

National Assembly for Wales / Cynulliad Cenedlaethol Cymru  
[Health and Social Care Committee / Y Pwyllgor Iechyd a Gofal Cymdeithasol](#)

[Regulation and Inspection of Social Care \(Wales\) Bill / Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol \(Cymru\)](#)

Evidence from Health and Safety Executive – RISC 12 / Tystiolaeth gan Yr Awdurdod Gweithredol Iechyd a Diogelwch – RISC 12

Health and Safety Executive response to the Consultation on the Regulation and Inspection of Social Care (Wales) Bill

Role of the Health and Safety Executive (HSE)

HSE is responsible for health and safety policy at work in Great Britain and regulates occupational health and safety across most industries and sectors, including in the health and social care sector. HSE enforces the Health and Safety at Work etc. Act 1974 and related legislation. It engages in both inspection and investigation activities. HSE inspectors have extensive powers to take action, including powers to issue improvement and prohibition notices or prosecute those in breach of health and safety legislation.

Consultation questions

HSE has views on two of the 14 questions listed in Annex A of the Consultation letter and its response to both questions overlap. The two questions are questions 1 and 4.

HSE response to questions 1 and 4

HSE considers that to achieve the stated aims and objectives there needs to be a robust inspection and investigation regime, delivered by a regulator or regulators with adequate powers to both secure improvement and secure justice. The Welsh Government's regulators are the Care Council for Wales (CCW) (to be renamed Social Care Wales) and the Care and Social Services Inspectorate Wales (CSSIW). Both the CCW and CSSIW lack a comprehensive set of powers. Our view is that the specialist regulator for social care in Wales, the CSSIW, should have the necessary regulatory powers and criminal sanctions to deal with poor care services that put service users at risk. Effective

enforcement is a necessary tool in securing compliance and improvement, and in holding individuals and organisations to account and securing justice where failings have caused serious harm or death. Whilst the Police and HSE/Local Authorities have powers to investigate and prosecute either single or multiple incidents, the powers available to CSSIW are much more limited and aimed primarily at securing improvement.

The lack of a comprehensive set of powers by specialist regulators such as CSSIW, who may otherwise be better placed to act, often leads to HSE being called upon to act as a 'regulator of last resort'. However, HSE can only enforce where there has been a breach of relevant legislation and the incident falls within its published selection criteria, so there is effectively a regulatory gap in respect of failures outside these parameters. In such instances the social care providers may escape prosecution even if their failures and the consequences have been very serious.

We believe that in order to ensure effective regulation there needs to be:

- A comprehensive regulatory framework that ensures adequate inspection and investigation by the specialist regulator, and that ensures that there are no regulatory gaps;
- Adequate regulatory powers to secure improvement and justice;
- Clarity about roles and responsibilities;
- A duty to report incidents, so relevant regulators know about problems and can become involved where appropriate;
- Sufficient resourcing, and
- Clarity for citizens, so that they know what good care looks like, the standards that have to be achieved and who they can turn to if they have concerns.

HSE would welcome further discussions with the Welsh Government, CSSIW and others about achieving these outcomes.