

REGULATION AND INSPECTION OF SOCIAL CARE (WALES) ACT 2016

EXPLANATORY NOTES

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.

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

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).