



Llywodraeth Cymru
Welsh Government

HEALTH AND SOCIAL CARE (WALES) BILL

Statement of Policy Intent for Subordinate Legislation

June 2024

HEALTH AND SOCIAL CARE (WALES) BILL

STATEMENT OF POLICY INTENT FOR SUBORDINATE LEGISLATION

This document provides an indication of the current policy intention for the subordinate legislation that Welsh Ministers would be empowered or required to make under the provisions of the Health and Social Care (Wales) Bill ('the Bill'). It has been prepared in order to assist committees during the scrutiny of the Bill and should be read in conjunction with the Explanatory Memorandum and Explanatory Notes.

The key purpose of the Bill is to introduce changes that:

- eliminate private profit from the care of looked after children;
- enable introduction of Direct Payments for NHS Continuing Healthcare (CHC); and
- make amendments to ensure that the Regulation and Inspection of Social Care (Wales) Act 2016 (the 2016 Act) and Social Services and Well-being (Wales) Act 2014 (the 2014 Act) are able to operate fully and effectively.

For ease of reference, this document includes separate information for each provision in the Bill which involves subordinate legislation. However, in reality a number of these areas would be likely to be combined and dealt with, for example, within a set of regulations. The contents of this document correspond to the information provided in Chapter 5 of the Explanatory Memorandum.

In developing subordinate legislation, the Welsh Government will work closely with stakeholders, consulting where appropriate, in order to ensure the provisions are relevant, valid and proportionate.

PART 1: SOCIAL CARE

CHAPTER 1 – PROVISION OF SOCIAL CARE SERVICES TO CHILDREN: RESTRICTIONS ON PROFIT

REGULATIONS RELATING TO	Allowing Welsh Ministers to prescribe information required in an application to be registered to become a provider of a restricted children's service
BILL PART	Part 1, Chapter 1
SECTION	3(2)
METHOD OF BRINGING INTO FORCE	Negative
DESCRIPTION OF THE REGULATIONS	
<p>Section 3(2) inserts a new subsection 6(1A) in the 2016 Act which contains the power to make regulations.</p> <p>The power will allow Welsh Ministers to prescribe information required in an application to be registered to become a provider of a restricted children's service, in order for them to be satisfied that the person applying to become a provider meets the necessary requirements.</p>	
REASON FOR AND POLICY INTENT OF THE POWER TO MAKE REGULATIONS	
<p>The 2016 Act already sets out (at section 6(1)(a)-(c)) some information that must be included in an application to the Welsh Ministers when a person who wants to provide a regulated service applies to the Welsh Ministers for registration. There are existing powers at section 6(1)(d) and section 6(2) of the 2016 Act which enable Ministers to prescribe further information and the form in which an application must be made.</p> <p>This power mirrors the approach already taken in section 6(1)(d) of the 2016 Act (concerning applications for registration as a service provider), and ensures that the Welsh Ministers can prescribe information that needs to be provided in the case of an application to provide a restricted children's service, to satisfy the Welsh Ministers that the organisation which is applying meets the requirement in section 6A(1) that they are a not-for-profit entity. This is expected to include information on the organisation's objects or purposes, and the type of organisation which is applying (e.g. a charitable company limited by guarantee without a share capital).</p> <p>By conferring a power on Welsh Ministers to prescribe information that needs to be provided in the case of an application to provide a restricted children's service, the Bill allows for the application process to be reviewed from time to time and enables flexibility to adapt the process if necessary.</p>	

REGULATIONS RELATING TO	Allowing Welsh Ministers to prescribe what is an acceptable “public good” to which the objectives or purposes of a person proposing to provide a restricted children’s services must primarily relate
BILL PART	Chapter 1 of Part 1
SECTION	3(3)
METHOD OF BRINGING INTO FORCE	Negative
DESCRIPTION OF THE REGULATIONS	
<p>Section 3 inserts new sections - 6A and 6B - into the 2016 Act regarding registration in respect of a restricted children's service and definitions. Section 6A(3) deals with requirements in relation to the objects and purposes of a person seeking registration to provide restricted children’s services. Proposed new section 6A(3)(a) specifies “the welfare of children” as an acceptable ‘public good’ to which those objects or purposes must primarily relate. Section 6A(3)(b) specifies that Welsh Ministers may also prescribe other such public good(s).</p> <p>This power allows Welsh Ministers to prescribe what is an acceptable “public good” to which the objectives or purposes of a person proposing to provide a restricted children’s service must primarily relate.</p>	
REASON FOR AND POLICY INTENT OF THE POWER TO MAKE REGULATIONS	
<p>The power will allow Welsh Ministers to prescribe what is an additional acceptable “public good” to which the objectives or purposes of a person proposing to provide a restricted children’s service must primarily relate, thus permitting the ‘future-proofing’ of the provisions against the possibility of new public goods being identified.</p> <p>New forms of ‘public good’ may be identified in the future, for example if a not-for-profit entity for children also wished to pursue objects/purposes relating to the welfare of adults in need of care and/or support by providing services for adults. In a circumstance such as this Welsh Ministers may wish to consider whether specifying a new public good could allow that, while still being consistent with the policy.</p>	

REGULATIONS RELATING TO	Allowing Welsh Ministers to determine the end of the transition period for restricted children's services
BILL PART	Chapter 1 of Part 1
SECTION	4(3)
METHOD OF BRINGING INTO FORCE	Draft Affirmative
DESCRIPTION OF THE REGULATIONS	
Section 4(3) inserts a proposed new paragraph 1(1)(b), in a new Schedule 1A to the 2016 Act. Paragraph 1(1)(b) specifies that the transitional period for a restricted children's service ends with the day appointed by the Welsh Ministers by regulations.	
REASON FOR AND POLICY INTENT OF THE POWER TO MAKE REGULATIONS	
<p>The power will allow Welsh Ministers to determine the end of the transition period for restricted children's services, including the ability to respond to the potential need to determine different days in relation to different types of service and different descriptions of service provider; for example, if the achievement of not-for-profit placement sufficiency is uneven across service types.</p> <p>The power recognises that it will be necessary to consider the progress of local authority disengagement from the use of for-profit placements in order to determine the appropriate point at which to bring the transition period to a close (i.e. the time at which placement disruption for children and service providers can be avoided or minimised).</p>	

REGULATIONS RELATING TO	Allowing Welsh Ministers to prescribe enactments for the purposes of which sub-paragraph (3) of paragraph 2 does not apply.
BILL PART	Chapter 1 of Part 1
SECTION	4(3)
METHOD OF BRINGING INTO FORCE	Negative
DESCRIPTION OF THE REGULATIONS	
<p>Section 4(3) inserts proposed new paragraph 2(4)(b), in new Schedule 1A to the 2016 Act relating to transitional registration arrangements for existing service providers. Paragraph 2(4)(a) sets out that the requirements in sub-paragraph (3) – that the registration of the service provider is not subject to the requirement in section 6A(1) and the entry on the register maintained under section 38 must show that the provider does not meet the requirement of being a not-for-profit entity – do not apply for the purposes of an application made under section 6(1) and 11(1)(a)(i) of the 2016 Act.</p> <p>Paragraph 2(4)(b) sets out that the requirements in sub-paragraph (3) also do not apply for the purposes of any other enactments Welsh Ministers may prescribe.</p>	
REASON FOR AND POLICY INTENT OF THE POWER TO MAKE REGULATIONS	
<p>The power will allow Welsh Ministers to prescribe enactments for the purposes of which sub-paragraph (3) of paragraph 2 does not apply. It complements paragraph 2(4)(a).</p> <p>Sub-paragraphs 2(4)(a)(i) and (ii) operate so that although for most purposes an ineligible provider of a restricted service is treated as if it met the not-for-profit requirements whilst the transitional period lasts, this is not the case where that provider is making an application to provide an additional regulated service (or vary its registration to do so). This power allows Welsh Ministers to specify other instances where such a provider should be treated as not meeting the not-for-profit requirement.</p>	

REGULATIONS RELATING TO	Allowing Welsh Ministers to impose conditions on existing providers of restricted children's services.
BILL PART	Chapter 1 of Part 1
SECTION	4(3)
METHOD OF BRINGING INTO FORCE	Draft affirmative
DESCRIPTION OF THE REGULATIONS	
Section 4(3) inserts proposed new paragraph 3(1), in new Schedule 1A to the 2016 Act. 3(1) sets out that Welsh Ministers may by regulations make provision imposing conditions on a service provider to whom paragraph 2 applies (an existing provider of restricted children's services during the transitional period).	
REASON FOR AND POLICY INTENT OF THE POWER TO MAKE REGULATIONS	
<p>The power will allow Welsh Ministers to impose conditions on existing providers of restricted children's services during the transitional period, including restrictions on the type of service they may provide and the description of looked after children they may accommodate.</p> <p>This may include imposing conditions to restrict providers who are subject to the transitional provisions to only providing places for children whose placement has been approved by Welsh Ministers under section 81B of the Social Services and Well-being (Wales) Act 2014, or to limit the circumstances in which such providers may accept placements from local authorities in England (for example to circumstances where the placement is necessary to allow siblings to be accommodated together). The power could also be used to prevent providers who are subject to the transitional provisions from providing a place for any new child after a certain date. The draft affirmative procedure will support scrutiny of the proposed conditions.</p>	

REGULATIONS RELATING TO	Allowing Welsh Ministers to specify the information contained within, and the form of, an application by a provider of restricted services for a variation of that provider's registration.
BILL PART	Chapter 1 of Part 1
SECTION	4(3)
METHOD OF BRINGING INTO FORCE	Negative
DESCRIPTION OF THE REGULATIONS	
<p>Section 4(3) inserts proposed new paragraph 4(3), in Schedule 1A to the 2016 Act). This sets out that a provider of a restricted children's service applying for variation of registration and being a not-for-profit entity (as per the requirement in section 6A(1)) must include in their application such information as may be prescribed to satisfy Welsh Ministers that the person meets the requirements of being a not-for-profit entity, and that an application be in the prescribed form.</p> <p>The power relates to a task which is administrative in nature and the procedure mirrors that in relation to applications for variation under s.11(3)(a)(iii) and (3)(b) of the 2016 Act.</p>	
REASON FOR AND POLICY INTENT OF THE POWER TO MAKE REGULATIONS	
<p>The power will allow Welsh Ministers to specify the information contained within, and the form of, an application by a provider of restricted services for a variation of that provider's registration. This ensures that Welsh Ministers have access to the information they require in order to determine an application for variation of registration from a provider of restricted children's services.</p> <p>Such information is more properly contained within Regulations. The rationale is consistent with that set out above for the power inserted by section 3(2) to require the equivalent information for applications for registration.</p>	

REGULATIONS RELATING TO	Allowing Welsh Ministers to prescribe information about evidence relevant to the fit and proper person test which must be included in the annual return.
BILL PART	Chapter 1 of Part 1
SECTION	7(a)
METHOD OF BRINGING INTO FORCE	Draft affirmative on the first use, and subsequently negative (see section 10(6) of the 2016 Act, and section 7(c)(ii) of the Bill)
DESCRIPTION OF THE REGULATIONS	
<p>Section 7(a) inserts a proposed paragraph (viiiia) into section 10, subsection (2)(a) of the 2016 Act relating to the annual return. This sets out that an annual return must contain such information about evidence relevant to the fit and proper person test as may be prescribed.</p> <p>The power mirrors that in relation to annual returns under s.10(2)(a)(ix) of the 2016 Act.</p>	
REASON FOR AND POLICY INTENT OF THE POWER TO MAKE REGULATIONS	
<p>The power will allow Welsh Ministers to prescribe information about evidence relevant to the fit and proper person test which must be included in the annual return. The purpose of this is to form part of the evidential basis for judgements about fitness of those who are operating restricted children's services (for example in relation to payments in excess of specified amounts or to particular persons or for particular sorts of services which may have been made by a not-for-profit entity).</p> <p>This information is appropriate for stipulation in Regulations and would be the basis for Welsh Ministers as regulator to inquire as to whether the payments contravened section 9A because they were unreasonable or disproportionate. The policy intention is that regulations will be used to ensure that the information contained within the annual return and used in relation to the fit and proper person test will be proportionate, factually-based, current and consistent.</p>	

REGULATIONS RELATING TO	Allowing Welsh Ministers to prescribe information to be included in an annual return in order to satisfy Welsh Ministers that the provider meets the requirements of section 6A(1) (concerning requirements in order to be registered as a provider of a restricted children's services).
BILL PART	Chapter 1 of Part 1
SECTION	7(b)
METHOD OF BRINGING INTO FORCE	Draft affirmative on the first use, and subsequently negative (see section 10 of the 2016 Act, and section 7(c)(iv) of the Bill)
DESCRIPTION OF THE REGULATIONS	
<p>Section 7(b) inserts a proposed new section 2A after subsection (2) into section 10 of the 2016 Act relating to the annual return. This sets out that an annual return for a provider, other than a local authority, of a restricted children's service must also contain such information as may be prescribed to satisfy Welsh Ministers that the person meets the requirements of being a not-for-profit entity.</p> <p>The power relates to a task which is administrative in nature and the procedure mirrors that in relation to annual returns under s.10(2)(a)(ix) of the 2016 Act.</p>	
REASON FOR AND POLICY INTENT OF THE POWER TO MAKE REGULATIONS	
<p>The power will allow Welsh Ministers to prescribe information to be included in an annual return in order to satisfy Welsh Ministers that the provider meets the requirements of section 6A(1) (concerning being a not-for-profit entity). The purpose of this is to form part of the evidential basis for judgements about adherence to requirements on the part of those who are operating restricted children's services in relation to the type of undertaking set out in section 3(3)(4) or the person's objects or purposes.</p>	

REGULATIONS RELATING TO	Allowing Welsh Ministers to prescribe information to be included in an application to vary a provider's registration to be able to provide a restricted children's service.
BILL PART	Chapter 1 of Part 1
SECTION	8(2)
METHOD OF BRINGING INTO FORCE	Negative
DESCRIPTION OF THE REGULATIONS	
<p>Section 8(2) inserts a proposed new subsection (4) after subsection (3) into section 11 of the 2016 Act relating to an application for variation of registration as a service provider. This sets out that a restricted children's service provider wanting to provide a regulated service which it is not already registered to provide, must, in its application to vary its registration, also contain such information as may be prescribed to satisfy Welsh Ministers that the person meets the requirements of being a not-for-profit entity.</p> <p>The power relates to a task which is administrative in nature and the procedure mirrors that in relation to application for variation to registration as a service provider under s.11(3)(a)(iii) of the Act.</p>	
REASON FOR AND POLICY INTENT OF THE POWER TO MAKE REGULATIONS	
<p>The power will allow Welsh Ministers to prescribe information to be included in an application to vary a provider's registration to be able to provide a restricted children's service, in order to satisfy Welsh Ministers that the provider meets the requirements of section 6A(1) (concerning being a not-for-profit entity). The purpose of this is to form part of the evidential basis for judgements about whether a provider is eligible to provide a restricted children's service.</p> <p>The rationale is consistent with that set out above for the power inserted by section 3(2) to require the equivalent information for applications for registration.</p>	

REGULATIONS RELATING TO	Allowing Welsh Ministers to prescribe information to be contained in local authority sufficiency plans, about for-profit providers who provide accommodation in Wales or England, respectively, and who are likely to be named in applications for approval of supplementary placements
BILL PART	Chapter 1 of Part 1
SECTION	11
METHOD OF BRINGING INTO FORCE	Negative
DESCRIPTION OF THE REGULATIONS	
Section 11 inserts new section 75A into the 2014 Act relating to preparation and publication of local authority annual sufficiency plans. Subsection (2)(d)(iii) and (iv) of new section 75A provides that annual sufficiency plans must include, in relation to applications for approval of supplementary placements, information to be prescribed in regulations about for-profit providers who provide accommodation in Wales (subsection (2)(d)(iii)), and information to be prescribed in regulations about for-profit providers who provide accommodation in England (subsection (2)(d)(iv)).	
REASON FOR AND POLICY INTENT OF THE POWER TO MAKE REGULATIONS	
<p>The power will allow Welsh Ministers to prescribe information to be contained in local authority sufficiency plans, about for-profit providers who provide accommodation in Wales or private providers who provide accommodation in England, and who are likely to be named in applications for approval of supplementary placements. Given that private providers in England are expected to be both for-profit and not-for-profit, Welsh Ministers may wish to have specific information about the type of entity in those cases.</p> <p>Sufficiency plans will promote a coherent approach to the planning and provision of not-for-profit services according to local needs and the rebalancing of care and support provision more widely. The power to prescribe information about for-profit providers in Wales and private providers in England who are likely to be named in applications for approval of supplementary placements allows a dynamic approach to sufficiency plan requirements which can be adapted to the evolving position in relation to sufficiency of not-for-profit provision in Wales.</p>	

REGULATIONS RELATING TO	Allowing Welsh Ministers to prescribe other information to be contained in local authority sufficiency plans.
BILL PART	Chapter 1 of Part 1
SECTION	11
METHOD OF BRINGING INTO FORCE	Negative
DESCRIPTION OF THE REGULATIONS	
Section 11 (subsection (2)(f) of new section 75A to be inserted into the 2014 Act relating to preparation and publication of local authority annual sufficiency plans) sets out that annual sufficiency plans must include such other information as may be prescribed by regulations.	
REASON FOR AND POLICY INTENT OF THE POWER TO MAKE REGULATIONS	
<p>The power will allow Welsh Ministers to prescribe other information to be contained in local authority sufficiency plans.</p> <p>As with other regulation-making powers in relation to sufficiency plans more broadly these plans will promote a coherent approach to the planning and provision of not-for-profit services according to local needs and the rebalancing of care and support provision more widely. The power to prescribe information to be included in local authority sufficiency plans allows a dynamic approach to sufficiency plan requirements which can be adapted to the evolving position in relation to sufficiency of not-for-profit provision in Wales.</p>	

REGULATIONS RELATING TO	Allowing Welsh Ministers to prescribe the form of local authority sufficiency plans.
BILL PART	Chapter 1 of Part 1
SECTION	11
METHOD OF BRINGING INTO FORCE	Negative
DESCRIPTION OF THE REGULATIONS	
<p>Section 11 (subsection (3) of new section 75A to be inserted into the 2014 Act relating to preparation and publication of local authority annual sufficiency plans) sets out that annual sufficiency plans must be in a form as may be prescribed by regulations.</p> <p>The power relates to a task which is administrative in nature.</p>	
REASON FOR AND POLICY INTENT OF THE POWER TO MAKE REGULATIONS	
<p>The power will allow Welsh Ministers to prescribe the form of local authority sufficiency plans, a task which is administrative in nature.</p> <p>As per other regulation powers in relation to sufficiency plans, these plans will promote a coherent approach to the planning and provision of not-for-profit services according to local needs and the rebalancing of care and support provision more widely.</p>	

REGULATIONS RELATING TO	Allowing Welsh Ministers to prescribe other information to be contained in an application by a local authority for a supplementary placement.
BILL PART	Chapter 1 of Part 1
SECTION	13(3)
METHOD OF BRINGING INTO FORCE	Negative
DESCRIPTION OF THE REGULATIONS	
<p>Section13(3) (subsection (3)(g) of new section 81B to be inserted into the 2014 Act relating to ways in which looked after children are to be accommodated and maintained, specifically in relation to an application for approval of a supplementary placement) sets out that applications from local authorities applying for a supplementary placement must include such other information as the Welsh Ministers may prescribe in regulations.</p> <p>The power relates to a task which is administrative in nature.</p>	
REASON FOR AND POLICY INTENT OF THE POWER TO MAKE REGULATIONS	
<p>The power will allow Welsh Ministers to prescribe other information to be contained in an application by a local authority for a supplementary placement. This will enable the application process to be reviewed from time to time and adapted if necessary.</p>	

REGULATIONS RELATING TO	Duty to submit and publish annual return
BILL PART	Chapter 2 of Part 1
SECTION	14
METHOD OF BRINGING INTO FORCE	Negative
DESCRIPTION OF THE REGULATIONS	
<p>Section 14 inserts a new subsection (4A) into section 10 of the 2016 Act. Subsection (4A) is a power to allow the Welsh Ministers to prescribe the time limit within which an annual return must be published.</p>	
REASON FOR AND POLICY INTENT OF THE POWER TO MAKE REGULATIONS	
<p>The Regulations will allow the Welsh Ministers to prescribe the time limit within which an annual return must be published by a service provider.</p> <p>The intention is to use the regulations to prescribe a reasonable timescale for the publication of annual returns by service providers. This will ensure that timely and consistent information is available to the public.</p> <p>Using regulations rather than specifying a timescale on the face of the Act provides flexibility to adjust the timescale should it prove necessary in practice.</p>	

REGULATIONS RELATING TO	Application for cancellation of service provider's registration: information to be provided
BILL PART	Chapter 2 of Part 1
SECTION	15
METHOD OF BRINGING INTO FORCE	Negative
DESCRIPTION OF THE REGULATIONS	
<p>Section 15 inserts a new subsection, (1A), into section 14 of the 2016 Act. Subsection (1A)(a) is a power to allow the Welsh Ministers to prescribe the information required from a service provider applying to cancel their registration. Subsection (1A)(b) is a power to allow the Welsh Ministers to prescribe the form of an application for cancellation.</p>	
REASON FOR AND POLICY INTENT OF THE POWER TO MAKE REGULATIONS	
<p>The Regulations will allow the Welsh Ministers to require specific information in a suitable format as part of an application to cancel a service provider's registration. It is envisaged these regulations will be used to require information from service providers seeking to cancel their registration setting out how they will continue to comply with the requirements in the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 until the service ceases to be provided. This will ensure the regulator has relevant information about the operation of the service and the care of individuals using or living at the service to carry out its duties effectively during the closure period.</p> <p>Using regulations rather than specifying information requirements on the face of the Act will provide the flexibility to vary the information requirements according to the type of regulated service and will future proof the requirements, ensuring they remain fit for purpose.</p> <p>These regulations will complement the regulation-making powers in sections 11(3) of the 2016 Act which provides an equivalent regulation-making power to require prescribed information when an application is made for variation of a service provider's registration.</p> <p>It has become apparent during the operation of the 2016 Act that there is a disparity in the information requirements between service providers who are applying to vary their registration (by removing one or more services from the registration) and those who are seeking to cancel their registration in its entirety and exit the market. This hinders the regulator's ability to be assured about the provider's intentions to support the ongoing safety and well-being of individuals using the service until it closes. The regulation-making power allowing the Welsh Ministers to require information from a service provider applying to cancel their registration will address this gap in the regulatory framework. It will align the approach for service providers exiting the market with that of those who are varying their registration.</p>	

Prescribing the information required in regulations will provide clarity and certainty for service providers.

The power to prescribe the form of an application for cancellation is a technical matter and simply ensures such applications are fit for purpose and include the necessary level of detail for the regulator to make a decision.

REGULATIONS RELATING TO	Enabling Welsh Ministers to provide that childcare workers (persons employed/working to provide care and supervision to children by a person registered under Part 2 of the Children and Families (Wales) Measure 2010) are to be treated as social care workers.
BILL PART	Chapter 2 of Part 1
SECTION	18
METHOD OF BRINGING INTO FORCE	Negative
DESCRIPTION OF THE REGULATIONS	
<p>Section 18 will amend section 79 of the 2016 Act, to provide Welsh Ministers with the power, by regulation, to extend the definition of social care workers for the purpose of the Act to include childcare workers.</p> <p>The power will allow the Welsh Ministers to provide that childcare workers (persons employed/working (including agency workers) to provide care and supervision to children by a person registered under Part 2 of the Children and Families (Wales) Measure 2010) are to be treated as social care workers.</p>	
REASON FOR AND POLICY INTENT OF THE POWER TO MAKE REGULATIONS	
<p>Regulations would specify that childcare workers are to be treated as social care workers, this will provide a formal basis for the support Social Care Wales (SCW) currently provides to the childcare workforce and enable SCW to carry out further functions to support the sector as a whole. .</p> <p>The ultimate goal is to ensure that all those who make up the childcare workforce can be offered ongoing support by an expert body. This will take place on many fronts, through attraction, entry, recruitment, induction, and career progression. At all times the aim of SCW is to develop a highly skilled qualified workforce with a child centred approach at the heart of all they do. Whilst historically SCW has provided support to the sector and received funding for doing so, the making of regulations will provide a legal basis for this.</p> <p>Regulations would specify that childcare workers are to be treated as social care workers and provide a legal basis for the support SCW provide to the childcare workforce.</p> <p>Whilst legally there is no distinction between persons who work/are employed within daycare and play settings (play settings being included within the meaning of day care in section 19 of the Measure) in practice the support provided by SCW has not extended to persons working within play settings (play workers). It is</p>	

proposed that any regulations made in accordance with the amendment will formalise the support currently provided by SCW to the sector and ensure that this is provided to the sector as a whole (including play workers).

REGULATIONS RELATING TO	Enabling Welsh Ministers to make regulations to require or allow local authorities to make direct payments towards meeting the needs of adults, children, or carers, replacing the existing powers in sections 50 to 52 and 53(11) of, and Schedule A1 to, the 2014 Act.
BILL PART	Chapter 2 of Part 1
SECTION	20
METHOD OF BRINGING INTO FORCE	Negative
DESCRIPTION OF THE REGULATIONS	
This power replaces existing powers in sections 50 to 52 and 53(11) of, and Schedule A1 to, the 2014 Act allowing the Welsh Ministers to make regulations to require or allow local authorities to make direct payments towards meeting the needs of adults, children, or unpaid carers.	
WHAT CAN THE REGULATIONS ACHIEVE?	
<p>Section 50 of the 2014 Act (direct payments to meet an adult's needs) contains a regulation-making power for Welsh Ministers to require or allow a local authority to make direct payments to a person towards the costs of meeting the needs of an adult for care and support under section 35 or 36 of the Act. Currently section 50 permits the local authority to make a direct payment in respect of an adult's needs to either an adult with mental capacity, or a "suitable person" if the adult lacks mental capacity.</p> <p>Regulations made under the new section 49A and the substituted section 50 will also allow local authorities to make direct payments to a nominated person (individual or body) where an eligible adult has mental capacity, provided that both the adult and the person nominated give consent.</p> <p>Regulations made under the new section 49A and the substituted section 51 of the 2014 Act will enable direct payments to be made to nominated persons in similar circumstances in respect of a child's needs for care and support under sections 37, 38, or 39.</p> <p>Regulations under the new section 49A and substituted section 52 of the Act, will enable direct payments to be made to a nominated person in respect of the provision of support for a carer (unpaid)</p>	
REASON FOR AND POLICY INTENT OF THE POWER TO MAKE REGULATIONS	
The regulations are required to allow local authorities to make direct payments to nominated people so that they can manage direct payments on behalf of adults with capacity, children, and unpaid carers where both the individual entitled to the payments and the person nominated to receive have given consent.	

REGULATIONS RELATING TO	Enabling Welsh Ministers to make regulations under powers in a substituted Schedule A1 to the 2014 Act (which is introduced by a new section 53A) to require or allow local authorities to make direct payments in respect of a person to whom section 117 of the Mental Health Act 1983 (after-care) applies, in lieu of providing or arranging for the provision of after-care services. This replaces equivalent powers in the existing Schedule A1 of the 2014 Act and sections 50, 51 and 53(11) of the 2014 Act.
BILL PART	Chapter 2 of Part 1
SECTION	20
METHOD OF BRINGING INTO FORCE	Negative
DESCRIPTION OF THE REGULATIONS	
The power to make regulations in a substituted Schedule A1 to the 2014 Act (which is introduced by a new section 53A) enables the Welsh Ministers to make regulations to require or allow local authorities to make direct payments in respect of a person to whom section 117 of the Mental Health Act 1983 (after-care) applies, in lieu of providing or arranging for the provision of after-care services. This replaces equivalent powers in the existing Schedule A1 to, and sections 50, 51 and 53(11) of the 2014 Act.	
REASON FOR AND POLICY INTENT OF THE POWER TO MAKE REGULATIONS	
The regulations will enable local authorities to make direct payments in lieu of after-care services to people who are eligible to receive after-care under section 117 of the Mental Health Act 1983, or to a person nominated by the person eligible to receive after-care under section 117 of the Act, whether or not the person eligible to receive after-care has capacity to consent to the making of the payments.	

REGULATIONS RELATING TO	Enabling Welsh Ministers to make provision that will require or enable LHBs to make direct payments under section 117 of the Mental Health Act 1983
BILL PART	Part 2
SECTION	24
METHOD OF BRINGING INTO FORCE	Draft affirmative on the first use, and subsequently negative
DESCRIPTION OF THE REGULATIONS	
<p>Section 24(2) inserts new section 10B “Direct payments for healthcare” into the National Health Service (Wales) Act 2006 (the 2006 Act) which gives the Welsh Ministers the power to make direct payments in lieu of the provision of services under that Act.</p> <p>The new section 10B(5) enables the Welsh Ministers to make regulations that will require or enable Local Health Boards to make direct payments to individuals or to a person nominated by them, in lieu of the provision of after-care services they have a duty to provide under section 117 of the Mental Health Act 1983 (the 1983 Act).</p>	
REASON FOR AND POLICY INTENT OF THE POWER TO MAKE REGULATIONS	
<p>The regulations would enable Local Health Boards to make direct payments to individuals, or to a person nominated by them, in lieu of after-care services required and that would be arranged for by the Local Health Board following the individual being discharged from hospital in instances when they have been detained under sections 3, 37, 45A, 47 or 48 of the 1983 Act. Section 117 of the 1983 Act places a duty on Local Health Boards to provide after-care services to individuals who are eligible if they have been detained under the specified sections of the 1983 Act. Without this power, Local Health Boards would not be able to make direct payments to individuals who have been discharged from hospital following detention under the specified sections of the 1983 Act, in lieu of the Local Health Board arranging or providing services to meet that person’s needs for after-care services . The powers ensure consistency between individuals who are entitled to after-care services under the 1983 Act and those who receive NHS services under the 2006 Act.</p> <p>The 1983 Act also makes provision for individuals to receive after-care services funded by a local authority; such individuals are currently able to receive direct payments funded by the local authority in lieu of provision of care and support under the 2014 Act by virtue of regulations made under that Act.</p> <p>Regulations made under the new section 10B(5) of the 2006 Act will enable such a person to receive direct payments in lieu of services to meet their assessed needs for after-care, whether they are for care and support under the 2014 Act, or health care under the 2006 Act.</p>	

REGULATIONS RELATING TO	Enabling Welsh Ministers to make provision to set out the detail of how direct payments made in lieu of the provision of NHS services will need to operate.
BILL PART	Chapter 2
SECTION	24
METHOD OF BRINGING INTO FORCE	Negative
DESCRIPTION OF THE REGULATIONS	
Section 24(2) inserts new section 10C (regulations about direct payments) into the 2006 Act. The power would enable Welsh Ministers to make regulations to set out the detail of how direct payments made in lieu of the provision of NHS services will operate.	
REASON FOR AND POLICY INTENT OF THE POWER TO MAKE REGULATIONS	
<p>Direct payments will provide an alternative way of meeting the needs of adults who are eligible for Continuing NHS Health Care (CHC). Rather than providing or arranging for their needs to be met directly, a direct payment would enable the recipient, or a nominated person acting on their behalf, to arrange the care themselves. This gives the recipient greater choice and control over how their needs are met.</p> <p>The regulations are required to ensure that Local Health Boards, on behalf of the Welsh Ministers, are able to make a direct payment to recipients or their representatives within a clear framework, which is detailed, and may need to be changed as wider circumstances change. The regulations will make provision about who may be eligible to receive direct payments, set out the circumstances when direct payments may be available, the services for which they may or may not be used and details of the arrangements required to administer such payments.</p> <p>Section 10C contains the regulation-making power and includes an inexhaustive list of the sort of provision that may be made using this power.</p> <p>It is intended that the Welsh Ministers will make regulations under existing powers in the 2006 Act to direct Local Health Boards to exercise functions in relation to the making of direct payments on their behalf.</p>	

REGULATIONS RELATING TO	Enabling Welsh Ministers to make provision that is incidental or supplementary to, or consequential on, any provision of this Act and to make transitional or saving provision in connection with any provision of this Act.
BILL PART	Part 3
SECTION	28
METHOD OF BRINGING INTO FORCE	Negative if amending or revoking subordinate legislation. Draft affirmative if amending or repealing primary legislation.
DESCRIPTION OF THE REGULATIONS	
This is a power to allow the Welsh Ministers to make provision that is incidental or supplementary to, or consequential on, any provision of this Act and to make transitional or saving provision in connection with any provision of this Act.	
REASON FOR AND POLICY INTENT OF THE POWER TO MAKE REGULATIONS	
<p>This power is required to ensure that any new provision made in or by virtue of the Act will be able fit into the existing legislative framework.</p> <p>These regulations are required to allow the Welsh Ministers to make supplementary, incidental, consequential, transitional, or saving provisions if it is considered necessary for the purposes of giving full effect to the provisions of the Bill. It is likely that such changes would be relatively minor, and making them through regulations will provide appropriate flexibility for such provisions to be made without the need to amend primary legislation on each occasion.</p> <p>If the regulations amend or repeal any provision of primary legislation, then they will be subject to the draft affirmative procedure. Otherwise, they will be subject to the negative procedure.</p>	