

Consultation Response Form

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Your address:

Responses to consultations may be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please place a tick in the box:

Please tell us who you are responding on behalf of. For example is this your own response or is it sent on behalf of an organisation?

I am responding on behalf of the Welsh Language Commissioner. The Commissioner's principal statutory aim is to promote and facilitate the use of the Welsh language. The Welsh Language Commissioner's vision is a Wales where people can live their lives in Welsh. Our response to this consultation therefore specifically focuses on the effects of the consultation proposals on the Welsh language, on the rights of Welsh speakers and the opportunities to use the language. We have therefore not answered all of the questions. We should also note that the Welsh Language Commissioner is an 'allowed person' in cases before the Family Court.

If you want to receive a receipt of your response, please confirm your email address, here:

Questions on Chapter 1: Eliminating profit from the care of children looked after

There are 12 questions about this chapter.

Question 1.1: Do you think that introducing provision in legislation that only allows 'not-for-profit' providers to register with CIW will support delivery of the Programme for Government commitment to eliminate profit from the care of children looked after?

No comment.

Question 1.2: What in your view are the likely impacts of the proposal? You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical matters such as cross-border issues.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

The Care Inspectorate for Wales states in table 3 of its [National review of care for children in Wales](#) that the Welsh language was the language choice of 3% of children in care homes in 2017-18. It does not report on the degree that the care was available in Welsh to meet the need. It is possible that a lack of care in Welsh could have a detrimental effect on children (please also see our response to question 1.17 in this respect). Our expectation is of course that local authorities already include a requirement to provide care through the medium of Welsh when commissioning care from providers, in accordance with the requirements of the Social Services and Well-being (Wales) Act 2014 and since 2015 the Welsh language standards. If a third party carries out an activity or provides a service on behalf of the body which is under a duty to comply with the standards the local authority must ensure that the third party complies with the standards applicable to that service too. We would encourage you to find out what is the baseline of the current provision of care of children looked after in Welsh as part of your planned regulatory impact assessment work. As Commissioner we have had to contribute in the past to cases in the court of protection where individuals have been placed in places where there has not been Welsh language provision available to

them. This suggest that steps have not always been taken to ensure that Welsh speakers receive their care in Welsh.

The consultation document sets out that eliminating profit from the care of children looked after will 'promote the development of local services that are locally accountable. It will rebalance the social care market in favour of public sector and not-for-profit care provision and will create a larger provider base and secure better social value' (30). All local authorities operates in accordance with the Welsh language standards, as it is expected of third party providers acting on their behalf as stated above. It is possible that increasing direct provision from the public sector, more locally, would mean that more provision would be available through the medium of Welsh because it reduces those third party requirements in some cases. However, as already stated, our expectation is that local authorities already commission care through the medium of Welsh. A change to commissioning only from not-for-profit providers would not necessarily make a difference to Welsh language provision therefore unless it is ensured that authorities will indeed commission care in Welsh for children looked after.

Question 1.3: One approach could be for the legislation to define 'not-for-profit' in terms of the types of organisation that would qualify. Do you consider that the restriction should also be expressed in terms of the way that any trading surplus is expended? What would be the effects and implications of this?

No comment.

Question 1.4: Do you think the primary legislation should include a power for Welsh Ministers to amend the definition of 'not-for-profit' through subordinate legislation?

No comment.

Question 1.5: What are your views on the proposed timings for the primary legislation to come into effect?

No comment.

Question 1.6: Are there any issues in relation to transition for children looked after, local authorities and service providers you would like to draw our attention to?

No comment.

Question 1.7: What are your views on the issuing of guidance to support the implementation of the primary legislation?

The document states that elsh Ministers propose issuing guidance to support the implementation of the legislative changes to eliminate private profit from the care of children looked after, such as referencing or describing appropriate organisational models. This guidance will act as an aid in providing information and support to stakeholders as we implement the changes' (28). We believe that such guidelines would be useful if they included detailed guidance on how to ensure that

children and young people who speak Welsh receive care in Welsh in accordance with the active offer, and how the care system as a whole can give every child the opportunity to learn, develop and use the Welsh language. It would be appropriate to include organisational models regarding the provision of care in the Welsh language which would include guidance on the development, planning and scheduling of the workforce and ensure that resources and support are available for Welsh speakers in order to ensure that care is provided through the medium of Welsh. The new guidance to support the implementation of this primary legislation should be guided by the rights of children. We urge you to discuss with the Children's Commissioner the linguistic rights of Welsh-speaking children looked after in accordance with the UN's Convention on the Rights of the Child, specifically articles 29 and 30. We are aware that the Welsh Language Board provided advice to the then Welsh Assembly Government in 2006-7 under section 3 of the Welsh Language Act 1993 regarding guidelines for the care of children looked after. It would be appropriate to consider that advice in the preparation of this guidance. We would also be happy to discuss the guidance with you as it is developed.

We understand that the Welsh Government is currently developing a National Framework for commissioning care and support following the publication of the [Rebalancing Care and Support White Paper](#) as well. The National Framework should include strong guidance on how childcare is commissioned in Welsh and in accordance with Welsh language standards, the active offer of care and the rights of the child. The guidance published as a result of the proposals of this consultation should be in line with that National Framework.

Question 1.8: What are your views on using legislation to place a restriction on local authorities to commission placements from 'not-for-profit' organisations only? In particular:

- Do you think it would support us to deliver the commitment to eliminate profit from the care of children looked after in Wales?
- What would be the benefits, disbenefits and other implications of such an approach?
- What would be an appropriate timescale for implementing such an approach, if it were to be adopted in Wales?

No comment.

Question 1.9: What are your views on the possibility of approaches being taken in response to these legislative proposals which would undermine the intention to eliminate profit from the care of children looked after in Wales? Are there any actions which would guard against such activity?

No comment.

Question 1.10: We would like to know your views on the effects that the legislative changes to eliminate profit from the care of children looked after will have on the Welsh language, specifically on opportunities for people to use Welsh and on

treating the Welsh language no less favorably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

The consultation document states that 'there will potentially be benefits in terms of Welsh language provision, in that local authorities must assess the sufficiency of care and support provided for these placements through the medium of Welsh. It is hoped that this will stimulate the growth of new provision to meet identified need and demand' (37). Our understanding is that local authorities are already required to assess the degree of care and support needed and provided through the medium of Welsh in their local authority, regardless of the provider, as outlined in the [Social Services and Well-being \(Wales\) Act 2014 Part 2 Code of Practice \(General Functions\)](#). The document does not explain why a change to a 'not for profit' system, would necessarily mean that there would be an increase in Welsh language provision.

Question 1.11: Please also explain how you believe the legislative changes to support delivery of eliminating profit from the care of children looked after could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

As we note above we believe that further clarification is needed as to how the legislative changes to help eliminate profit from the care of children looked after would in themselves increase provision in the Welsh language. We therefore believe that further steps need to be considered to make sure that local authorities and the potential not-for-profit providers actually ensure that children who receive care actually receive that care in Welsh. It is possible that more detailed guidelines such as those referred to in 1.7 above would contribute to this but we believe that further steps than that need to be considered to ensure that placements for children looked after meets the needs of those children to speak Welsh in accordance with Part 6, 75 (1), Part 6, 78 (3) (a) and Part 6, 78 (3) (a) of the Social Services and Well-being (Wales) Act 2014. Enabling children who have been brought up to speak Welsh to continue to do so should be crucial in the provision for children looked after and in accordance with their rights. Ensuring opportunities for all children looked after to develop skills in the Welsh language should also be a consideration.

Question 1.12: This chapter has focused on how we can achieve the commitment to eliminate profit in the care of children looked after, and we have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

No comment.

Questions on Chapter 2: Introducing direct payments for Continuing NHS healthcare

There are 8 questions about this chapter.

Question 2.1: We have outlined our proposals to introduce further voice and control for adults receiving Continuing Health Care (CHC) in Wales. Do you agree or disagree with these proposals? Please explain your reasoning.

No comment.

Question 2.2: What in your view are the likely impacts of the proposal?

You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical matters such as cross-border issues or transition to the new arrangements.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

No comment.

Question 2.3: What lessons can we learn from other countries' practice in this area?

No comment.

Question 2.4: Do you believe there are any other or complementary approaches we should be considering to achieve the same effect? If so, please outline below.

No comment.

Question 2.5: We will work to ensure that any legislative change is supported by robust guidance to help both payment recipients and practitioners understand how the system will operate. Can you identify anything that it would be helpful to include in this guidance? What other support should be provided?

No comment.

Question 2.6: We would like to know your views on the effects that introducing direct payments for continuing NHS healthcare would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

No comment.

Question 2.7: Please also explain how you believe our proposals for introducing direct payments for continuing NHS healthcare could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No comment.

Question 2.8: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No comment.

Questions on Chapter 3: Mandatory reporting of children and adults at risk

There are 11 questions about this chapter.

Question 3.1: What are your views on the principle of imposing a duty to report a child at risk (as defined in section 130(4) of the Social Services and Well-being (Wales) Act 2014) directly on individuals within relevant bodies?

No comment.

Question 3.2: What are your views on the principle of imposing a duty to report an adult at risk (as defined in section 126(1) of the 2014 Act) directly on individuals within relevant bodies?

No comment.

Question 3.3: What in your view would be the likely benefits, disbenefits, risks, costs, savings and equality impacts of such an approach?

Please explain your reasoning.

No comment.

Question 3.4: What lessons can we learn from the duties to report in other countries?

No comment.

Question 3.5: If individual reporting duties were to be introduced – for children and adults at risk – should these sit alongside, or replace, the existing duties on organisations under the 2014 Act?

No comment.

Question 3.6: If individual reporting duties were to be introduced, should they apply to the workforce of current 'relevant partners' under section 162 of the 2014 Act (including youth offending teams in relation to children), or more widely, for example to those working in religious or sports settings, etc., and in particular:

- (a) What are your views on this in respect of children (under the age of 18)?
- (b) What are your views on this in respect of adults?

No comment.

Question 3.7: If individual reporting duties were to be introduced, which occupation types or roles should be subject to any duty (e.g. members of regulated professions; employed staff, even if they are not regulated; volunteers), and in particular:

(a) What are your views on this in respect of children (under the age of 18)?

(b) What are your views on this in respect of adults?

No comment.

Question 3.8: What sanctions do you think would be proportionate or appropriate for failure to comply with an individual reporting duty?

No comment.

Question 3.9: We would like to know your views on the effects that introducing individual reporting duties would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

No comment.

Question 3.10: Please also explain how you believe proposals for introducing individual reporting duties could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No comment.

Question 3.11: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No comment.

Questions on Chapter 4: Amendments to regulation of service providers and responsible individuals

Part 2 and Schedule 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 ('the 2016 Act') provides the basis on which Care Inspectorate Wales ('CIW') – on behalf of the Welsh Ministers – undertakes functions relating to the registration, regulation and inspection of 'regulated services'.

This chapter of the consultation focuses on proposed amendments to the regulatory regime for regulated services, service providers and their designated responsible individuals. These relate to a range of matters provided for within the 2016 Act, including:

- a) Identifying unregistered services
- b) Publication of annual returns
- c) Publication of inspection reports
- d) Improvement notices and cancellation of registration
- e) Responsible individuals
- f) Definition of 'Care' for children and young people

Questions on proposed amendments relating to each of these matters follow.

There are 21 questions about this chapter.

Question 4.1: *(a) Identifying unregistered services - power to obtain information:* Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to require information from any person where there is reasonable cause to believe that they are providing a service which should be regulated?

No comment.

Question 4.2: *(a) Identifying unregistered services - power to obtain information:* Do you agree with the proposal to extend the offence of failing to provide information when required to do so, to include these persons?

No comment.

Question 4.3: *(a) Identifying unregistered services - power of entry:* Do you agree with the proposal to amend the 2016 Act to remove ambiguity and make it clear that the Welsh Ministers (CIW) have the power to enter and inspect any premises which they have reasonable cause to believe is (or has been) used as a place at or from

which a service is (or has been) provided, or which is (or has been) used in connection with the provision of a regulated service?

No comment.

Question 4.4: *(a) Identifying unregistered services - power of entry:* Do you agree with the proposal to extend the offence of obstructing an inspector or failing to comply with a requirement imposed by an inspector, to include these circumstances?

No comment.

Question 4.5: *(b) Publication of annual returns:* Do you agree with the proposal to amend the 2016 Act to require service providers to publish their annual returns?

No comment.

Question 4.6: *(b) Publication of annual returns:* Do you agree with the proposal to create a related offence of failing to publish an annual return?

No comment.

Question 4.7: *(c) Publication of inspection reports:* Do you agree with the proposal to amend the 2016 Act to provide additional flexibility for the Welsh Ministers (CIW) to recognise circumstances where it may not be appropriate, relevant, or proportionate to prepare and/or publish an inspection report?

No comment.

Question 4.8: *(d) Improvement notices and cancellation of registration – variation of registration as a service provider:* Do you agree with the proposal to amend the 2016 Act to remove the requirement for the Welsh Ministers (CIW) to issue an improvement notice to a provider in circumstances where the provider is no longer providing that service or using that place to provide a service?

No comment.

Question 4.9: *(d) Improvement notices and cancellation of registration - removal of a condition on a service provider's registration:* Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to remove a condition on a service provider's registration without giving a notice of proposal (section 18) and notice of decision following notice of proposal (section 19), when the circumstances which led to the imposition of the condition no longer apply?

No comment.

Question 4.10: *(d) Improvement notices and cancellation of registration – power to cancel a service provider's registration:* Do you agree with the proposal to amend the

2016 Act to remove the requirement for the Welsh Ministers (CIW) to follow the improvement notice process to cancel the registration of a service provider in circumstances when the provider has already ceased to provide a regulated service?

No comment.

Question 4.11: *(d) Improvement notices and cancellation of registration – information from providers who are cancelling their registration:* Do you agree with the proposal to create a regulation-making power under Section 14 of the 2016 Act to enable the Welsh Ministers (CIW) to require information from a service provider who is cancelling their registration and exiting the market?

No comment.

Question 4.12: *(d) Improvement notices and cancellation of registration – power to extend the timescale within an Improvement Notice:* Do you agree with the proposal to amend the 2016 Act to give the Welsh Ministers (CIW) the power to extend the timescale for information to be provided when improvement notices are issued?

No comment.

Question 4.13: *(d) Improvement notices and cancellation of registration – power to cancel a service provider's registration in prescribed circumstances:* Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to disapply the section 16(3)(b) requirement within the improvement notice – to take particular action or provide information – in prescribed circumstances, when it would be futile to apply the requirement?

No comment.

Question 4.14: *(e) Responsible individuals – making representations:* Do you agree with the proposal to amend the 2016 Act to give Responsible Individuals the right to make representations to the Welsh Ministers (CIW), against any improvement notice or cancellation of their designation, provided the representations are made within the time limit specified within the notice?

No comment.

Question 4.15: *(e) Responsible individuals – sending the improvement notice to the service provider:* Do you agree with the proposal to amend the 2016 Act to require that any improvement notice served to a Responsible Individual must also be sent to the service provider?

No comment.

Question 4.16: *(e) Responsible individuals - Removing a Responsible Individual without making an application to designate a new Responsible Individual:* Do you

agree with the proposal to amend the 2016 Act to allow a service provider to apply to the Welsh Ministers (CIW) for a variation of the conditions of their registration to remove a Responsible Individual when they are not designating a replacement Responsible Individual as part of the same application?

No comment.

Question 4.17: *(f) Definition of 'Care' for children and young people:* Do you agree with the proposal to adjust the definition of 'care' in section 3 of the 2016 Act in order to place beyond doubt that the provision of parental-type care is recognised as being 'care' within the meaning of the 2016 Act?

No comment.

Question 4.18: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical issues.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning, either here or, if easier, please feel free to note any impacts specific to an individual proposal under the appropriate question above.

No comment.

Question 4.19: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

No comment.

Question 4.20: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No comment.

Question 4.21: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No comment.

Questions on Chapter 5: Amendments to regulation of the social care workforce

There are 9 questions about this chapter.

Question 5.1: Do you agree with the proposal to amend the 2016 Act to provide that a person who has held office as a member of Social Care Wales may be reappointed once? Please explain your reasoning.

No comment.

Question 5.2: Do you agree with the proposal to amend the 2016 Act to provide Social Care Wales with the power to grant a conditional registration for a person, when they are renewing their registration, in certain circumstances? Please explain your reasoning.

No comment.

Question 5.3: Do you agree with the proposal to amend the 2016 Act to allow a panel to review and extend interim orders as appropriate, up to the maximum of 18 months? Please explain your reasoning.

No comment.

Question 5.4: Do you agree with the proposal to amend the 2016 Act to provide a Fitness to Practise panel with the ability to revoke an interim order, during review proceedings, where it is necessary and appropriate? Please explain your reasoning.

No comment.

Question 5.5: What, in your view, would make it necessary and appropriate for a Fitness to Practise panel to revoke an interim order?

No comment.

Question 5.6: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical issues.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

No comment.

Question 5.7: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

No comment.

Question 5.8: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No comment.

Question 5.9: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No comment.

Questions on Chapter 6: Extending the definition of social care worker to include childcare and play workers

There are 5 questions about this chapter.

Question 6.1: We would like to know your views on the proposal to extend the definition of 'social care worker' to include both childcare and play workers. In particular, are you in favour of extending the role of Social Care Wales to cover childcare and play workers working in the childcare sector?

Please explain your reasoning.

No comment.

Question 6.2: What in your view would be the likely impacts of the proposal? You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical issues.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

No comment.

Question 6.3: We would like to know your views on the effects that the proposal would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

We do not disagree with the intention to extend the definition of social care worker to include childcare and play workers because, as explained in the consultation document, this 'will provide a clear mandate for SCW to carry out its functions in relation to the childcare and play workforce, as a whole' (chapter 6 (1)).

SCW annually publishes [registration data reports on the information given by applicants and registered persons](#). We believe that it would be beneficial if the information collected about the childcare and play workforce as individuals register enables a complete picture of the linguistic skills of that workforce to be drawn up. This is particularly important in the context of childcare and the intention in the Collaboration Agreement to expand the provision for the early years with a particular emphasis on strengthening the Welsh language provision. The consultation document

confirms this, stating in chapter 6 (10) that discusses the intended outcomes stating 'In particular, the Welsh Government's Programme for Government and Cooperation Agreement commitments regarding expanding childcare provision to all 2 year olds in Wales, as well as the commitment to grow Welsh-medium provision, depend on the sector being sustainable; on there being a sufficiently sized and qualified workforce. SCW's work is fundamental to this and requires a clear legislative basis to be able to continue to support the childcare and play sector, as a whole'.

[More than just words 2022-27](#) states the expectation that at 'all NHS and social care colleagues to follow a language 'awareness 'course which will explain how important Cymraeg is in service delivery and as a patient need' (Action 14). Part 4, 91 (1) Regulation and Inspection of Social Care (Wales) Act 2016 states that an entry in the register in respect of a person must show '.....(c) such other qualifications, knowledge or experience relevant to the person's registration as may be prescribed'. Bearing in mind this expectation in *More than just words*, we would encourage you to ensure that information regarding whether an individual has followed a language awareness course is collected for all on the SCW register as well.

Gathering full and rich information about linguistic skills and qualifications together with information about the language awareness of the childcare workforce could contribute to the full implementation of the Collaboration Agreement commitment.

Question 6.4: Please also explain how you believe the proposal could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Please see above.

Question 6.5: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No comment.