

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

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **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 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

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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.
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.

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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,
  - 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

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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).