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Llywodraeth Cymru
Welsh Government

Welsh Government
Consultation Document

Phase 2 implementation of the Regulation and Inspection of Social Care (Wales) Act 2016 – Workforce Aspects

Date of issue: 12 June 2017

Action required: Responses by 7 August 2017

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Overview This consultation seeks your views on the workforce aspects of phase 2 of implementing the Regulation and Inspection of Social Care (Wales) Act 2016, including the limitation of non-guaranteed hours contracts within domiciliary support services; the delineation of travel time and care time in arranging domiciliary support; the registration of domiciliary care workers and means of addressing the shortage of registered social care managers.

How to respond You can respond to this consultation by completing and returning, by midnight on the closing date, the consultation response form at the back of this document. The response should be sent to:

Legislation Implementation Branch
Social Services Directorate
Welsh Government
Crown Buildings
Cathays Park
Cardiff
CF10 3NQ

Alternatively the consultation response form is available on our website (<http://wales.gov.uk/consultations/?lang=en>) and can be returned to us, by midnight on the closing date, via e-mail to: RISCAct2016@wales.gsi.gov.uk

Further information and related documents **MS Word, Large print, Braille and alternative language versions of this document are available on request.**

Law Commission Review of Health and Social Care Workforce Regulation
<http://www.lawcom.gov.uk/project/regulation-of-health-and-social-care-professionals/>

Manchester Metropolitan University research: “Factors that affect the recruitment and retention of domiciliary care workers.”
<http://gov.wales/statistics-and-research/factors-affect-recruitment-retention-domiciliary-care-workers/?lang=en>

Welsh Government consultation: “Domiciliary Care Workforce: Improving the recruitment and retention of Domiciliary Care workers in Wales” and the Analysis of Responses and Written Ministerial Statement
<https://consultations.gov.wales/consultations/domiciliary-care-workforce>
<http://gov.wales/about/cabinet/cabinetstatements/2016-new/domiciliarycare/?lang=en>

Public Services Staff Commission guidance: “Principles and guidance on the appropriate use of non-guaranteed hours arrangements in devolved Public Services in Wales”

<http://publicservicesstaffcommission.gov.wales/guidance-and-reports/principles-guidance-appropriate-use-non-guaranteed-hours-arrangements?lang=en>

Value Wales guidance: “Code of Practice Ethical Employment in Supply Chains”

<http://gov.wales/docs/dpsp/publications/valuwales/170502-ethical-en.pdf>

Contact details

For further information:

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Data protection

How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

Consultation on Phase 2 implementation of the Regulation and Inspection of Social Care (Wales) Act 2016 – Workforce Aspects

1. Background

The Regulation and Inspection of Social Care (Wales) Act 2016

The Regulation and Inspection of Social Care (Wales) Act 2016 (“the 2016 Act”) was passed by the National Assembly for Wales on 24 November 2015 and received Royal Assent on 18 January 2016. It reforms the regulation and inspection regime for social care in Wales.

The 2016 Act provides the statutory framework for the regulation and inspection of social care services and the social care workforce. It enables the Welsh Ministers to put in place a number of items of subordinate legislation through the making of regulations, the publication of guidance and the issuing of codes of practice. In addition to this, Social Care Wales (“SCW”) is responsible for developing and maintaining rules for the regulation of the workforce.

The 2016 Act is being implemented in three overlapping phases:

- **Phase 1 (2016/17)** included regulations relating to the new system of workforce regulation required by the Act. These came into force on 3 April 2017. Alongside these, SCW developed the rules and procedures to govern the process of workforce registration and regulation which it has operated since 3 April 2017.

Links to all of these phase 1 regulations can be accessed via the SCW Information and Learning Hub:

<https://socialcare.wales/hub/riscact-regulations>

- **Phase 2 (2017/18)** includes regulations and statutory guidance relating to the requirements and standards expected of service providers and Responsible Individuals in domiciliary and adult residential care settings; children’s residential care settings; children’s secure accommodation and Residential Family Centres. These are currently out to consultation (2 May – 25 July), will be refined and laid before the National Assembly for Wales in the autumn, and are scheduled to come into force in April 2018.

The consultation can be accessed here:

<https://consultations.gov.wales/consultations/phase-2-implementation-regulation-and-inspection-social-care-wales-act-2016>.

Phase 2 also includes the workforce-related draft regulations and proposals contained in this document.

- **Phase 3 (2018/19)** includes regulations and statutory guidance relating to the requirements and standards expected of service providers and Responsible Individuals within: Voluntary Adoption Agencies & Adoption Support Agencies; Fostering Services; Adult Placement (Shared Lives) Services; and Advocacy Services. Regulations within phase 3 will also look to build upon the Market Oversight provisions within Part 7 of the 2016 Act.

Technical groups are currently being established to assist in development of these regulations which will be consulted upon in Spring/Summer 2018 and laid before the National Assembly for Wales by the end of that year. They will come into force in April 2019, and therefore all systems under the Act will be operational by this date.

Welsh Government consultation on the Domiciliary Care Workforce

In summer 2015 the Welsh Government commissioned primary and secondary research, via the then Care Council for Wales, into potential links between the terms and conditions of domiciliary care workers and the quality of care. The aim of the research, undertaken by Manchester Metropolitan University, was to assess the extent to which the employment terms and conditions of care workers impact upon the quality of domiciliary care provided. The objectives of the research included identification of factors which may - positively and negatively - influence individuals in choosing to commence and remain working within domiciliary care, and identification of the extent to which these factors impact on the quality of care and support provided. A summary of this research was published by the Welsh Government in January 2016, with the full version published in March 2016¹.

Following on from the initial results of this research the Welsh Government undertook its consultation “Domiciliary Care Workforce – Improving the recruitment and retention of domiciliary care workers in Wales”² between 18 January and 15 April 2016. This consultation included possible interventions relating not only to zero hours contracts, but also to other areas such as minimum wage compliance, travel time, “call clipping”³ and health and safety. The consultation received 108 responses from a range of stakeholders and interested parties including carers, domiciliary care workers, service providers, commissioners, trade unions and representative bodies. Whilst there was broad support for many of the ideas outlined within the consultation, the key message was that multiple actions were needed to improve recruitment and retention. These actions included reinforcing compliance with existing requirements such as the national minimum wage; increasing the transparency of processes - for example differentiating clearly between travel time and call time - and continuing to pursue opportunities to establish domiciliary care as an attractive, supported and rewarding long-term career.

The Welsh Government published an analysis of the consultation responses in November 2016 alongside a written Ministerial statement⁴ which outlined a number of actions that the Welsh Government would take forward, including its commitment to taking further action to limit the use of zero hours contracts in domiciliary care, in order to improve recruitment and retention and have a positive impact on the quality of care and support provided. During phase 1 of implementing the 2016 Act, the Welsh Government consulted upon draft

¹ Manchester Metropolitan University research “Factors that affect the recruitment and retention of domiciliary care workers” – published on 17 March 2016
<http://gov.wales/statistics-and-research/factors-affect-recruitment-retention-domiciliary-care-workers/?lang=en>

² <https://consultations.gov.wales/consultations/domiciliary-care-workforce>

³ Call clipping occurs where calls are systematically cut short due to care workers not having enough, or any, time to travel between calls.

⁴ 28 November 2016 - <http://gov.wales/about/cabinet/cabinetstatements/2016-new/domiciliarycare/?lang=en>

regulations⁵ which set a requirement for all service providers to publish the number of their employees on each type of contractual arrangement, which will include non-guaranteed hours contracts, as a way of improving transparency through reporting. In this phase, we are consulting on options to take further action on non-guaranteed hours contracts, together with other measures to tackle concerns around clearly identifying travel time and care time.

2. The evidence for change and key principles

A great deal has been achieved by the Care and Social Services Inspectorate Wales (“CSSIW”) and the former Care Council for Wales (“the CCW”) as regulators in Wales, and also by the wider social care sector, to achieve the ambitions articulated when the Care Standards Act 2000 was implemented. The framework under that Act, whereby CSSIW and the CCW were the principal regulators, worked well for us. It gave us a baseline of standards - both for the workforce and for our care and support services - and has undoubtedly improved public protection. This has achieved much greater consistency, protection from abuse and exploitation, and greater exposure of sub-standard services. We have succeeded in raising performance and continue to use regulation and inspection to eliminate poor standards. However, since then we have recognised that many things have changed within and around the sector, and identified both the need to avoid our regulatory arrangements becoming out of date and the need to support the provision of sustainable services.

Our reform of the system for regulation and inspection of social care, under the 2016 Act, therefore rests on five key principles:

- Responsiveness to the Social Services and Well-Being (Wales) Act 2014 reforms;
- Ensuring citizens are at the heart of care and support;
- Developing a coherent and consistent Welsh approach;
- Tackling provider failure; and
- Responsiveness to new models of service and any emerging concerns over the quality of care and support services.

The proposals in this consultation have a significant part to play in serving and advancing this reform.

- Proposals contained within this consultation arose from the Welsh Government’s consultation on the domiciliary care workforce in 2016, and seek to differentiate travel time from care time as a way of addressing “call clipping” where calls are cut short to facilitate travel to the next call, through the introduction of a requirement upon service providers to delineate (i.e. differentiate) between travel and care time when scheduling visits.

⁵ https://consultations.gov.wales/sites/default/files/consultation_doc_files/160621returnsen.pdf

- The proposals within this consultation relating to non-guaranteed hours (i.e. zero hours) contracts also arose from the Welsh Government’s consultation on the domiciliary care workforce and reflect the commitment of the Welsh Government to taking forward action in the field of domiciliary care, within the powers at its disposal. These include bringing forward regulations under the 2016 Act.
- Our commitment to registering domiciliary care workers with Social Care Wales was made during scrutiny of the Registration and Inspection of Social Care (Wales) Bill in 2015, and has subsequently been set out in Ministerial written statements⁶.
- The role of social care managers is central to the delivery of high quality care and support. However, the Welsh Government has been made aware of longstanding challenges relating to their recruitment. The sector has noted significant difficulties in recruiting people to the social care manager role leading to considerable vacancies particularly in some parts of Wales, whilst an over-representation of adult care home managers in fitness to practise proceedings may be reflective of issues in relation to the quality of some managers being appointed. We are therefore also seeking to use this consultation to engage with the sector in exploring these issues and identifying potential solutions.

3. What are the main issues? Where are we now?

The Welsh Government has been concerned by the high turnover of staff within the domiciliary care workforce and the implications for the quality of care and support provided. The evidence we have gathered through stakeholder engagement, the commissioned research and consultations undertaken, as well as information received anecdotally, has also pointed to a significantly high proportion of zero hours contracts used in the workforce.

To explore these issues further, the Welsh Government contracted Manchester Metropolitan University to undertake research⁷ to identify factors affecting the workforce and the quality of care and support. The evidence highlighted a range of issues that affected the recruitment and retention of the workforce. Chief among them was the prevalent use of zero hours contracts, together with other issues such as low pay, the non-payment of travel time and “call clipping”. All had implications not only for the recruitment and retention of staff but also for the delivery of quality care and support.

In light of these concerns, the Welsh Government undertook a consultation⁸ on a range of proposals that it could take forward to address these matters. An analysis of the consultation findings was published in November 2016 alongside a

⁶ 12 November 2015 - <http://gov.wales/about/cabinet/cabinetstatements/previous-administration/2015/58099798/?lang=en>

<http://gov.wales/about/cabinet/cabinetstatements/2016-new/domiciliarycare/?lang=en>

⁷ Manchester Metropolitan University research “Factors that affect the recruitment and retention of domiciliary care workers” – published on 17 March 2016

<http://gov.wales/statistics-and-research/factors-affect-recruitment-retention-domiciliary-care-workers/?lang=en>

⁸ <https://consultations.gov.wales/consultations/domiciliary-care-workforce>

Ministerial written statement⁹ which outlined how we intend to support the provision of good quality care through improved recruitment and retention of the workforce, including proposals relating to zero hours contracts, increased compliance with the National Minimum Wage, training and development and raising the professional status of domiciliary care workers.

The key message from this consultation was that multiple actions are needed to improve recruitment and retention, including reinforcing compliance with existing requirements such as the National Minimum Wage, increasing the transparency of processes - for example, differentiating clearly between travel time and call time - and continuing to pursue opportunities to establish domiciliary care as an attractive, supported and rewarding long term career.

The evidence from the consultation also raised some real and practical issues and ways ahead that we must consider, such as the approach to zero hours contracts, what level of qualification is appropriate for the registration of the workforce, and what a career pathway might look like.

In the first instance, as part of phase 1 of implementing the 2016 Act, we consulted upon regulations¹⁰ which set a requirement for all service providers to publish the number of their employees on each type of contractual arrangement, which will include non-guaranteed hours contracts, as a way of improving transparency through reporting. Here, as part of phase 2 of implementing the Act, we are consulting on options to take further action on influencing the use of non-guaranteed hours contracts within domiciliary support services; delineating between travel time and care time in arranging domiciliary support; and opening the SCW register of social care workers to facilitate the registration of domiciliary care workers.

Further work has been undertaken across the Welsh Government on the issue of non-guaranteed hours contracts, including the development of guidance¹¹ by the Public Service Staff Commission for Welsh public sector employers. This guidance sets out clear expectations on practices of all public sector employers to ensure that non-guaranteed hours contracts are not used inappropriately. On 9 March 2017, the Welsh Government followed up the Commission's guidance with the launch of a Code of Practice for Ethical Employment in Supply Chains¹² in the Welsh public sector.

4. This consultation

This consultation is designed to test a draft regulation that requires service providers, of domiciliary support services, to clearly differentiate between travel time and care time when arranging those services [Annex A]. It also relates to a draft regulation that seeks to limit the use of non-guaranteed hours contracts within domiciliary support services, so as to safeguard the quality and continuity of

⁹ 28 November 2016 - <http://gov.wales/about/cabinet/cabinetstatements/2016-new/domiciliarycare/?lang=en>

¹⁰ https://consultations.gov.wales/sites/default/files/consultation_doc_files/160621returnsen.pdf

¹¹ <http://publicservicesstaffcommission.gov.wales/guidance-and-reports/principles-guidance-appropriate-use-non-guaranteed-hours-arrangements?lang=en>

¹² <http://gov.wales/docs/dpsp/publications/valuwales/170502-ethical-en.pdf>

care and support provided [Annex B]. Both of these proposals link to the draft Regulated Services (Service Providers and Responsible Individuals) Regulations 2017 that were published for consultation¹³, within phase 2, on 2 May 2017.

We are also seeking views on proposals to open the Social Care Wales register of social care workers to those employed in regulated domiciliary support services (i.e. domiciliary care workers) from 2018 and how we may address current challenges in the recruitment and retention of social care managers.

Your consultation responses will help inform our consideration of the final regulations and any accompanying guidance. Our intention is to analyse your responses over the autumn. We will then consider any changes that may be required before making and laying the regulations towards the end of this year.

The detailed proposals are outlined below.

5. The proposals

- **A regulation that requires service providers to delineate travel time and care time [Annex A]**

These relate to domiciliary support services only.

The evidence provided by Manchester Metropolitan University's research¹⁴, supported by responses to our own consultation¹⁵, was that many domiciliary care workers were concerned that the lack of differentiation between travel time and care time in scheduling the delivery of care was having an adverse impact upon the quality of care and support provided. They also noted that, in many cases, it was not just the distances to be travelled that played a factor, but there could be a range of external factors that meant calls had to be cut short – i.e. “rush hour” traffic, parking and, local events and the restrictions that these sometimes generated in certain areas. All of these could contribute to a reduction in the quality of care and support provided to individuals.

In order to help address this we are proposing to regulate, using powers within section 27 of the 2016 Act, to require service providers to maintain systems that delineate (i.e. differentiate) between travel time, time allocated for rest breaks (if applicable) and care time when scheduling domiciliary support visits. The time assigned for travelling will need to be adequate, having in mind relevant circumstances e.g. “rush hour” traffic, parking and, local events and other restrictions. The regulation also requires records to be kept of the actual time spent by each domiciliary care worker on travel time, visits and rest breaks on the day, providing evidence of whether the regulation has been complied with.

¹³ <https://consultations.gov.wales/consultations/phase-2-implementation-regulation-and-inspection-social-care-wales-act-2016>

¹⁴ Manchester Metropolitan University's research - Factors that affect the recruitment and retention of domiciliary care workers – published on 17 March 2016
<http://gov.wales/statistics-and-research/factors-affect-recruitment-retention-domiciliary-care-workers/?lang=en>

¹⁵ <https://consultations.gov.wales/consultations/domiciliary-care-workforce?lang=en>

This will encourage greater transparency, so that appropriate action may be taken to ensure that care time is not unduly eroded by travel between visits. This proposal should help to address “call clipping” where visits are cut short because of poorly set rotas, with insufficient time allocated for travelling to service users and the delivery of care and support.

- **A regulation that requires service providers to offer domiciliary care workers on non-guaranteed hours contracts the choice of alternative contractual arrangements [Annex B]**

These relate to domiciliary support services only.

Evidence gathered through the Manchester Metropolitan University research¹⁶ and our own consultation¹⁷ indicates that there are a substantial number of domiciliary care workers employed through zero hours contracts. A much higher proportion of these domiciliary care workers are employed on zero hours contracts in the independent sector than in the public sector.

Both the research findings and consultation responses evidence a compelling link between the prevalence of zero hours contracts and a reduced quality of care, due to issues with continuity of care and support, and communication between workers and their clients.

However, some responses to the Welsh Government’s domiciliary care consultation indicated that restricting the use of zero hours contracts could risk undermining the viability of domiciliary care services provided in response to prevalent “time and task” commissioning processes. Such contracting arrangements can lead to daily fluctuations in the level of service needed. Consequently, providers often use non-guaranteed hours contracts to engage workers, so they can easily vary the hours worked to correspond with the degree of service needed. We are aware that the National Commissioning Board is working with commissioners, service providers and representatives of service users and carers to develop a toolkit that will move the commissioning and provision of domiciliary support services away from the “time and task” method to one that focuses on outcomes.

This change to the commissioning process, to one that focuses more on the needs of the individuals, could well result in a “natural” reduction in the use of non-guaranteed hours contracts for staff as use of “time and task” contracts diminishes. Greater collaboration between all partners in developing services will lead to more clarity around the actual number of hours of service that contracts will require and therefore improve business stability for providers and job security for their staff. However, Welsh Ministers remain concerned that more action is needed to ensure that we drive forward a change in the culture around the use of non-guaranteed hours contracts. We understand the need to balance our actions against the concerns that stakeholders have raised that the use of legislation in

¹⁶ Manchester Metropolitan University’s research - Factors that affect the recruitment and retention of domiciliary care workers – published on 17 March 2016

<http://gov.wales/statistics-and-research/factors-affect-recruitment-retention-domiciliary-care-workers/?lang=en>

¹⁷ <https://consultations.gov.wales/consultations/domiciliary-care-workforce?lang=en>

this area risks undermining the viability of domiciliary support services, if the proposed changes to the commissioning process have not had time to take effect.

We are proposing to regulate, using powers under section 27 of the 2016 Act, to require service providers of domiciliary support services to offer workers on non-guaranteed hours contracts the choice of moving on to alternative contractual arrangements after a period of ongoing employment. The draft regulation takes a similar approach to that of the Public Service Staff Commission guidance¹⁸. They apply to domiciliary support services only, as the evidence demonstrates it is in this service area that the existing use of non-guaranteed hours (zero hours) contracts is detrimental to the continuity, and therefore quality of care and support provided. The draft regulation requires the employer to offer the worker a range of contracts, including a minimum hours contract based on the average hours previously worked, if regular hours have been worked in the previous set period. This requirement is based on a continuing need for the hours to be worked and on satisfactory performance on the part of the worker during the previous period. The employer would also be required to offer a minimum hours contract for a lower number of hours than the average hours previously worked or a continuing non-guaranteed hours contract, as some workers may prefer these options.

This proposal is intended to operate alongside the draft Regulated Services (Annual Returns) Regulations 2017¹⁹ – consulted upon within phase 1 of implementation – that set out the need for transparency in the annual reporting process. Those Regulations require service providers to record the types of contractual arrangements on which staff are employed, and the number of staff employed on each type of contract, as part of their annual return. The proposal also builds upon the guidance produced by the Public Services Staff Commission²⁰ and Value Wales²¹ on the use of non-guaranteed hours. Collectively, the aim is to improve the quality and continuity of care and support received by individuals in their own homes.

- **The extension of the Social Care Wales register of social care workers to include those employed in domiciliary support services (i.e. domiciliary care workers) from 2018**

This relates to domiciliary support services only.

The mandatory registration of domiciliary care workers responds to support from the sector for the extension of registration across the workforce and is intended to deliver increased public assurance, assist professionalisation of the workforce and ultimately improve quality of care and support.

¹⁸ <http://publicservicesstaffcommission.gov.wales/guidance-and-reports/principles-guidance-appropriate-use-non-guaranteed-hours-arrangements?lang=en>

¹⁹ https://consultations.gov.wales/sites/default/files/consultation_doc_files/160621returnsen.pdf

²⁰ Public Services Staff Commission guidance: “Principles and guidance on the appropriate use of non-guaranteed hours arrangements in devolved Public Services in Wales” published 2016 <http://publicservicesstaffcommission.gov.wales/guidance-and-reports/principles-guidance-appropriate-use-non-guaranteed-hours-arrangements?lang=en>

²¹ Value Wales guidance: “Code of Practice Ethical Employment in Supply Chains” published 2016 <http://gov.wales/docs/dpsp/publications/valuewales/170502-ethical-en.pdf>

The proposed definition includes any domiciliary care workers working within regulated domiciliary support services, including both those directly employed by a regulated service and those who are engaged by a registered service, such as agency and bank staff. It is not intended that those who provide care and support on an individual basis without the involvement of any employment agency or employment business, such as personal assistants, will be required to register.

The extension of registration to this new workforce group needs to be appropriately timetabled so there is sufficient time for workers to familiarise themselves and comply with the registration requirements, including the standards they will need to meet and the qualifications they will need to evidence or acquire. Linked to this, Social Care Wales will be consulting over the summer on changes to its rules relating to the qualifications and fees required for the registration of domiciliary care workers. Sufficient time is also required so that workers can be added to the register over a realistic period, to avoid overwhelming the administrative systems of the workforce regulator. For these reasons a reasonable lead-in time needs to be planned and we feel that our proposal, of 2 years, will allow for these considerations.

The Social Care Wales (Specification of Social Care Workers) (Registration) Regulations 2016²² will require amendment so as to allow Social Care Wales to permit domiciliary care workers to join the workforce register from 2018, with mandatory registration coming into effect from 2020. Additional regulations, under section 27 of the 2016 Act, will be developed to require providers of domiciliary support services to ensure that workers are registered with Social Care Wales within a specified period of time. We believe this timescale will provide sufficient time for domiciliary care workers to engage with Social Care Wales to understand both the process and what this will mean for them, and will enable them to register with the regulator by the mandatory deadline of 2020.

- **Supply of Managers**

This relates to social care managers across the whole sector.

Good social care leadership and management is critical to the quality of care and support provided. For this reason Welsh Government requires residential childcare managers, adult care home managers and domiciliary support service managers to register with Social Care Wales.

The registration requirements include qualifications that are achieved through vocational learning. The Welsh Government and regulators are aware of the challenge of the recruitment of social care managers, including the difficulties experienced in obtaining the required qualifications and the extent of turnover in this part of the workforce. 14% of regulated services are currently operating without a registered social care manager. There is a consensus that we need new thinking to address the supply of social care managers.

We would therefore like to seek your views on the significance of this challenge and what may be done to address it.

²² http://www.legislation.gov.uk/wsi/2016/1235/pdfs/wsi_20161235_mi.pdf

Annex A - Delineation of travel time and care time

- (1) This regulation only applies to a service provider in respect of the provision of a domiciliary support service which the provider is registered to provide.
 - (2) A service provider to whom this regulation applies must—
 - (a) prepare a schedule of visits in respect of each domiciliary care worker working at the service; and
 - (b) provide a copy of the relevant schedule of visits to the domiciliary care worker to whom that schedule relates.
 - (3) The schedule of visits must delineate the time allocated for travel time, the time allocated for each visit and (if applicable) the time allocated for rest breaks.
 - (4) The time allocated for travel time must be sufficient having regard to—
 - (a) the distance between the location of one scheduled visit and the next scheduled visit; and
 - (b) any other factors which might reasonably be expected to affect travel time, such as traffic congestion and the availability of parking at the location of the scheduled visits.
 - (5) The time allocated for each visit—
 - (a) must be sufficient to enable care and support to be provided to the individual in accordance with their personal plan; and
 - (b) must not be less than 30 minutes unless either condition A, B or C, as described in section 8 of the Act, is met.
 - (6) A service provider to whom this regulation applies must ensure that a record is kept of the time spent by each domiciliary care worker on travel time, visits and rest breaks.
 - (7) For the purposes of this regulation—

“domiciliary care worker” (“gweithiwr gofal cartref”) means a person working at the service who is providing care and support to an individual and includes a person employed by the service provider and a person engaged by the service provider under a contract for services;

“schedule of visits” (“amserlen ymweliadau”) means a schedule of the visits which a domiciliary care worker is required to make during the course of a day or a week;

“travel time” (“amser teithio”) includes the time spent travelling between the location of one scheduled visit and the location of the next scheduled visit but does not include any time spent travelling from the home of the domiciliary care worker to the location of the first scheduled visit or any time spent travelling from the location of the last scheduled visit to the home of the domiciliary care worker;

“visit” (“ymweliad”) means a visit to an individual for the purpose of providing a domiciliary support service.
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Annex B- Offering domiciliary care workers on non-guaranteed hours contracts the choice of alternative contractual arrangements

(1) This regulation only applies to a service provider in respect of the provision of a domiciliary support service which the provider is registered to provide.

(2) If the conditions in paragraph (3) are met, a service provider to whom this regulation applies must offer a domiciliary care worker the choice of continuing to be employed under any of the following types of contractual arrangement—

- (a) a further non-guaranteed hours contract;
- (b) a contract of employment where the number of hours required to be worked per week is at least the average number of hours worked per week during the preceding three months;
- (c) a contract of employment where the number of hours required to be worked per week is less than the average number of hours worked per week during the preceding three months.

But this requirement does not prevent the service provider employing a domiciliary care worker on any other type of contractual arrangement which has been agreed between the provider and the worker.

(3) The conditions referred to in paragraph (2) are—

- (a) the domiciliary care worker has been employed by the service provider under a non-guaranteed hours contract for the qualifying period,
- (b) the domiciliary care worker has worked regular hours during the three months preceding the end of the qualifying period,
- (c) the provider has decided that there is a continuing need for the hours to be worked on an ongoing basis, and
- (d) the domiciliary care worker has performed satisfactorily during the qualifying period.

(4) For the purposes of this regulation—

“domiciliary care worker” (*“gweithiwr gofal cartref”*) means a person who provides care and support to individuals as part of a domiciliary support service;

“non-guaranteed hours contract” (*“contract oriau heb eu gwarantu”*) means a contract of employment or other worker’s contract under which—

- (a) the undertaking to do work or perform services is an undertaking to do so conditionally on the employer making work or services available to the worker, and
- (b) there is no certainty that any such work or services will be made available to the worker.

For the purpose of this definition, an employer makes work or services available to a worker if the employer requests or requires the worker to do the work or perform the services;

The terms “contract of employment” (*“contract cyflogaeth”*), “employer” (*“cyflogwr”*), “employment” (*“cyflogaeth”*) and “employed” (*“cael ei gyflog”, “wedi ei gyflogi”*) have the same meanings as in section 230 of the Employment Rights

Act 1996²³;

“worker” (“*gweithiwr*”) has the same meaning as in section 230 of the Employment Rights Act 1996, except that an agency worker is not a worker for the purpose of this regulation. Any reference to a worker's contract is to be construed accordingly;

“the qualifying period” (“*y cyfnod cymhwysol*”) is-

- (a) in any case where the worker has commenced employment after the relevant date, the period of three months from the date the employment commenced;
- (b) in any case where the worker commenced employment before the relevant date, the period of such employment ending with the commencement date;
- (c) in any case where the worker has previously been offered the choice of an alternative contractual arrangement in accordance with the requirements of this regulation and has chosen to remain on a non-guaranteed hours contract, the period of three months from the date any such choice was made.

For the purposes of this definition–

“the commencement date” (“*y dyddiad cychwyn*”) is the date on which this regulation comes into force;

“the relevant date” (“*y dyddiad perthnasol*”) is the date which falls three months before the commencement date.

²³ 1996 c. 18.

Consultation Response Form

Your name:	
Organisation (if applicable):	
Email / Telephone number:	
Your address:	

Responses to consultations are likely to 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:

A regulation requiring service providers to delineate travel time and care time [Annex A]
--

Q.1. Are the requirements workable in practice? If not, how could they be adjusted?

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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Please explain:

A regulation requiring service providers to delineate travel time and care time [Annex A]
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Q.2 Will the requirements result in transparency of care and travel time?

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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Please explain:

A regulations requiring service providers to delineate travel time and care time [Annex A]			
Q.3 Will the requirements help to prevent care time being eroded by travel time between visits?			
Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
Please explain:			

A regulation requiring service providers to delineate travel time and care time [Annex A]			
Q.4 Commissioning practices are already beginning to change to focus on outcomes for the individual. Should they also emphasise greater collaboration between commissioners and service providers to agree on what adequate travel time looks like?			
Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
Please explain:			

A regulation requiring service providers to delineate travel time and care time [Annex A]			
Q.5 Would a requirement on local authorities to factor in relevant local considerations (i.e. parking restrictions, etc.) as part of the commissioning process help providers of domiciliary support services plan visits more effectively?			
Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
Please explain:			

A regulation regarding Non-Guaranteed Hours Contracts for domiciliary care workers [Annex B]

Q.6 Will the requirement for employers to provide staff with a choice of non-guaranteed or fixed hours contracts, based on average hours worked over the preceding 3 months (or less than the average, if the employee would prefer this), help domiciliary support services to move towards more stable arrangements for the provision of care and support?

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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Please explain:

A regulation regarding Non-Guaranteed Hours Contracts for domiciliary care workers [Annex B]

Q7. Would it be appropriate to require employers to offer this contract choice after the first 3 months of employment? If not, what do you think would be an appropriate period?

Please explain:

A regulation regarding Non-Guaranteed Hours Contracts for domiciliary care workers [Annex B]

Q8. Would it be appropriate and workable to require employers to offer ongoing reviews of non-guaranteed hours contractual arrangements, every 3 months? If not, what might be an appropriate period for review?

Please explain:

A regulation regarding Non-Guaranteed Hours Contracts for domiciliary care workers [Annex B]

Q.9 Following each offer, should employers be required to record the choice made by employees, to evidence that such offers have been made where appropriate?

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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Please explain:

Opening the register for domiciliary care workers in 2018

Q.10 Do you think that 2 years lead-in time from 2018 for people to join the register voluntarily is sufficient to complete the mandatory registration of domiciliary care workers by 1 April 2020?

Please note that Social Care Wales will be consulting on the registration fees and qualifications requirements involved.

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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Please explain:

Supply of social care managers

Q.11 Do you believe there is a challenge with the supply and availability of social care managers? i.e. finding enough of the right people for these roles and keeping them in their roles

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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Please explain:

Supply of social care managers

Q.12 If so, how do you suggest this is resolved?

Please explain your suggestions for (1) finding the right people (2) finding the right number of people (3) retaining social care managers:

Other Questions

The Welsh Government is interested in understanding whether the proposals in this consultation document will have an impact on groups with protected characteristics. Protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, and sexual orientation.

Q.13 Do you think that the proposals in this consultation will have any positive impacts on groups with protected characteristics? If so, which and why/why not?

Q.14 Do you think that the proposals in this consultation will have any negative impacts on groups with protected characteristics? If so, which and why/why not?

We would like to know your views on the effects that these proposals would have on the Welsh language, specifically on

- i) opportunities for people to use Welsh and
- ii) on treating the Welsh language no less favourably than English.

Q.15 What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Q.16 Please also explain how you believe the proposed policy could be formulated or changed so as to have:

- i) 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**
- ii) 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.**

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 tell us about them.