

# REGULATION AND INSPECTION OF SOCIAL CARE (WALES) ACT 2016

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## EXPLANATORY NOTES

### INTRODUCTION

1. These Explanatory Notes are for the Regulation and Inspection of Social Care (Wales) Act 2016 passed by the National Assembly for Wales on 24 November 2015 and which received Royal Assent on 18 January 2016. They have been prepared by the Department for Health and Social Services of the Welsh Government to assist the reader of the Act.
2. The Explanatory Notes should be read in conjunction with the Act but are not part of it. They are not meant to be a comprehensive description of the Act. Where an individual section of the Act does not require any explanation or comment, none is given.

### POLICY BACKGROUND

3. *Sustainable Social Services for Wales: A Framework for Action*, published in February 2011, set out the Welsh Government's policy direction towards a whole system change in respect of social care in Wales. The main aims of this document were to –
  - Deliver better social services by providing users and carers with a much stronger voice and greater control over the services they receive.
  - Ensure people receive the help they need to live fulfilled lives.
4. The Social Services and Well-being (Wales) Act 2014 (“the 2014 Act”) was the first piece of legislation taken forward to achieve these aims. The 2014 Act replaces the previous legislative framework for the provision of social care to adults and children with a comprehensive new system placing the well-being of those in receipt of care and support at the heart of the regulatory system.
5. The changes introduced as part of the 2014 Act necessitated a complete overhaul of the regulatory system in Wales in respect of social care. As such the aims of this Act are linked to changes introduced by the 2014 Act. They are –
  - To place the citizen at the heart of the system.
  - To create a system that understands the impact of services on the lives of people.
  - To ensure providers of services are appropriately accountable.
  - To improve information sharing and co-operation.
  - To better understand the future and avoid unexpected failures.
  - To support the development of the best workforce possible.
  - To deliver a robust and transparent system of regulation for service providers and for the workforce.

*These notes refer to the Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2) which received Royal Assent on 18 January 2016*

- To reduce complexity of the law and provide future flexibility.
6. In short, the 2014 Act sets out the system for the provision of social care, this Act sets out the system for regulating and inspecting that provision.
7. There have been a number of inquiries and reviews relating to the provision of social care which were conducted in the years preceding the passing of the Act and which therefore influenced the content of the Act itself. The relevant reviews and inquiries are –
- The response to Southern Cross where a large number of care homes were closed at extremely short notice due to the decision of the provider to end its service provision.
  - The response to Winterbourne View which involved the criminal abuse and neglect of vulnerable adults in England <https://www.gov.uk/government/publications/winterbourne-view-hospital-department-of-health-review-and-response>;
  - The report by Robert Francis Q.C. of the Mid Staffordshire NHS Foundation Trust Public Inquiry (the Francis inquiry - *Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry* <https://www.gov.uk/government/publications/report-of-the-mid-staffordshire-nhs-foundation-trust-public-inquiry>); and
  - The report by Margaret Flynn commissioned by the Welsh Government into the neglect of residents at several care homes in South East Wales investigated by Gwent Police as Operation Jasmine (*In Search of Accountability- A review of the neglect of older people living in care homes investigated as Operation Jasmine by Margaret Flynn* <http://gov.wales/topics/health/publications/socialcare/reports/accountability/?lang=en>).

## **GENERAL OVERVIEW OF THE ACT**

8. The Act is split into 11 Parts and 3 Schedules –
- Part 1 – Regulation of social care services
  - Part 2 – Overview and Interpretation of Parts 3 to 8
  - Part 3 – Social Care Wales
  - Part 4 – Social Care Workers
  - Part 5 – Social Care Workers: Standards of conduct, education etc.
  - Part 6 – Social Care Workers: Fitness to practise
  - Part 7 – Orders prohibiting work in social care: Unregistered persons
  - Part 8 – Social Care Wales: Duty to establish panels etc.
  - Part 9 – Co-operation and joint working by the regulatory bodies etc.
  - Part 10 – Miscellaneous and general
  - Part 11 –Final provisions

9. The Act introduces a new system of regulation of care and support services, replacing that established under the Care Standards Act 2000 (“the 2000 Act”). Part 1 sets out the regulatory processes applying to a person who applies to, and subsequently delivers, a social care service in Wales which is regulated under the Act. It also provides detail in respect of the regulation of local authority social services functions and establishes the new processes for both local authorities and the Welsh Ministers to undertake assessment of the care and support market.
10. Part 3 renames the Care Council for Wales as Social Care Wales (“SCW”). In addition to being the body which undertakes the regulation of the social care workforce in Wales, this Part provides SCW with the power to give advice and assistance and carry out studies for the purposes of improving the standards of social care provided in Wales.
11. Parts 4 - 8 replace the relevant provisions of the 2000 Act dealing with the registration of social care workers, the rules about the fitness of such workers to practise etc. Many of the detailed rules in this area were previously contained in rules made by the Care Council for Wales using powers under the 2000 Act. Much of that detail is now contained in this Act itself; SCW’s powers to make rules under the Act are mostly related to procedural matters. These Parts have also been informed by the recent Law Commission report on the regulation of health and social care workers - [http://www.lawcom.gov.uk/wp-content/uploads/2015/03/lc345\\_regulation\\_of\\_healthcare\\_professionals.pdf](http://www.lawcom.gov.uk/wp-content/uploads/2015/03/lc345_regulation_of_healthcare_professionals.pdf).
12. Part 9 contains provision about information sharing and joint working between the Welsh Ministers as the regulator of social care services, SCW and other relevant bodies.
13. Part 10 details the Welsh Ministers powers to initiate an inquiry into any matter concerned with the provision of care and support. It also contains provision about how documents are to be sent and when they are treated as delivered for the purposes of the Act.
14. Part 11 contains the general final provisions, including provisions about minor and consequential amendments, powers to make subordinate legislation under the Act, commencement and interpretation.

## **COMMENTARY ON SECTIONS**

### **PART 1 - REGULATION OF SOCIAL CARE SERVICES**

#### **Chapter 1 - Introduction**

##### **Section 2 - Meaning of "regulated service"**

15. Part 1 (Chapters 1-5 and 7) of the Act replace the system of registration set out in Parts 1 and 2 of the 2000 Act for the purpose of social care regulation in Wales. The 2000 Act established a system where by "establishments and agencies" were registered. In effect this required a separate registration for each location where a service was provided. Under this Act registration is service-based in that a provider must register to provide any service which is regulated by the Act and that registration will contain all the details of the locations where the service is provided (see Chapter 2 of this Part).
16. Therefore, Section 2(1) lists the "regulated services" that will be the subject of regulation by the Welsh Ministers pursuant to Part 1. The meaning of each entry in the list is expanded upon in Schedule 1. The services listed in Schedule 1 broadly correspond with the establishments and agencies that were regulated pursuant to provision in Parts 1 and 2 of the 2000 Act and cover the kinds of services that provide care and support to persons within the field of social care. The inclusion of "advocacy services" in section 2(1) is an exception as there is no equivalent to this in Parts 1 and 2 of the 2000 Act. Section 2(1)(h) provides the power to add to the list of regulated services by regulations.
17. There may be some services that on the face of it would fall within the definition of a regulated service but there may be good reasons not to regulate that service through this Act (for example, the activity concerned is already regulated through another route). Subsection (3) therefore allows the Welsh Ministers to make regulations whereby services that would otherwise fall within the list in subsection (1) are not to be treated as regulated services. Section 187(2)(a) specifies that regulations made under this section must be made using the affirmative procedure.

##### **Schedule 1 - Regulated services: definitions**

18. The definition of a care home service in paragraph 1 covers both children's homes and homes for adults. Hospitals and schools are not included as they are regulated through the health and education systems respectively (although certain schools may also be regulated as a children's home depending on the number of days within a particular period that accommodation together with nursing or care is provided for children at the school; see sub-paragraph (3)). The other exceptions in sub-paragraph (2) are all treated as separate types of regulated services.
19. In paragraph 5, fostering services provided by local authorities are not included because local authority services are to be regulated under section 94A of the 2014 Act which is inserted by section 58 of this Act.

20. Paragraph 7 provides a definition of an advocacy service. Regulations will make provision about the services that will fall to be regulated under this Act. Lawyers, acting in their capacity as such, are exempted from being prescribed under those regulations pursuant to sub paragraph (4).
21. Paragraph 8(2) sets out exceptions to what is considered to be a domiciliary support service. If the care and support is provided by a person (possibly a relative, friend or neighbour) who only provides it on a personal basis (i.e. not part of a formal business or service) then that provision of care and support is not regulated under the Act. Paragraph 8(3) provides a further exception so that those who merely introduce a person to an individual requiring domiciliary support will not fall to be regulated under the Bill. The key aspect of the exception here is the absence of any on-going role in the direction or control of the provision of care and support.

### **Section 3 - Other key terms**

22. This section defines a number of important terms used in this Part of the Act including the terms “care” and “support” . This is different to the approach in the 2014 Act where those terms are not defined so that the obligations to assess and provide for the needs of a person take into account the broadest possible range of care and support that a person may need. In contrast, this Act imposes a regulatory regime on persons who provide a service which constitutes the provision of care and support. It is therefore important for there to be some certainty about what care and support means so that a service provider is aware that they are providing a service which is to be regulated. It also means that any future services that may be prescribed pursuant to the power in section 2(1)(h) are limited to those that provide care and support as it is defined by this section. The definition of “care” is not intended to define how care is delivered or assessed. Section 27(2) requires that regulations made under subsection (1) must include requirements as to the standard of care and support that must be provided by a service provider. It is with reference to these regulatory requirements that the quality of care will be assessed with reference to well-being outcomes (see section 27(3)).
23. There may be activities that fall within the definitions of care and support that need to be excepted so that the carrying out of those activities does not constitute the carrying on of a regulated service under the Act and so persons who are involved in those things have certainty that this is the case. Section 3(3) therefore provides the power to the Welsh Ministers through regulations to set out things that are not to be considered as “care” and “support” (for example, care provided by a family member in a context that might otherwise lead to that provision being treated as one of the regulated services listed in Schedule 1).

## **Chapter 2 - Registration etc. of service providers**

### **Section 5 - Requirement to register**

24. This is the fundamental rule underpinning the regulation of care and support services. Any person providing one of the regulated services listed in section 2(1) must be registered with the Welsh Ministers. Providing one of those services when not registered is a criminal offence which is punishable by an unlimited fine or imprisonment for up to 2 years (or both) (see Section 51(1)).

### **Section 6 - Application for registration as a service provider**

25. Section 6 sets out the process by which a person may apply to the Welsh Ministers to become a service provider. Subsection (1)(b) requires the applicant to specify “the places at, from or in relation to which the service is to be provided”.
26. The expression “at, from or in relation to which” is intended to cover the whole gamut of ways in which a service may be delivered. “At” a place is intended to cover things like a care home service where the service is provided within particular premises. “From” is intended to cover offices where those providing the services may be based but where they travel out from there to provide a service (for example a fostering service or a domiciliary support service). A place like that may also be where people receiving the service travel to from time to time in order to receive it. “In relation to” is intended to cover the geographical areas where a service is delivered, for example, the area covered by a provider of a fostering service or domiciliary support service. For example, a person may apply to be a provider of a domiciliary support service from an office in Bridgend with the intention of providing that service in relation to the County Boroughs of Bridgend and Neath and Port Talbot.
27. Subsection (1)(c) requires a service provider to designate an individual to be registered as the responsible individual in respect of each place specified under subsection (1)(b). Section 21 limits the kinds of individuals who can be specified and once they are specified, responsible individuals will be subject to particular requirements under regulations made pursuant to section 28.

### **Section 7 - Grant or refusal of registration as a service provider**

28. Section 7 sets out the actions that the Welsh Ministers must take in respect of an application received in accordance with section 6. The application must be granted if the applicant fulfils the criteria in subsection (1). Subsection (1)(a)(ii) requires that an application relating to a domiciliary support service must contain the undertaking set out in section 8 (see the explanatory note to section 8 for detail in relation to this undertaking). Subsection (1)(b) requires the applicant to be a fit and proper person and subsection (1)(c)(ii) requires each individual designated as a responsible individual to be a fit and proper person. The matters that the Welsh Ministers must have regard to when determining whether a person is fit and proper are set out in section 9.

29. In granting the application, subsection (3)(a)(i) specifies that the granting of the application must be subject to a condition specifying the places “at, from or in relation to which” the service is to be provided. This covers cases where a service provider may specify an intention to provide more than one service at, from or in relation to more than one place. The imposition of this condition makes it clear that a service can only be provided at, from or in relation to the places specified by the Welsh Ministers in this condition.
30. In other words, in determining that application, the Welsh Ministers may grant a certain aspect of the application while refusing others. For example, a provider may make an application to provide both a care home service and a domiciliary support service. In determining the application the Welsh Ministers may be of the view that the provider is not able to meet the regulatory requirements in accordance with section 27 in respect of the domiciliary support service so will only grant the application to provide a care home service and refuse the application in respect of the provision of a domiciliary care service.
31. If a provider does satisfy the requirements in respect of both types of services the Welsh Ministers must set those out as a condition of registration. Providers cannot be registered to provide any regulated service at, from or in relation to any place, the services and places must be specified as a condition of registration. Any additional service or place that the provider may seek to add in the future has to be added to that person’s registration. The mechanism by which a provider does this is by making an application to vary their registration (see section 11).
32. As with the condition about places, the Welsh Ministers might be satisfied about the individual designated as the responsible individual in relation to some of the places but not others. The registration of the service provider is intended to permit an individual to be the responsible individual only in relation to places specified on that provider’s registration certificate. Subsection 3(a)(ii) specifies that the granting of an application by the Welsh Ministers must be subject to a condition that specifies the responsible individual for each place at, from or in relation to which a service is provided. Adding a new responsible individual or making an existing responsible individual responsible for an additional location must be done by applying for the registration to be varied under section 11.
33. In addition to the mandatory conditions about places and responsible individuals, the Welsh Ministers can impose other conditions on a registration. The types of conditions that might be imposed under subsection (3)(b) include placing a restriction on the number or the age of residents at a care home service, a requirement for appropriate restrictions on staffing such as a requirement for a certain number of nursing staff, or in the case of a domiciliary support service, a restriction on accepting any new packages of care.

## **Section 8 - Duration of domiciliary support visits**

34. Section 8 sets out the detail of the undertaking that must be given by a person seeking to apply to become a service provider of a domiciliary support service whether that is the first and only service that they apply to provide or a subsequent service that they seek to provide by virtue of an application to vary their initial registration.
35. Subsection (1) sets out the basic undertaking that a domiciliary support service will not be provided by way of a visit which is shorter than 30 minutes unless any one of conditions A, B and C (as set out in subsections (3), (5) and (7)) apply. Those conditions provide exceptions to the application of the undertaking.
36. Subsection (2) ensures that Condition A applies only where a local authority directly provides domiciliary support to a person or the authority commissions a registered provider to provide it because of the local authority's duty to meet the care and support needs of a person (or the authority's duty to meet the needs of a person's carer, for example where the authority provides domiciliary support in order to provide respite for a carer). Condition A does not apply to private arrangements between a person and a service provider where the person is paying the provider directly.
37. Subsection (3) sets out Condition A. The effect of this provision is that that the undertaking will not be breached if the first visit within the period of a care and support plan or a support plan is at least 30 minutes (unless Condition C applies) and the first visit by every new support worker within the same period is also at least 30 minutes. It does not mean that second and subsequent visits can be less than 30 minutes - they would still have to meet the criteria set out in sub paragraph (b) before they were permitted to be shorter. Local authorities are required to have care and support plans in place for persons who they consider to have needs for care and support (and support plans for carers who they consider to have needs) by virtue of section 54 of the 2014 Act.
38. Sub paragraph (b)(ii) is intended to ensure that tasks carried out during a visit meet the quality standards that will be set out in regulations under section 27. This ensures that no visit can be short because the tasks required have been completed to a substandard level.
39. Subsection (4) means that Condition B applies to cases where the person receiving the domiciliary support has directly made arrangements with the provider. It does not make a difference whether a person is paying privately or is paying using direct payments made to them by a local authority under sections 50 or 51 of the 2014 Act.
40. Subsection (5) sets out Condition B. Sub paragraph (a) means that the undertaking will not be breached if the shorter visit is something that the person and the provider have agreed between them. Sub paragraphs (b) and (c) are identical to those in Condition A.

41. Subsection (6) means that Condition C applies in all cases where a domiciliary support service visit is provided.
42. Subsection (7) sets out Condition C. This means that the undertaking will not be breached in circumstances where the person being visited requests that the visit comes to an end before the expiry of 30 minutes.

### **Section 9 - Fit and proper person: relevant considerations**

43. In making a decision as to whether a person applying to be a service provider, or who currently is a service provider, is a fit and proper person subsection (2) makes it clear that the Welsh Ministers may have regard to all matters that they think appropriate. The same requirement applies when the Welsh Ministers are making a decision as to whether a person designated as a responsible individual, or who is currently a responsible individual, is a fit and proper person. In addition, subsections (4) to (8) set out evidence that the Welsh Ministers must have regard to when making their decision. This evidence includes the commission of certain offences and the giving of a caution. 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.
44. The reliance that Welsh Ministers place on any matter they consider relevant in making a decision will be a matter of fact and degree.
45. Subsection (9) is a regulation making power for Welsh Ministers to vary the evidence to which they must have regard under this section.

### **Section 10 - Annual return**

46. Subsection (1) requires a service provider to submit an annual return following the end of each financial year and subsection (2) sets out a list of information that must be contained within an annual return. A failure to submit an annual return within the time limit prescribed in subsection (4) is a summary offence punishable by a fine (see sections 48 and 51(2)).

### **Section 11 - Application for variation of registration as a service provider**

47. If a service provider wants to change any of the parameters of their registration (e.g. by adding a new regulated service or a new location or changing the responsible individuals that are registered) they must apply for a variation of their registration under this section.

48. Subsection (2) is a regulation making power that allows the Welsh Ministers to set a time limit within which the service provider must apply to vary their registration to designate a new person as a responsible individual in respect of that service or a location at which that service is carried out. If a responsible individual dies or becomes incapable of performing the role or if the designation of the individual is cancelled by the Welsh Ministers in accordance with section 22 because they no longer satisfy the requirements set out in section 21 the service provider has to have another individual in place or else they would be committing an offence under section 43. It is therefore reasonable to provide for a certain period of time where there might be a gap in registering a new responsible individual. This regulation making power is intended to provide for this and may specify different time periods in different circumstances (for example, it might be reasonable to require a service provider to act quickly to find a replacement responsible individual when it has been clear for some time that the existing individual's registration was going to be cancelled. In contrast, a longer gap may be permissible when a responsible individual dies unexpectedly).
49. Subsection (3) sets out the things that must be contained within an application to vary registration. If that application is to provide a domiciliary support service then paragraph (a)(ii) requires that the application must contain the undertaking set out in section 8.

### **Section 12 - Grant or refusal for application for variation**

50. In the event that a service provider has made an application to vary or remove a condition imposed by the Welsh Ministers under section 11(1)(b), subsection (2) makes it clear that the Welsh Ministers might decide to vary the condition in a manner that is different to that specified in the application or indeed they might impose another condition altogether (either in addition to or as a replacement for the condition set out in the application). Given the wide range of conditions that might be subject to a variation application the Welsh Ministers therefore have the power to take whatever action they consider is most appropriate in the circumstances. Otherwise the Welsh Ministers would be limited to simply granting or refusing the application on its terms and then would have to go through a separate procedure under section 13 to make any additional variation.
51. Subsection (3) ensures that the Welsh Ministers must give prior notice to a provider of whatever they propose to do in relation to an application under this section and must also give notice of the eventual decision for it to take effect (see sections 18 to 20).

### **Section 13 - Variation without application**

52. Even if no application to vary a registration has been made, the Welsh Ministers may consider it necessary to make a variation (for example, an inspection under section 34 might have alerted the Welsh Ministers to the need for the registration to be varied).
53. This section specifies the circumstances under which Welsh Ministers are able to vary the registration of a service provider without having received an application from the service provider.

54. The ability to vary a registration allows Welsh Ministers to cancel a particular service whilst a provider is still able to provide other services or to cancel a place at, from or in relation to which a service is provided while maintaining the registration of other places.
55. For example, a provider may be registered to provide a care home service at two places, one in Cardiff and one in Swansea. The Welsh Ministers may consider that the care home service provided in Cardiff is not complying with the relevant regulatory requirements and should be cancelled. Under this regulatory regime the provider's registration may be varied to remove one place at which the care home service is provided (Cardiff) from the registration whilst retaining the other place (Swansea). This is because a provider will only be registered once in respect of all the services provided and all the places at, from or in relation to which each of those services is provided.
56. As with variations under section 11, the Welsh Ministers must first issue a notice of proposal prior to making any final decision to vary a service provider's registration.

#### **Section 14 - Applications for cancellation of registration as a service provider**

57. This section allows for applications to be made to cancel a registration but not if the Welsh Ministers have already commenced action to cancel a provider's registration under section 15 or 23. That restriction prevents a provider from circumventing the cancellation procedures under those sections which include the Welsh Ministers setting out the grounds for cancellation. Where the Welsh Ministers have taken action to cancel a registration there may be important public interest reasons for setting out grounds for taking that action.

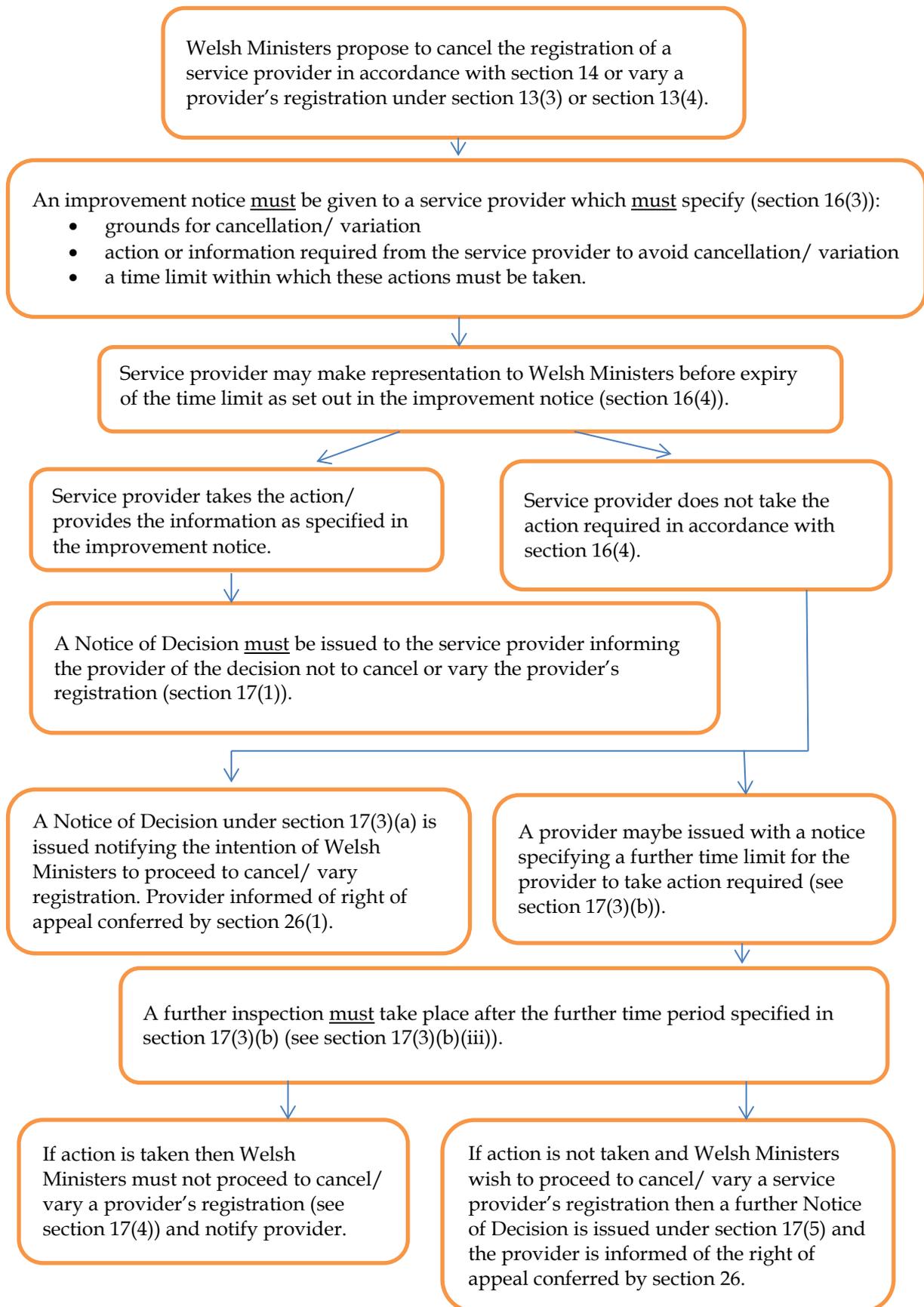
#### **Section 15 - Cancellation without application**

58. Section 15 sets out the powers of the Welsh Ministers to cancel a service provider's registration in its entirety. This could potentially mean the cancellation of several services provided at, from or in relation to several places. As this is a power, it will be for the Welsh Ministers to decide in each case whether cancellation is appropriate on whichever of the grounds listed in subsection (1) applies.
59. Subsection (4) prohibits the Welsh Ministers from being able to cancel a provider's registration unless the improvement notice procedure in sections 16 and 17 have been complied with (but that procedure does not apply to any application to urgently cancel or vary a registration made in accordance with section 23 or to a decision of the Welsh Ministers to impose urgent condition pursuant to section 24).

## **Section 16 - Improvement notices and Section 17 - notice of decision following improvement notice**

60. Section 16 provides for a notice of intention to vary or cancel and gives the provider an opportunity to rectify things. In accordance with section 16(3)(c) an improvement notice will specify a time limit within which the actions identified as being necessary by the Welsh Ministers must be undertaken in order to avoid cancellation.
61. If the Welsh Ministers are not satisfied that the action has been taken at the end of that time limit, the Welsh Ministers are able to do one of three things. They may immediately proceed to making a decision to cancel or vary the registration. If the Welsh Ministers do this then they must issue a decision notice and explain to the provider the right of appeal conferred by section 26. In circumstances where the Welsh Ministers decide that there has been satisfactory compliance they cannot proceed to cancel and must provide a notice to the provider informing them of this.
62. Alternatively, there may be cases where, after the time limit has expired, the Welsh Ministers are of the view that certain actions have been taken but not all or that the actions have been taken but they are not confident that compliance with the regulatory requirements has been achieved by the provider. Section 17(3)(b) provides the Welsh Ministers with a power to specify a date following which they propose to cancel or vary if they are still not satisfied that action specified in the improvement notice has been taken. At the end of that further period, if the Welsh Ministers are of the view that there is continued non-compliance and wish to proceed to cancel they must carry out an inspection (subsection (5)). If the Welsh Ministers wish to proceed to cancel following that inspection then they must issue a decision notice to cancel or vary.
63. A provider will have a right of appeal against a decision by the Welsh Ministers to cancel or vary (see section 26).
64. The following diagram illustrates the improvement notice procedure:

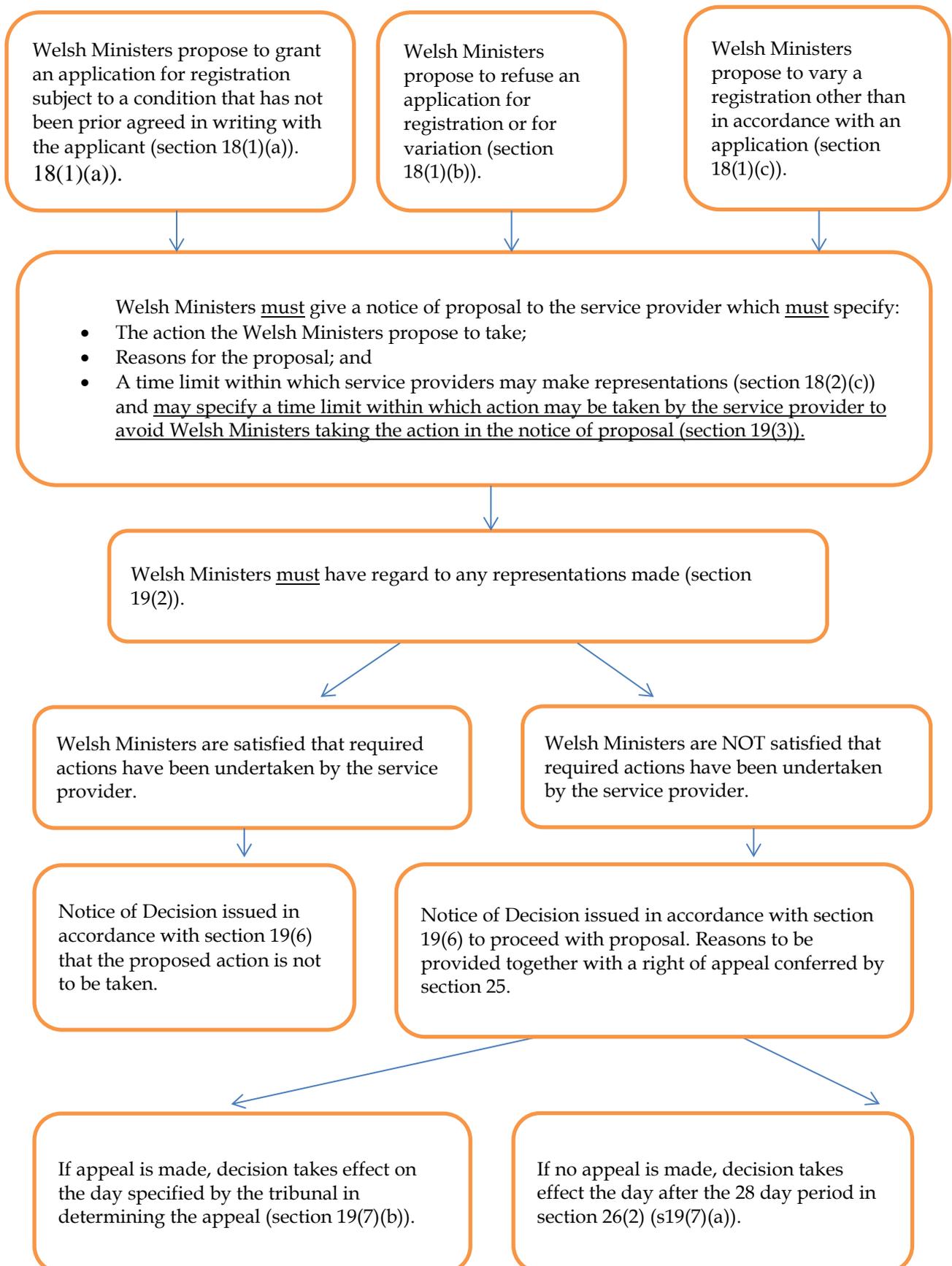
## Improvement notice procedure



**Section 18 - Notice of proposal and Section 19 - notice of decision following notice of proposal**

65. Before making certain decisions, the Welsh Ministers are obliged to issue a notice informing the service provider of the decision they propose to take and giving the service provider the opportunity to make written representations within a certain time period, which must be at least 28 days. Such a notice can also give the provider to opportunity to rectify the situation by providing a time limit within which certain things must be done to avoid the action being taken (see section 18(3)).
66. The Welsh Ministers are obliged to consider any representations made and following this to make a decision in accordance with section 19(6).
67. The following diagram illustrates the notice of proposal procedures:

## Notice of proposal procedure



**Section 21 - Responsible individuals and Section 22 - cancellation of designation of a responsible individual**

68. Sections 7 and 21 taken together require that there must be a person appointed as a responsible individual who is designated by the provider as part of the provider's registration. Section 21 specifies that the responsible individual must satisfy certain requirements. Subsection (2) requires the responsible individual to be someone of suitable seniority within the company or organisation that is running the service.
69. The responsible individual will also have to be "fit and proper". The requirements that must be considered by Welsh Ministers in making a decision as to whether a person designated by the service provider as responsible individual is a fit and proper person to be a responsible individual or whether an existing responsible individual continues to be fit and proper are set out in section 9.
70. The responsible individual will have specific responsibilities for the service in respect of which that person is registered. Those duties will be set out in regulations made pursuant to section 28. At the time the service provider applies to be registered, the Welsh Ministers will need to be satisfied that the person designated as responsible individual is capable of performing those duties (see section 7(1)(c)). A responsible individual will need to be able to meet the requirements imposed by regulations under section 28 in relation to the type of service that the individual is to be registered as responsible individual for.
71. Section 21(4) allows the same person to be a responsible individual in respect of more than one place at, from or in relation to which a service is provided. However, this will be possible only if the Welsh Ministers can be satisfied that the person is capable of performing their duties as responsible individual in respect of each place.
72. If an individual does not meet the requirements to be a responsible individual, section 22 gives the Welsh Ministers power to cancel the designation of a responsible individual. The individual is first given an opportunity to rectify things so as to show that he or she is fit to be a responsible individual (see section 22(4)(b)).
73. By way of example, a provider may designate the same person to be the responsible individual in respect of a care home service in Cardiff and a care home service in Bangor. An example of duty that may be placed on the responsible individual in the regulations made pursuant to section 28 is a requirement to supervise the management of the service. The Welsh Ministers may consider that the same person would not be capable of supervising the management at both of those places. If, in the opinion of the Welsh Ministers, the individual is not so capable, then the provider will be required to designate a different individual for each of the places.

74. Using the same example, the Welsh Ministers may decide at the time of first registration that the same individual could demonstrate that they were able to fulfil the requirements in section 21(1) and register that individual as responsible individual in respect of the care home service provided in both Cardiff and Bangor. However, post registration, evidence may come to light that, in fact, the individual was not able to do so. For example, the supervision of the management of the care home service in Cardiff may be satisfactory but not in respect of the service provided in Bangor. The Welsh Ministers could, in accordance with section 22, cancel the registration of the responsible individual in respect of the Bangor care home service, whilst maintaining that individual's registration as the responsible individual in respect of the Cardiff care home service but they would have to give an improvement notice to the individual to give him or her the chance to rectify things before the Welsh Ministers proceed to cancellation.

### **Section 23 - Urgent cancellation or variation of services or places**

75. In circumstances so severe that they require Welsh Ministers to take urgent action, section 23 provides the Welsh Ministers with the power to take action by making an application to the magistrates court to urgently cancel an entire registration or, alternatively, a place at, from or in relation to which a service is provided. Urgent action may be taken only if there is a serious risk to a person's life or physical or mental health or a risk of a person suffering from abuse or neglect.
76. One of the aims of this system of registration, and a consequence of it, is that an application to cancel the entirety of a provider's registration would not completely fail in circumstances where the criteria in section 23(2) was not met in respect of each place at, from, or in relation to which each service was being provided. For example, the Welsh Ministers might apply to cancel the registration of a provider who provides a care home service at three places. The Court may be satisfied that the criteria in section 23(2) are met in respect of two of those places but not the remaining place. Section 23 provides the Court with the power to vary the registration of the provider by removing two of the places at which the care home service was being provided whilst maintaining the registration of the care home service in respect of the remaining place as opposed to refusing the entirety of the Welsh Ministers application.
77. The improvement notice procedure in sections 16 and 17 do not apply to urgent applications (see section 15(4)).

### **Section 25 - Urgent variation of registration: other conditions**

78. In a case where a person's life or physical or mental health may be at risk or where there is a risk of abuse or neglect occurring the Welsh Ministers may, under this section, urgently vary a condition of registration or impose a new condition. This is an alternative to the cancellation procedure under section 23.
79. Subsection (5) allows Welsh Ministers to further vary or withdraw a condition varied or imposed under this section. For example, information might come to light after the urgent action has been taken (whether as a result of representations made or otherwise).

80. A service provider will have the right to appeal a decision to urgently vary or impose a condition as soon as the decision is made. Upon appealing to the First Tier Tribunal, the Tribunal will have the power to make any interim order it deems appropriate. This may include suspending the effect of the decision made by the Welsh Ministers. This may be appropriate, for example, in a case where the Tribunal does not have capacity to list the matter for an immediate hearing. A decision could be suspended pending the Tribunal having the capacity to have a hearing on the issue.

### **Section 26 - Appeals**

81. Section 26 provides service providers with rights of appeal in relation to decisions made by the Welsh Ministers to cancel or vary a registration whether or not that decision is made in urgent circumstances (a responsible individual may also appeal against a decision to cancel the individual's designation (see section 22(5) and (6)). The powers of the First Tier Tribunal are wide. The Tribunal is provided with the power to confirm a decision of the Welsh Ministers, direct that the decision will not have effect or will cease to have effect if it has already. The Tribunal may also make interim orders or substitute its own decision. In substituting its own decision the Tribunal only has the power to do something that the Welsh Ministers could do.

### **Section 27 - Regulations about regulated services, Section 28 -, regulations about responsible individuals and Section 29 - guidance about regulations under sections 27 and 28**

82. Regulations made pursuant to section 27 will form the basis of regulation by the Welsh Ministers. Subsection (2) requires that regulations made under subsection (1) must include requirements as to the standard of care and support that must be provided by a service provider. Subsection (3) requires that those standards will be linked to the well being outcomes statement issued by the Welsh Ministers pursuant to section 8 of the 2014 Act and have regard to the importance of the well-being of individuals who receive care and support via the regulated service in question. Regulations may also impose other requirements on providers. Some examples are: a requirement to have a manager who is "fit" together with the criteria for fitness of both manager and staff; a requirement to prepare a statement of purpose; a requirement to keep records and accounts and notifications of incidents.
83. Regulations made pursuant to section 28 will set out the duties that are to be placed on the responsible individual. Those duties may, for example, include a requirement to appoint a suitable and fit manager and to report that appointment to whatever part of the service provider's organisation has overall control of the body (i.e. the board of directors or similar in the case of a company; to the partners in the case of a partnership or to the Director of Social Services in the case of a local authority). The regulations could also require a responsible individual to supervise the management of a service. Other examples of the requirements that may be imposed by regulations under this section are –
- requirements to check the accuracy of record keeping,
  - requirements to undertake regular inspections of places where a service is provided,

- a requirement to complete the relevant section of the service providers annual report prepared in accordance with section 10 and to sign a declaration of truth in respect of that section of the report,
  - a requirement to report, in a timely manner any concerns the responsible individual may have about the regulated service to the board of directors, partnership or the Director of Social Services.
84. Linked to regulations under this section is the power in section 46 to make provision for failure to comply with a particular requirement in the regulations to be a criminal offence.
85. Section 29 of the Act places a duty on providers to have regard to guidance published by the Welsh Ministers under this section .

### **Chapter 3: Sections 32-37 - Information and inspections**

86. Section 33 provides the Welsh Ministers with the power to obtain information in relation to the exercise of their functions as regulator of care and support services under this Act. This is subject to any legal restriction on obtaining such information (subsection (2)).
87. Section 33(1) defines the term “inspection” for the purposes of Part 1. An inspection will involve two things: an assessment of the quality of care as well as an assessment of the organisation and co-ordination of the service.
88. Section 34 sets out an inspector’s powers of entry and inspection. The inspector may inspect any premises which the inspector has reasonable grounds to believe is (or has been) used as a place at or from which a service is (or has been) provided, such as a place where a care home service is provided. But an inspector may also inspect premises which the inspector has reasonable grounds to believe is (or has been) used in connection with the provision of a regulated service. This could be offices or a storage facility on an industrial estate where documents connected with the service are kept. It may also include a car used in connection with the provision of a domiciliary support service (see subsection (6)). Where an inspector wants to inspect a person’s home, the occupier must consent to an inspector entering the home for the purpose of an inspection.
89. Section 35 sets out the inspector's powers to interview and medically examine persons. Subsection (1) provides a power to the inspector to require anyone to be interviewed in private. This could be the service provider, manager or employee of a service but it could also include a parent, relative or carer of the service user if they consent to be interviewed. An inspector may carry out a medical examination of a service user but only if the inspector is a registered doctor or nurse and the person consents to being examined (subsection (4)). Subsection (5) makes provision for third parties to be present during an interview or examination if the person being interviewed or examined wants a third party to be present and the inspector does not object or if the inspector wants a third party to be present and the person being interviewed or examined does not object.

90. Section 36 requires the Welsh Ministers to prepare an inspection report as soon as is practicable after an inspection has been carried out. Subsection (2) sets out the matters that must be included in that report. While that report must contain an assessment of the quality of care measured against the standards set out in regulations made under section 27(1) there is also a requirement for the inspector to report on the effect of the care and support that is being provided by the service on the well being of service users (see sub paragraph (b)). The inspector is also required to undertake an assessment and report upon the organisation and co-ordination of all services provided by the service provider (see sub paragraph (c)).
91. Section 37 provides a regulation making power to enable the Welsh Ministers to establish a ratings system in respect of the quality of care provided by regulated services. In the event that such a system is introduced then section 36(2)(d) requires the inspector to put that rating in the inspection report which must be published. Section 187(2) provides that regulations made under this section must be made using the affirmative procedure.

#### **Chapter 4: Sections 38-42 - General functions**

92. Section 38 places a duty on Welsh Ministers to maintain a register of service providers. Subsection (2) sets out what information each entry must show and subsection (3) requires that the register is published and made available for public inspection free of charge. Subsection (5) is a regulation making power permitting the Welsh Ministers to omit certain information from the register in certain circumstances and to refuse requests made for copies or extracts of the register in certain circumstances. This power replicates an existing power in section 36(3) of the 2000 Act and could, for example, be used to restrict publication of medical information about providers or details about establishments relating to children.
93. Local authorities have statutory duties to assess and provide (whether directly or otherwise) care and support to those in need of such services who are eligible (see the 2014 Act). They are also commissioners of regulated services. Section 39 ensures that local authorities are notified when providers of regulated services have certain actions taken against them by the regulator.

#### **Chapter 5: Sections 43-55 - Offences and penalties**

94. The offences in the Act that are classified as summary only offences are:
- making a false statement in a document (section 47)
  - a failure to submit an annual return (section 48)
  - a failure to provide information. (section 49)
95. A false statement could be provided verbally or in writing and, similarly, a failure to provide information may occur by failing to provide the information verbally or in writing.

96. The offences in the Act that are classified as either way offences are:
- providing a regulated service without being registered (section 5)
  - a failure to comply with a condition (section 43)
  - false description with intent to deceive (section 44)
  - obstructing an inspector or failing to comply with a requirement imposed by an inspector. (section 50)
97. There is a distinction between the offence in section 5 of providing a regulated service without being registered and the offence in section 44 of pretending to be a service provider or pretending that a place is one at from or in relation to which a regulated service is provided. Section 5 would be engaged if a person was carrying on a regulated service without being registered with the Welsh Ministers. However, an offence under section 44(1)(a) might be committed if a person was pretending to be registered in order to, for example, secure a local authority contract. In relation to section 44(1)(b) the offence applies in the case of a person holding a place out as being one where that person is registered to provide a service when they are not so registered. For example, a person may own two care homes, one in Cardiff and one in Bridgend. That person may be registered to provide a care home service at a place in Cardiff but not at a place in Bridgend. That person would not be committing an offence under section 5 because they would be registered to provide a care home service at a place in Cardiff but they would be committing an offence under section 44(1)(b) because that person would be pretending to be registered to provide a care home service in Bridgend when they were not so registered.
98. The either way offences may attract a prison sentence of up to 2 years if the offence is serious enough to be tried on indictment. An unlimited fine is available to the sentencing Court in all cases.
99. Sections 45 and 46 provide powers to the Welsh Ministers to establish further offences in relation to any of the regulatory requirements established in the regulations made in respect of provider and responsible individuals in sections 27 and 28.
100. Section 52 provides a power to the Welsh Ministers to give a penalty notice instead of bringing proceedings for an offence but only in relation to those offences that are prescribed in regulations. Subsection (2) limits the exercise of that regulation making power to certain offences only, namely, false statements in documents, failure to submit an annual return, or a failure to provide information.
101. Section 55 makes it clear that the prosecuting authority for the purpose of Part 1 offences under the Act is the Welsh Ministers or the Counsel General. If any other person seeks to bring proceedings for offences under the Act then they must seek the written consent of the Counsel General to the Welsh Government.

## **Chapter 6: Sections 56-58 - Local authority social services**

102. The 2014 Act imposes statutory duties on local authorities in respect of their social services functions which are listed in Schedule 2 to that Act.

### **Section 56 - Reports by local authorities and general duty of the Welsh Ministers and Section 57 - reviews, investigations and inspections**

103. Section 144 of the 2014 Act imposes a duty on local authorities to appoint a Director of Social Services for the purpose of its social services functions. Section 56 inserts section 144A into the 2014 Act placing a duty on local authorities to prepare and publish an annual report on the exercise of their social services functions.

104. The 2014 Act is the main piece of legislation relating to local authority social services functions (which, as mentioned above, are set out in Schedule 2 to that Act), sections 56 to 58 of this Act therefore insert provisions into the 2014 Act that are concerned with the Welsh Ministers' regulatory powers in respect of those functions.

105. Inserted section 149A provides a power to Welsh Ministers to review studies and research undertaken by others in relation to the exercise of the social services functions of local authorities in Wales. This could include a study undertaken by SCW pursuant to section 70 of the Act.

106. Inserted section 149B provides the Welsh Ministers with a power to review the exercise of local authority social services functions including the commissioning of services by local authorities in connection with the exercise of those services functions. For example, as a result of the duties under the 2014 Act to meet the needs of people who require care and support a local authority will be obliged to (among other things) have in place domiciliary support services. Local authorities can provide those services directly but they may also commission such services. If the Welsh Ministers decide to review a particular local authority with regard to the provision of domiciliary support then Welsh Ministers must have regard to the matters set out in section 149D - this includes the quality and effectiveness of the service (section 149D(b)) and the effectiveness of the service in achieving well being outcomes (section 149D(h)).

107. Part 8 of the 2014 Act (specifically sections 150 to 161) provide powers of intervention by central government in respect of the exercise by a local authority of its social services functions. Section 57(2) substitutes section 161 and inserts alternative provision in respect of powers of entry and inspection. Further, a duty is imposed upon Welsh Ministers by inserted section 161A to prepare and publish a code of practice. Section 161B provides a power to require information and section 161C establishes some offences. The inserted provisions are broadly equivalent to the Welsh Minister's powers in respect of private service providers in Chapter 3 of the Act with some exceptions that are not relevant in the context.

## **Section 58 - Regulation of local authority functions relating to looked after and accommodated children**

108. Part 6 of the 2014 Act makes provision in relation to looked after and accommodated children and there are a number of regulation making powers provided to the Welsh Ministers to make provision about the exercise of those functions.
109. Those functions under Part 6 are therefore to be regulated under new sections 94A and 94B inserted into the 2014 Act by section 58. Section 94A states that regulations can make provision for the regulation of local authority functions in relation to looked after and accommodated children and section 94B provides for regulations to specify that breaches of regulations under section 94A may be an offence. As with offences relating to breaches of requirements under Part 1 of the Act (see sections 44, 45 and 51) an offence under section 94B of the 2014 Act is an either way offence punishable by a maximum of 2 years in prison, an unlimited fine or both. This replaces the provisions about regulation of “relevant fostering functions” in Part 3 of the 2000 Act that are no longer applicable in relation to Wales (see the amendments made to the 2000 Act by Schedule 3 to this Act).

## **Chapter 7: Sections 59-63 - Market oversight**

110. Sections 189 to 191 of the 2014 Act (as amended by Schedule 3 to this Act) place duties on local authorities to meet the needs of people receiving service provision from a person who is registered as a service provider under this Act but becomes unable to provide the regulated service due to business failure.
111. Sections 59 to 63 of this Act are a series of provisions aimed at identifying those providers of regulated services that provide a service which, if it were to fail, would have an impact on the care and support market in Wales and would be the trigger point for the local authority duties to be exercised under sections 189 to 191 of the 2014 Act.
112. Sections 59 to 62 are in similar terms to the market oversight provisions (sections 53-57) in the Care Act 2014 which apply to England. Section 59 requires the Welsh Ministers to establish criteria in regulations that will be used to identify providers who will be the subject of the market oversight provisions in the Act. Where the criteria apply to a particular provider, section 61 requires the Welsh Ministers to assess the financial sustainability of the provider’s business. Where there is found to be a significant risk to that business, the powers in section 61(3) permit the Welsh Ministers to require the service provider to develop a plan for how those risks will be mitigated or eliminated and to arrange directly or require the provider to arrange for an independent review of the business.

113. Subsection (6) of section 61 provides a power to Welsh Ministers to make regulations enabling them to obtain from certain persons information which may be helpful in assessing the financial sustainability of the provider. The type of information that the Welsh Ministers may need is likely to be information which relates to the finances of the service provider or which relates to the financial position of the particular entity - if the service provider is financially dependent on such an entity. The type of person that may be prescribed in the regulations may include companies within the same group as the provider and companies that hold a significant ownership stake in the provider.
114. The requirement for the Welsh Ministers to prepare and publish a national market stability report in section 63 has no direct equivalent in the Care Act 2014. The information contained in such a report is not limited to information about providers who are subject to the market oversight provisions; it is a report providing a picture of where there is ample provision of particular services and where there are or are likely to be a shortfall in the provision of particular types of services. The report must include an assessment of the effect of commissioning of services by local authorities in the exercise of their social services functions. Section 63(2) requires that this report is prepared in consultation with SCW given that SCW has as its main objective the protection, promotion and maintenance of the safety and well-being of the public in Wales (see section 68 for details about Social Care Wales objectives).

### **PART 3 - SOCIAL CARE WALES**

#### **Sections 67-78**

115. The Care Council for Wales (“the Council”) was established by Part 4 of the 2000 Act for the purpose of: a) promoting high standards of conduct and practice among social care workers; and b) promoting high standards in their training. This Act renames the Council as Social Care Wales (“SCW”) and restates and modifies SCW’s functions previously conferred on it by Part 4 of the 2000 Act. The Act also confers additional functions upon SCW.
116. Section 67 provides for the Council’s continuation under a new name, despite the repeal of section 54 of the 2000 Act; the Council will now be known as “Social Care Wales”.
117. Schedule 2 makes provision about the membership and operational arrangements of SCW. This replaces provision made for the Council’s membership and operation by Schedule 1 to the 2000 Act (and regulations made by the Welsh Ministers under it (the Care Council for Wales (Appointment, Membership and Procedure) Regulations 2001).
118. SCW’s members will be appointed by the Welsh Ministers, and it will comprise a maximum of 15 persons, including a chairing member:

119. A significant part of the Council's role under Part 4 of the 2000 Act related to the maintenance of a register of particular kinds of social care worker, including social workers. Much of the detail of the system established by Part 4 of the 2000 Act was left to rules made by the Council; these rules were subject to the approval of the Welsh Ministers.
120. SCW's functions under sections 69 and 70 relate to those services regulated under Part 1 of this Act (see the explanatory note for section 2) as well as any other service in Wales which involves the provision of care and support by social care workers (together, "care and support services"). Section 70 is a restatement with modification of a function of the Welsh Ministers in section 95(1) of the 2003 Act. Section 70 is broader than section 95 of the 2003 Act; while section 95 is limited to local authority social services functions, section 70 applies to any care and support service. SCW will be able to undertake or commission research to identify improvement priorities and best practice for care and support services; by virtue of section 70 SCW will also be able to work with care and support services to implement any recommendations it identifies.
121. Section 71 requires SCW to make information about what it does available to: a) the public; and b) social care workers generally. Information could be made available by publishing information electronically (for example on SCW's website) or in any other way SCW considers appropriate (by public meetings or events, for example). This section also requires SCW to develop and publish a policy on engaging the public and social care workers in the exercise of its functions. The way in which it does so will be something for SCW to determine and may vary depending on the nature of the function in question; but section 75 is also relevant here: it requires SCW to consult before issuing certain documents, including rules made under powers contained elsewhere in this Act.
122. Under the 2000 Act, the Council had extensive powers to make rules filling in the detail of the system established under Part 4 of the 2000 Act. These rules had to be approved by the Welsh Ministers before being made. The equivalent to the system established in rules under the 2000 Act is largely set out on the face of the Act; SCW's powers to make rules are mostly concerned with procedural arrangements. As a result, the requirement for Ministerial approval has not been restated.
123. Section 75 requires SCW to consult before making or varying any rules or issuing any codes or guidance under the Act. There are some instances where a full public consultation might not be appropriate, for example because the rules need to be amended to reflect a change in EU law or a change is necessary to correct a mistake. In such circumstances the Welsh Ministers can agree that a consultation is not necessary (subsection (3)).

124. SCW is required to have regard to guidance given to it by the Welsh Ministers and comply with any directions issues by the Welsh Ministers (see sections 76 and 77). Guidance could include the Welsh Ministers setting out how SCW should approach its annual review of staff pay. A direction could be given in circumstances where the Welsh Ministers had concerns about the governance of SCW or the manner in which it is carrying out its activities.
125. Section 78 confers default powers on the Welsh Ministers in respect of SCW. The Welsh Ministers had the same powers in relation to the Council under the 2000 Act. This power could be relied upon if SCW failed to comply with any directions issued by the Welsh Ministers under section 77 or if SCW was acting in breach of European Union law for example.

#### **PART 4 – SOCIAL CARE WORKERS**

##### **Section 79 - Meaning of “social care worker” etc.**

126. Section 79 sets out those persons who are “social care workers” for the purposes of the Act. The social care workers listed in subsection (1)(b) - (d) manage, or provide care and support in connection with regulated services; therefore this section needs to be read in conjunction with section 2. Persons not involved with the provision of care and support but employed at places where care and support is provided will not be captured by the definition; so persons who are employed as gardeners or electricians at a care home, for example, would not be “social care workers”.
127. Subsection (2) of section 79 enables the Welsh Ministers by regulations to treat other categories of person as social care workers for the purposes of this Act, and subsection (3) lists those categories. These include persons such as responsible individuals designated by service providers, student social workers, inspectors of care services and persons who provide care and support in connection with care and support services which are not “regulated services”. The regulations enable the Welsh Ministers to designate categories within a particular description of persons listed in subsection (3) to be treated as social care workers.

**Sections 80 – 91 - The register, Registration in the social worker part or an added part of the register, “Appropriately qualified,” Dealing with applications for registration or renewal, Visiting social workers and Information to be contained on the register**

128. This Part sets out the framework in relation to the register. Section 80 requires SCW to keep a register of relevant social workers, visiting social workers from relevant European States and social care workers of any other description specified by the Welsh Ministers in regulations. Regulations can therefore require SCW to keep a register of managers of regulated services or those employed in a regulated service. The requirement for social care workers to register does not arise by virtue of section 80. This is simply a requirement for SCW to keep a register of certain social care workers. See paragraphs 137 and 138 for an explanation of how the requirement to register is imposed on social workers and social care workers. If for example the Welsh Ministers require managers of regulated services to register with SCW, regulations would have to be made under section 80 to require SCW to keep a register of those managers.
129. The register will comprise of parts; a part for relevant social workers; a part for each description of social care workers specified by the Welsh Ministers in regulations; and a part for visiting social workers. If the Welsh Ministers require SCW to keep a register of managers of regulated services and those employed in a regulated service for example, there must be a separate part of the register for managers and then a separate part for those employed in a regulated service.
130. By virtue of section 111 social workers who wish to call themselves social workers or hold themselves out as registered social workers must be registered with SCW or an equivalent regulator in the UK (further explanation is provided below).
131. The 2000 Act did not require social care workers of other descriptions to register. Under the 2000 Act certain categories of social care workers were required to register by virtue of requirements set out in regulations made pursuant to section 22 of the 2000 Act. For example regulation 9(6) of the Care Homes (Wales) Regulations 2002 (SI 2002/324) stated that a person is not fit to manage a care home unless the person is registered as a manager of a care home with the Council. Regulations made under section 27 of the Act could set out similar requirements in relation to regulated services under Part 1. See the explanatory note for section 27 for further details. The criteria for the fitness of managers of regulated services and staff at regulated services could include that they must be registered with SCW.

132. Regulations made under section 27 could require further categories of social care workers to register. Regulations under section 111(2) could also impose a requirement to register on other categories of social care workers by extending the protection of title afforded to social workers by virtue of that section. Regulations under subsection (2) may provide that it is an offence for a category of social care worker, such as managers of a regulated service, to call themselves or hold themselves out as a registered manager without being registered with SCW or an equivalent regulator. If such regulations are made to require categories of social care workers to register, regulations will also have to be made under section 80 to require SCW to keep a register of those social care workers. The provisions of the Act which relate to registration will only apply to those social workers who are required to register by virtue of regulations made under section 27 or 111. They will not apply to the broad descriptions of persons in section 79(3) who may be treated as social care workers.
133. The duty to keep the register is imposed on SCW which must appoint a registrar (see section 81). The registrar must be a member of SCW's staff (it could be an existing member including the Chief Executive) and various responsibilities in relation to registration are conferred on that person. Most of these are set out in the Act, but additional responsibilities may be specified in rules made by SCW (see for example section 88). The registrar, being a member of SCW's staff is accountable to SCW for the way in which the various responsibilities of that office are exercised.

#### **Applications for registration - sections 82 - 85**

134. The register is a list of social care workers who have satisfied the registrar that they meet the registration requirements (section 83(1)). The registrar must make that judgment by reference to three criteria; to be registered a person must satisfy the registrar that he or she: a) is appropriately qualified ("condition 1")(section 83((2)(a) and section 84); b) is fit to practise ("condition 2") (section 83(2)(b) and section 117(1)) and, c) intends to practise work to which the entry relates ("condition 3") (section 83(2)(c)). More about these criteria appears below. In order to be registered in the social worker part or an added part of the register applicants must satisfy the three conditions. The conditions do not apply to those who wish to be registered in the part for visiting social worker; details of how they are registered appear below.

#### **Condition 1: appropriately qualified**

135. Section 84 sets out how applicants can demonstrate that they are appropriately qualified for the purpose of registration. This will depend on whether the applicant is a social worker or a social care worker.

*Social workers*

136. Paragraph (a)(i) provides that social workers are considered appropriately qualified if they have undergone a course which has been approved by SCW under section 114. Courses will be approved by SCW if it is satisfied that the course will enable persons completing it to attain the required standard of proficiency in social work (a standard that will be specified in rules made by SCW)(see section 114).
137. Paragraph (a)(ii) provides that social workers are also considered appropriately qualified if they satisfy the requirements of section 85. Section 85 deals with the recognition of qualifications in social work gained in other parts of the UK and other parts of the world. This section is therefore relevant for social workers with a qualification from England for example. If SCW considers that a qualification gained from outside Wales is of equivalent standard to a qualification it approves, then an applicant who holds that qualification is considered appropriately qualified. A graduate from a social work degree course in England would therefore satisfy condition 1 if that qualification meets SCW's standard of proficiency. If SCW is of the view that the training involved in obtaining the professional qualification outside Wales is not of a sufficient standard it can require the applicant to undergo additional training in order to satisfy condition 1 (section 85(2)(b)(ii)).
138. For applicants from a country within the European Economic Area ("EEA States") and Switzerland, SCW can require the applicant to complete an adaptation period or pass an aptitude test (section 85(1)). EEA States include all European Union Member States plus Iceland, Liechtenstein and Norway. SCW could therefore require an applicant from Germany or from France to pass an aptitude test to demonstrate their skills and ability to practise social work. For example, applicants may be required to complete an adaptation period or pass an aptitude test if the applicant's training was significantly shorter than training in Wales or did not cover the range of activities that are covered by courses approved by SCW. Applicants can appeal SCW's decision to require them to complete an adaptation period or pass an aptitude test to the First-Tier Tribunal (see section 105).
139. If a social worker has not completed an approved course and does not satisfy the requirements of section 85 they can demonstrate that they are appropriately qualified if they satisfy any training requirements set out by SCW in rules (section 84(a)(iii)). For example, this power could be used by SCW to recognise applicants who hold qualifications that are no longer offered by universities or colleges.

*Social Care workers*

140. Paragraph (b)(i) of section 84 provides that social care workers are considered appropriately qualified if they have undergone a course which has been approved by SCW under section 114. Completion of an approved course will satisfy SCW that a social care worker is appropriately qualified.

141. Section 84(b)(ii) enables social care workers to demonstrate that they are appropriately qualified if they satisfy any training requirements set out by SCW in rules. For example, this could cover social care workers who have been in post prior to SCW obtaining the power to approve courses in relation to social care workers.

**Condition 2: “fit to practise”**

142. Assessments of a person’s fitness to practise must be made by reference to the grounds of impairment set out in section 117. The statutory grounds are categories of conduct or underlying reasons for impairment. The registrar must be satisfied under section 83(2)(b) that an applicant’s fitness to practise is not impaired on any of those grounds.

**Condition 3: intention to practise**

143. In order to be eligible to become registered an applicant must also satisfy the registrar that he or she intends to practise the social care work to which his or her entry relates. One way of doing this in practice might be to require the applicant to sign a declaration confirming that they intend to practise as a social worker.

**Granting or refusing applications**

144. Applications for registration which satisfy the requirements in section 83 must be granted by the registrar. Anyone whose application for registration has been refused has the right to appeal the registrar’s decision to a registration appeals panel who will review the decision (see sections 101 to 103).
145. The registration conditions in sections 83 to 84 do not apply to visiting social workers. The expression “visiting social workers” refers to social workers from EEA States or Switzerland who are lawfully established to practise social work in their home country but are practising in the United Kingdom on a temporary or occasional basis (see section 90). For an explanation of EEA States see paragraph 143 above.

146. What constitutes temporary or occasional practice is a question of fact which will vary from case to case and it will be for SCW to determine although applicants can appeal SCW's decision to the First Tier Tribunal (see section 105). The relevant law on this is contained in Part 2 of the General Systems Regulations (see the definition in section 90(8)) The General System Regulations is the system for the recognition of professional qualifications introduced by Directive 89/48/EEC and supplemented by Directive 92/51/EEC. It is to enable those who are qualified to practise a profession in an EEA country or Switzerland to have their qualifications recognised in another EEA country or Switzerland, in order to practise there. Visiting social workers are still established as social workers in their home country; for this reason there are different arrangements for checking their qualifications to determine whether they meet the standards of proficiency for practice in Wales. This is different to becoming established in Wales and being registered in the social worker part of the register. In order to register in the social worker part of the register, social workers who have qualified outside Wales are required to satisfy the registration conditions referred to above.
147. Visiting social workers are not required to demonstrate that they are appropriately qualified or fit to practise in accordance with sections 83 and 84 provided that they are lawfully allowed to practise in their own country and are only practising in the United Kingdom temporarily. If they have the benefit of regulation 8 of the General Systems Regulations they must be registered by the registrar and appear in the visiting European part of the register. Regulation 8 enables SCW to check the qualifications of visiting social workers for any substantial differences which are harmful to public health or safety and if there are any such difference SCW can require the visiting social worker to pass an aptitude test.
148. An entry for applicants whose applications for registration are granted will be included in the part of the register to which their employment relates. Section 91 sets out the information that will appear on the register. The Welsh Ministers can set out in regulations that the register must show additional qualifications or experience that the registered person has gained. For example, SCW could annotate an entry to show that the registered person has gained an additional qualification which has been quality assured by SCW or to show that a social worker has completed a senior social work programme. SCW can make rules requiring or authorising the registrar to include other information in an entry in the register (subsection (2)(a)). For example, rules made under this subsection could require the registrar to include information about the area where the registered person is employed. Rules made under this section could also require the registrar to include information in the register on the Welsh language skills of registered persons.

149. SCW will have the power by rules to specify that an entry in the register will lapse if not renewed (section 86). It is for SCW to specify the period after which a registration will lapse. SCW may specify different periods for different categories of social care worker. For renewals, registered persons do not have to demonstrate that they are appropriately qualified as they have already had to demonstrate this when they first applied to be registered. Rather they must demonstrate that they have complied with any continuing professional development requirements imposed by Social Care Wales under section 113 (see subsection (3)). This could include work-based learning, seminars, teaching or other activities which aim to advance a registered person's professional development.
150. Entries in the register that are not renewed will automatically lapse (section 87). This will not be the case if the registered person is subject to fitness to practise proceedings or a fitness to practise panel has determined that his or her fitness to practise is impaired (see explanatory notes on Part 6 for explanation of the fitness to practise procedures). This is to avoid a situation where a registered person can let his or her registration lapse as a way of avoiding his or her case being subject to examination and possibly a sanction being imposed.

#### **Sections 92 – 94 - Removal of entries from the register**

151. The registrar is required to ensure that the register is accurate and up to date. Sections 92 to 94 set out the details of how the register is kept up to date; section 92, for example, allows SCW to make rules about removing an entry on a person's retirement from practising as a social care worker.

#### **Sections 95 – 100 - Restoring an entry to the register**

152. A person who has been removed from the register can apply to be restored to the register. An application for restoration could be made by a retired social worker, for example, who wishes to return to work. SCW must set out in rules the procedure for making such applications (see section 100). The rules could provide, for example, that all applications are treated as a first application for registration.
153. Where a person's entry in the register has been removed from the register by a fitness to practise panel because they were considered not fit to practise, the decision as to whether they should be allowed back on to the register must be made by a registration appeals panel. Section 174 provides that SCW must set up a panel adjudication system for the purpose of appeals relating to the register. Section 174 needs to be read in conjunction with section 175 which together make provision about the constitution, operation and procedure of the panel. Registration appeals panels are required to review the decisions made by the registrar in relation to registration and make decisions in relation to whether individuals should be restored to the register. Applications to be restored following removal by a fitness to practise panel cannot be made until 5 years after the applicant was removed and then only one application per year can be made. This minimum time period is intended to reflect the permanency and gravity of a decision to remove a person from the register. (See explanatory notes on Part 6 for an explanation of the fitness to practise procedures).

154. If a person has had two or more applications for restoration refused, a registration appeals panel can give a direction that the person is suspended from making further application for restoration of his or her entry to the register (see section 98(4)). That person is prevented therefore from making any further applications for restoration. However three years from the date of the direction, the applicant can apply to the registrar for that suspension to be reviewed by a registration appeals panel (see section 99(2)). If the registration appeal panel revokes the direction the applicant is free to apply for restoration once again. However if a registration appeal panel considers that the direction should remain in place the applicant remains unable to apply for restoration. The applicant can however request a further review after the expiry of another three year period.

### **Sections 101 – 105 - Appeals to a registration appeals panel and appeals to the tribunal**

155. Registration appeal panels are required to review the decisions made by the registrar in relation to registration and are required to make decisions whether to restore individuals to the register following their removal by a fitness to practise panel.
156. Section 104 introduces a further right of appeal against the decision of the panel to the First-Tier Tribunal. The Tribunal can hear appeals on matters of law and fact and it has a chamber that specialises in dealing with social care matters.

### **Sections 106 – 111 - Notifying the registrar of changes to information etc., duty to publish the register etc. and protection of title “social worker” etc.**

157. It is important that the register is as up to date and as accurate as is possible. SCW is required therefore by rules to require registered persons to inform the registrar of any changes to the information recorded about him or her in the register. This could include informing the registrar of a change in employer for example if rules made by SCW require that such information must appear in the register.
158. Section 107 enables SCW to take a pro-active approach in respect of registered persons’ fitness to practise; instead of waiting for an allegation to be made or information being brought to its attention in another way that a registered persons’ fitness to practise may be impaired, section 107 enables SCW to conduct periodic surveys of registered persons to satisfy itself that their fitness to practise remains unimpaired. If the registrar was made aware of any issues through this process it could notify SCW who could refer the matter for further investigations under Chapter 2 of Part 6 (see explanatory note which accompanies Part 6 for further information).

159. For reasons of public protection the register can reflect those sanctions imposed by a fitness to practise panel on a registered person (see section 91). However, the register will not reflect that a person's entry has been removed. Therefore SCW is required to keep a list of those persons whose entries have been removed. If members of the public had concerns about a social worker and couldn't find their name on the register, they could check the list of removed persons to see if they had in fact been removed on the basis of being unfit to practise.
160. Section 111 provides protection of the title "social worker". This was protected under section 61 of the 2000 Act. Subsection (2) provides a regulation-making power for the Welsh Ministers to be able to add other descriptions of social care workers whose title might require protection. Regulations could for example make it an offence for a person who is not registered as a manager of a regulated service to use that title or hold themselves out as being registered with an intention to deceive. SCW is required to set out its policy on prosecuting offences under section 111 (see section 72). This could for example set out that it will leave prosecutions to be brought by the Crown Prosecution Service, or that in certain cases it will bring private prosecutions.

## **PART 5 – SOCIAL CARE WORKERS: STANDARDS OF CONDUCT, EDUCATION ETC.**

### **Section 112 - Codes of practice**

161. The development of codes of practice is an important aspect of workforce regulation as the codes set out and describe the standards of practice expected of social care workers. The Council currently produces codes under section 62 of the 2000 Act. This function has been retained. The codes will be relevant where complaints have been made about a social care worker's fitness to practise; a failure to comply with a standard in a code may be evidence of a person being unfit to practise. Codes could set standards for social care workers generally or SCW could make specific codes relevant to particular categories of social care workers only, for example a code of practice for managers of regulated services.
162. SCW will also be able to produce codes of practice for approved mental health professionals (AMHP). AMHPs exercise functions under the Mental Health Act 1983 ("the 1983 Act"). Those functions relate to decisions made about individuals with mental disorders, including the decision to apply for compulsory admission to hospital. Social workers can train to become AMHPs and therefore SCW is able to set out the standards expected of such social workers. The Council had the function of approving courses for AMHPs under section 114A of the 1983 Act. SCW have retained this function.

163. The performance of workers is influenced by their employment environment and it will be important for SCW to be able to set out standards expected of those employing social care workers; section 112 allows for these standards to be set. Such standards might require employers to ensure that employees are required only to carry out work which is appropriate or suitable for them by having regard to their qualifications and experience. All of the codes of practice will need to be kept up to date so that they reflect the latest developments in what can be a quickly changing industry; to that end, SCW will be required to keep the codes under review and vary them where appropriate.

### **Section 113 - Continuing professional development**

164. The purpose of the training that may be required under this section will be to ensure that social care workers maintain and up-date their knowledge and competence in an ever-developing environment. Registered persons will need to comply with any CPD requirements in order to renew their registration (see section 84). Rules made by SCW in relation to such training must take into account any training that a visiting social worker from an EEA country or Switzerland has undertaken in their home country to ensure that such workers are not discriminated against.

### **Section 114 - Approval of courses etc.**

165. Under the 2000 Act the Council approved qualifying and post-qualifying courses in social work. Section 114 retains this function but also provides SCW with the power to approve courses suitable for other social care workers. Requiring that social care workers must have certain qualifications in order to be registered is a way of ensuring workers are qualified but it does not in itself guarantee the quality of the courses that give rise to the qualifications. The intention of giving SCW a role in approving such courses is to maintain a high standard in the quality of the education to be provided to actual and prospective social care workers.

### **Section 115 - Inspection in connection with certain courses**

166. As part of its power to approve training courses in social care work SCW will need to be able to visit and report on the places delivering this training. It will also need to assess on an ongoing basis whether providers are continuing to meet the standards required for approval as part of its quality assurance process. Section 115 enables SCW to inspect providers of courses for social workers and other social care workers. This power could be used to visit educational institutions but could also for example be used to visit practice placements where students go to develop their practical skills.

## **Section 116 - Other functions of Social Care Wales in respect of education and training**

167. Subsection (1) will allow SCW to make provision for the training of social care workers and prospective workers; that might be through it providing training itself, or by commissioning appropriate courses from another person. This situation could arise if SCW took the view that the number or quality of training courses available to student social care workers of a particular kind was having a detrimental effect on the quality of care and support being offered in Wales.

## **PART 6 -SOCIAL CARE WORKERS: FITNESS TO PRACTISE**

### **Chapter 1 - Grounds of impairment**

#### **Section 117 - Fitness to practise**

168. This Part sets out the framework for the investigation of allegations of impaired fitness to practise of registered persons and the framework governing fitness to practise hearings. Section 164 sets out the meaning of registered person and confirms that it means a person who is registered in the social worker part, an added part or the visiting European part of the registers. Part 6 of the Act therefore applies only to social care workers who are required to register, for example social workers. It does not apply to unregistered social care workers.
169. Fitness to practise panels will make decisions about whether a registered person's fitness to practise is impaired. These panels also decide what sanctions are appropriate following consideration of a case (see section 174 for provision requiring SCW to establish fitness to practise panels and the explanatory note which accompanies sections 174 and 175 for an explanation of the constitution and procedures of panels).
170. Section 117 provides that a person's fitness to practise is to be regarded as impaired by reason only of one or more of the grounds specified in subsection (1).
171. In subsection (1)(a), evidence of "deficient performance as a social care worker" is likely to include failures to comply with the standards of conduct and practice expected of social care workers set out in the codes of practice issued by SCW under section 112, although persons evaluating a social care worker's performance will not be limited to just considering compliance with codes. This ground is intended to capture serious or persistent failures to follow the standards of conduct expected of practising social care workers. Therefore a single instance of negligent treatment could constitute deficient performance, as could persistent technical failings or other repeated departures from good practice.

172. In subsection (1)(b), serious misconduct refers to conduct which may or may not be related to the exercise of professional skills, but which brings disgrace upon the registered person and thereby prejudices that person's ability to practise safely and the reputation of the profession. Therefore behaviour that takes place outside a social care worker's professional practice may lead to action where public confidence in social care workers might be undermined if action was not taken.
173. In subsection (1)(c), "barred list" refers to a list of individuals who have been deemed unsuitable to work with children or vulnerable adults. In England, Wales and Northern Ireland this list is maintained by the Disclosure and Barring Service under the Safeguarding Vulnerable Groups Act 2006. In Scotland the list is maintained by Disclosure Scotland under the Protection of Vulnerable Groups (Scotland) Act 2007. Typically persons are barred because they have committed criminal offences which relate to the ill-treatment or abuse of children or vulnerable adults.
174. Determinations by a relevant body are determinations made by equivalent regulators of social care workers and the nursing and midwifery regulator for the United Kingdom: the NMC. If for example the regulator for social workers in England, the Health and Care Professions Council, made a decision that a social worker is not fit to practise, the registrar could rely on that decision to refuse that social worker's application to register with SCW. This will prevent persons from circumventing the decision of one regulator by registering with another. Similarly, findings made in the Welsh context about a registered person's fitness to practise may inform decisions in relation to registers maintained by other regulators in the United Kingdom and further afield.
175. In respect of subsection (1)(e), SCW will not ordinarily need to be involved merely because a social care worker suffers from an illness. This ground should be relied upon only if a social care worker has a medical condition (including an addiction to drugs and alcohol) that is affecting his or her ability to practise to an acceptable standard.
176. Not every finding of impairment under subsection (1) will automatically mean the registered person's fitness to practise is impaired. Other relevant factors will be taken into account, including for example in a case involving deficient performance, whether the issues in question are easily remediable or whether action has been taken to address the problem.

## **Chapter 2 - Preliminary procedures**

### **Sections 118 - 124 - Preliminary consideration of allegations etc.**

177. This chapter sets out the framework for the investigation of allegations of impaired fitness to practise made to SCW in respect of a registered person; the chapter also applies where SCW has other grounds for believing that a person's fitness may be impaired (for example, if SCW became aware through a report in the media that a social worker had been arrested or sacked).

178. Preliminary consideration refers to the process of considering allegations or information to determine whether or not a case should proceed to be given further consideration. It will be SCW's process for screening such allegations and information; and this process could be carried out by a member or members of SCW's staff or by other persons appointed for that purpose. SCW can treat any information which comes to its attention as a potential allegation and there are no particular requirements as to the form of allegations (section 118).
179. The purpose of preliminary consideration is to decide whether the matter merits further investigation or, because of its severity, a direct referral to a fitness to practise panel. Section 120 sets out the criteria for eligibility for onward referral for investigation or immediate panel consideration.
180. If a matter is eligible for onward referral it must be referred for investigation or directly to a fitness to practise panel. SCW must refer allegations concerning convictions for offences in respect of which a custodial sentence was, or could have been, imposed directly to a fitness to practise panel and will have powers to specify in rules any other categories of cases that must be referred directly. This is because there is no need to investigate the facts giving rise to convictions of this nature and SCW will need to be able to act quickly to deal with registered persons convicted of serious offences.
181. At any stage in the fitness to practise process, including preliminary consideration, a registered person's case can be referred to an interim orders panel. Interim order panels consider if any immediate measures are needed to protect the public or the registered person while matters are being considered and investigated. These measures could include restricting the range of activities the registered person is permitted to carry out, or suspending the registered person's registration; the detailed provisions dealing with interim measures appear in Chapter 4 of this Part and are explained below.

### **Sections 125 - 130 - Investigation**

182. Sections 125-130 provide for allegations of impaired fitness to practise to be investigated by SCW, or investigated by persons acting on SCW's behalf. SCW could for example provide that all or particular kinds of investigations are to be carried out by staff members or by other individuals appointed for that purpose. Alternatively, it could establish an investigation committee for conducting investigations. SCW will also be able to appoint advisors such as health advisors. This might be necessary when investigating allegations that a registered person's fitness to practise may be impaired due to a health condition and an understanding of the condition is required or an assessment of their capacity.

183. Upon the conclusion of the investigation, SCW must refer the matter to a fitness to practise panel if the matter satisfies the realistic prospect test in section 126(2)(a) and it is in the public interest to refer the matter.
184. Where a case is not referred to a fitness to practise panel, SCW will have a range of options available to it to dispose of the case; these are set out in section 126. Where SCW decides that warning the registered person about their behaviour may be appropriate, the registered person has a right to request an oral hearing. This is to provide the person with an opportunity to make representations if they feel that a warning is not appropriate: a warning that has been issued can be recorded on the entry in the register relating to that person. SCW can also agree undertakings with registered persons. This could be, for example, an agreement that the registered person must complete a training course where the investigation has revealed that he or she may benefit from additional training.
185. There is provision in section 130 for introducing mediation as a means of disposing of cases referred for investigation. Mediation can be introduced only if provision is made by regulations made by the Welsh Ministers. Mediation could, for example, be beneficial in cases where allegations do not amount to impaired fitness to practise but there is a need to resolve issues between the registered person and the complainant which are likely to have an ongoing and detrimental effect to an ongoing relationship. If mediation were to be introduced a draft of the regulations would need to be approved by the National Assembly before being made (see section 187(2)).

### **Sections 131 – 133 - Review**

186. Section 131 provides a mechanism for reviewing certain decisions made upon conclusion of preliminary consideration and investigation. This enables SCW to reconsider decisions to ensure they are properly made or to reconsider decisions in light of new information which was not available at the time the original decision was made. Anyone SCW considers to have an interest in the decision can apply for a review. The review power does not include decisions to refer cases to an interim orders or fitness to practise panel. SCW has a separate power to cancel such referrals in section 134.
187. Section 131 requires SCW to review a decision mentioned in subsection (2) if it appears to SCW that the decision is materially flawed. This might be because of an error made by SCW in the administrative handling of the case which undermines the decision, such as the loss of relevant evidence, or an error of judgement or reasoning by the decision-maker. SCW has a broad rule-making power to determine the process that will apply to reviews under section 131. SCW could for example provide that the registrar makes the final decision.

188. Upon conclusion of an investigation or following consideration by a fitness to practise panel, sanctions can be imposed on a registered person. These include imposing conditions on a registered person's registration, for example restricting the areas in which they can practise, suspending the registered person for a period of time or requiring the register person to agree to an undertaking (see explanatory note accompanying section 126 and sections 135-155). There is a significant public interest in reviewing sanctions to ensure compliance with sanctions and to assess a registered person's fitness to practise in light of sanctions imposed. Chapter 5 sets out the system for reviewing conditional registration orders, suspension orders and undertakings. Review hearings are undertaken by fitness to practise panels and there are two ways in which a review can be initiated.
189. The first is a review must take place if this has been directed in the original order or undertaking. For example an undertaking agreed between a registered person and fitness to practise panel to complete a training course requires a review to take place after 6 months to assess compliance with the undertaking. Section 151, subsections (1)-(6), requires fitness to practise panels to carry out reviews where it is a requirement of the undertaking, conditional registration order or suspension order. See the explanatory note which accompanies Chapter 5.
190. Section 133 sets out the second method of initiating a review. SCW is responsible for monitoring compliance with conditions, suspensions and undertakings. Section 132(3) places a duty on SCW to refer cases to a fitness to practise panel to carry out a review if it has reason to believe that a registered person has breached an undertaking or condition. If, for example, SCW became aware that a registered person was failing to comply with a conditional registration order and was practising in an area he or she was prohibited from practising, SCW would be required to refer the matter for review. This information would not be treated as a new allegation and investigated accordingly. It would be referred immediately to a fitness to practise panel to review.
191. SCW is also able to refer matters for review proceedings at any time if it considers that a review is desirable (section 133(2)). This might be because SCW has received an allegation that a registered person subject to a conditional registration order is acting in a way which calls into question their fitness to practise. Once again, this allegation would not be treated as a new allegation rather it would be referred immediately to a fitness to practise panel to review.

### **Chapter 3: Sections 134 - 142 - Disposal of fitness to practise cases**

192. Fitness to practise panels consider allegations that a registered person's fitness to practise is impaired. This Chapter sets out the various powers the panels have to dispose of cases.

193. Fitness to practise panels must determine whether a person's fitness to practise is impaired on any of the grounds listed in section 117. The panel has the power to impose sanctions following a finding of impairment (see section 138). The main purpose of a sanction is not punitive but to protect the public, although it may also have a punitive effect. Where a panel's finding is that a registered person's fitness to practise is not impaired, the panel has a range of options as to how to dispose of the case; these including warning the registered person about their behaviour or giving advice about changing their conduct in future (see sections 135 and 137). SCW can publish guidance which fitness to practise panels will be required to take into account when imposing sanctions or disposing of cases (see section 162). The guidance could set out for example, the factors the panel should take into account when considering whether to issue a warning.
194. Any conditions imposed on a registered person by a fitness to practise panel can only be imposed for a period of 3 years in the first instance and a registered person's registration can only be suspended by a suspension order for 12 months in the first instance. The review process for reviewing conditions and suspensions is set out in Chapter 5 and is explained below. Conditions and suspensions can be extended beyond time limits imposed by a fitness to practise panel on review. A social worker could, for example, be suspended from practising as a social worker for 12 months by a fitness to practise panel; in making the relevant suspension order the panel could specify that a review of the suspension order would be conducted by another fitness to practise panel a month before the expiry of the order. If the panel conducting the review considered that the person's fitness to practise remained impaired, it could use section 154 to extend the suspension order for another year. It could not, however use section 154 to extend the suspension for a period exceeding 12 months. In the same way it could not extend a conditional registration order for a further period exceeding 3 years. Extensions cannot exceed the time limits imposed in section 139.
195. There are however circumstances when suspension orders can be extended for longer than 12 months. Registered persons whose fitness to practise is impaired on health grounds can be suspended indefinitely following a two year period of suspension. See explanatory notes for Chapter 5 for further explanation.

196. Registered persons can appeal any sanction imposed by a fitness to practise panel following a finding of impairment to the First-Tier Tribunal (section 158). Section 140 gives fitness to practise panels the power to issue immediate conditional registration and suspension orders pending the outcome of any appeal to the Tribunal. Whilst the purpose of such orders is the same as interim orders, the ways in which they operate are different. Immediate orders are not reviewed periodically like interim orders and their duration is linked to the appeal process. (See the explanatory note for Chapter 4 of this Part for further details about interim orders.) Therefore an immediate suspension order might be imposed if a fitness to practise panel has ordered that an entry relating to a registered person be removed from the register. This removal will not come into effect until the period for appealing has passed or an appeal is concluded; therefore the immediate order would be a measure taken to protect the public in the intervening period.

#### **Chapter 4: Sections 143 – 149 – Interim orders and review of interim orders**

197. The purpose of interim orders is to enable temporary restrictions to be imposed in respect of a registered person while investigations are undertaken into allegations made against the person.
198. SCW is required by section 174 to make rules for the establishment of interim order panels; broadly, the role of these panels will be to impose and review interim orders. There are two types of interim orders: an order for interim conditional registration which allows the registered person to continue practising but in a limited capacity; and an interim suspension order which prevents the registered person from practising at all until there is a final determination of his or her case.
199. The panel imposing or reviewing an interim order is not charged with making a final determination about whether allegations concerning a person's unfitness to practise are true. The test for imposing or, on review, confirming an order is whether it is necessary for the protection of the public or it is otherwise in the public interest or the interests of the registered person.
200. Interim orders take effect immediately and can be imposed for up to 18 months; a person in respect of whom an order is made does have a right of appeal under section 145; any appeal would be considered by the First-tier tribunal. Orders which are in force must be reviewed by an interim orders panel in accordance with the requirements of section 146; orders can be extended if SCW considers that necessary on application to the First-tier Tribunal.

## **Chapter 5: Sections 150 – 157 – Review proceedings**

201. This Chapter sets out the system for reviewing conditions of practise, suspension orders and undertakings. All review hearings under this Chapter will be carried out by fitness to practise panels. Hearings must take place if this has been directed by the original panel, or agreed in the case of an undertaking. Therefore a conditional registration order to complete a training course within 6 months could provide that a review must take place before expiry of the order to ensure that the registered person has completed the course. Hearings should also take place if SCW becomes aware of new evidence suggesting that a sanction imposed on a person should be reviewed. For example if SCW was made aware of an allegation that a suspended social worker was practising, a review hearing should take place. See explanatory note to sections 131-133 for further detail.
202. Panels are able to take a number of decisions in relation to the original order; (whether that be a conditional registration order, a suspension order, or an undertaking). A panel may confirm or revoke the order; it may extend or reduce the period of the order; or it may adjust or remove any of the conditions. The panel can also impose any sanction or other form of disposal it considers more appropriate. For example, a persistent and serious breach of conditions may mean that a removal order is necessary.
203. Upon review of a suspension order, panels can extend the order indefinitely if a registered person has been suspended for at least two years for reason only of adverse health. Those subject to indefinite suspension orders can request that a fitness to practise panel review the order. A first application for review cannot be made until 2 years have passed since the order was made; and subsequent applications for review are subject to similar restrictions: once an unsuccessful application has been made, a person must wait for a period of 2 years before making another application. This would be relevant to workers who might be suffering from a long-term illness and cannot practise for a considerable period of time and therefore for whom regular reviews are not appropriate.

## **Chapter 6: Appeals and referrals to the tribunal**

### **Section 158 - Appeals against decisions of a fitness to practise panel**

204. Section 158 provides for appeals against decisions of a fitness to practise panel to the First-Tier Tribunal. Therefore registered persons who are dissatisfied with a condition that had been imposed or with the fact that they had been removed from the register for example could ask the Tribunal to look at this decision.

## **Chapter 7: Sections 159 – 164 - General and supplementary**

205. The timely supply of relevant information is essential for the efficient and effective functioning of the fitness to practise process. Delays or refusal from registered persons or their employers to supply information could result in difficulty progressing and concluding cases. Section 160 enables SCW to require persons to produce information and, in the event of non-compliance, apply to the Tribunal for it to require disclosure of the information being withheld. Persons cannot, however, be required to produce information that is protected from disclosure by other legislation or rule of law. A request for information could not override anything barring disclosure contained in the Data Protection Act 1998, for example.
206. Section 161 requires SCW to publish all decisions made by fitness to practise panels and interim order panels, except decisions to take no further action. This also applies to decisions made on review. This is to ensure that the process is transparent and that the information is available to the public.
207. Section 163 provides that subject to the exceptions in subsection (3), a person is not to be treated as a registered person if he or she is subject to a suspension order despite the fact that his or her name still appears on the register. This will ensure that social workers subject to a suspension order cannot call themselves registered social workers or hold themselves out as being registered.

## **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)).

#### **PART 8 – SOCIAL CARE WALES: DUTY TO ESTABLISH PANELS ETC.**

211. Section 174 provides that SCW must by rules make provision for there to be registration appeal panels, interim orders panels and fitness to practise panels. Section 174 and rules made under it set out how each of the panels are to be constituted. The provisions are intended to ensure that there are safeguards in place to ensure that panel members are impartial and can make decisions without being affected by conflicts of interest. Subsection (5) lists the types of person who are prohibited from being panel members and paragraph (b) provides the Welsh Ministers with the power to make regulations prohibiting additional persons.. This could include for example a person who is not a member of SCW’s staff (who would be prohibited by virtue of paragraph (a)) but has given preliminary consideration to a matter, or a person who has sat on another similar kind of panel.
212. Section 175 allows the Welsh Ministers to make regulations in respect of proceedings before the panels. The regulations could, for example, set out SCW’s case management powers and other procedural matters relating to hearings before panels. The regulations could provide that different procedures apply to different panels so for example that in some cases interim orders panels must hear cases in private.

213. Subsection (4) of section 175 provides that the civil standard of proof will apply to the proceedings of all panels established under this Act. Panels will be required therefore to determine questions of fact on the balance of probabilities.

## **PART 9 – CO-OPERATION AND JOINT WORKING BY THE REGULATORY BODIES ETC.**

214. Sections 176 to 182 apply to the Welsh Ministers in the exercise of their functions as services regulator under the Act, and to SCW. These sections also apply to the Welsh Ministers in the exercise of their functions under section 15 of the Adoption and Children Act 2002 in connection with the inspection of premises relating to adoption services, and to certain of their functions under the Social Services and Well-being (Wales) Act 2014. Section 178 also applies to the relevant authorities listed in section 177. The aim of this set of provisions is to provide legal certainty to the services regulator (CSSIW as a department of the Welsh Government acting for the Welsh Ministers), the workforce regulator (Social Care Wales) and the relevant authorities in relation to the extent of their duties to co-operate and work with each other in exercising their respective functions.
215. These provisions make it clear that the relevant public authorities are legally entitled to work together with other public authorities and indeed that they must do so where that is consistent with their respective functions.
216. The Welsh Ministers and SCW must always co-operate with each other when exercising the functions mentioned above if they think that doing so will bring the benefits mentioned in section 178. Section 177 contains a list of relevant authorities who are required to co-operate with the regulators under section 178, but only when requested to do. Such a request may only be made if the regulator in question thinks that the co-operation will have a positive effect on the manner in which their functions are exercised or will assist them in achieving their general objectives as set out in sections 4 and 68 of the Act. Those functions and objectives apply only in relation to Wales. Such a duty will apply unless the circumstances set out in section 178(3) apply (see below). Section 178(4) is a reciprocal duty on the regulators to cooperate with the relevant authorities when requested to do so.

217. Section 178 does not explicitly limit what is meant by co-operation. It is designed to capture any kind of assistance that one organisation can give to another. Examples of the kind of co-operation that the section could entitle a regulatory body to request or give, include-
- co-ordination of enforcement activity where regulatory jurisdictions overlap;
  - liaison on how media interest is to be handled in relation to matters of mutual concern;
  - input on standards, rules, educational requirements etc.
  - lending of expertise for staff training events;
  - sharing of analyses and assessments in relation to mutually relevant patterns or trends.
218. A regulatory body will be entitled to request the co-operation of an authority listed in section 177 so long as the regulatory body decides that co-operation will either have a positive effect on the way it exercises its existing functions or that the co-operation will help the regulator achieve the general objectives it has under section 4 or 68.
219. Once one of the regulatory bodies requests co-operation from an authority the authority has to comply with the request unless one of three exceptions apply (see section 178(3)(a), (b) and (c)). The exceptions are –
- The law prevents the authority from co-operating in the way that has been requested (this could be law in another piece of statute or even a common law rule);
  - The authority reasonably thinks that to co-operate as requested would not be compatible with the authority's own functions; or
  - The authority thinks that the co-operation would have an adverse effect on their functions (for example, even in a case where the law allowed the authority to co-operate and the authority thought it would complement its own functions it might still refuse to co-operate because of the cost of doing so. That is to say, the authority reasonably considers the costs of co-operating would lead to an adverse effect on its own functions.)
220. An illustration of the importance of the two regulators (i.e. the Welsh Ministers and SCW) working together in the exercise of their respective functions is the approach taken in the Act in relation to managers. The system under the 2000 Act required managers of establishments and agencies registered under Part 2 of the 2000 Act to register with both the service regulator and the workforce regulator. A consequence of the system of regulation under the Act is that managers are no longer required to register with the service regulator. Regulations made under sections 27 and 28 will require managers to register with the workforce regulator only and regulations could be made under section 79(1)(b) to require SCW to keep a register in respect of managers of regulated services.

221. Regulations under section 28 could require the responsible individual in relation to a place at, from or in relation to which a service is provided to be responsible for employing a fit manager and for the supervision of the management. In those circumstances, the service regulator will be required to take action against the responsible individual (and not the manager) where there are failings in the management. Given that it is the service regulator that is likely to have the most contact with managers and will be more aware of when a manager is under-performing, the workforce regulator would be reliant on the service regulator to share information about managers and, where necessary, to support the workforce regulator in bringing fitness to practise proceedings against managers of services.
222. Section 179 permits both regulators to jointly exercise functions that each has, i.e. the Welsh Ministers have function A, SCW has function B, and when the Welsh Ministers and SCW arrange to exercise functions A and B jointly under this section, both bodies will be legally accountable for the exercise of function A and B. This means that both bodies will be respondents to any judicial review challenge to the exercise of each other's function. This power could be used for example, to allow the bodies to establish a joint committee to exercise the Welsh Ministers function of reviewing studies and research into local authority social services functions and to review those functions (see sections 149A and 149B of the 2014 Act as inserted by section 56) alongside SCW's function of undertaking comparative or other studies under section 70.
223. Section 180 permits the regulators to delegate any of their functions to the other. This could be used, for example, to allow the Welsh Ministers as service regulator to delegate their function of authorising persons to carry out inspections under section 33 (2) to SCW who have functions relating to the appointment of persons to conduct fitness to practise investigations (see section 125).
224. Sections 181 and 182 are information sharing provisions that aim to provide certainty to the regulators about the extent to which they have the power to share information in the course of exercising their functions.

*These notes refer to the Regulation and Inspection of Social Care (Wales) Act 2016  
(anaw 2) which received Royal Assent on 18 January 2016*

## **RECORD OF PROCEEDINGS IN NATIONAL ASSEMBLY FOR WALES**

225. The following table sets out the dates for each stage of the Act's passage through the National Assembly for Wales. The Record of Proceedings and further information on the passage of this Act can be found on the National Assembly for Wales' website at: <http://senedd.assembly.wales/mgIssueHistoryHome.aspx?IId=12110>

<b>Stage</b>	<b>Date</b>
Introduced	23 February 2015
Stage 1 - Debate	14 July 2015
Stage 2 Scrutiny Committee - consideration of amendments	7 October 2015 15 October 2015
Stage 3 Plenary - consideration of amendments	17 November 2015
Stage 4 Approved by the Assembly	24 November 2015
Royal Assent	18 January 2016