

# HEALTH AND SOCIAL CARE (QUALITY AND ENGAGEMENT) (WALES) ACT 2020

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 2: Improvement in health services**

##### *Section 2 – Quality in the provision of health services*

4. This section imposes new duties on the Welsh Ministers and NHS bodies relating to improving the quality of health services.
5. The provision will, in respect of NHS bodies, replace that in section 45(1) of the Health and Social Care (Community Health and Standards) Act 2003. Section 45(1) imposes a duty on Welsh NHS bodies (local health boards, NHS trusts and special health authorities) to ensure that appropriate arrangements are in place to monitor and improve the quality of health care provided by or for those bodies. The new provision will replace section 45(1) and will, additionally, apply to the Welsh Ministers.
6. New section 1A of the National Health Service (Wales) Act 2006, as inserted by subsection (1), will require the Welsh Ministers to exercise their functions in relation to the health service with a view to securing improvement in the quality of health services. This duty will apply when the Welsh Ministers exercise any of their functions that relate to the health service, including functions relating to the health service that sit outside the National Health Service (Wales) Act 2006 such as, for example, the Welsh Ministers' function of reviewing and investigating health care under Chapter 4 of Part 2 of the Health and Social Care (Community Health and Standards) Act 2003.
7. Under section 1A(3) and (5), the Welsh Ministers will be required to publish an annual report on the duty to secure improvement and lay the report before the Senedd. The report must include an assessment of the extent of any improvement in outcomes achieved as a result of steps taken to comply with the duty. The kinds of outcomes that may be assessed in the report may include, for example, the extent of any improvement in patient experience, or in the early detection and treatment of sepsis or the extent of any improvement in reducing the incidence of hospital acquired infections.
8. New sections 12A, 20A and 24A of the National Health Service (Wales) Act 2006, as inserted by the subsequent subsections of section 2, will impose a corresponding duty on local health boards, NHS trusts and special health authorities ("NHS bodies"). In accordance with section 24A(8) of that Act (which is inserted by section 2 of this Act), a special health authority does not include a cross-border special health authority within the meaning of section 8A(5) of the National Health Service (Wales) Act 2006. NHS bodies will be required to exercise all of their functions with a view to securing improvement in the quality of health services. The duty, therefore, differs to that in section 45(1) in that it applies to the exercise of all functions. In discharging the duty, an NHS body will not only be required to consider how it might improve a service it provides directly, but also how it might act in a way that will contribute to an

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improvement in the quality of another part of the health service. For example, the provision of an electronic medicines prescribing and discharge system may improve the quality of the service experienced by service users across the health service as a whole.

9. When discharging the duty NHS bodies will be required to take into account any standards set by the Welsh Ministers under section 47 of the Health and Social Care (Community Health and Standards) Act 2003. The current standards are the Health and Care Standards (April 2015). The Welsh Ministers will also have the function of conducting reviews of the arrangements made by NHS bodies for the purpose of discharging their duty under section 12A, 20A or 24A. These elements are provided for by amendments made by Part 1 of Schedule 3 to the Act.
10. In addition, new sections 12A, 20A and 24A each place a duty on the Welsh Ministers to issue guidance to the relevant type of NHS body in respect of the duty of quality. The guidance must, in particular, include guidance about (i) the evidence to be used in support of their assessment of improvement in outcomes that have been achieved as a result of steps taken to comply with the duty of quality; and (ii) the conduct of such an assessment.

### **Part 3: Duty of candour**

#### ***Section 3 – When the duty of candour applies***

11. This section explains when the duty of candour in Part 3 will apply. When the duty applies, an NHS body must take certain steps in accordance with a procedure set out in regulations made under section 4.
12. For the purpose of this Part an NHS body is a local health board, an NHS trust, a special health authority and a primary care provider. A primary care provider is a person who provides general medical services (GP services), general dental services, general ophthalmic services or pharmaceutical services on behalf of a local health board. In accordance with section 11(7), the application of the duty to special health authorities extends to special health authorities established under section 22 of the National Health Service (Wales) Act 2006, but does not include any cross-border special health authority (within the meaning of section 8A(5) of that Act) apart from NHS Blood and Transplant in relation to the exercise of its functions in Wales.
13. The duty of candour procedure will have to be followed where the two conditions in subsections (2) and (3) are met.
14. The first condition is that the service user to whom health care is being or has been provided by the NHS body has suffered an adverse outcome. A service user is treated as having suffered an adverse outcome if the service user experiences, or if the circumstances are such that the service user could experience, any unexpected or unintended harm that is more than minimal. The meaning of “more than minimal harm” will be set out in guidance issued by the Welsh Ministers under section 10 of the Act. The guidance will be developed having regard to existing definitions of harm, such as those used in the National Reporting and Learning System which is the existing system for reporting adverse patient safety incidents in the NHS. For the purpose of the duty of candour, harm includes psychological harm.
15. The duty is triggered not only when harm is known to have occurred but in cases where harm could occur in the future; for example, where an error in the administration of medication may cause an adverse outcome at a future point. The duty may be triggered by an action taken by an NHS body during the provision of health care or by a failure to take action. The harm must be unintended or unexpected which means that the duty does not apply where undesirable outcomes occur as a result of a medical condition.
16. The second condition is that the provision of the health care was or may have been a factor in the service user suffering the outcome. The outcome must therefore relate to

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the provision of the care by the NHS body rather than being solely attributable to the person's illness or underlying condition. It need not, however, be certain that the health care caused the harm; it is sufficient that the health care may have been a factor. The application of the duty does not indicate that the NHS body has acted negligently.

#### ***Section 4 - Duty of candour procedure***

17. This section requires the Welsh Ministers to provide in regulations for a procedure to be followed by an NHS body when the duty of candour applies to the body. The procedure will set out actions to be taken by NHS bodies when the duty applies.
18. Subsections (2) and (3) give detail as to what the regulations must make provision about. The regulations must, for example, require the NHS Body to notify the service user or their representative that the duty of candour has come into effect, to provide information about any further enquiries that will be carried out, and make provision about support and an apology.

#### ***Section 5 – Primary care providers: duty to prepare report***

19. This section requires a primary care provider to prepare an annual report on whether the duty of candour has come into effect in relation to health care provided by the provider. The section sets out what information the report must contain (but it can include other information).
20. Where a primary care provider has provided health care on behalf of two or more local health boards in a particular financial year, this section will require the provider to prepare a separate report in respect of each local health board.

#### ***Section 6 – Supply and summary of report under section 5***

21. This section requires a primary care provider, as soon as practicable after the end of a financial year, to send the annual report prepared under section 5 to the local health board to which the report relates.
22. A local health board must prepare a summary of the reports it has received from the primary care providers under subsection (1).

#### ***Section 7 – Local Health Board, NHS Trust and Special Health Authority: reporting requirements***

23. This section requires local health boards, NHS trusts and special health authorities (including NHS Blood and Transplant in relation to the exercise of its functions in Wales), as soon as practicable after the end of each financial year, to prepare an annual report on the duty of candour. It also makes provision about what that report must contain (but it can include other information).

#### ***Section 8 – Publication of section 6 summary and section 7 report***

24. This section requires NHS bodies subject to the duty in section 7 to publish the reports prepared under that section.
25. In the case of a local health board, the report must include the summary prepared under section 6 of the reports provided to the local health board by primary care providers providing services on its behalf. The local health board will therefore be responsible for publishing information relevant to the duty of candour in respect of its own services and the services provided by primary care services for its area. This will mean that all of the information about the duty of candour in respect of a local health board area will be published together.

### ***Section 9 – Confidentiality***

26. Subsection (1) of this section provides that a report published under section 8 by an NHS body may not name certain individuals. The individuals are: any person to whom health care is being or has been provided by or on behalf of the body; and any person acting on such a person's behalf. In addition, subsection (2) requires an NHS body, when determining what information to include in a section 8 report, to have regard to the need to avoid including any information which, even though it does not actually give an individual's name, is in the circumstances likely to enable the identification of that individual. Such a circumstance might arise, for example, where the details of a particular patient's care have received media attention. The purpose of this provision is to protect confidentiality.

### ***Section 10 – Guidance given by the Welsh Ministers***

27. This section requires NHS bodies, in exercising functions relating to the duty of candour, to have regard to any guidance issued by the Welsh Ministers.

### ***Section 11 – Interpretation of “health care” and other terms***

28. This section makes provision about the interpretation of terms used in Part 3 including the meaning of “health care”, “illness” and “NHS body”.
29. By virtue of subsection (5), where health care is provided as part of a contract, agreement or arrangement between two NHS bodies, the care is deemed as having been provided by the body providing the care rather than the body which arranged for the care to be provided on its behalf. This means that in relation to such an arrangement, the duty of candour, if engaged, would apply to the provider of the care only. This includes health care provided on behalf of the NHS body by a primary care provider.
30. Under subsection (6), where health care is provided on an NHS body's behalf by a body that is not an NHS body, the duty of candour, if engaged in relation to the health care in question, will apply to the NHS body, not the body which provided the care.

## **Part 4: The Citizen Voice Body for Health and Social Care**

### ***Section 12 - Establishment of Citizen Voice Body***

31. This section establishes the Citizen Voice Body for Health and Social Care, Wales (the “Citizen Voice Body”) as a body corporate (a legal entity in its own right) whose general objective will be to represent the interests of the public in health and social care. It will also provide complaints advocacy service in respect of health and social care. The Citizen Voice Body will be a national body that will replace the 7 Community Health Councils in Wales and the Board of Community Health Councils which oversees the local Councils.
32. Provision about the Citizen Voice Body's membership, constitution and operational arrangements is made in Schedule 1.
33. The Body will have between 8 and 10 non-executive members, appointed by the Welsh Ministers; including a chairing member and a deputy chairing member.
34. The Body's membership will also include the person appointed under paragraph 9 of Schedule 1 as its chief executive.
35. [Schedule 1](#) also makes provision for an associate member to be appointed to the Body in circumstances where one or more trade unions are recognised by it. To be eligible for appointment as an associate member, an individual must be a member of the Body's staff and a member of a trade union recognised by the Body. The procedure for appointing an associate member is set out in paragraph 6 of the Schedule; and an

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appointment would be made by the non-executive members on the basis of nominations made by trade unions recognised by the Body.

36. The expression “recognition” in relation to a trade union is significant for the purposes of rules regulating collective bargaining between employers and trade unions; the principal legislation on this is the Trade Union and Labour Relations (Consolidation) Act 1992.
37. Among other things, the Body will have the power under Schedule 1 to appoint staff; and to establish committees and sub-committees. The Body will be required to make rules regulating its procedure and the procedure of any of its committees or sub-committees.

### **Section 13 – General objective**

38. This section provides that the Citizen Voice Body’s general objective, in carrying out its functions, is to represent the interests of the public in respect of health services and social services. “Health services” mean NHS services and “social services” mean the services provided by local authorities in exercise of their social services functions.
39. Subsection (2) requires the Citizen Voice Body, for the purpose of achieving its general objective, to seek the views of the public. It may do so in whatever way it considers appropriate. For example, the Body may hold events, conduct online surveys polls and online discussion groups, distribute feedback forms and maintain a social media presence. Section 15 enables the Body to make representations to an NHS Body (for the purposes of Part 4 of the Act “NHS body” means a local health board, an NHS trust and a special health authority) or local authority which will enable it to convey to those bodies the views it has sought from the public. In accordance with section 22, a special health authority means a special health authority established under section 22 of the National Health Service (Wales) Act 2006, but does not include a cross-border special health authority within the meaning of section 8A(5) of that Act.
40. Subsection (3) provides that when making arrangements for the purpose of complying with its duty under subsection (2) to seek the views of the public, the Citizen Voice Body must, in particular, have regard to the importance of ensuring, where appropriate, face to face engagement between its staff, or any other persons acting on its behalf (which could include contractors or persons offering assistance as volunteers), and persons from whom views are being sought.
41. The Citizen Voice Body will also have a role where local health boards or NHS trusts plan services or propose changes to them. Under section 183 of the National Health Service (Wales) Act 2006 and section 242 of the National Health Service Act 2006 local health boards and NHS trusts have a duty make arrangements to consult the public or their representatives when they plan their services, develop proposals for changing how their services are provided or make decisions affecting the operation of their services. In the exercise of its function of representing the public’s interests, the Citizen Voice Body may be involved in consultations carried out by local health boards in the discharge of these duties. Local health boards, and NHS trusts may consult the Body directly but the Body may also instigate its own contribution to consultations. The local health board, or trust must take any representation made by the Body into account (see section 15). The Body may also make contributions to any consultation carried out by a local authority about its social services functions. The local authority must take any representation made by the Body into account (see section 15).

### **Section 14 – Public awareness and statement of policy**

42. This section places the Citizen Voice Body under a duty to promote public awareness of its general objective and functions. It must also prepare and publish a statement of its policy setting out how it proposes to promote awareness of its functions and how it will seek the views of the public for the purpose of its general objective.

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43. Subsection (3) requires the statement of policy to, in particular, specify how the Citizen Voice Body proposes to ensure that it represents the interests of and is accessible to people in all parts of Wales and how members of the Body's staff and anyone else acting on the Body's behalf (such as contractors or persons assisting the Body in a voluntary capacity) are able to engage effectively with people across Wales. This requires the Body to plan effectively to ensure it can achieve these things when it is exercising its functions.

### ***Section 15 – Representations to public bodies***

44. This section enables the Citizen Voice Body to make representations to an NHS Body or local authority about anything it considers relevant to provision of a health service or social services. This enables it to make known any views it has sought from the public and represent those views to the bodies responsible for providing and arranging health and social services, whether in response to a consultation by one of the bodies or at its own instigation after it has sought the views of the public.
45. An NHS body or local authority must have regard to the representation when exercising any function to which that representation relates.
46. Subsection (4) requires the Welsh Ministers to issue guidance to NHS bodies and local authorities in relation to representations the Citizen Voice Body makes to them under this section. NHS bodies and local authorities are required by subsection (5) to have regard to that guidance. The guidance may, for example, deal with how an NHS body or local authority ought to respond when a representation is made to it.

### ***Section 16 - Advocacy services etc. in respect of complaints about services***

47. This section gives functions to the Citizen Voice Body in relation to complaints. Under this section the Citizen Voice Body may provide assistance to individuals with complaints relating to health and social services including social care services regulated under the Regulation and Inspection of Social Care (Wales) Act 2016.
48. Assistance may be given by, for example, providing information and support to allow a service user to pursue a complaint themselves or by providing the support to a complainant at meetings where a complaint is discussed.
49. Subsection (2) sets out the complaints relating to health services in respect of which the Citizen Voice Body may give assistance. They are the complaints which by virtue of section 187 of the National Health Service (Wales) Act 2006 the Welsh Ministers are required to arrange for the provision of independent advocacy services. These include complaints about—
- a. the exercise of any of the functions of an NHS body (a local health board, an NHS trust or special health authority),
  - b. the provision of health care by an NHS body including care provided on their behalf by another person or body,
  - c. the provision of redress by or for an NHS body under the NHS Redress (Wales) Measure 2008.
50. It also includes complaints made to the Public Services Ombudsman for Wales relating to NHS services.
51. Subsections (3) to (6) set out the other complaints in respect of which the Citizen Voice Body may provide assistance. These include—
- a. complaints made to a local authority about the exercise of its social services functions,

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- b. complaints made to a local authority about the provision of services by another person or body under arrangements with the local authority,
  - c. complaints made to a provider of a regulated social care service (within the meaning of the Regulation and Inspection of Social Care (Wales) Act 2016) such as a care home service or domiciliary support service.
52. It also includes complaints made to the Public Services Ombudsman for Wales about a local authority's social services functions or about care home services and domiciliary care services.
53. Subsection (7) excludes from the Body's functions assistance with complaints to a local authority by children and other specified individuals where complaints assistance is already arranged by local authorities by virtue of their duties under Part 10 of the Social Services and Well-being (Wales) Act 2014.
54. Subsection (8) requires the Citizen Voice Body, when it is providing or considering whether to provide advocacy services or other assistance under this section, to have regard to the importance of ensuring, where appropriate, face to face engagement between its staff or any other persons acting on its behalf (such as contractors) and any person to whom advocacy services or other forms of assistance are being or may be provided.

### ***Section 17 – Duty to promote awareness of activities of Citizen Voice Body***

55. This section imposes a duty on local health boards, NHS trusts, special health authorities and local authorities to promote awareness of the activities of the Citizen Voice Body.

### ***Section 18 - Duty to supply information to Citizen Voice Body***

56. This section imposes a duty on local health boards, NHS trusts, special health authorities and local authorities to supply such information to the Citizen Voice Body as it may reasonably request for the purpose of its functions. This will enable it to obtain information about the services provided by or arranged by the body or its proposals for developments, for example. The information excludes information that is protected from disclosure by other legislation or other rule of law. A request for information could not, for example, override prohibitions on disclosure contained in data protection legislation.
57. A local authority or an NHS Body must give the Citizen Voice Body its reasons in writing if it refuses to disclose information to the Citizen Voice Body under this section.

### ***Section 19 – Code of practice on access to premises***

58. This section imposes a duty on the Welsh Ministers to prepare and publish a code of practice about-
- a. requests by the Citizen Voice Body to access premises where health or social services are provided for the purpose of seeking views about health services or social services, and
  - b. where access has been agreed, engagement with individuals at those premises.
59. The Code will apply to the Citizen Voice Body, NHS bodies (ie Local Health Boards, NHS Trusts and Special Health Authorities) and local authorities who will all have a duty to have regard to it.
60. Subsection (5) places the Welsh Ministers under a duty to consult the Citizen Voice Body, NHS bodies, local authorities and any other persons they consider appropriate when preparing the code.

***Section 20 – Co-operation between the Body, local authorities and NHS bodies***

61. This section places the Citizen Voice Body, NHS bodies and local authorities under a duty to make arrangements to co-operate with a view to supporting each other to exercise their respective functions under sections 13(2), 14(1) and 17(1).
62. **Section 13(2)** is the Citizen Voice Body’s function of seeking the views of the public in respect of health and social services. Section 14(1) is the Citizen Voice Body’s duty to promote public awareness of its general objective and functions. Section 17(1) places a duty on NHS bodies and local authorities to bring the activities of the Citizen Voice Body to the attention of people who are receiving or may receive health services or social services that they provide or which are provided on their behalf.

***Section 21 and 22– Meaning of health services, social services and other terms***

63. These sections make provision about the interpretation of the terms used in Part 4 including the meaning of “health services” and “social services”.

***Section 23 – Abolition of Community Health Councils, and connected matters***

64. This section abolishes Community Health Councils and the Board of Community Health Councils in Wales by the repeal of section 182 of and Schedule 10 to the National Health Service (Wales) Act 2006. Community Health Councils were established under section 182 of the National Health Service (Wales) Act 2006 to represent the interests of the public in the health service. They also provide independent advocacy services, by virtue of arrangements made with the Welsh Ministers under section 187 of the National Health Service (Wales) Act 2006. These functions will be exercised by the Citizen Voice Body with the addition of functions relating to social care.
65. **Part 2** of Schedule 3 makes consequential amendments related to the abolition of the Community Health Councils and the Board of Community Health Councils and creation of the Citizen Voice Body. The Community Health Councils were initially established in 1974 in England and Wales and continued in existence in Wales by virtue of section 182 of the National Health Service (Wales) Act 2006. A number of Acts of Parliament such as the Freedom of Information Act 2000 and the Equality Act 2010 refer to Community Health Councils, as do a number of Welsh Acts, such as the Well-being of Future Generations (Wales) Act 2015 and the Regulation and Inspection of Social Care (Wales) Act 2016. This Part of the Schedule removes references to the Community Health Council and Board of Community Health Councils in Wales and, where appropriate, adds a reference to the Citizen Voice Body.
66. This section also introduces Schedule 2 to the Act which enables the Welsh Ministers to transfer property, rights and liabilities which currently exist in relation to Community Health Councils to the Citizen Voice Body. The Welsh Ministers must lay any scheme before the Senedd, as provided in paragraph 1(6).

**Part 5: Miscellaneous and general**

***Section 24 – Vice-chairs of boards of directors of NHS Trusts***

67. This section amends Part 1 of Schedule 3 to the National Health Service (Wales) Act 2006 to enable the Welsh Ministers, if they consider it appropriate, to appoint a vice-chair to the board of an NHS Trust.
68. Subsections (3) and (4) make consequential amendments in connection with the main proposition in subsection (2). In the case of subsection (3), these amendments are necessary to allow the Welsh Ministers to make regulations about the qualifications and tenure of office of a vice chair (including the circumstances in which they cease to hold office or may be removed or suspended). The amendments made by subsection (4)



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are necessary to require an NHS Trust to pay remuneration and other allowances to a vice-chair.

### ***Section 25 – Regulations***

69. This section explains that powers to make regulations are to be exercised by statutory instrument (which means that certain procedural and other requirements contained in the Statutory Instruments Act 1946 apply in relation to the regulations).
70. Subsection (3) provides that the affirmative procedure will apply to regulations made under section 26 if the regulations amend or repeal any enactment contained in primary legislation (section 26 contains a power to make transitional etc. provision necessary for the purposes of the Act). This means that any such regulations are subject to the express approval of the Senedd.
71. Subsection (4) provides that all other regulations are subject to annulment in pursuance of a resolution of the Senedd, including regulations made under section 26 that do not amend or repeal primary legislation.

### ***Section 26 – Interpretation***

72. This section defines key terms used in the Act, including “regulations”, “Local Health Board”, and “NHS Trust”.

### ***Section 27– Minor and consequential amendments***

73. This section introduces Schedule 3 which sets out minor and consequential amendments relating to the duty of quality and the Citizen Voice Body.
74. [Part 2](#) of Schedule 3 sets out consequential amendments related to the abolition of the Community Health Councils and the Board of Community Health Councils in Wales and creation of the Citizen Voice Body.

### ***Section 28 – Power to make transitional etc. provision***

75. This section enables the Welsh Ministers to make regulations to provide for any consequential, supplementary or incidental provision, or any transitional, transitory or saving provisions in the circumstances set out in subsection (1).

### ***Section 29 – Coming into force***

76. This section makes provision about when and how the Act comes into force.
77. Subsection (1) provides that this section and section 30 come into force the day after the day the Act receives Royal Assent.
78. The other provisions of the Act will come into force on a day specified in a commencement order (or orders) made by the Welsh Ministers under subsection (2). By virtue of subsection (3), the Welsh Ministers will have power to specify different dates for different purposes and include transitional, transitory and savings provision in any commencement order.