

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 UNISON and College of Occupational Therapists – RISC 14 /
Tystiolaeth gan UNSAIN ac Coleg y Therapyddion Galwedigaethol – RISC 14

Regulation and Inspection of Social Care (Wales) Bill

Response from UNISON, including the College of Occupational Therapists.

Introduction

UNISON is pleased to respond to this consultation having taken part in the task group on worker regulation. UNISON is also the largest public sector union and has approximately 33,000 members working within the social care sector in Wales. We have a Social Services Forum, where members meet and exchange information, as well as communicating views via e-mail. Our members include Social Care Workers of all grades.

The College of Occupational Therapists is the professional body for occupational therapists and represents over 30,000 occupational therapists, support workers and students from across the United Kingdom and 1,600 in Wales. Occupational therapists work in the NHS, Local Authority housing and social services departments, schools, prisons, voluntary and independent sectors, and vocational and employment rehabilitation services.

Occupational therapists are regulated by the Health and Care Professions Council, and work with people of all ages with a wide range of occupational problems resulting from physical, mental, social or developmental difficulties. The philosophy of occupational therapy is founded on the concept that occupation is essential to human existence and good health and wellbeing. Occupation includes all the things that people do or participate in. For example, living independent lives in their own homes, caring for themselves and others, working, learning, playing and interacting with others. Being deprived of or having limited access to occupation can affect physical and psychological health.

Response to questions

1. Do you think the Bill as drafted will deliver the stated aims (to secure well-being for citizens and to improve the quality of care and support in Wales)

and objectives set out in Section 3 (paragraph 3.15) of the Explanatory Memorandum? Is there a need for legislation to achieve these aims?

- 1.1 UNISON welcomes the intention of the Bill to register and regulate persons providing the services listed in the long title, where they are not already registered. The protection of vulnerable people reliant on health and social care services and practitioners is vitally important. Robust regulation is essential for protecting the public from poor practice and practitioners and to maintaining the safety and wellbeing of vulnerable people receiving services.
- 1.2 Both UNISON and the College of Occupational Therapists have taken part in the work groups relating to workforce regulation and inspection, committed to ensuring all our members views are considered.
- 1.3 There is a need for the legislation as a result of changes to the existing legislation in England and to ensure that services which cross borders are included. As services are no longer service led but person-led the old system will become unwieldy. It will be essential that this Bill offers sufficient flexibility to keep up with the changes that will occur as the Social Services and Wellbeing (Wales) Act 2014 is implemented. The long title of the Bill says regulation of persons not services and lists certain specific service types. This may not facilitate that flexibility.
- 1.4 We further believe that legislation is necessary if we are to safeguard ourselves from the situations reported in the Francis review et al. Standards need to be consistent, and it is our belief that by having this framework (of the Bill) we will be better placed to provide that consistency of care to the people of Wales.
- 1.5 Regulation of the providers and workforce are vital to provide the public with assurances that their well-being is being protected. Responsibilities fall on employers and the workforce alike, but the monitoring and inspection must be properly resourced, to ensure there is confidence in the measures suggested.

- 1.6 We understand the argument against not extending regulation to all social care workers, but we do remain of the view this is a necessary part in the increased professionalization of the workers within social care. The provision for regulations to follow in the future is better than outright blocking of this issue, but we are concerned that the resources issue is unlikely to improve (and that is one of the main reasons for the decision), whilst the increase in care work continues (as outlined in all the statistical commentary). Social Care workers are vital to any social care policy succeeding as the major provider of the care – we should recognise their responsibility, and registration would assist this. Responsibility without professional support only serves to abandon Care Workers to the lower paid – increased professionalization is often recognised with better pay. However, we are saying in this Bill that there are not the resources available to take this step, we may do so in the future but for now, they are not required to be registered. We would like to see this part of the bill reviewed annually with all interested parties so that we might react more quickly in the future.
- 1.7 UNISON welcomes the aim as stated in section 3. The objective to improve information sharing and co-operation would be best achieved by a more explicit expectation to work with all other regulatory bodies in Wales. This includes regulators of members of the social care workforce already regulated by other, often UK, regulators and to expect co-operation with existing health inspectorates and workforce and improvement bodies. Achievement of the aim/ objective of workforce development and regulation will require co-operation with a range of other bodies and clarity over how the Bill relates to different groups of workforce in different ways. For example, section 1; paragraph 1.3 of the explanatory memorandum says the Bill proposes to introduce changes which will reform regulation of the social care workforce. However, this Bill is only regulating social workers and managers. The remainder of the social care workforce are either not regulated or are regulated by other bodies.

2. What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill adequately take account of them?

- 2.1 Inevitably finance and the pressure on current services will be a potential barrier to implementing the provisions of the Bill.
- 2.2 There must be robust inspection and monitoring procedures in place – they are outlined within the bill but will not succeed if the resources are not provided. Staff and Service Users and their families must have confidence that any complaint will be quickly and thoroughly investigated. At the moment we find that families feel unsure how to complain and staff feel that their job will be in jeopardy if they ‘whistle blow’. We would like to see the Welsh Government ensuring that procurement criteria includes an organisation having an open and transparent ‘whistle blowing policy’. It would be useful too, that any inspection includes contact with the Trade Union, to ensure partnership working means what it says and that any collective issues and personal case trends can be reported professionally and be part of the investigation.

3. Do you think there are any issues relating to equality in protection for different groups of service users with the current provisions in the Bill?

- 3.1 There are different expectations for registration of adult and children’s workforces which may cause different levels of protection for vulnerable people.
- 3.2 The current model of inspection for social care is that of a single inspector. Other inspectorates, for example Healthcare Inspectorate Wales use small teams to validate and triangulate their findings. As more and more services integrate and may receive inspections from more than one regulator/ inspector this may result in inequality for some groups.
- 3.3 Whilst the Annual Report imposes a duty to include accessibility, it does not go further than that. This could lead to a ‘lip service’ response, in that the employing bodies just answer without actually consulting families and the Trade Unions. We would like to see a model consultation provided to the

employers which covers all aspects of equality – the report would then be more relevant, and equality would be at the heart of the service provided.

4. Do you think there are any major omissions from the Bill or are there any elements you believe should be strengthened?

- 4.1 One major omission is that the Bill does not explicitly acknowledge the fact that some social care workers are already regulated by UK regulators. The current system also experiences this and it has created a situation where such groups, because they are not regulated by the Care Council for Wales tend not to be included in the other work of the Care Council in its role as a sector skills council. So for example, workforce development and career opportunities for occupational therapists have not been given the same attention as those for the regulated social work workforce. The College of Occupational Therapists and UNISON would hope that this Bill will redress that and ensure that the roles undertaken by Social Care Wales beyond those of a regulator are clearly expected to be for the entire workforce.
- 4.2 The Social Services and Wellbeing (Wales) Act will transform services and drive greater integration with health and other partners. This Bill does not appear to explicitly drive that agenda further by at least explicitly allowing or encouraging integrated infrastructure in, for example, inspections, workforce development and education and in improvement agendas. That omission may lead to missed opportunities in practice to transform and improve services
- 4.3 We have already set out above our belief that regulating all social care workers should be undertaken, not least because the public will expect them to be.
- 4.4 In section C of the explanatory memoranda the Welsh Government states that we ‘recognise that the marker should not determine priorities in social care’ and goes on to say that we should all work collectively to meet the priorities as set by the Welsh Government. With 968 providers in Wales, how confident can we be that high standards will prevail in all providers – we repeat here our

view that monitoring and compliance must be robust if we are not to allow unelected employers to determine social care outputs (which is the main change in the focus of social care provision in this bill). Policy must unequivocally be set by our elected representatives, and any comparisons when Local authorities put out procurement criteria must be honestly compared to like for like comparisons with Care provision from within the public sector before any contracts are issued.

5. Do you think that any unintended consequences will arise from the Bill?

- 5.1 The omissions mentioned above may result in unintended consequences. The definition of care (Part1; Chapter1; 3(i) a) solely references physical tasks. While s3 (a) (ii) identifies the 'mental' processes related to those tasks, as it stands it appears to focus on task and time rather than quality of the interaction. Relationships and the quality of human interaction are a vital element in providing high quality care services, as many recent reports and investigations such as Southern Cross, Mid Staffs and Operation Jasmine, have shown. The definition appears to be different to the expectation of the Social Services and Wellbeing (Wales) Act where care and support seek to meet the wellbeing outcomes and explicitly include a wider range of outcomes. Would this definition tend to encourage a focus on tasks and providing services which only meet physical needs? How do emotional care and support, confidence building and other developmental elements fit this definition? This definition does not acknowledge that the person being cared for may need cognitive, mental and emotional elements of their wellbeing, as defined in the Social Services and Wellbeing (Wales) Act to be included in their care and support.
- 5.2 Part 3, section 68(3) defines a care and support service in a different manner from the Social Services and Wellbeing (Wales) Act which allows for a wide range of services to provide care and support. It is not clear whether different legal expectations of what constitutes care and support might cause any confusion or difficulties in delivering/ providing services.

5.3 Resources will be higher than expected as care requirements grow and the workforce becomes more trained and valued. This is an issue for all governments in the UK and we should be making plans now for providing the social care needed. Wales could lead this in the UK.

5.4 With so many providers, there will need to be robust monitoring as stated above to ensure compliance with Welsh Government Policy. The costs to Local Authorities could increase further as they are left with the more expensive care provision.

6. What are your views on the provisions in Part 1 of the Bill for the regulation of social care services? For example moving to a service based model of regulation, engaging with the public, and powers to introduce inspection quality ratings and to charge fees.

6.1 UNISON and the College of Occupational Therapist welcomes the move to regulate services rather than organisations. It is not clear whether 'regulated activity' (s171) is the same as 'regulated services'. The definition of regulated services in schedule 1 is limited compared to the Social Services and Wellbeing (Wales) Act. The meaning of wellbeing (s2) in that Act offers the opportunity to develop very person centred and flexible provision to meet individual needs. This will create variable services and the need for a broad social care workforce. The intention of this Bill to prepare for that flexibility is welcome. It will be challenging to capture that variability and flexibility in order to continue to protect vulnerable people. How will these be included if they don't fit a traditional model of care home or domiciliary care or the definitions in schedule1? We note that only care and support services will be regulated and understand this to mean there will be no regulation of preventative or other services.

6.2 As Welsh Government policy continues to promote the integration of services It is surprising that there is no reference to any potential to allow joint or integrated inspections, for example with Healthcare Inspectorate Wales. An explicit reference to allow, or even to promote such partnership working would

be very useful in Part 9. We are aware that members of UNISON experience separate inspections at present depending on their service registration. There is no reference in the Bill to the fact that each local authority as well as CSSIW and HIW may all inspect a single service, each requiring the same or similar information, usually in a different format. A prudent approach would be to streamline this system.

7. What are your views on the provisions in Part 1 of the Bill for the regulation of local authority social services? For example, the consideration of outcomes for service users in reviews of social services performance, increased public involvement, and a new duty to report on local markets for social care services.

7.1 We welcome the intention to consider outcomes for individuals in reviews of social services and increased public involvement. S55: insertion to Social Services and Wellbeing (Wales) Act (s144b) requires services which will be easily definable. If these do become more individualised and flexible to meet individual's goals it will be challenging to summarise these in a report for the whole authority. Such a report can count and comment on residential care places but may not be able to amalgamate very individual responses.

7.2 S57: insertion to the Social Services and Wellbeing (Wales) Act in relation to looked after children. Regulations under section 94A (3) can prevent a person working if they are not registered under s79 of the RISC Act (registration of social care workers). This presumes any registered staff are registered with SCW which may have an impact for staff already registered with other regulators. One aim of the Bill is to clarify and reduce complexity, if this resulted in dual regulation or the loss of a multi professional workforce this may not deliver the intended outcomes.

8. What are your views on the provisions in Part 1 of the Bill for the development of market oversight of the social care sector? For example, assessment of the financial and corporate sustainability of service providers and provision of a national market stability report.

- 8.1 Whilst we prefer that social care provision remain with the public sector, we understand that this Bill intends to ensure that the Welsh Government drive social care priorities and retain the variety of employers. We do welcome the provision to ensure that employers financial and corporate governance are investigated. It will be important to recognise that unforeseen situations will continue to arise and this activity needs to be proportionate to the other demands of activity for local authorities.
- 8.2 The development of market oversight, must only be an analysis of the provision within each area of the particular annual report and must be objective. It is easy for an employer to submit a bid undercutting the staffing costs, for instance, if the criteria for assessing against that in the public sector is different. There must be an open assessment of relative costs for comparison purposes.

9. What are your views on the provisions in Part 3 of the Bill to rename and reconstitute the Care Council for Wales as Social Care Wales and extend its remit?

- 9.1 The objective (s67) (1) for Social Care Wales (SCW) does not limit the protection, promotion and maintenance of the safety and wellbeing of the public in Wales to social care matters. UNISON expects this responsibility to relate only to the services and practitioners registered with and regulated by SCW. However, in s67 (2) the functions do not appear to relate to this objective: this section includes a responsibility to maintain high standards for all social care workers. UNISON is unclear how responsibility can apply beyond the services and practitioners registered with and regulated by SCW. Practitioners registered with and regulated by other practitioners, such as occupational therapists and nurses will remain under the jurisdiction of those regulators. It is not fully clear how this covers staff who are not regulated at all

as individuals, but who work in regulated services. Will the Responsible Individual and Registered Manager be accountable for these staff?

- 9.2 The Bill should be very clear what references to social care workers means
- a. Those who are registered/ regulated and thus parts of the Bill relating to the role of SCW as a protector (naming them as social workers and managers)
 - b. The whole workforce when SCW is acting as an improvement/ education and support agency (using the term social care workers)
- 9.3 There is potential for conflict of interest in placing so many roles in one body and so the function of protecting the public should be paramount and separate to other roles. Protecting the public is a significantly different role to those of a sector skills council, professional body or education provider for example. 'Trust Assurance and Safety –The Regulation of Health Professionals in the 21st Century' (2007 <http://www.official-documents.gov.uk/document/cm70/7013/7013.pdf>) identifies a number of key principles that should underpin statutory professional regulation. The “overriding interest should be the safety and quality of the care that patients receive from [...] professionals” and that “**Regulators need to be independent of government, the professionals themselves, employers, educators and all the other interest groups involved**”(p2).
- 9.4 The wider roles given to SCW (Part 5) in relation to all social care workers are undertaken via the Workforce Education Development Service (WEDS) in healthcare. Clarity is needed on the groups that SCW will include in this work. For example, how will occupational therapists be supported in their practice and professional development in social care, even though they are not the responsibility of SCW in its regulatory role? How will the different responsibilities be separated? There is a missed opportunity here for improving integration in health and social care.
- 9.5 The title Social Care Wales, is a good one – it will show immediately that there has been a change. We are not sure how the CSSIW and Social Care Wales will work together, particularly when setting standards.

9.6 Training and supervision: Every employer should have processes in place to ensure that staff have the appropriate skills to do their job and these skills are steadily enhanced through training and professional development. This should include providing access to competent professional supervision and appraisals carried out by trained staff. It is also good practice for an employer to set aside resources and protected time for training and development, including for part-time and shift workers. Staff who are supervising others or being supervised should fully engage in the process and be able to access guidance if they identify any difficulties or concerns. We are not clear how this will be provided by employers outside of the public sector and how SCW will monitor and assess training provision. We do welcome the inclusion of ensuring training is part of the SCW remit.

10. What are your views on the provisions in Parts 4 - 8 of the Bill for workforce regulation? For example, the proposals not to extend registration to new categories of staff, the removal of voluntary registration, and the introduction of prohibition orders.

10.1 Social Care workers (Part 4)

The definition of a social care worker (s78) includes a far wider group than the registered groups. The Bill needs to acknowledge that there are groups of social care workers who are also registered and regulated by other regulators. Much of the wording in the Bill implies that all social care workers will be included in sections which specifically relate to regulation and the role of SCW as a regulator. For example, s78 (3) (b) would include occupational therapists. Any regulations made under s78 (2) will need to be clear of any overlap with existing regulator functions. The sections immediately after s78 refer to the register and continue to refer to issues relating to registered groups: using the term “social care workers” who are not registered groups. For example, section 57 amends the Social Services and Wellbeing (Wales) Act and allows for s94 (A) (3) regulations to specify that a person not registered under S79 of the Regulation and Inspection of Social Care (Wales) Act cannot work for a

local authority in relation to Accommodated and Looked After Children. Care will be needed to ensure that occupational therapists, speech and language therapists and nurses are not excluded by such regulations.

10.2 S83 (b) refers to an “applicant for registration as a social care worker of any other description”. Yet the only groups to be registered are social workers and registered managers. S83 (b) (i) requires completion of a course approved by SCW under s113 – which cross refers to s79. Occupational therapists courses, as with other groups registered by other regulators, are not approved by SCW but by the relevant regulator for each profession and by the professional body, as well as being quality assured by the Higher Education Institution. Clearer wording will help ensure the objectives of the Bill can be achieved.

10.3 Social Care workers: standards of conduct, education etc. (Part 5)

This part is not always clear as to which workforce groups are included and which are not. For example, s111 (1) (a) refers to standards of conduct and practice for “social care workers”. We are unclear how codes are to be applied to unregistered groups of staff or to staff registered with other regulators. S111 (3) refers to codes for social workers when working as approved Mental Health Practitioners (AMHPs). However three other professions can be AMHPs and it would make sense for the same codes of conduct to have to apply to every AMHP regardless of their professional background. S111 (6) says a local authority making a decision about the conduct of any social care worker must (if directed to do so by Welsh Ministers) take into account any code published by SCW. However, the codes of other regulators may be more appropriate. How will this be accommodated?

10.4 We support the general principle to improve the education and career opportunities for all social care workers and to improve standards more widely including through monitoring or approval of courses. However, greater clarity is needed in relation to what is the role of a regulator, and thus are requirements in order to work in the sector; what is good practice but not required; and what roles could be enhanced by opportunities for integration or

joint working with other regulators, such as HCPC or NMC, and other employers, such as WEDS and the improvement functions of Public Health Wales.

10.5 Social Care Workers Fitness to Practise (Part 6)

UNISON is unclear what remit over fitness to practice SCW has over workforce groups other than social workers and registered managers. Fitness to practice for occupational therapists is under the remit of the HCPC. S116 (5) appears to acknowledge this is only for workers registered with SCW: changing the title of this part so it does not say all social care workers would help. UNISON notes the reference to HCPC in s116 (4) but reads this as referring to social workers registered in England. S117 refers to a “registered person” is this only a person registered with SCW? What about a person registered with another, UK, registering body working in Wales?

10.6 We have stated our disagreement with not extending regulation to other workers above.

11. What are your views on the provisions in Part 9 of the Bill for cooperation and joint working by regulatory bodies?

11.1 These refer only to co-operation in relation to social workers. There needs to be explicit reference to interaction in relation to the NHS and other parts of the sector. S174 identifies the regulatory bodies as Welsh Ministers and SCW. It is disappointing there is no reference to co-operation and joint working with HCPC and other regulators in relation to staff regulated by that other regulator.

11.2 There is also no reference to co-operation in relation to the wider roles of SCW, which is surprising given the policy direction of greater integration. For example, workforce development and education commissioning for occupational therapists is undertaken by WEDS, there seems to be a missed opportunity to consider integrated workforce planning, joint course development and approval, integrated career frameworks and continuing professional education and learning (CPEL). UNISON is aware of a lack of

cross recognition of qualifications between health and social care. The Bill offers an ideal opportunity to co-operate in recognising qualifications across the sector to allow joint appointments; integrated working and movement of staff between local government and NHS employers and reduce the need for staff to 'redo' similar qualifications to named recognised qualifications by one part of the sector.

12. In your view does the Bill contain a reasonable balance between what is included on the face of the Bill and what is left to subordinate legislation and guidance?

- 12.1 Mostly. We are concerned that the future of social care will become a private concern rather than public sector lead – this has been the direction of travel for some time, which has not been halted by this bill. We recognise the commitment to priority setting by the Welsh government, but this may not be sufficient.
- 12.2 Regulations are necessary because of the detail required, and in the main the balance is correct – however we remain nervous of how those regulations will read and would assume we will be equally consulted about those.
- 12.3 Not setting out clear plans of how to regulate Social Care Workers will be confusing to the public, who will assume they are regulated.

Financial implications

13. What are your views on the financial implications of the Bill as set out in parts 6 and 7 of the Explanatory Memorandum?

- 13.1 The cost of care is set to increase, the memorandum provides some useful information, but it is based on assumptions where specific information is unknown (actual staff and hours for instance). We are concerned that as resources reduce how the quality of care will be maintained and improved.

14. Are there any other comments you wish to make about specific sections of the Bill?



- 14.1 Section 33(3): powers of the Inspector. The Inspector may “assess the wellbeing of any person accommodated or receiving care and support there”. Does this constitute a professional assessment which will have to meet the requirements of the assessment regulations for the Social Services and Wellbeing (Wales) Act including consideration of the wellbeing outcomes? If not, and this is intended to mean a more general consideration of the situation of the person it may be more useful to use different language.
- 14.2 Language: throughout the Bill varying language is used. Consistent language will help make the Bill clearer and will achieve its aims more effectively. For example, more consistent use of registered service/ person; is a regulated service the same as a social care service? ‘Regulated activity’; ‘regulated services’ and ‘social care’ are all used to describe regulated services. The main one is using ‘social care workers’ when referring to both registered and non-registered groups without clarity.
- 14.3 We are also concerned about the increasing personalisation of care and how this will be largely excluded from the remit of this bill. We believe that personalised care providers, as individuals (often) need protection and support as well as the Service Users – this would in our view lead to different care for different providers, which this bill is hoping to avoid.
- 14.4 We would have like to see an attempt to work on optimum staffing models: which can assess the right staffing numbers and skill mix against local population numbers and needs. The staffing model should include all in social work teams including skilled administrators. Extra capacity in teams for support, mentoring and development activities and for staff to have enough time to work directly with service users. This may be provided for within the regulations.

15 Conclusion

We welcome the aim and intent of the Bill and consider that the legislation is needed. The main concerns are that the Bill:

- Is absolutely clear how relationships between regulators enhance public protection by acknowledging and providing for some staff to be regulated by SCW while others are regulated by UK regulators:
- Is clear about when SCW is acting as a regulator and the sections relating to the staff regulated by SCW; and when it undertakes other roles which include other staff. Those staff need to be treated equitably with staff registered/ regulated by SCW and a consistent term is used in those different roles.
- Promotes and encourages co-operation and integrated working to support the transformed, integrated services which will improve delivery for people reliant on them.
- Is properly resourced, and that
- The regulations are created by consultation.

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