

REGULATION AND INSPECTION OF SOCIAL CARE (WALES) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 7 – Orders Prohibiting Work in Social Care: Unregistered Persons

Sections 165-173 - Orders prohibiting work in social care: unregistered persons

208. Provisions under Part 7 enable the Welsh Ministers to establish a prohibition scheme by regulations. Under the 2000 Act the Council maintained a register for categories of social care workers who were not legally required to register. Such social care workers could therefore register on a voluntary basis. In contrast SCW are only required to keep a register of those social care workers who are required to register. Social care workers will not be able to voluntarily register with SCW. The introduction of a prohibition scheme is a means of regulating the social care workforce for which a part of the register does not exist in order to ensure that social care workers are competent and fit to provide care to the public. This would be done by fitness to practise panels making orders prohibiting particular individuals from carrying out activities designated by regulations made by the Welsh Ministers. The scheme will therefore not restrict entry to practise but will allow SCW to take action against a person who fails to comply with proper standards of conduct.
209. “Designated activities” is intended to capture those activities which are ordinarily carried out by unregistered social care workers which involve the provision of care and support to vulnerable persons including children. This could, for example, include providing advocacy support to meet the care and support needs of vulnerable persons, or providing domiciliary care to vulnerable persons. Regulations designating regulated activities for the purposes of prohibition orders cannot be made unless they are approved in draft by the National Assembly for Wales (see section 187(2)).
210. Regulations can set out what conditions must be met before a fitness to practise panel can make a prohibition order in respect of a person. This could include that the person has been convicted of a particular kind of criminal offence, for example. As with the fitness to practise process in Part 7, there is provision for interim prohibition orders to be made to provide immediate public protection whilst cases are investigated. Breach of a prohibition order or interim prohibition order is a criminal offence which would be tried in the magistrates’ court only. The penalty on conviction is a fine with no limit set on the amount of fine the court may impose. The Welsh Ministers are also able to make regulations making it a criminal offence for persons to employ or appoint persons subject to prohibition orders as a social care worker. Any such regulations must also be approved in draft by the National Assembly before being made (see section 187(2)).