

REGULATION AND INSPECTION OF SOCIAL CARE (WALES) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

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

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

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.