Cyfarwyddwr)
- darparu dealltwriaeth o ddarpariaeth y swyddogaeth gwasanaethau cymdeithasol i lywio llywodraethu strategol a gwneud penderfyniadau ar lefel awdurdod cyfan.

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<sup>1</sup>Fel sy'n ofynnol o dan adran 144A o Ddeddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014.

### 3. Diben

3.1 Mae gan y cod ymarfer hwn sawl diben y mae'n rhaid i'r holl awdurdodau lleol wybod amdanynt a chydymffurfio â nhw. Dyma brif ddibenion y cod:

- Nodi'r safonau ansawdd
- Nodi'r fframwaith perfformiad a gwella
- Nodi'r data a'r dystiolaeth y mae'n rhaid i awdurdodau lleol eu casglu i roi tystiolaeth o'u cynnydd tuag at gyflawni'r safonau ansawdd
- Sicrhau bod awdurdodau lleol yn defnyddio data a thystiolaeth yn effeithiol
- Sicrhau bod awdurdodau lleol yn deall eu cyfrifoldebau ar gyfer gwella llesiant pobl sydd angen gofal a chymorth a gofalmwy sydd angen cymorth.

3.2 Bwriad y cod ymarfer hwn yw cyflawni'r nodau a ganlyn:

Ar gyfer unigolion:

- galluogi pobl i ddeall y gofal ac ansawdd y cymorth y mae ganddynt hawl i'w gael gan eu hawdurdod lleol
- galluogi pobl i ddeall sut y mae awdurdodau lleol yn cael eu mesur o ran eu darpariaeth gwasanaethau cymdeithasol

Ar gyfer ymarferwyr:

- galluogi ymarferwyr i ddeall a defnyddio tystiolaeth yn effeithiol i gefnogi a gwella eu hymarfer
- sicrhau bod ymarferwyr yn gwbl ymwybodol o'u rôl o ran casglu tystiolaeth a data manwl gywir er mwyn mesur perfformiad a gwelliant yn briodol a deall yr effaith ar ganlyniadau llesiant pobl sydd angen gofal a chymorth a gofalmwy sydd angen cymorth
- deall bod rhaid i ymarferwyr fod yn fedrus, yn gymwys a'u bod yn cael eu cefnogi, gan sicrhau ffocws clir ar wella

Ar gyfer awdurdodau lleol:



- galluogi awdurdodau lleol i ddeall y cyfeiriad strategol ehangach ar gyfer gofal cymdeithasol y mae'n rhaid iddynt weithio tuag ato, a'u rôl o ran cyflawni hyn
- galluogi awdurdodau lleol i ganolbwyntio ar eu perfformiad – ar gyfer pobl sydd angen gofal a chymorth a gofalwyr sydd angen cymorth, ac ar lefel sefydliadol
- galluogi awdurdodau lleol i ddeall pwysigrwydd data a thystiolaeth o ran llywio eu perfformiad a'u gwelliant – yn benodol o ran eu dealltwriaeth a'r defnydd effeithiol o ddata meintiol, data ansoddol a'r defnydd o ymchwil a thystiolaeth
- galluogi awdurdodau lleol i ddeall sut y bydd Llywodraeth Cymru yn eu dwyn i gyfrif am eu perfformiad o ran gwasanaethau cymdeithasol
- galluogi awdurdodau lleol i ddeall beth y maent yn ei wneud yn dda, i gydnabod a rhannu arfer gorau o fewn awdurdodau lleol a rhyngddynt ac i gydnabod beth nad ydynt yn ei wneud cystal, beth y gallent ei wneud yn wahanol a beth sydd angen ei newid
- galluogi awdurdodau lleol i rannu tystiolaeth gydag ystod eang o bartneriaid er mwyn hwyluso cydweithio a chefnogi gwell integreiddio
- sicrhau bod ymarferwyr yn fedrus, yn gymwys a'u bod yn cael eu cefnogi ac yn gallu defnyddio data a thystiolaeth yn effeithiol i lywio gwelliant
- hysbysu dealltwriaeth strategol ehangach o sut y mae'r awdurdod lleol yn gweithredu ar y cyfan, yn defnyddio ei adnoddau ac yn darparu ar gyfer pobl yr ardal.

Ar gyfer Llywodraeth Cymru:

- sicrhau bod pob awdurdod lleol yn gweithio tuag at yr un safonau uchel
- sicrhau bod ansawdd yn rhan annatod o ofal a chymorth, bod pob awdurdod lleol yn ceisio cyrraedd yr un lefel uchel o ran ansawdd a bod y tegwch i bobl o ran eu profiad o ofal a chymorth ledled Cymru
- sicrhau bod pob awdurdod lleol yn defnyddio dulliau a methodolegau tebyg i fonitro perfformiad a llywio gwelliant

- sicrhau bod modd defnyddio'r dystiolaeth a gesglir gan awdurdodau lleol i fonitro perfformiad ar lefel leol a chenedlaethol, i lywio gwelliant ar draws y sector gofal cymdeithasol ac i lunio polisïau cenedlaethol

3.3 Mae'r cod ymarfer hwn yn rhan o uchelgais ehangach ar gyfer llywodraeth leol. Mae'n ceisio gwneud newid go iawn a pharhaus i'r ffordd y mae gwasanaethau cymdeithasol yng Nghymru yn cael eu mesur a'u hadrodd a'r ffordd mae'r wybodaeth a gesglir yn cael ei defnyddio i lywio dyfodol gwasanaethau cymdeithasol yng Nghymru. Rhaid i awdurdodau lleol ddeall pwysigrwydd data a thystiolaeth a deall y manteision y gall y defnydd effeithiol a pharhaus o ddata a thystiolaeth ddibynadwy o safon uchel ei chael ar ddeall perfformiad a llywio gwelliant.

3.4 Mae'r cod ymarfer hwn, a'r safonau ansawdd a'r fframwaith perfformiad a gwella a nodwyd yn rhoi cyfarwyddyd clir i awdurdodau lleol ac i Lywodraeth Cymru o ran mynd i'r afael â pherfformiad a gwelliant mewn gwasanaethau cymdeithasol ar lefel genedlaethol a lleol.

3.5 Bydd angen casglu data lleol penodol hefyd, a bydd pob awdurdod lleol yn penderfynu ar hyn yn unigol.

## 4. Y Safonau Ansawdd

4.1 Mae'r safonau ansawdd yn nodi disgwyliadau Llywodraeth Cymru, ar lefel genedlaethol, ynghylch ansawdd y cymorth y mae'n rhaid i awdurdodau lleol ei ddarparu. Mae'r safonau wedi'u nodi yn y tabl isod:

Y Safonau Ansawdd			
Pobl	Atal	Partneriaethau ac Integreiddio	Llesiant
Mae pobl yn bartneriaid cyfartal sydd â llais, dewis a rheolaeth dros eu bywydau ac yn gallu cyflawni'r hyn sy'n bwysig iddynt.	Mae'r angen am ofal a chymorth yn cael ei leihau ac nid yw anghenion yn cynyddu, gan sicrhau'r canlyniad gorau posibl i bobl.	Mae partneriaethau effeithiol ar waith i gomisiynu a darparu canlyniadau cynaliadwy a chwbl integredig o safon uchel i bobl.	Mae pobl yn cael eu hamddiffyn a'u diogelu rhag camdriniaeth ac esgeulustod ac unrhyw fathau eraill o niwed.
Mae arweinyddiaeth effeithiol yn amlwg ar bob lefel, gyda gweithlu cymwysedig a hynod fedrus yn cael ei gefnogi i weithio tuag at weledigaeth a rennir.	Mae cydnerthedd yn ein cymunedau yn cael ei hyrwyddo ac mae pobl yn cael eu helpu i gyrraedd eu potensial trwy annog a helpu pobl sydd angen gofal a chymorth, gan gynnwys gofalwyr, i ddysgu, datblygu a chymryd rhan mewn cymdeithas.	Mae pobl yn cael eu hannog i gyfrannu at gynllunio a darparu eu gofal a'u cymorth fel partneriaid cyfartal.	Mae pobl yn cael eu helpu i reoli eu llesiant a gwneud eu penderfyniadau gwybodus eu hunain fel y gallant gyrraedd eu potensial llawn a byw'n annibynnol cyhyd â phosibl.

4.2 Y bwriad yw i'r safonau ansawdd fod yn ddyheadol, yn hytrach na bod yn rhestr wirio i'w chyflawni. Fe'u lluniwyd i herio awdurdodau lleol, i godi uchelgais ac i annog arloesedd.

4.3 Mae'r safonau'n gysylltiedig â'r saith nod llesiant a amlinellir yn Adran 4 o Ddeddf Llesiant Cenedlaethau'r Dyfodol (Cymru) 2015 ac yn gysylltiedig â'r

diffiniad o lesiant yn Adran 2 o Ddeddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014.

4.4 Nod y safonau yw sicrhau bod pobl sydd angen gofal a chymorth a gofalwyr sydd angen cymorth yn gallu cael mynediad at y cymorth iawn ar yr amser iawn o'r lle iawn, a bod gweithwyr proffesiynol profiadol a/neu gymwys ar gael i'w ddarparu. Yn benodol, mae hyn yn cynnwys:

- y cymorth a ddarperir i bobl i gael gafael ar wybodaeth a chyngor;
- y cymorth a ddarperir i bobl sydd angen gofal a chymorth a gofalwyr sydd angen cymorth;
- y cymorth a ddarperir i'r gweithlu gwasanaethau cymdeithasol.

4.5 Disgwylir i awdurdodau lleol ddangos eu cynnydd yn erbyn y safonau ansawdd yn flynyddol trwy Adroddiad Blynyddol Gwasanaethau Cymdeithasol yr Awdurdod Lleol<sup>2</sup>. Rhaid i'r dystiolaeth hon fod yn gyfuniad o'r data a'r dystiolaeth a gasglwyd trwy'r fframwaith perfformiad a gwella, ochr yn ochr ag unrhyw ddata lleol neu ymagweddau eraill y mae'r awdurdodau lleol yn eu hystyried yn briodol iddynt.

4.6 Mae'r safonau ansawdd wedi'u cynllunio fel eu bod yn cyd-fynd yn gyfan gwbl â phedair egwyddor graidd Deddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) <sup>3</sup>2014 a Chod Ymarfer Arolygiaeth Gofal Cymru ar gyfer adolygu gwasanaethau cymdeithasol awdurdodau lleol<sup>4</sup>

4.7 Ar gyfer pob egwyddor graidd, datblygwyd dau safon ansawdd. Mae'r safonau ansawdd wedi'u cynllunio i ymdrin ag oedolion, plant a gofalwyr, a'r gweithlu gofal cymdeithasol os yw hyn yn berthnasol.

### **Cysondeb ag Arolygiaeth Gofal Cymru**

4.8 Mae pedwar pennawd y safonau ansawdd – pobl; atal; partneriaethau ac integreiddio; a llesiant - yn cyd-fynd yn fwriadol â'r penawdau a ddefnyddir yng nghod ymarfer Arolygiaeth Gofal Cymru ar gyfer adolygu gwasanaethau cymdeithasol mewn awdurdodau lleol. Diben hyn yw sicrhau bod cysondeb o ran dulliau gweithredu rhwng Llywodraeth Cymru ac Arolygiaeth Gofal Cymru a bod awdurdodau lleol yn deall sut y mae'r cod hwn a'r cod ymarfer ar gyfer adolygu gwasanaethau cymdeithasol mewn awdurdodau lleol yn cyd-fynd.

4.9 Mae'n cael ei ddatblygu ymhellach drwy ddisgrifiadau cyson y pedwar pennawd. Mae'r disgrifiadau hyn wedi'u datblygu gan Lywodraeth Cymru ac Arolygiaeth Gofal Cymru i sicrhau bod y ddau god ymarfer yn defnyddio'r un ieithwedd.

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<sup>2</sup>Fel sy'n ofynnol o dan adran 144A o Ddeddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014.

<sup>3</sup>h.y. pobl, atal, partneriaethau ac integreiddio a llesiant

<sup>4</sup> <https://careinspectorate.wales/sites/default/files/2019-04/190401-code-of-practice-lass-en.pdf>

4.10 Mae pedwar pennawd y safonau ansawdd a'r disgrifiadau cyffredin wedi'u nodi isod:

## **Pobl**

4.11 Mae dull seiliedig ar hawliau yn gwneud pobl yn rhan annatod o wasanaethau a chymunedau, gan ddarparu eglurder a thryloywder ynghylch hawliau a chyfrifoldebau. Mae gan bobl lais cryf a rheolaeth dros wasanaethau a dderbyniant, gyda chytundeb ynghylch a oes angen eiriolaeth<sup>5</sup> yn sail i hynny. Mae hyn yn helpu i roi ffocws ar yr hyn sy'n bwysig iddynt, y canlyniadau y maent eisiau eu cyflawni a sut y gallant ddefnyddio eu cryfderau a'u hadnoddau eu hunain i hyrwyddo eu llesiant eu hunain. Mae pwysigrwydd cymryd risgiau cadarnhaol mewn ymarfer sy'n seiliedig ar gryfderau yn cael ei gydnabod a'i reoli'n dda. Mae ymarferwyr a rheolwyr yn sicrhau bod ymarfer a goruchwyliaeth yn seiliedig ar yr wybodaeth ddiweddaraf, ymarfer seiliedig ar dystiolaeth a deunyddiau perthnasol eraill, gan gynnwys deddfwriaeth, arweiniad gan y llywodraeth a dysgu o adolygiadau.

## **Atal**

4.12 Mae arweinyddiaeth a llywodraethu cymesur a chyson yn sicrhau bod anghenion y boblogaeth yn sbarduno newid sefydliadol, gan fod awdurdodau lleol a byrddau iechyd lleol yn canolbwyntio ar ddulliau atal ar gyfer anghenion gofal a chymorth a nodir yn lleol. Mae'r ymagwedd integredig gadarnhaol at ddiwylliant o atal yn amlwg trwy gydweithredu, seilwaith cefnogol a systemau cyflenwi sy'n cyfateb i'w gilydd. Mae dull darbodus o ddyrannu adnoddau yn sicrhau bod yr help iawn ar gael ar yr amser iawn ac, ynghyd â gwasanaethau di-dor, ac mae hyn yn atal anghenion rhag cynyddu ac yn gwella ansawdd siwrnai'r unigolyn trwy'r system iechyd a gofal cymdeithasol. Mae gwasanaethau a chanlyniadau yn gymesur, wedi'u targedu, yn gynaliadwy ac yn cael eu cefnogi trwy hyrwyddo mentrau cymdeithasol, cwmnïau cydweithredol, gwasanaethau dan arweiniad defnyddwyr a'r trydydd sector, sy'n adeiladu'r economi graidd leol trwy gael pobl i gyfnewid eu sgiliau a'u diddordebau. Gall gweithgarwch atal fod yn unrhyw beth sy'n helpu i ddiwallu angen a nodir, ac mae'n amrywio o fesurau eang sy'n targedu'r boblogaeth gyfan i ymyriadau unigol mwy penodol.

## **Partneriaeth ac integreiddio**

4.13 Trwy ymddiriedaeth, ymrwymiad a rennir a chydweithrediad, mae awdurdodau lleol a byrddau iechyd lleol yn cyfrannu adnoddau ac yn gweithio gyda phobl leol i nodi anghenion a datblygu adroddiadau asesu poblogaeth integredig. Mae'r adroddiadau hyn yn sail i'r gwaith o lywio, comisiynu a darparu gwasanaethau cynaliadwy. Mae gwerth a chynaliadwyedd yn cael eu cyflawni drwy gydamcanion a ffocws ar y canlynol: gwelliant parhaus trwy ymgysylltu â phobl sy'n defnyddio gwasanaethau, hunanwerthuso, arloesedd a'r defnydd o ymarfer seiliedig ar dystiolaeth. Ar lefel unigolyn, mae gwasanaethau'n cael eu

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<sup>5</sup>Mae Llywodraeth Cymru wedi cyhoeddi cod ymarfer ar Eiriolaeth ar wahân.

<https://llyw.cymru/sites/default/files/publications/2019-12/deddf-gwasanaethau--cymdeithasol-a-llesiant-cymru-2014-cod-ymarfer-rhan-10-eiriolaeth.pdf>

cyd-gynhyrchu yn seiliedig ar berthynas gyfartal rhwng ymarferwyr a phobl sydd angen gofal a chymorth a gofalwyr sydd angen cymorth. Mae llwyddiant yn cael ei fesur trwy gasglu gwybodaeth ynghylch a yw cymorth yn cyflawni'r pethau sy'n bwysig i bobl a sut mae sefydliadau'n sbarduno gwelliant ar lefel poblogaeth ac unigolyn.

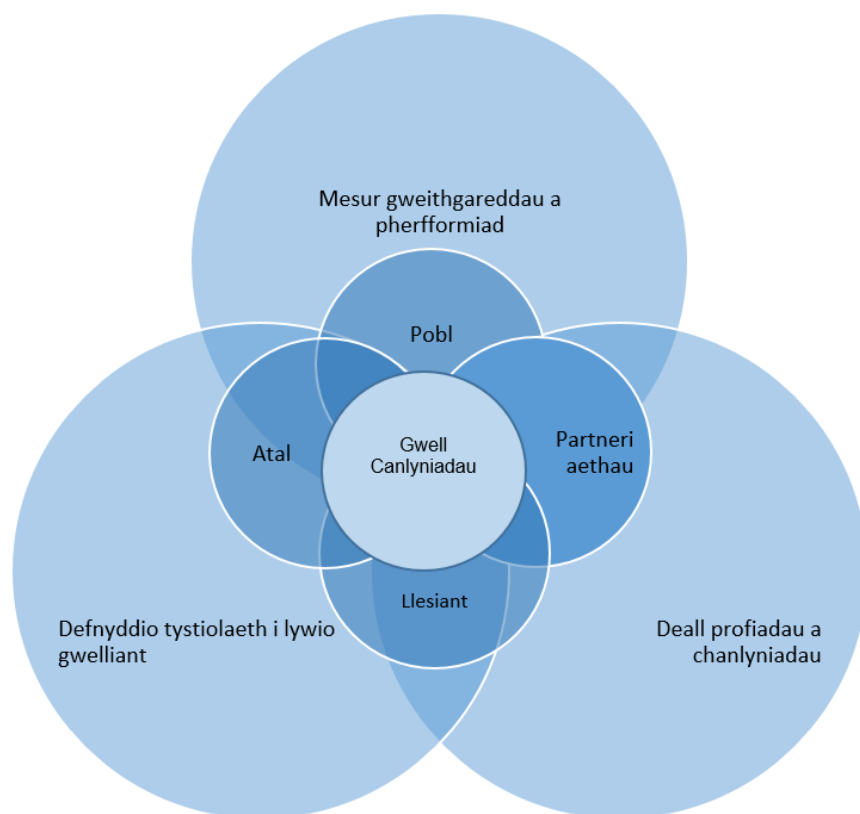
## **Llesiant**

4.14 Mae awdurdodau lleol sy'n arfer swyddogaethau o dan Ddeddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014 yn sicrhau eu bod yn gwneud cyfraniad cadarnhaol at lesiant pobl sydd angen gofal a chymorth a gofalwyr sydd angen cymorth. Ar lefel unigolyn, mae hyn yn cynnwys canfod dymuniadau a theimladau'r person, parchu ei urddas, ystyried ei ddiwylliant, ei gredoau a nodweddion eraill ac adeiladu ar ei amgylchiadau, ei alluoedd, ei rwydweithiau a'i gymunedau. Mae gweithio mewn partneriaeth â phobl i ddatblygu atebion creadigol yn allweddol i wella ansawdd y gofal, sicrhau llesiant ac atal datblygiad anghenion pobl am ofal a chymorth. Rydym yn mesur llwyddiant mewn perthynas â chanlyniadau i bobl yn hytrach na phroses.

## 5. fframwaith perfformiad a gwella

5.1 Cynlluniwyd y fframwaith perfformiad a gwella i helpu awdurdodau lleol i ddangos tystiolaeth o'u cynnydd yn erbyn y Safonau Ansawdd, ac i lywio penderfyniadau ar gyfer gwasanaethau cymdeithasol ac ar lefel corfforaethol a sefydliadol. Bydd y dystiolaeth a gesglir yn galluogi awdurdodau lleol i ddeall eu perfformiad o ran Deddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014, yn llywio eu gweithgareddau gwella ansawdd a rhaid ei defnyddio hefyd i hysbysu Adroddiad Blynyddol Gwasanaethau Cymdeithasol Awdurdodau Lleol<sup>6</sup>.

5.2 Mae'r diagram isod yn amlinellu'r fframwaith perfformiad a gwella ac yn dangos sut y mae'n rhaid i holl gydrannau'r fframwaith gyd-fynd â'i gilydd er mwyn cyflawni gwell canlyniadau i bobl sydd angen gofal a chymorth a gofawyr sydd angen cymorth.



5.3 Mae'r fframwaith perfformiad a gwella yn cynnwys tair rhan. Y rhain yw:

- Mesur gweithgarwch a pherfformiad
- Deall profiadau a chanlyniadau
- Defnyddio tystiolaeth i lywio gwelliant

<sup>6</sup> Fel sy'n ofynnol o dan adran 144A o Ddeddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014.

## **Mesur gweithgarwch a pherfformiad**

5.4 Mae'n darparu'r cyd-destun y mae awdurdodau lleol yn gweithio ynddo trwy ddarparu gwybodaeth glir a chywir am nifer y bobl sy'n symud drwy'r system gofal cymdeithasol a nodi'r galw ar wasanaethau o ganlyniad i hynny.

5.5 Bydd y data'n cael eu casglu'n flynyddol trwy amrywiaeth o fetrigau a ragnodir yn genedlaethol. Dylai awdurdodau lleol gasglu eu data eu hunain hefyd i adlewyrchu eu blaenoriaethau lleol.

## **Deall profiad y defnyddiwr a chanlyniadau**

5.6 Mae'n darparu gwybodaeth i awdurdodau lleol am safon profiadau pobl o ofal cymdeithasol, ynghyd ag a ydynt yn cyflawni eu canlyniadau llesiant.

5.7 Bydd y data'n cael eu casglu'n flynyddol trwy amrywiaeth o ddulliau a ragnodir yn genedlaethol. Dylai awdurdodau lleol gasglu eu data eu hunain hefyd, i adlewyrchu eu blaenoriaethau lleol.

## **Defnyddio tystiolaeth i lywio gwelliant**

5.8 Mae tystiolaeth yn galluogi awdurdodau lleol i ddeall y cyd-destun gofal cymdeithasol ehangach a sut y gallant wella eu darpariaeth a'u hymarfer.

5.9 Dylid defnyddio tystiolaeth ar bob lefel yn y system gofal cymdeithasol er mwyn sicrhau bod gwelliant yn digwydd ar sail wybodus, yn gyson ac mewn ffordd gynaliadwy. Bydd hyn yn cynnwys:

- **Lefel yr unigolyn** – Ymarferwyr gofal cymdeithasol yn cynnal eu hymchwili eu hunain neu'n defnyddio tystiolaeth fel rhan o gymhwyster proffesiynol neu i lywio eu hymarfer eu hunain.
- **Lefel leol** – Awdurdodau lleol yn defnyddio tystiolaeth i lunio gwasanaethau, i lywio gwelliant ac i ddeall arferion gorau.
- **Lefel ranbarthol** - Byrddau partneriaeth ranbarthol yn defnyddio'r cod ymarfer hwn i siapio eu gwaith eu hunain, i lywio gwelliant a chomisiynu ac i ddeall sut y mae'n rhaid i ddefnydd data a thystiolaeth arferol ategu blaenoriaethau lleol a chenedlaethol.
- **Lefel Genedlaethol** – Llywodraeth Cymru yn defnyddio tystiolaeth i ddeall effeithiolrwydd polisi cenedlaethol, i lywio datblygiad polisi i'r dyfodol ac i sicrhau bod gwelliant yn cael ei wneud ledled Cymru

## **6. Llesiant**

6.1 Mae'r gofyniad ar i bobl sydd angen gofal a chymorth a gofalwyr sydd angen cymorth gael eu cefnogi i gyflawni'r canlyniadau llesiant sydd bwysicaf iddynt yn rhan annatod o Ddeddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014.



Rhaid i awdurdodau lleol ddefnyddio'r fframwaith perfformiad a gwella i gyfrannu at gyflawni'r canlyniadau llesiant hyn.

6.2 Mae ystyr llesiant wedi'i amlinellu yn Adran 2 o'r Ddeddf, ac mae'n berthnasol i bobl sydd angen gofal a chymorth a gofawyr sydd angen cymorth. Yn unol â'r Ddeddf, mae llesiant mewn perthynas â pherson yn golygu llesiant mewn perthynas ag unrhyw un o'r canlynol;

- (a) iechyd corfforol, iechyd meddwl a llesiant emosiynol;
- (b) amddiffyn rhag camdriniaeth ac esgeulustod;
- (c) addysg, hyfforddiant a gweithgareddau hamdden;
- (d) perthnasoedd domestig, teuluol a phersonol;
- (e) cyfraniad a wneir at y gymdeithas;
- (f) sicrhau hawliau a hawlogaethau;
- (g) llesiant cymdeithasol ac economaidd;
- (h) addasrwydd llety preswyl.

O ran plentyn, mae "llesiant" hefyd yn cynnwys—

- (a) datblygiad corfforol, deallusol, emosiynol, cymdeithasol ac ymddygiadol;
- (b) "lles" fel y diffinnir y term Saesneg cyfatebol "welfare" at ddibenion Deddf Plant 1989.

O ran oedolyn, mae "llesiant" hefyd yn cynnwys—

- (a) rheolaeth ar fywyd pob dydd;
- (b) cymryd rhan mewn gwaith.

6.3 Mae Adran 5 o'r Ddeddf yn rhoi dyletswydd ar unrhyw berson sy'n arfer swyddogaethau o dan y Ddeddf i geisio hyrwyddo llesiant pobl sydd angen gofal a chymorth a gofawyr sydd angen cymorth. Mae'r ddyletswydd gyffredinol hon yn berthnasol i bobl a chyrrff sy'n arfer swyddogaethau o dan y Ddeddf hon, gan gynnwys Gweinidogion Cymru, awdurdodau lleol, byrddau iechyd lleol ac asiantaethau statudol eraill.

6.4 Mae Adran 8 o'r Ddeddf yn rhoi dyletswydd ar Weinidogion Cymru i gyhoeddi datganiad yn ymwneud â llesiant pobl sydd angen gofal a chymorth a gofawyr sydd angen cymorth. Mae'n rhaid i'r datganiad llesiant nodi'r canlyniadau sydd i'w cyflawni o ran llesiant pobl sydd angen gofal a chymorth a gofawyr sydd angen cymorth, a'r mesuriadau y bydd y gwaith o gyflawni'r canlyniadau hyn yn cael ei fesur yn eu herbyn.

## 7. Gwelliant Strategol

7.1 Mae'r cod ymarfer hwn yn rhan o ymrwymiad ehangach Llywodraeth Cymru i gefnogi gwelliant strategol ar draws y sector gofal cymdeithasol yng Nghymru. Mae'r cod hwn yn cysylltu'n benodol â Chod Ymarfer Arolygiaeth Gofal Cymru ar gyfer adolygu swyddogaethau gwasanaethau cymdeithasol awdurdodau lleol<sup>7</sup> a swyddogaeth statudol Gofal Cymdeithasol Cymru i ddiogelu, hyrwyddo a chynnal diogelwch a llesiant y cyhoedd yng Nghymru, fel y nodwyd yn Adran 68 o Ddeddf Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru) 2016. Dylai awdurdodau lleol ddefnyddio'r cod ymarfer hwn yn y cyd-destun ehangach hwn.

## 8. Atebolrwydd

8.1 Bydd Llywodraeth Cymru yn defnyddio'r dystiolaeth a gesglir drwy'r cod ymarfer hwn i ddeall yr effaith y mae awdurdodau lleol yn ei chael ar ganlyniadau llesiant pobl sydd angen gofal a chymorth a gofalwyr sydd angen cymorth ar lefel genedlaethol, rhanbarthol a lleol. Bydd Llywodraeth Cymru yn hwyluso cydweithio rhwng awdurdodau lleol a'u partneriaid i sicrhau bod tystiolaeth a gesglir drwy'r cod ymarfer hwn yn cael ei rhannu yn rheolaidd ac fel mater o drefn, ei deall a'i defnyddio'n effeithiol i lywio gwelliant yn y sector gofal cymdeithasol.

8.2 Bydd Arolygiaeth Gofal Cymru yn defnyddio'r dystiolaeth i lywio adolygiad gwasanaethau cymdeithasol awdurdodau lleol drwy arolygon statudol a gweithgareddau gwerthuso perfformiad fel y nodwyd yn Neddf Rheoleiddio ac Arolygu Deddf Gofal Cymdeithasol (Cymru) 2016 a'r cod ymarfer ar gyfer adolygu swyddogaethau gwasanaethau cymdeithasol awdurdodau lleol<sup>8</sup>.

8.3 Hefyd, bydd gan Gofal Cymdeithasol Cymru trwy eu rôl statudol i ddiogelu, hyrwyddo a chynnal diogelwch a llesiant y cyhoedd yng Nghymru, fel y nodwyd yn Adran 68 Deddf Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru) 2016, rôl allweddol wrth gefnogi ymarferwyr, awdurdodau lleol a'r sector gofal ehangach i ddeall a defnyddio data a thystiolaeth yn effeithiol i sicrhau eu bod yn cyflawni gwelliant yn greadigol ac yn gynaliadwy.

8.4 Rhaid i awdurdodau lleol ddefnyddio'r data a'r dystiolaeth y maent yn eu casglu drwy'r cod ymarfer hwn i lywio cynnwys Adroddiad Blyneddol Gwasanaethau Cymdeithasol Awdurdodau Lleol<sup>9</sup> yn ogystal â dealltwriaeth ar lefel corfforaethol ehangach o sut y mae'r sefydliad yn gweithredu ar y cyfan. Bydd cyhoeddi'r wybodaeth hon yn cefnogi tryloywder ac yn helpu pobl i gael mynediad at y wybodaeth sydd ei hangen arnynt i ddeall yr effaith y mae gwasanaethau cymdeithasol yn ei chael yn eu hardal leol.

## 9. Canllawiau Perthnasol

<sup>7</sup> <https://careinspectorate.wales/sites/default/files/2019-04/190401-code-of-practice-lass-en.pdf>

<sup>8</sup> <https://careinspectorate.wales/sites/default/files/2019-04/190401-code-of-practice-lass-en.pdf>

<sup>9</sup> Fel sy'n ofynnol dan o dan adran 144A o Ddeddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014.

9.1 Rhaid i awdurdodau lleol sicrhau eu bod yn cydymffurfio'n llawn â'r holl ganllawiau a gyhoeddir mewn perthynas â'r cod ymarfer hwn.

## **Explanatory Memorandum to the Code of practice in relation to the performance and improvement of social services in Wales**

This Explanatory Memorandum has been prepared by the Department of Health and Social Services and is laid before the National Assembly for Wales in conjunction with the above code of practice and in accordance with Standing Order 27.1

### **Minister/Deputy Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Code of practice in relation to the performance and improvement of social services in Wales.

Julie Morgan AM

**Deputy Minister for Health and Social Services**

11 February 2020

## **PART 1**

### **1. Description**

In 2011 the Welsh Government published the White Paper Sustainable Social Services: A Framework for Action, which set out an ambitious plan to create a new integrated and person-centred approach to social services provision in Wales. To achieve this new approach, in the last assembly term the Welsh Government made a piece of primary legislation: the Social Services and Well-being (Wales) Act 2014 ('the Act').

The Act provides the legal framework for improving the well-being of people who need care and support, and carers who need support. It also enables the Welsh Ministers to put in place regulations, publish guidance and issue codes of practice.

This code of practice relating to the performance and improvement of social services in Wales, sets out the framework for measuring the progress that local authorities make in relation to the discharge of their duties under the Act as a whole and enables local authorities to continuously improve their services to ensure that all people in need of care and support and all carers who need support are able to improve their well-being outcomes.

This code replaces the Code of practice in relation to measuring social services performance issued in April 2016

### **2. Matters of special interest to the Legislation, Justice and Constitution Committee**

None.

### **3. Legislative background**

The powers enabling the making of this code are contained in Sections 145 and 146 of the Act.

Section 145 of the Act permits Welsh Ministers to issue, and from time to time revise, one or more codes of practice on the exercise of social services functions.

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

The purpose of the code is to set out, through new quality standards, the vision for social services in Wales and how improvement in services for individuals will be supported, measured and sustained by local authorities.

The code has been drafted to move local authorities away from a very bureaucratic and process driven focus on data to a more holistic and collaborative approach where consistent collection of high quality data will become routine practice and local authorities understand how to collect and

use data and evidence to inform both performance and improvement. The code will be used to:

- require local authorities to focus on both performance and improvement
- set out the range of different types of data that local authorities must be collecting and accessing to inform their performance and improvement
- raise expectations in relation to the quality and consistency of data gathered by local authorities
- ensure local authorities are fulfilling their core functions as set out in the Act and the associated legislation and codes of practice
- ensure there is a clear, nationally understood approach to inform performance and improvement that is shared between Welsh Government and local authorities
- ensure local authorities, Welsh Government and other partners within the social care sector can access consistent and comparable data that provides clear evidence of progress, identifies areas where further work is needed and accurately and reliably informs policy at a local and national level

This code of practice replaces the Code of practice in relation to measuring social services performance issued in April 2016.

It is intended that this code of practice comes into effect on 1 April 2020.

## **5. Consultation**

Section 146 (1) of the Act states that before issuing or revising a code under section 145 Welsh Ministers must consult on a draft code. The code of practice, together with the draft technical guidance that support the performance and improvement framework, were consulted upon in a 12 week consultation that ran from 13 May to 5 August. The consultation received 43 responses from local authorities, third sector organisations and individuals.

Prior to formal consultation the code of practice and supporting technical guidance were developed and tested in close collaboration with a wide range of stakeholder groups who met regularly from January 2018 – April 2019.

Following the consultation, the code was reviewed and amendments made where appropriate, to take into account the views of respondents. A consultation

summary report together with a list of respondents will be published on the Welsh Government's website in February 2020<sup>1</sup>.

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<sup>1</sup> Consultation Document relating to Code of Practice in relation to measuring Social Services performance: <https://gov.wales/measuring-social-services-performance-code-practice>

## **6. Regulatory Impact Assessment**

The code is not subordinate legislation made by statutory instrument and for that reason a RIA is not required under section 4.2 of the Welsh Ministers Regulatory Impact Assessment Code.

However, consideration has nonetheless been given to whether the impact of the code is in any case sufficient to warrant completion of an RIA. Given that this code does not impose additional requirements on local authorities it has been decided that its impact is not such as to warrant completion of an RIA.

The code of practice has been subject to a full Integrated Impact Assessment (IIA). The IIA has shown that there are no significant negative impacts on any of the areas under consideration. Additionally, the code does not create any significant regulatory burden; therefore a full RIA has not been completed. A summary of the IIA will be available on the Welsh Government website.



## DATGANIAD GAN LYWODRAETH CYMRU

**TEITL** Deddfwriaeth yn ymwneud ag ymadael â'r UE  
**DYDDIAD** 25 Chwefror 2020  
**GAN** Jeremy Miles AC, y Cwnsler Cyffredinol a'r Gweinidog Brexit

Roeddwn yn meddwl y byddai'n fuddiol rhoi'r wybodaeth ddiweddaraf i'r Aelodau ar y datblygiadau diweddar a'r rhagolygon o ran deddfwriaeth sy'n codi yn sgil ymadael â'r Undeb Ewropeaidd.

I ddechrau, byddaf yn ystyried Deddf y Cytundeb Ymadael a'r goblygiadau ar gyfer confensiwn Sewel.

Bydd yr Aelodau'n cofio bod y Senedd hon, ar 21 Ionawr, wedi dilyn argymhelliad Llywodraeth Cymru a gwrthod cydsyniad ar gyfer y ddeddfwriaeth honno.

Mae wedi'i ddweud sawl gwaith yn y Senedd mai rhesymau cyfansoddiadol yn bennaf oedd y tu ôl i hyn – o ran bygythiad y ddeddfwriaeth hon i gymhwysedd Senedd Cymru a gallu Llywodraeth Cymru i ddylanwadu ar y negodiadau sydd ar ddod a fydd yn cael effaith ddifrifol ar feysydd polisi datganoledig. Fe wnaethon ni bopeth posibl i wella'r Bil – a hynny cyn iddo gael ei gyflwyno ac yna gan weithio'n agos gydag Aelodau o Dŷ'r Arglwyddi i gynnig gwelliannau a fyddai wedi'i wneud yn dderbyniol o safbwynt datganoli. Ond, yn y diwedd, nid oedd modd darbwyllio Llywodraeth y Deyrnas Unedig. Roedd ein penderfyniad yma yn y Senedd yn adlewyrchu pleidleisiau tebyg yng Nghynulliad Gogledd Iwerddon a Senedd yr Alban – y tro cyntaf i bob un o'r tair deddfwrfa wrthod cydsyniad ar gyfer yr un ddeddfwriaeth gan Senedd y Deyrnas Unedig. Er gwaethaf hyn, gwthiodd Llywodraeth y Deyrnas Unedig y Bil drwodd i gael Cydsyniad Brenhinol wrth i Senedd San Steffan ddiystyru barn y tair deddfwrfa.

Gallai hyn fod wedi troi'n argyfwng cyfansoddiadol difrifol, gan fygwth seiliau datganoli. Fodd bynnag, mewn gohebiaeth, dywedodd Ysgrifennydd Gwladol yr Adran dros Ymadael â'r Undeb Ewropeaidd fod yr amgylchiadau yn rhai "hynod, penodol ac eithriadol" a dywedodd Canghellor Dugiaeth Caerhirfryn eu bod yn "unigryw". Cafwyd sylwadau tebyg gan yr Arglwydd Callanan, Gweinidog Gwladol yn yr Adran dros Ymadael â'r Undeb Ewropeaidd, yn y trydydd darlleniad yn Nhŷ'r Arglwyddi ac mewn datganiad ysgrifenedig gan Ganghellor Dugiaeth Caerhirfryn.

Ysgrifennais wedyn at Stephen Barclay a Michael Gove i gydnabod yr arwyddion calonogol hyn bod Llywodraeth y Deyrnas Unedig yn cydnabod difrifoldeb y cam hwn a'i bod yn dehongli egwyddor 'ddim fel arfer' Sewel i olygu 'dim ond o dan yr amgylchiadau mwyaf eithriadol'. Ar y sail hon, fe wnes i eu hatgoffa ein bod ni, yn 'Diwygio ein Hundeb', wedi galw am godeiddio'r confensiwn drwy nodi'r amgylchiadau a'r meini prawf pan allai Llywodraeth y Deyrnas Unedig, mewn sefyllfa gyfyng, fwrw ymlaen â'i deddfwriaeth, er gwaethaf diffyg cydsyniad gan y deddfwrfeydd datganoledig. Fe alwon ni hefyd ar i Lywodraeth y Deyrnas Unedig drafod hyn ymhellach â ni.

Felly, er bod penderfyniad Llywodraeth y Deyrnas Unedig i fwrw ymlaen â Bil y Cytundeb Ymadael heb gydsyniad y deddfwrfeydd datganoledig yn peri cryn bryder, mae'n ymddangos eu bod yn credu, fel ninnau, y dylid ystyried yr achos hwn yn un eithriadol. Mae angen inni fynd ati nawr i adeiladu ar hynny.

Gan symud ymlaen, bydd yr Aelodau yn ymwybodol bod bron y cwbl o gyfraith yr Undeb Ewropeaidd yn dal i fod yn gymwys yn y Deyrnas Unedig yn ystod y cyfnod pontio. Ond mae Llywodraeth Cymru wedi bod yn ystyried a oes angen pwerau i gadw gyda datblygiadau yn neddfwriaeth yr Undeb Ewropeaidd y tu hwnt i'r cyfnod pontio – ac a fyddai pwerau o'r fath yn ymarferol. Nid ydym ar hyn o bryd yn gweld angen brys i gyflwyno Bil yn y Senedd sy'n cynnwys pwerau i gadw gyda deddfwriaeth yr Undeb Ewropeaidd. Mae sawl rheswm dros hyn.

Y prif reswm, o bosibl, yw bod gennym bryderon o ran a fyddai'n dderbyniol i'r Senedd hon pe bai Gweinidogion Cymru yn cael pwerau eang i gadw gyda deddfwriaeth yr Undeb Ewropeaidd o fewn cymhwysedd datganoledig drwy Fil hollgynhwysfawr. Ni fyddai hynny'n gyson â'r safbwyntiau y mae'r Aelodau wedi'u mynegi yn y gorffennol, felly byddai'r bar ar gyfer cynnig gweithred o'r fath yn cael ei osod yn uchel.

Mae yna hefyd ffyrdd eraill o alluogi Cymru i gadw gyda datblygiadau pan fyddwn yn gweld yr angen.

Yn gyntaf, mae gan Weinidogion Cymru eisoes bwerau i gadw gydag addasiadau technegol i deddfwriaeth drydyddol yr Undeb Ewropeaidd drwy swyddogaethau a gafodd eu creu gan yr Offerynnau Statudol ar gyfer Ymadael â'r Undeb Ewropeaidd fel rhan o'r rhaglen gywiriadau, neu drwy bwerau domestig sydd eisoes yn bodoli. Bydd angen mynd ati i ddadansoddi pa bwerau sydd eisoes ar gael mewn ymateb i gynigion deddfwriaethol penodol yn yr Undeb Ewropeaidd wrth iddynt gael eu datblygu.

Ar gyfer deddfwriaeth fwy sylweddol yn yr Undeb Ewropeaidd, byddai eu proses deddfwriaethol nhw yn darparu mwy na digon o amser i alluogi Senedd Cymru i gyflwyno a phasio Bil pe bai angen.

Mae cyd-destun hyn oll yn bwysig. Mae Llywodraeth Cymru yn dal i fod wedi'i hymrwymo i broses y Fframweithiau Cyffredin. Rydyn ni'n credu y dylai'r broses hon alluogi a rheoli gwahaniaethau mewn polisi rhwng Llywodraeth y Deyrnas Unedig a'r Llywodraethau Datganoledig, neu yn wir rhwng y Llywodraethau Datganoledig eu hunain. Rydyn ni'n bwriadu dilyn proses y fframweithiau cyffredin hyd at ei diwedd

cyn penderfynu ble y gall fod angen inni ddilyn datblygiadau yn neddfwriaeth yr Undeb Ewropeaidd yn y dyfodol.

Serch hynny, hoffwn sicrhau'r Aelodau y byddwn yn parhau i adolygu'r sefyllfa.

Yn olaf, dylai'r Aelodau fod yn ymwybodol y bydd angen corff sylweddol o is-ddeddfwriaeth eleni. Ni allwn ddweud faint fydd ei angen cyn gwybod beth fydd hynt y negodiadau â'r Undeb Ewropeaidd, ac yn wir â thrydydd gwledydd eraill. Beth bynnag, bydd galw yn codi o'r gwaith arferol i weithredu cyfraith yr UE sy'n dod i rym eleni; yr Offerynnau Statudol cywiro pellach sy'n angenrheidiol i sicrhau bod cyfraith yr UE a ddargedwir yn 'gweithio' yng nghyd-destun diwedd y cyfnod pontio; a'r is-ddeddfwriaeth fydd ei hangen i weithredu'r systemau newydd sy'n cael eu sefydlu gan Filiau'r Deyrnas Unedig a Deddf y Cytundeb Ymadael ei hun.

Mae'r gwaith wedi hen ddechrau i benderfynu faint o ddeddfwriaeth fydd yn angenrheidiol – gymaint ag y gallwn ei benderfynu ar hyn o bryd – a byddaf, wrth gwrs, yn parhau i roi'r wybodaeth ddiweddaraf i'r Aelodau.

### **Cadarnhewch yr hyn a draddodwyd**

**O dan embargo hyd nes y mae Jeremy Miles AC, y Cwnsler Cyffredinol a'r Gweinidog Brexit, wedi traddodi'r datganiad.**

Ken Skates AC/AM  
Lesley Griffiths AC/AM  
Kirsty Williams AC/AM



Ein cyf/Our ref: MA/P/KS/0356/20

Llywodraeth Cymru  
Welsh Government

Mick Antoniw AC  
Cadeirydd  
Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad  
Cynulliad Cenedlaethol Cymru  
Bae Caerdydd  
Caerdydd  
CF99 1NA

26 Chwefror 2020

Annwyl Mick,

Dyma roi'r newyddion diweddaraf i chi ar ein cysylltiadau rhynglywodraethol gydag Adran Busnes, Ynni a Strategaeth Ddiwydiannol (BEIS) Llywodraeth Prydain a gyda Gweinyddiaethau Datganoledig eraill.

Mae crynodeb o'r cyfarfodydd rhyngweinidogol diweddar wedi'u hatodi.

Yn gywir,

**Ken Skates AC/AM**  
Gweinidog yr Economi a Thrafnidiaeth  
Minister for Economy and Transport

**Lesley Griffiths AC/AM**  
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig  
Minister for Environment, Energy and Rural Affairs

**Kirsty Williams AC/AM**  
Y Gweinidog Addysg  
Minister for Education

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:  
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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

## **Atodiad A – Crynodeb o gyfarfodydd rhyngweinidogol gyda Gweinidgion BEIS, a Gweinidogion o Weinyddiaethau Datganoledig arall**

Ar 17 Hydref 2019 aethom i'r cyfarfod pedairochrog cyntaf un gydag Ysgrifennydd Gwladol yn Llundain. Rhoddodd y cyfarfod cyntaf gyfle i bwysu am yr angen am weithio mwy effeithlon rhwng llywodraethau ar lefel Weinidogol.

Ar 24 Hydref 2019 aeth Gweinidog yr Amgylchedd, Ynni a Materion Gwledig i gyfarfod Pedairochrog ar Ynni a Newid Hinsawdd gyda Kwasi Kwarteng (Gweinidog Gwladol Ynni a Thwf Glân). Bu'r Gweinidogion yn trafod yr angen am gydweithrediad rhynglywodraethol gwell ar ynni a newid hinsawdd.

Ar 30 Hydref 2019, aeth Gweinidog yr Economi a Thrafnidiaeth i gyfarfod Pedairochrog Busnes a Diwydiant gyda Nadhim Zahawi AS, (Is-ysgrifennydd Gwladol Seneddol a'r Gweinidog Busnes a Diwydiant). Bu'r Gweinidogion yn trafod bod yn barod ar gyfer busnes a chymorth busnes.

Bu'r Gweinidog Addysg i ddau gyfarfod pedairochrog gyda Chris Skidmore AS, Gweinidog Gwladol Prifysgolion, Gwyddoniaeth, Ymchwil ac Arloesedd, ar 23 Medi 2019 a 21 Hydref 2019. Bu'r Gweinidogion yn trafod dyfodol rhaglenni ymchwil ac arloesi sy'n gweithredu ledled Cymru a'r DU.

Ar 3 Chwefror, bu Gweinidog yr Amgylchedd, Ynni a Materion Gwledig mewn cyfarfod pedairochrog arall ar Ynni a Newid Hinsawdd gyda Kwasi Kwarteng AS. Roedd y cyfarfod pedairochrog hwn yn canolbwyntio ar oblygiadau Cynllun Masnachu Allyriadau y DU.

Mae cyfyngiadau ar y ddogfen hon

Mae cyfyngiadau ar y ddogfen hon

Mae cyfyngiadau ar y ddogfen hon



Mae cyfyngiadau ar y ddogfen hon