

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 Royal College of Nursing Wales – RISC 18 / Tystiolaeth gan Coleg Nyrsio Brenhinol Cymru – RISC 18



Regulation and Inspection of Social Care (Wales) Bill

*Response from the Royal College of Nursing, Wales
Presented to the National Assembly for Wales Health and Social
Care Committee April 2015*

ABOUT THE ROYAL COLLEGE OF NURSING (RCN)

The RCN is the world's largest professional union of nurses, representing over 400,000 nurses, midwives, health visitors and nursing students, including over 24,000 members in Wales. The majority of RCN members work in the NHS with around a quarter working in the independent sector. The RCN works locally, nationally and internationally to promote standards of care and the interests of patients and nurses, and of nursing as a profession. The RCN is a UK-wide organisation, with its own National Boards for Wales, Scotland and Northern Ireland. The RCN is a major contributor to nursing practice, standards of care, and public policy as it affects health and nursing.

The RCN represents nurses and nursing, promotes excellence in practice and shapes health policies.

Regulation and Inspection of Social Care (Wales) Bill

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General

- 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?**

The Royal College of Nursing Wales (RCN Wales) is broadly supportive of the as drafted. We have some concerns, particularly with regard to workforce regulation outlined in this response which could be met by amendment or clarification. In general however we believe that this Bill is necessary and will achieve the objectives set out in Section 3 of the Explanatory memorandum.

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

Public sector finances will remain a challenge for the foreseeable future. The effective regulation and inspection of services and workforce will require investment in sufficient qualified staff to undertake inspection and regulatory process such as appeals hearing in an appropriate timeframe. This must also include inspection of nursing services by nurse inspectors.

In addition education in the sector will be needed on the provisions of this Bill.

- 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?**

It will be important in the process of encouraging citizen engagement that diverse groups of service users are represented.

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

RCN Wales believe the proposals in the regulation of the social care workforce need to be more explicit about interaction and crucially, cooperation, between different professional regulators.

We expand on these concerns later in this response but the essence of our concern is that In order to achieve the best possible care package for the individual's needs, professionals with **different** health and social care expertise are needed for example, an occupational therapist, a social worker, a nurse etc

Highly skilled professionals are regulated by different regulators for extremely good reasons that include those laid out in this Bill. The regulator must have an understanding of the educational and practical requirements of the profession at a the highest level

As it is to be hoped that the future will see increased integration between health and social care services the Bill must have a framework that encourages explicitly recognises and respects the different regulatory regimes and effectively encourages cooperation.

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

The concept of 'social care workforce' must be clearly and legally understood as entirely separate from the concept of the 'people who work in health and social care in the community'.

For example the RCN has around 6000 members in Wales working in the independent sector (and thousands more working in the community with social services on a daily basis). Many of these will be providing nursing care to older people. Nursing care is a specific service not only characterised by the task but by the whole knowledge, experience and skills that educated professional registered nurse brings to this task. A classic example of this is the bathing. Bathing, undertaken by an appropriately experienced and qualified registered nurse would become an opportunity for a therapeutic assessment of skin, nutrition, memory and mental well-being. This does not mean that all bathing should be undertaken by a registered nurse and equally a different professional would bring a different set of skills to the assessment.

As it is to be hoped that the future will see increased integration between health and social care services the Bill must have a framework that encourages explicitly recognises and respects the different regulatory regimes and effectively encourages cooperation.

The danger of a combining a rigid approach to social care (e.g. 'it must be provided by a Social Worker' with an acquisitive approach to what its social care (e.g. 'everything outside a hospital') is that this could frustrate a multi-disciplinary approach and work to prevent integration.

Provisions in the Bill

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.

The Royal College of Nursing Wales is supportive of these provisions. The service based model of regulation appears a much needed simplified system and we support the full engagement of the public in these processes. We support the introduction of a fee for regulation with the proviso that it must be proportional and able to be borne by the market. A sliding scale might be a proportional approach.

We support in principle the introduction of a quality rating system. This, coupled with the introduction of comparable annual reports will allow for much greater accessibility and ease in scrutinising services. This is particularly important for members of the public. However we welcome the government's acknowledgement that this system would need "significant consultation" to establish the best approach.

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.

The Royal College of Nursing Wales is supportive of these provisions. The new reporting measures appear a simpler system with greater ease of comparability on content.

We are particularly pleased to welcome the new duty to report on the local market for social care services which will be of great importance in the planning of local healthcare services and local healthcare workforce need.

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.

The Royal College of Nursing Wales is extremely supportive of these provisions. A sudden decision to withdraw services by a major provider can cause immense harm to service users and create immense pressure on an already fragile acute care sector.

We are enthusiastic about the provision of a national market stability report and urge consideration of the labour market to be part of its regular content.

It is only in the last year that the educational commission process for non-medical professionals was first formally required to attempt to take account of the needs of the independent sector in its assessments but the two sectors are very closely interrelated. This is particular true for health care support workers who are am more mobile part of the labour market and regularly migrate between the NHS and the independent sector.

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?

The Royal College of Nursing Wales has some concerns about the potential conflict (or perceived conflict) of interest between the role of a regulator and that of a professional body. A regulator must protect the public by regulating the profession. It cannot place the interests of the profession or appear to place the interests of the profession first.

The Royal College of Nursing is a professional body. We promote standards of care and the interests of patients and nurses, and of nursing as a profession and as such contribute to the development of nursing practice, standards of care, and public policy.

The Nursing and Midwifery Council (NMC) is the regulator of the nursing profession.

The duties of promoting high standards in the profession and of promoting public confidence in the social care workforce are suggested in this Bill for Social Care Wales. These are not incompatible with regulatory duties but certainly need some further careful thought on wording.

For example the website of the NMC¹ defines its role as:

- We exist to protect the health and wellbeing of the public.
- We set standards of education, training, conduct and performance so that nurses and midwives can deliver high quality healthcare consistently throughout their careers.
- We ensure that nurses and midwives keep their skills and knowledge up to date and uphold our professional standards.
- We have clear and transparent processes to investigate nurses and midwives who fall short of our standards.

It explains its mission as (*italics added*):

Our primary purpose is to protect patients and the public in the UK through effective and proportionate regulation of nurses and midwives. We set and promote standards of education and practice, maintain a register of those who meet these standards and take action when a nurse or midwife's fitness to practise is called into question. *By doing this*

¹ <http://www.nmc-uk.org>

well we promote public confidence in nurses and midwives, and regulation.

It would be helpful to have clear and explicit regulations about the governance of the organisation and the role of lay people in this process, the engagement of citizens and stakeholders and a duty to work with other relevant professional bodies, trade unions and regulators in the field.

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.

The Royal College of Nursing has a number of concerns with the approach to workforce regulation laid out in these sections.

The rigid qualification rules

The approach to registration laid out for Social Care Wales in the explanatory memorandum is a continuation of the current approach by the Care Council for Wales. It is rigidly based on the possession of the 'right' qualifications (as defined by Social Care Wales).

This has currently resulted in the absurd situation of experienced senior nurses holding several degrees at postgraduate level being required by the Care Council for Wales to sit a basic NVQ examinations in health and social care.

At best this is a waste of time for the nurse, the people s/he cares for and the Care Council for Wales. At worst it is indicative of ignorance about the nature and value of nursing skills in the care of older people and will act as a disincentive to encouraging nurses to pursue careers in health and social care in the community.

Registered Nurses also promote residents' independence through proactive, rehabilitative care; promote residents' health and flourishing; deliver high quality palliative care and end of life care for individuals; play a key role in advocacy for residents and families.

Registered Nurses are managers and leaders in terms of managing the care for individual residents; managing care services and care settings; co-ordinating multi-professional input; teaching and enabling staff, residents and families; knowing about local policies and services and providing healthy and safe environments.

This situation could easily be addressed by taking cognisance of equivalent qualifications *where the individual in question is a regulated healthcare professional.*

Dual regulation for already regulated healthcare professionals

The RCN believes that regulated healthcare professionals are exactly that – already regulated. They do not require additional regulation from the Social Care Wales.

Registered Nurses are registered professionals (regulated by the Nursing and Midwifery Council) accountable for evidence-based practice in accordance with their professional code.

Dual regulation will not protect the public in any additional way or provide an extra value to the public.

Instead it will cost the regulator (and ultimately the public purse) as the administrative processes of regulation (revalidation, registration, and disciplinary hearing, any appeals etc) will need to be gone through twice. This is time-consuming as well as costly.

The individual being regulated will have to pay the regulator twice. This could be too costly. The bureaucracy and cost will prevent ease for movement in services in the community at a time when the policy direction is to encourage it.

There could be miscarriages of justice and at very best confusion if a disciplinary care arises placing individuals in a double jeopardy situation.

All of this could be avoided by a clear policy statement that whilst regulated healthcare professionals working in these roles will need to be registered with Social Care Wales regulation remains with the appropriate professional regulator.

The potential extension of registration to other categories of social care workers

The RCN believes it is appropriate to introduce this new system and assess impact before proceeding to registering new categories of workers. Changes to local government and further integration of health and social care are on the agenda. It may be more prudent to take stock of these changes before proceeding.

In addition we would draw the committee's attention to our concerns expressed in answer to question 5. The concept of 'social care workforce' must be clearly and legally understood as entirely separate from the concept of the 'people who work in health and social care in the community'. It would not be appropriate for Social care Wales to seek to extend registration to GPs or district nurses for example.

The regulation of healthcare support workers

Registered nurses are currently accountable to the NMC for delegation to healthcare support workers and supervision of their tasks.

Healthcare support workers whose routine duties are delegated to them by a registered nurse or who have a health and social care qualification, are part of the nursing family and are eligible for membership of the Royal College of Nursing.

The RCN believes this category of healthcare support workers should be regulated by the NMC.

Prohibition Orders

The powers around prohibition order appear extremely wide at present and require far more clarification before the RCN could be fully supportive. In particular we have concerns about the relationship of these orders to already existing regulatory regimes for all the reasons of double jeopardy and confusion we laid out earlier.

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

We do not believe the statements in the explanatory memorandum sufficiently reassure and explain how this cooperation will be sought and, maintained and put into operation.

We do not have confidence in the system at present and would require more explicit reassurance that the intention is to protect the public in the most effective manner whilst ensuring natural justice for those regulated.

The Bill contains powers for Welsh Ministers to make Regulations and issue guidance, and for Social Care Wales to make Rules.

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?

The Royal College of Nursing Wales objects strongly to the provision for Social Care Wales to make Rules without requiring the permission of Welsh Ministers.

We do not think it is all appropriate for any such body to have this wide autonomous policy making ability without any democratic oversight.

This is even more alarming a suggestion as the predecessor body the Care Council for Wales has on numerous occasions demonstrated its lack of understanding and recognition of value in the nursing contribution to care in the community.

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

We have no comment on this section.

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

RCN Wales warmly welcomes the introduction of the concept of the 'Responsible Individual' who must be a senior representative of the provider and on whom the legal responsibilities are placed. This is an excellent development and will mean that responsibility is rightly placed with those that have the means to effect change.

On the provision that: Service providers will no longer have to register separately for each service and at each location where the service is provided. A provider will instead make one application for registration which can be varied so as to authorise changes such as the provision of further services at further locations

RCN Wales believes this will assist with delayed discharges from both acute and community services. However this places responsibility firmly in the hands of the provider to ensure that services can meet the assessed needs of the individual and for large providers may result in people being moved between homes to meet staffing needs. This possibility will need to be considered.