

Health and Social Services Committee

HSS(2)-13-06(p.4)

Date: Thursday 28 September 2006

Venue: Committee Room 1, National Assembly for Wales

Title: The Care Standards Act 2000 and the Children Act 1989 (Regulatory Reform and Complaints) (Wales) Regulations 2006

Purpose

1. This paper provides the Committee with the opportunity it requested to consider proposed changes to the Regulations for services registered with the Care Standards Inspectorate for Wales (the CSIW), before they go forward for consideration under standing order 24.

Summary

2. The Committee selected these Regulations for scrutiny at its meeting on 19 January 2006. The proposed measure would bring the existing Regulations into line with two recent developments – the reform of regulatory practice and the new framework on handling complaints in local authority social services. Subject to approval in Plenary, scheduled for 5 December 2006, it is hoped to bring the new requirements into force on 1 January 2007.

Background

3. Following the policy directions set out in "Making the Connections" and the UK-wide report "Inspecting for Improvement", the CSIW has begun a far-reaching reform of regulatory practice. In future:

CSIW will put the experience of service users at the core of inspection.

CSIW will ensure that the intensity of inspection of individual services is matched to need – concentrating regulation where it is needed most.

CSIW will seek to reduce any unnecessary burden on providers – with self- assessment and the provider's own quality assurance process being important aspects of this.

There will be a greater emphasis on unannounced inspections.

There will be a closer dovetailing of the work of CSIW with other inspectorates.

4. The draft Regulations have been developed to support these reforms.
5. The Assembly's new framework for handling complaints in social services came into force on 1 April 2006. Securing effective joint working between independent providers, local authorities and the CSIW was one of the biggest challenges within this work – and the guidance "Listening and Learning" sets out a model of good practice in this area. The development of the new framework exposed inconsistencies and inadequacies in the existing Regulations on handling complaints in regulated services. The draft Regulations would deal with these shortcomings – by drawing wherever appropriate on the Regulations for local authority complaints procedures.
6. The single set of Regulations being proposed would introduce consistent and up to date provision on these issues across the range of regulated services, including child minding and other day care for under eights, children's homes, care homes and domiciliary care agencies.
7. A formal twelve-week consultation finished at the end of June. Some amendments have been made and the draft Regulations, explanatory memorandum and regulatory appraisal are ready for consideration by the Committee.

Consideration

8. On the reform of regulatory practice, the main changes are designed to help the CSIW to target inspection where it needed most:

The Regulations introduce consistent duties on providers to have their own quality assurance mechanisms in place. These would have to seek the views of service users and others. And providers would have to report at least once a year on the quality of care provided by the service.

The Regulations require registered providers, on the request of the CSIW, to provide a "self-assessment" of their service. This would have to be accurate, not misleading and in the form requested by the CSIW.

Finally, the Regulations place providers under a duty to tell the CSIW when they have completed any action required by the CSIW to rectify an identified regulatory breach.

9. On the handling of complaints, the main changes are designed to extend to independent providers the provisions of the 2005 Regulations on complaints procedures in local authority social services:

The new Regulations place duties on independent sector providers to safeguard and promote the welfare of the service user in handling complaints. There are new duties to ascertain and take into account the user's wishes and feelings.

The Regulations put all the time-scales for handling complaints on a statutory footing and require providers to keep complainants informed about progress with their complaint.

The Regulations permit providers to operate the second stage of the complaints procedure only where

they are authorised to do so by the CSIW. The Regulations now make it clear that the CSIW will allow providers to run a formal consideration stage, only where this would be undertaken by someone not involved in the running of the service.

The requirements on advocacy support for complainants have been strengthened to bring them as closely as possible into line with those on local authorities.

The Regulations now provide arrangements for managing complex situations where there are concurrent investigations by for instance the police, the CSIW or the Care Councils.

10. The formal consultation on the draft Regulations and draft regulatory appraisal was held between 10 April and 30 June 2006. A report on the response is attached to the Regulatory Appraisal; lists of consultees and of respondents appear as Annexes 1 and 2 to the report. The bodies that responded overwhelmingly endorsed the substance of the proposals. Reactions to some of the proposed time-scales were a little more mixed – but in every case they were still supported by a clear majority.

Timetable for implementation

11. ELLS Committee has not yet decided whether they wish to scrutinise the Regulations. If they do so, this likely to happen on 18 October. I intend submitting the Regulations to Business Committee later in October, for consideration on 14 November. The timetable provides for the Regulations to be debated in Plenary on 5 December 2006 and to come into force on 1 January 2007.

Action

12. The Committee is invited to:

(i) Consider this paper, the draft Regulations, the draft Explanatory Memorandum and the draft Regulatory Appraisal

(ii) Note the intention to proceed with the draft Regulations in accordance with standing order 24. The current timetable provides for the SI to go to Plenary on 5 December 2006 and to come into force on 1 January 2007.

Brian Gibbons AM

Minister for Health and Social Services

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From: Brian Gibbons AM

Minister for Health and Social Services

Explanatory memorandum

Social care, Wales

Children and young persons, Wales

The Care Standards Act 2000 and the Children Act 1989

(Regulatory Reform and Complaints) (Wales) Regulations 2006

Summary

These Regulations will bring the existing Regulations on services regulated by the Care Standards Inspectorate for Wales (CSIW) into line with two recent developments – the reform of regulatory practice and the new framework on handling complaints in local authority social services.

This Memorandum is submitted to the Assembly's Business Committee in relation to The Care Standards Act 2000 and the Children Act 1989 (Regulatory Reform and Complaints) (Wales) Regulations 2006, in accordance with Standing Order 24.6.

A copy of the draft Instrument is submitted with this Memorandum.

Enabling Powers

3. The powers enabling the Assembly to make these Regulations are contained in sections 23(2)(a) and (9), 59(2), 62(3), 79C and 104(4) of, and paragraph 12 of Schedule 2 to, the Children Act 1989; sections 1(4), 3(3), 4(6), 12(2), 14(1)(d), 15(3), 16, 22, 25, 33, 34(1), 35, 42(1), 48(1), 50 and 118(1) and (5) to (7) of the Care Standards Act 2000; and sections 2(6)(b), 9(1) and (3), 10 and 140(1) of the Adoption and Children Act 2002. The powers under the Children Act 1989 have been transferred to the National Assembly for Wales and the powers under the Care Standards Act 2000 and the Adoption and Children Act 2002 have been conferred on the National Assembly for Wales. Responsibility for issues relating to the contents of these Regulations has been delegated to my portfolio as Minister for Health and Social Services.

Effect

4. These Regulations will have the effect of bringing the existing Regulations on services regulated by the Care Standards Inspectorate for Wales (CSIW) into line with two recent developments – the reform of regulatory practice and the new framework on handling complaints in local authority social services.

5. On the reform of regulatory practice, the key changes are as follows:

The Regulations would introduce consistent duties on providers to have their own quality assurance mechanisms in place. These would have to seek the views of service users, the staff of the service, and local authorities paying for the service. Providers would have to report at least once a year on the quality of care provided by the service and make copies available as requested to those whose views were sought and to the CSIW.

The Regulations would require registered providers, on the request of the CSIW, to provide a "self-assessment" of their service. This would have to be accurate, not misleading and in the form

requested by the CSIW.

Finally, the Regulations, wherever the CSIW has specified action that a provider needs to take to remedy a regulatory breach, would require the provider to tell the CSIW when they have completed the action required.

6. On complaints procedures, the main changes include:

The new Regulations would require providers to safeguard and promote the welfare of the service user in the way they handle complaints. There are new duties to ascertain and take into account the user's wishes and feelings.

The Regulations require providers to inform complainants about advocacy services that might be helpful to them.

The Regulations put all of the time-scales for handling complaints on the same footing as those for local authorities. Local resolution of a complaint would have to be completed within two weeks – though this could be extended by up to two weeks, if the complainant agreed. They require providers to keep complainants informed about progress with their complaint.

The Regulations extend to the rest of the regulated sector the arrangements that now apply to local authorities for managing complex situations where there are concurrent investigations by for instance the police, the Care Standards Inspectorate for Wales (CSIW) or the Care Council.

- The provider will have a duty to consult with the complainant and the other body about how to handle the complaint.
- The provider will have a power to suspend the complaints investigation.
- The provider will have a duty to keep the complainant up to date with what is going on – and tell them when for example the police have finished their investigation.
- When the other investigation is over – the provider will have a power to resume the handling of the complaint.
- The provider will have a duty to resume the complaint investigation again, if the complainant asks them to.

The Regulations would introduce consistent requirements for all registered providers on the second stage of the complaints procedure – formal consideration. The registered provider could undertake the second stage only where this was approved by the CSIW. The Regulations make it clear that the CSIW would allow providers to run a formal consideration stage only where this would be undertaken by someone not involved in the running of the service. Formal consideration of a complaint would have to be completed within five weeks – though this could be extended, if the complainant agreed.

7. This single set of Regulations would introduce these changes across the range of regulated services. The Regulations that would be amended by the measure are:

- The Care Homes (Wales) Regulations 2002
- The Children's Homes (Wales) Regulations 2002
- The Child Minding and Day Care (Wales) Regulations 2002
- The Fostering Services (Wales) Regulations 2003
- The Residential Family Centres (Wales) Regulations 2003
- The Nurses Agencies (Wales) Regulations 2003
- The Domiciliary Care Agencies (Wales) Regulations 2004
- The Adult Placement Schemes (Wales) Regulations 2004
- The Adoption Support Agencies (Wales) Regulations 2005

8. These Regulations generally match Whitehall policy on the reform of regulatory practice. They generally match Whitehall policy on the handling of local authority complaints, although the English Regulations on local authorities have not yet been made – and there are no plans in England to bring the provision for regulated providers into line with the new provision there for local authorities. The regulations implement distinctive Welsh policy in the following areas:

- The Regulations strengthen the requirements on local authorities to safeguard and promote the welfare of service users.
- The Regulations have provisions on concurrent investigations which are broader than the draft local authority Regulations in England.
- The Regulations require local authorities to provide advice to complainants about advocacy services.

Target Implementation

9. It is intended that the proposed Regulations be made on 5 December 2006 and come into force on 1 January 2007. Any delay in the coming into force date would mean that the legal framework would not be in place to support the reform of regulatory practice. On complaints, the provisions for the independent sector would stay out of line with those in the statutory sector. The additional opportunities and safeguards enshrined in the Regulations would be unavailable to users of private and voluntary social services in Wales.

Financial Implications

10. The work on the preparation of the Regulations has been funded within existing, and planned, administration costs budgets. The proposed measure would not involve additional financial implications for the CSIW or elsewhere within the Assembly.

11. It is not anticipated that registered providers will need additional resources to meet their duties under these Regulations. The overall intention is to secure improvements in practice within existing resources. The provisions on the reform of regulatory practice are part of a new framework designed to reduce any unnecessary burden on providers and to target CSIW intervention where it is needed most. There have always been provisions on complaints procedures - the new ones are designed to offer greater protection to service users but should not be more onerous for service providers.

Regulatory Appraisal

12. A Regulatory Appraisal has been carried out in relation to this Instrument and is attached.

Consultation

With Stakeholders

13. On the reform of regulatory practice, the proposed Statutory Instrument reflects the discussions which the CSIW has held with the providers and users of regulated services over the past 18 months. Both service users and providers alike have been keen to ensure that in the future regulation focuses more on the experiences of and outcomes for service users. There has been a welcome for the removal of any unnecessary administrative burdens.

14. On the handling of complaints, the proposed Regulations would extend to the regulated sector many of the main proposals from the Assembly's wide-ranging consultations on complaints in 2001 and 2005. The local authority Regulations were developed with the help of an external group that brought together a range of key interests to consider the main policy options and the drafting instructions for the Regulations. The formal consultation in 2005 was supplemented by a range of opportunities designed to secure the views of individual children and adults who use social care services.

15. The Welsh Assembly Government consulted extensively on the present draft Regulations and the draft Regulatory Appraisal between 10 April and 30 June 2006. Copies of the consultation packs were sent to over 100 key organisations including local authorities and health bodies, and organisations in the voluntary and private sectors.

16. Twenty-five responses were received and a report on responses is attached to the Regulatory Appraisal. A list of consultees and a list of the bodies that responded are attached as Annexes 1 and 2 to that report. The bodies that responded overwhelmingly endorsed the substance of the requirements proposed by the Welsh Assembly Government - and in every case they endorsed the timescales, although this support was sometimes more qualified.

17. In the light of the consultations, a number of amendments were made to the drafts of both sets of Regulations.

The Regulations now require the provider to tell the CSIW when they have completed any action the CSIW has specified as needed to remedy a regulatory breach.

The Regulations now require service providers to inform complainants about advocacy services that might be helpful to them – and to remind children that if they access the local authority complaints procedure the authority must provide help with advocacy.

The Regulations now provide arrangements for managing complex situations where there are concurrent investigations by for instance the police, the Care Standards Inspectorate for Wales

(CSIW) or the Care Council.

With Subject Committee

The proposed Regulations were notified to the Health and Social Services Committee via the list of forthcoming legislation on 19 January 2006 (HSS (2)-01-06 Paper 3a, item No: HSS 4 (06)), and have remained on the list ever since. However, the title of the legislation at the time was The Care Standards Act 2000 and the Children Act 1989 (Miscellaneous Amendments) (Wales) Regulations 2006. The Regulations were identified for formal scrutiny. The draft measure is scheduled to be considered by the Committee on 28 September 2006.

Recommended Procedure

19. Subject to the views of the Business Committee, I recommend that these Regulations proceed to Plenary under the Standard procedure to give Members an opportunity to debate them.

Compliance

20. The proposed legislation will (as far as is applicable):

- have due regard to the principle of equality of opportunity for all people (Government of Wales Act 1998 section 120);
- be compatible with the Assembly's scheme for sustainable development (section 121);
- be compatible with Community law (section 106);
- be compatible with the Assembly's human rights obligations (section 107); and
- be compatible with any international obligations binding the UK Government and the Assembly (section 108).

21. The information in this Memorandum has been cleared by the Legal Services Department.

22. Drafting lawyer: Therese Gray (ext. 6813)

23. Head of Directorate: Mike Shanahan (ext. 3060)

24. Policy Lead: Ken Alexander (ext. 3791)

Brian Gibbons AM September 2006
Minister for Health And Social Services

Regulatory Appraisal
Social Care, Wales
Children and Young Persons, Wales

The Care Standards Act 2000 and The Children Act 1989 (Regulatory Reform and Complaints) (Wales) Regulations 2006

Background

The Care Standards Act 2000 ("the 2000 Act") enabled the National Assembly for Wales to reform the regulatory system for a wide range of social care and independent healthcare settings in Wales. The Act also made the Assembly itself the regulator, responsible for registration, inspection, complaints investigation and enforcement.

The 2000 Act also gave the Assembly powers to make Regulations governing the conduct of services regulated under the 2000 Act. It also amended the Children Act 1989 ("the 1989 Act") in similar ways so that the Assembly could impose requirements on settings registered under the 1989 Act.

The regulatory functions of the Assembly are undertaken by the Care Standards Inspectorate for Wales ("the CSIW"). This is a division of the Welsh Assembly Government, but it has full delegated responsibility for all of its regulatory decisions. Under Part II of the Act, the CSIW is, as at 1 April 2006, responsible for registering and inspecting the services listed below:

- children's homes,
- residential family centres,
- independent fostering agencies,
- voluntary adoption agencies,
- adoption support agencies.
- care homes for adults,
- domiciliary care agencies,
- nurses agencies, and
- adult placement schemes.

The Welsh Assembly Government would wish, in principle, to include all of these services within the proposed changes. However, Regulations on voluntary adoption agencies are made jointly with England and there are currently no plans for amendment in that area.

The CSIW handed over the registration of private and voluntary healthcare services, including independent hospitals and clinics, to the Healthcare Inspectorate Wales on 1 April 2006. There are no plans to include these services under the proposed Regulations.

A new Part XA of the Children Act 1989 – inserted by Part VI of the Care Standards Act 2000 - made the Assembly responsible for regulating childminders and other day care services for children under 8 years old, such as playgroups and nurseries. These services are covered in the proposed Regulations.

Under Part III of the 2000 Act, the CSIW was empowered to inspect local authority fostering and adoption services, although these services are not required to register. These powers have now been replaced by more general powers to inspect local authority social services provision in the Health and

Social Care (Community Health and Standards) Act 2003. Local authority fostering services are included in the proposed reform – and matching changes to requirements on local authority adoption will be included in a revised set of regulations on that service, to be brought forward in broadly the same timescale.

Under Part VIII of the Care Standards Act 2000, the CSIW is empowered to inspect certain educational establishments providing boarding, to determine that the welfare of children is being safeguarded and promoted. The Assembly has made Regulations, but these deal mainly with the arrangements for inspection. There are no plans to include these educational services in the proposed changes.

Purpose and intended effect of the measure

The overall purpose of these Regulations is to bring the existing Regulations into line with two recent developments – the reform of regulatory practice and the new framework on handling complaints in local authority social services.

Following the policy directions set out in "Making the Connections" and the UK-wide report "Inspecting for Improvement", the CSIW has already begun a far-reaching reform of regulatory practice. In future:

- CSIW will put the experience of service users at the core of inspection.
- CSIW will ensure that the intensity of inspection of individual services is matched to need – concentrating regulation where it is needed most.
- CSIW will seek to reduce any unnecessary burden on providers – with self-assessment and the provider's own quality assurance process being important aspects of this.
- There will be a greater emphasis on unannounced inspections.
- There will be a closer dovetailing of the work of CSIW with other inspectorates.
- The proposed measure would amend the existing Regulations to support these reforms.

The Assembly's new framework for handling complaints in social services came into force on 1 April 2006. Securing effective joint working between local authorities and the CSIW has been one of the biggest challenges within this work – and the statutory guidance "Listening and Learning" sets out a model of good practice in this area. However, the development of the new framework has exposed inconsistencies and inadequacies in the existing Regulations on handling complaints in regulated services. The proposed measure would deal with these shortcomings – by drawing wherever appropriate on the new Regulations for local authority social services.

The single set of Regulations being proposed would introduce consistent and up to date provision on these issues across the range of regulated services. The Regulations that would be amended by the proposed measure are:

- The Care Homes (Wales) Regulations 2002
- The Children's Homes (Wales) Regulations 2002
- The Child Minding and Day Care (Wales) Regulations 2002

- The Fostering Services (Wales) Regulations 2003
- The Residential Family Centres (Wales) Regulations 2003
- The Nurses Agencies (Wales) Regulations 2003
- The Domiciliary Care Agencies (Wales) Regulations 2004
- The Adult Placement Schemes (Wales) Regulations 2004
- The Adoption Support Agencies (Wales) Regulations 2005

Risk Assessment

On the reform of regulatory practice, the changes are needed to ensure that the primary responsibility for the quality of the service is located where it should be - with the provider. The changes also seek to reduce any unnecessary burdens on providers by making use of their own internal procedures. The current arrangements have attracted a number of criticisms:

- CSIW does not make enough use of the provider's own information on performance and quality.
- CSIW spends too much time considering policies and procedures, instead of focusing on the experiences of – and outcomes for - service users.
- Providers have not always implemented - nor evidenced as they should - the improvements that CSIW has required of them.

On complaints, recent research and consultations have highlighted a number of problems with the present regime:

- People who use services do not feel that their complaints are always dealt with sympathetically.
- Services have not always met the requirements on time-scales.
- Services have not always kept complainants informed about the handling of their complaint.
- The different arrangements for different services have created confusion.
- And service users have experienced particular difficulties with those complex situations where the CSIW or a local authority is investigating the matters raised in the complaint, as well as the provider.

Options

Option 1: Do Nothing

16. This would mean that the present arrangements would continue and the current criticisms of the way in which CSIW operates would not be addressed. Neither would there be any improvement for the service user in how complaints are handled.

Option 2: Make the Legislation

17. This would clarify the current regulatory processes and put the emphasis back on providers having responsibility for the service they provide. The service user would be the main beneficiary in

relation to complaints, with a strengthened procedure that aims to put the service user first.

Benefits

18. On the reform of regulatory practice, the main benefits would be:

- The Regulations would introduce consistent duties on providers to have robust quality assurance mechanisms in place. These would have to seek the views of service users, the staff of the service, and local authorities paying for the service. Providers would have to report at least once a year on the quality of care provided by the service and make copies available as requested to those whose views were sought and to the CSIW.

Self-assessment would require the provider to identify the strengths and weaknesses of their own service and would help to reduce regulation by ensuring the provider drives the process of service improvement.

A regulation requiring providers to notify CSIW when they have remedied regulatory breaches would ensure that providers took the primary responsibility for full compliance with the law, the Regulations and the National Minimum Standards.

19. On complaints, the main beneficiaries of the new framework would be the vulnerable children and adults who use regulated social care services. It would also benefit family members and advocates who might need to pursue complaints on their behalf.

The Regulations would create unified and more coherent arrangements across all kinds of regulated services.

The Regulations would create duties on registered providers to place the well being of the service user at the heart of their work on handling complaints – and to take their views into account.

The Regulations would seek to ensure that, wherever appropriate, complaints are resolved as close as possible to the users of services.

The Regulations would require providers who want to run a formal consideration stage to have this part of their complaints procedure approved by CSIW – provided they can demonstrate that the formal consideration will be undertaken by someone not involved in running the service.

The Regulations would place duties on providers to keep complainants informed about the handling of their complaint.

The Regulations would make sense of those complex situations where the CSIW, the police or a local authority is also investigating the matters raised in the complaint.

20. On both regulatory reform and handling complaints, the changes proposed would support the

Welsh Assembly Government's agenda in 'Making the Connections'.

Costs

21. The work on the preparation of the Regulations has been funded within existing, and planned, administration costs budgets. The proposed measure would not involve additional financial implications for the CSIW or elsewhere within the Assembly.

22. It is not anticipated that registered providers will need additional resources to meet their duties under these Regulations. The overall intention is to secure improvements in practice within existing resources. The provisions on the reform of regulatory practice are part of a new framework designed to reduce any unnecessary burden on providers and to target CSIW intervention where it is needed most. There have always been provisions on complaints procedures - the new ones are designed to offer greater protection to service users but should not be more onerous for service providers.

Consultation

With Stakeholders

23. On the reform of regulatory practice, the proposed Statutory Instrument reflects the discussions which the CSIW has held with the providers and users of regulated services over the past 18 months. Both service users and providers alike have been keen to ensure that in the future regulation focuses more on the experiences of and outcomes for service users. There has been a welcome for the removal of any unnecessary administrative burdens.

24. On the handling of complaints, the proposed Regulations would extend to the regulated sector many of the main proposals from the Assembly's wide-ranging consultations on complaints in 2001 and 2005. The local authority Regulations were developed with the help of a Complaints and Representations Advisory and Implementation Group (CRAIG). This brought together a range of key interests to consider the main policy options and the drafting instructions for the Regulations. The formal consultation in 2005 was supplemented by a range of opportunities designed to secure the views of individual children and adults who use social care services.

25. The Welsh Assembly Government consulted extensively on the present draft Regulations and the draft Regulatory Appraisal between 10 April and 30 June 2006. Copies of the consultation packs were sent to over 100 key organisations including local authorities, health bodies and organisations in the voluntary and private sectors.

26. Twenty-five responses were received and a report of the responses is attached. List of consultees and of those responding appear as Annexes 1 and 2 to the report. The bodies that responded overwhelmingly endorsed the substance of the requirements proposed by the Welsh Assembly Government - and in every case they endorsed the timescales, although this was sometimes more qualified.

27. Respondents helpfully pointed out a number of areas where minor amendments to regulations –

or some associated guidance – could make for greater clarity. There were four proposals for more significant amendments, all on the complaints procedures. These concerned provision on advocacy support to complainants, concurrent investigations, access by self-funding service users to the new independent panel for social services complaints, and the provider's annual report on complaints.

With Subject Committee

28. The proposed Regulations were notified to the Health and Social Services Committee via the list of forthcoming legislation on 19 January 2006 (HSS (2)-01-06 Paper 3a, item No: HSS 4 (06)), and have remained on the list ever since. However, the title of the legislation at the time was The Care Standards Act 2000 and the Children Act 1989 (Miscellaneous Amendments) (Wales) Regulations 2006. The Regulations were identified for formal scrutiny. The draft measure is scheduled to be considered by the Committee on 28 September 2006.

Review

29. The operation of the proposed Regulations would be monitored systematically through the work of the CSIW. Providers would be responsible for having their own quality assurance system and for feeding this into the new self-assessment. The results of this would be outlined in individual inspection reports on services. In addition, the key trends of inspection would be reported to the Assembly and the public through the Inspectorate's statutory Annual Report.

Summary

30. This proposed Statutory Instrument would bring the existing Regulations on regulated services into line with two recent developments. The measure is needed to support the reform of regulatory practice. It is also needed to extend to other regulated services the new framework for handling complaints in local authority social services.

The Care Standards Act 2000 and The Children Act 1989 (Regulatory Reform and Complaints) (Wales) Regulations 2006 Report on the Response to the Consultation, April – July 2006

1. Background and Introduction

1.1 On 10 April 2006, the Welsh Assembly Government launched a twelve-week public consultation on a draft Statutory Instrument to amend the regulations on services regulated by the Care Standards Inspectorate for Wales (CSIW). The covering letter explained that the purpose of the proposed measure was to bring the existing regulations into line with two key developments. The first is the reform of regulatory practice and the second is the new framework on handling complaints in local authority social services.

1.2 The CSIW has begun a far-reaching reform of regulatory practice, based on the principle that the primary responsibility for the quality of the service should rest with the service provider. This reform seeks to ensure that the intensity of CSIW inspection of individual services matches the need –

concentrating regulation where it is needed most. The proposed measure would amend the existing Regulations to support these reforms.

1.3 The Assembly's new framework for handling complaints in local authority social services came into force on 1 April 2006. One of the main aims was to secure effective joint working between providers, local authorities and the CSIW – and the statutory guidance "Listening and Learning" set out a model of good practice in this area. However, the development of the new framework exposed inconsistencies and inadequacies in the existing Regulations on handling complaints in regulated services. The proposed provision on complaints would deal with these shortcomings – and underpin more effective joint working.

1.4 Views were invited on a single set of draft Regulations designed to introduce consistent and up to date provision on these two important issues across the range of regulated services. The services affected by the proposed measure would be:

- childminding and other day care for children under 8,
- children's homes,
- residential family centres,
- independent fostering agencies and local authority fostering services,
- local authority adoption services,
- adoption support agencies,
- care homes for adults,
- domiciliary care agencies,
- nurses agencies, and
- adult placement schemes.

1.5 At the same time, the Assembly Government invited views on a draft Regulatory Appraisal. The list of bodies consulted is at Annex One. Views were invited by 30 June, but all responses received before 12 July were considered and are included in this report.

2. The Overall Response

2.1 By 12 July, replies were received from 25 bodies. A list of the organisations that responded is at Annex Two. The balance of the response was as follows.

- Eight responses came from local authorities.
- Two responses came from local health boards.
- Two replies were from Community Health Council representatives.
- Nine replies came from provider interests in the private and voluntary sectors.
- The remaining four replies came mainly from voluntary bodies.

2.2 The Welsh Assembly Government provided consultees with a Consultation Response Form so that the responses could be directly and systematically compared. All but a handful of the respondents followed this approach.

3. Reform of Regulatory Practice

3.1 The first half of the consultation concerned the proposals to amend the regulations to support the reform of regulatory practice. Naturally enough, several organisations used these early questions to comment more generally on the overall reform of regulatory practice, with its greater emphasis on self-assessment and CSIW activity being targeted where it is most needed.

3.2 The response was very mixed. A couple of bodies welcomed the direction of travel – as one local authority put it:

"It makes sense for the CSIW to put more time into getting below standard providers to improve rather than a superficial overview of everyone."

3.3 More common, however, was a sense of unease that regulation and protection would be weakened. As a local authority and a major voluntary organisation both suggested:

"Self assessment is not sufficient. Vulnerable people deserve the very highest level of protection and that means regular independent monitoring of standards."

"We would be anxious to see CSIW having a role in independently validating the quality of the review and validating its findings or otherwise. It seems essential to us that there is a quality check on the thoroughness and accuracy of the review."

3.4 There was, however, a welcome for one particular element of the approach:

"I am pleased to see that there will be a greater emphasis on unannounced inspections. I have always been concerned that so much notice has been given to establishments – thus giving them time to ‘prepare’, often to the detriment of the people living in the home/school."

4. Review of Quality of Care

4.1 The first specific proposal on the reform of regulatory practice was to introduce consistent duties on providers to have their own quality assurance mechanisms in place. These would have to seek the views of service users and others. And providers would have to report at least once a year on the quality of care provided by the service.

4.2 The first question asked respondents whether they agreed with the draft regulations on Review of Quality of Care, disagreed with them, or weren't sure. There was overwhelming support. 22 respondents agreed with the broad proposals here. One disagreed, one was not sure and one did not comment.

4.3 The second question on the Review of Quality of Care concerned the timescale. The Assembly Government proposed that the registered provider should produce a report within 28 days of undertaking the review. Again, there was substantial support. 15 bodies endorsed the proposed timescale of 28 days. None felt that the timescale should be shorter, five felt it should be longer and

five didn't comment.

5. Assessment of Service

5.1 The second section of the Consultation Response Form invited responses to the proposals that registered providers should, on the request of the CSIW, to provide a "self-assessment" of their service. This would have to be accurate, not misleading and in the form requested by the CSIW.

5.2 The first question here asked respondents to say whether they agreed with the draft regulations on Assessment of Service. 21 organisations responded to this question and of these 17 supported the draft regulations. Two disagreed and two said they weren't sure.

5.3 The other question in this section asked about the timescale for supplying the Assessment. The Assembly Government proposed that providers should supply the assessment within 28 days – and 15 respondents endorsed this proposed timescale. None felt that the timescale should be shorter, but five felt it should be longer. Five didn't comment on this question.

6. Improvement Plans

6.1 The third section invited views on the proposals for improvement plans. These would require a provider, if requested by the CSIW, to prepare and provide a written plan showing what they would do to ensure compliance with an identified legal requirement. The timescale for this would be set by the CSIW, depending on the seriousness of the regulatory breach. Providers would also be under a duty to tell the CSIW when they had completed the action in the improvement plan.

6.2 The support for the broad proposal was almost unanimous. 20 respondents agreed and just one disagreed. Four didn't reply to this question.

6.3 The next question explored views on the proposal that providers should be under a duty to tell the CSIW when they had completed the action in the improvement plan. This proposal attracted a very similar level of support – of the 20 respondents who commented, 18 agreed with the proposal, one disagreed and one said they weren't sure.

6.4 The last question in this section introduced a Welsh Assembly Government proposal to extend the same requirement (to notify the CSIW when remedial action has been completed) to all cases where the CSIW has served requirement notices – not just those where an improvement plan is required. The support for this approach was still overwhelming, but it was not quite as clear-cut as for the earlier proposals. 20 organisations commented and of these 13 agreed with this proposal, three disagreed and four said they weren't sure.

7. Complaints Procedures

7.1 The second half of the consultation concerned the Assembly Government's proposals to put into place more coherent provisions on complaints procedures.

8. Preparing and Publicising Complaints Procedures

8.1 Views were invited first on draft Regulations which would introduce consistent requirements on all registered providers to prepare and follow complaints procedures. The procedures would have to be made known to services users, staff and others.

8.2 The support for this proposal was, quite simply, unanimous. 24 organisations commented on this question and all supported the proposals.

9. Handling Complaints

9.1 The next questions looked at those elements of the draft Regulations designed to introduce consistent requirements about handling complaints. In particular, the new Regulations would extend to other regulated providers the duties recently placed on local authorities that in handling complaints they must safeguard and promote the welfare of the service user. It would also establish the duty to take into account the ascertainable wishes and feelings of the service user.

9.2 Support for the draft Regulations was very clear. 20 organisations responded to this question and, of these, 16 agreed with the proposals, just one disagreed and three described themselves as unsure.

9.3 There was unanimous support for the specific new duties to safeguard and promote the welfare of service users in the handling of complaints. 20 organisations responded and all endorsed the proposal.

10. Complaints: Local Resolution

10.1 The next two sections of the consultations dealt with the proposals for the two stages of the complaints procedures. The first of these would introduce consistent requirements for all registered providers about the first stage of the complaints procedure – local resolution. It would extend to all regulated providers the timescales introduced for local authorities on 1 April 2006.

10.2 There was almost unanimous support for the Assembly Government's draft Regulations. 20 organisations agreed, none disagreed and three described themselves as not sure.

10.3 There was support too for the proposed timescale, but this was less clear-cut. The recent Regulations for local authority social services introduced a normal timescale for local resolution of 10 working days, albeit with possibilities for extension. The Assembly Government proposed the same provision for other registered providers. 22 of the respondents addressed this question. Of these, 14 supported the proposed timescale of 10 days for local resolution. Just one organisation favoured a shorter timescale – but seven said that would prefer a longer period.

11. Complaints: Formal Consideration

11.1 The final section of the draft Regulations would introduce consistent requirements for all registered providers on the second stage of the complaints procedure – formal consideration. Under

the Assembly Government's proposals, the registered provider could undertake the second stage only where this was approved by the CSIW. Once again, the new Regulations would extend to all regulated providers the timescales introduced for local authorities in April 2006.

11.2 There was overwhelming support for the draft Regulations on the formal consideration stage. 22 organisations responded to this question and, of these, 17 agreed with the Assembly Government's proposals. None disagreed, although five said they weren't sure.

11.3 As with the local resolution stage, the support for the proposed timescale was a little more qualified. The recent Regulations for local authority social services introduced a normal timescale for formal consideration of 25 working days, although with possibilities for extension. The Assembly Government proposed the same provision for other registered providers. 21 of the respondents addressed this question and, of these, 15 supported the proposed timescale of 25 working days. Two organisations favoured a shorter timescale – and four said they would prefer a longer period.

11.4 The final question in the consultation sought views on an Assembly Government idea not included in the draft Regulations. Ministers have been considering whether to make it clear in the Regulations that the CSIW would allow providers to run a formal consideration stage only where this would be undertaken by someone not involved in the running of the service.

11.5 This idea attracted almost unanimous support. 20 organisations responded and, of these, 17 agreed with the proposal. Two said they weren't sure – and just one disagreed.

12. Complaints: Four Suggestions for Amendment

12.1 The responses to the questions on complaints included several suggestions for further clarification of such expressions as "independent person", "working days" and even "complaint". It was suggested that this could be done either through amending the regulations or through covering guidance.

12.2 There were also four proposals for more substantial amendments to the provisions on complaints procedures. All four suggested ways in which the new complaints provisions applying to local authorities from 1 April 2006 should be extended to other registered providers.

12.3 Four respondents raised the need for service users to have access to advocacy if they were to get the best from the complaints procedure. Typical were the comments from two major voluntary organisations:

"We would want to stress the importance of the role of advocacy for children. The role of advocacy is key to children being supported through a complaint".

"Access to independent advocacy is essential for vulnerable people, which the majority people covered by this amendment would be, when taking forward a complaint."

12.4 Secondly, a couple of organisations raised the issues of building more effective links between

complaints investigations and concurrent investigations such as those by the police:

"... where there has to be a POVA or POCA strategy meeting this can take up to 5 working days to arrange, and if a police investigation is required following this, many weeks can pass before a registered manager would be allowed to undertake their own investigation. The guidance needs to be in line with POVA and POCA procedures and to support the improvement in practices that we have developed as a result of these and not to undermine them."

12.5 Two local authorities wondered whether it would be possible for self-funding service users to access the new independent panel for social services complaints. As one local authority explained:

"How will complainants who have had their internal formal investigation conducted by the agency ... appeal to Stage III? Those complainants who have their formal complaints investigated by the local authority under the statutory procedure ... will automatically have this right. For the sake of parity it will be important to extend this right to all complaints about registered services."

12.6 Finally one local authority suggested that the annual summary of complaints which the CSIW can already ask of providers should be developed along the same lines as the ones which local authorities produce. This would include not only the numbers and types of complaints and how they were resolved – but also the lessons learned:

"It would also be helpful to extend the requirement to provide a summary of complaints to the National Assembly so that there was requirement to produce an annual report very like the requirement placed on statutory agencies."

13. The Draft Regulatory Appraisal

13.1 There were hardly any comments on the draft Regulatory Appraisal, but one respondent challenged the suggestion that there would be no financial implications for regulated providers:

"The draft regulations propose new and extended administrative systems that will require staff time. No compensatory offsets in reductions of administrative burdens have been identified"

14. Summary

14.1 This report summarises the views of the 25 organisations that responded to a consultation on new regulations for providers regulated by CSIW. The draft regulations have two broad aims - to support the current moves towards the reform of CSIW's regulatory practice, and to extend to other regulated providers recent reforms in local authority complaints procedures.

14.2 On all of the substantive requirements that would be introduced by the new regulations, there was overwhelming endorsement for the Assembly Government's proposals. Reactions to some of the proposed time-scales were a little more mixed – but in every case they were supported by a very clear majority.

14.3 Respondents helpfully pointed out a number of areas where minor amendments to regulations – or some associated guidance – could make for greater clarity. There were four proposals for more significant amendments, all on the complaints procedures. These proposed including provision on advocacy support to complainants, concurrent investigations, access by self-funding service users to the new independent panel for social services complaints, and the provider’s annual report on complaints.

Annex One

Consultation On The Care Standards Act 2000 and The Children Act 1989 (Regulatory Reform and Complaints) (Wales) Regulations 2006

List of Consultees

- Chief Executives of Local Authorities (x22)
- Directors of Social Services (x22)
- Chief Executives of Local Health Boards (x22)
- Age Alliance Wales
- Age Concern Cymru
- All Wales People First
- Association of Directors of Social Services
- Association of Welsh Community Health Councils
- BAAF (Wales)
- Barnardo’s
- Care Council for Wales
- Care Forum Wales
- Carers Alliance Wales
- Carers Wales
- Cartrefi Cymru

- Children in Wales
- Chwarae Teg
- Clybiau Plant Cymru
- Crossroads Wales
- Disability Rights Commission
- Disability Wales
- Fostering Network Wales
- Independent Healthcare Forum
- Learning Disability Wales (formerly SCOVO)
- Mencap in Wales
- Mind Cymru
- Mudiad Ysgolion Meithrin
- NAAPS Cymru (National Association of Adult Placement Schemes)
- NAIRO
- National Association of Independent Resources for Children
- National Child Minding Association
- National Day Nurseries Association
- National Homecare Council
- NCH Action for Children
- North Wales Nursing and Residential Homes Association
- Play Wales
- Registered Nursing Homes Association (Wales)

- UK Home Care Association (Wales)
- Voices from Care Cymru
- Wales Council for the Blind
- Wales Council for the Deaf
- Wales Council for Voluntary Action
- Wales Forum of Parents and Carers
- Welsh Federation of Housing Associations
- Wales Pre-School Playgroups Association
- Welsh Local Government Association
- Welsh Residential Substance Misuse Services Forum

Annex Two

Consultation on The Care Standards Act 2000 And The Children Act 1989 (Regulatory Reform And Complaints) (Wales) Regulations 2006 List of Respondents At 12 July 2006

- Blaenau Gwent CBC
- Caerphilly CBC
- Carmarthenshire CC
- Conwy CBC
- Flintshire CC
- Gwynedd CC
- Newport CC
- City & County of Swansea
- Anglesey Local Health Board

- Pembrokeshire Local Health Board
- Board of Community Health Councils in Wales
- Pontypridd & Rhondda Community Health Council
- Barnardo's Cymru
- Brynawel House Alcohol Rehabilitation Centre
- Care Forum Wales
- Crosshands Home Services
- Crossroads Carmarthenshire
- Crossroads Wales
- Learning Disability Implementation Advisory Group (LDIAG)
- Neath Port Talbot Council for Voluntary Service
- Mencap Cymru
- NAAPS Cymru (National Association of Adult Placement Schemes)
- National Day Nurseries Cymru
- NCH Cymru
- Wales Council for Voluntary Action