Consultation Response Form

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Service Regulations

Regulations about an Application for Registration as a Service Provider

1. Do you agree that the requirements for information and documentation as set out in the draft regulations are relevant and proportionate? If not, why not?

Agree	Tend to agree	Tend to disagree	Disagree
☐	☐	√	☐

Please explain

We would like to start our response with a general comment regarding the fact that the Royal College of Nursing Wales deeply regrets the decision not to have representation from the Royal College on the Stakeholder Technical Advisory Group. Whilst there are a number of areas which we are supportive of within these proposed regulations, there are some areas where we have serious concerns about and which need addressing urgently. Had we been involved with the Technical Advisory Group, these concerns could have been discussed earlier at an earlier stage of the development of the proposals.

As stated in our response to the draft Regulation and Inspection of Social Care (Wales) Bill, the Royal College of Nursing Wales welcomes the fact that service providers will no longer have to register separately for each service and at each location where the service is provided. The Royal College 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. It will be essential that sufficient information is provided at the point of registration for the service regulator to make a sound judgement as to the suitability of the applicant to deliver the regulated service. As such, the Royal College of Nursing Wales welcomes the continuation of the requirement for service providers to provide a written 'statement of purpose' as part of the application process, and that services should be delivered in accordance with this statement of purpose, and that the statement is kept up to date.

Regulations about an Application for Registration as a Service Provider

2. Are there any additional requirements which should be considered? If so, what are they and why?

Please explain

There are a number of areas that the Royal College would like to see changes within Annex 1 and these are listed as follows:

- **Point 2 on page 9 of Annex A should include reference to whether or not an individual is regulated by a professional body as this is an important distinction and whether or not an individual is regulated has an impact on the nature of the service that is to be provided. This is vital for clarity and public protection. Point 9 on page 10 should also include the same.**
- **Given the legal status of the Welsh language as an official language, there should be specific reference to Welsh language in point 13 on page 10.**
- **In 17 e) on page 11 it is important to specify whether this refers to services provided by registered nurses or general nursing care, as there is an important distinction between the two.**
- **18 c) on page 11 should include professional education for individuals regulated by a professional body, as well as staff training and development. Professional education for regulated health professionals is required for revalidation and ensures quality of care for the public.**

These technical amendments are areas which could have been worked through prior to the publication of the draft proposals, had we been represented on the Technical Advisory Group.

Regulations about Provider Annual Returns

3. Do you agree that the requirements for the content of the provider annual returns as set out in the draft regulations are sufficient to provide the public with the information required to determine the best services for their needs and to enable them to make comparisons between services providers? If not, what are the additional requirements?

Agree	Tend to agree	Tend to disagree	Disagree
☐	☐	√	☐

Please explain

The Royal College of Nursing Wales is supportive of the requirement for the responsible individual (rather than the service provider) to undertake an annual quality of service review and provide the service regulator with a quality report for each of their services, and for this to be provided as part of the annual return. This increases accountability and transparency in relation to quality of service. This will also add to the level of authority and responsibility of the responsible individual.

It will be essential however for the responsible individual to have sufficient time, resources and educational preparation to conduct the annual quality of service review thoroughly and to a high standard and so the Royal College would expect this to be taken into account.

Again, there are a number of areas where we feel additional requirements/clarification is needed:

- **4(d) of Annex B should read 'Registered Nurses and nursing care staff'. It is important to use the legally protected term of registered nurses as there can be a distinct difference between a registered nurse, and an individual working in a nursing role. In the UK the use of the title of registered nurse is protected by law and ensures a consistency of care, skills and knowledge amongst all professionals delivering care under that title.**
- **In the third paragraph of Annex B, reference to training should read "training and professionally recognised education such as recognised by a Royal College or other professional body and workforce planning…" It is important to recognise the specific educational needs of staff that are professionally regulated. As previously stated, professional education for regulated health professionals is required for revalidation and ensures quality of care for the public. There is also a distinct difference between education and training and both are required for service quality.**
- **Given the legal status of the Welsh language as an official language, the section on 'Information about the service provision' requires a further point specifying Welsh language provision.**

Regulations about Provider Annual Returns

4. Do you agree with the proposed timing for making an annual return (28 days after the end of the financial year)?

Agree	Tend to agree	Tend to disagree	Disagree
☐	☐	☐	☐

Please explain

No comment.

Regulations about Provider Annual Returns

5. Are any of the requirements unnecessary? If so, which are they and why?

Please explain

No comment.

Regulations about an Application for Variation of Registration as a Service Provider

6. Do you agree that the requirements for information and documentation as set out in the draft regulations are relevant and proportionate? If not, why not?

Agree	Tend to agree	Tend to disagree	Disagree
☐	☐	☐	☐

Please explain

No comment.

Regulations about an Application for Variation of Registration as a Service Provider

7. Are there any additional requirements which should be considered? If so, what are they and why?

Please explain

No comment.

Regulations about the Application for Variation of Registration as a Service Provider

8. Do you agree with our proposals for the time limit within which an application to vary must be made where there is no responsible individual?

Agree	Tend to agree	Tend to disagree	Disagree
☐	☐	☐	☐

Please explain

No comment.

Regulations on notifying local authorities

9. Do you agree that the list of notifiable incidents contained in the Act is comprehensive? If not, what additional incidents would you like to see included?

Agree	Tend to agree	Tend to disagree	Disagree
☐	☐	☐	☐

Please explain

No comment.

Regulations on notifying local authorities

10. Do you agree that the draft regulations set out a system of notification which will provide local authorities with the information they require? If not, what information would you like to see excluded from the report or what further information do you think would be useful to include?

Agree	Tend to agree	Tend to disagree	Disagree
☐	☐	☐	☐

Please explain

No comment.

Workforce Regulations

Regulations on the meaning of "Social Care Worker"

11. Do you agree with the proposed definition of social care worker?

Agree	Tend to agree	Tend to disagree	Disagree
☐	☐	☐	√

Please explain

There is a clear distinction between a working definition for the purposes of the Act and a definition per se. The guidance and regulations should reflect this.

Nursing is a distinct profession from social care work. Registered Nurse is a legally protected title. Registered Nurses are regulated by the Nursing and Midwifery Council for public protection. The nursing profession has a distinct initial and ongoing educational requirements for registration.

It would be far more suitable to use a term such as 'List of working roles 'which fall under these regulations.

Regulations on the meaning of "Social Care Worker"

12. Do you support all those persons listed in the consultation document being considered as social care workers? If not, why not?

Agree	Tend to agree	Tend to disagree	Disagree
☐	☐	☐	√

Please explain

There is a clear distinction between a working definition for the purposes of the Act and a definition per se. The guidance and regulations should reflect this.

Nursing is a distinct profession from social care work. Registered Nurse is a legally protected title. Registered Nurses are regulated by the Nursing and Midwifery Council for public protection. The nursing profession has a distinct initial and ongoing educational requirements for

registration.
It would be far more suitable to use a term such as 'List of working roles 'which fall under these regulations.

Regulations on the meaning of "Social Care Worker"

13. Do you think that we should exempt certain descriptions of persons? If so, who and why?

Agree	Tend to agree	Tend to disagree	Disagree
☐	√	☐	☐

Please explain

The Royal College of Nursing would maintain that nursing should be exempt from the definition of 'Social Care Worker'. This is because the Royal College 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 NMC) 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 and the expertise of Social Care Wales is unclear in this field.

The individual being regulated will have to pay the regulator twice. This could be costly and unnecessary when the NMC are the UK wide recognised regulars. 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. The expertise and competency of Social Care Wales is unclear in this field.

All of this could be avoided by a set of regulations that state that regulated healthcare professionals working in the roles identified will need to be registered with Social Care Wales whilst regulation remains with the appropriate professional regulator.

Regulations on the meaning of "Social Care Worker"

14. Are there any risks in continuing to have a wide and inclusive approach – for example, are there any groups whom it may be disproportionate to expect to meet the requirements of the Code of Practice? Is there a risk that being too broad will dilute the work of Social Care Wales so that it is insufficiently concentrated upon those at the heart of the sector?

Please explain

Please see the comments in the sections above about the interaction between these regulations and regulated healthcare professionals

Regulations on the register

15. Do you consider that the current method for registration of social workers is working well? Are there any issues that have arisen?

Agree	Tend to agree	Tend to disagree	Disagree
☐	☐	√	☐

Please explain

The insistence of the Care Council in following the old fashioned approach of exclusively recognising very specific qualifications as suitable for registration is unhelpful and we hope will not be continued in the new body. There should be a process for transferring professionally recognised competencies at an equivalent level e.g. possessing a Masters level degree in management

Regulations on the register

16. Is there anything unhelpful or problematic about the proposed regulations on the register?

Please explain

Yes, Please see the above comments.

Regulations on the content of the register

17. Do you agree that the regulations applying to qualifications require the right range of information to be included on the register?

Agree	Tend to agree	Tend to disagree	Disagree
☐	☐	☐	√

Please explain

The register should note whether or not an individual is regulated by another professional regulator such as the NMC. This will mean that should any fitness to practise issue arise, Social Care Wales would be alerted and invoke the protocol to alert the relevant regulatory body.

Regulations on the content of the register

18. Should the regulations replicate the existing position in relation to the inclusion of fitness to practice decisions? Are there any disadvantages to this approach?

Agree	Tend to agree	Tend to disagree	Disagree
☐	☐	☐	☐

Please explain

No comment.

Regulations on the list of persons removed from the register

19. Do the regulations require the right range of information to be included on the list?

Agree	Tend to agree	Tend to disagree	Disagree
☐	☐	☐	☐

Please explain

No comment.

Regulations on the list of persons removed from the register

20. Do the regulations put in place the right approach to publishing the list?

Agree	Tend to agree	Tend to disagree	Disagree
☐	☐	☐	☐

Please explain

No comment.

Regulations on the duty to establish panels etc.

21. Do you agree with the approach to excluding people from membership of the various panels? If not, please explain why.

Agree	Tend to agree	Tend to disagree	Disagree
☐	☐	☐	☑

Please explain

RCN Wales has grave concerns regarding the decision to exclude those "connected with the Nursing and Midwifery Council and those who have previously been involved in investigating the matter under consideration" from being a member of the panel.

Firstly, we are not clear on the rationale for excluding the Nursing and Midwifery Council whilst not excluding any other regulatory body, such as the General Medical Council for instance.

Secondly whilst it may be understandable that anyone connected with a matter under investigation should not be involved with a panel investigating the same matter, the term 'connected to' is unclear. Does this refer to an investigator, incident witness or even expert witness?

Thirdly is not clear to us why a case already having already been through investigation proceedings would be subjected to further investigation. We are therefore unclear as to why that category of person has been excluded.

And finally the second clause in this section appears even more peculiar. *It appears to be stating that nobody connected with the NMC should ever*

in any circumstance be involved in any panel.

It is not clear to us why a whole sector of expertise and knowledge should be excluded in this way, particularly when it may be highly relevant and useful to the case being investigated. Indeed the prohibition appears quite bizarre.

It is unclear why the NMC should be specified as oppose to regulatory bodies more generally.

It is unhelpful that no rationale is provided for this section despite the lengthy and complex consultation documents.

This issue also again raises the question of why a representative from the Royal College of Nursing Wales was not included on the stakeholder technical group who helped to inform these regulations. Had the Royal College played a part in this group as had been previously expected then we might be clearer on the rationale behind this decision.

Regulations on proceedings before panels.

22. Do you agree with the content of the regulations relating to the way that panels will operate? If not, please explain why.

Agree	Tend to agree	Tend to disagree	Disagree
☐	☐	☐	√

Please explain

Please see above comments.

Regulations on proceedings before panels.

23. Do you agree that the regulations are focusing on issues that should be set out in regulations?

Agree	Tend to agree	Tend to disagree	Disagree

☐	☑	☐	☐

Please explain

It will be necessary for the appeals panels to have consideration for other regulators which may have already dealt with a case involving the same (or similar) charges against a healthcare professional, so as to avoid to avoid duplication in this regard. An additional point under 'Dealing with a case fairly and justly' should therefore be included to say that other regulators should be considered.

Regulations on Local Authority Social Services Annual Reports

24. Do you consider that the proposed approach will adequately support our objectives for Local Authority Social Services Annual Reports?

Agree	Tend to agree	Tend to disagree	Disagree
☐	☐	☐	☐

Please explain

No comment.

Regulation of Advocacy Services

25. Do you agree that the regulation of advocacy services should focus upon Independent Professional Advocacy as defined in the Code of Practice on the exercise of social services functions in relation to advocacy under Part 10 and related Parts of the Social Services and Well-being (Wales) Act 2014?

Agree	Tend to agree	Tend to disagree	Disagree
☐	☐	☐	☐

Please explain

No comment

26. Do you consider that the requirements of the 2016 Act should apply to an individual practitioner operating as a stand-alone business? If not, please provide brief evidence.

Agree	Tend to agree	Tend to disagree	Disagree
☐	☐	☐	☐

Please explain

No comment.

27. Do you consider that implementation of the requirements of the 2016 Act for advocacy services should be phased by sector e.g. advocacy services for looked after and other specified children followed by independent professional advocacy? If so, please provide brief evidence.

Agree	Tend to agree	Tend to disagree	Disagree
☐	☐	☐	☐

Please explain

No comment.

28. What is the anticipated impact for advocacy providers as a registered service under the Act?

Please explain

No comment.

29. Do you agree that only those who manage advocacy services, as a regulated service, should be required to register with Social Care Wales? If not, please provide brief evidence.

Agree	Tend to agree	Tend to disagree	Disagree
☐	☐	☐	☐

Please explain

No comment.

Other

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.

30. 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?

No comment.

31. 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?

No comment.

32. 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.

The Welsh Government needs to be mindful that a legislative gap is opening up between the unregistered social care workforce and the unregistered healthcare workforce and their different skill sets. This could become particularly relevant in any future development of a generic workforce. Therefore this legislative framework is opening up a potential disparity whereby one group is regulated and the other is not. This is clearly iniquitous if they are in similar complimentary delivery mechanisms.

Registered nurses are required by nursing regulation to only delegate where they are sure the delegated worker is competent to undertake that activity. There is potential for adverse unintended consequences when a registrant is expected to work between two different regulatory frameworks.

The consultation process on these regulations could be improved considerably.

There is far too much content to reasonably assess in this one phase. It should have been split into two separate consultations at least.

The consultation documents are lengthy and unnecessarily complex. Yet despite their length there is little or no explanation of the policy intent behind any one section.

Referring backwards and forward to various annexes invites misunderstanding. It would be preferable to consolidate documents. We would advise the following steps for any future such consultations:

1) **Establish an inclusive advisory group pre-consultation**
2) **Hold a consultation event for stakeholders**
3) **Split complex consultations up**
4) **Consolidate documentation**
5) **Clearly explain the policy rationale behind key points.**

Responses to consultations may be made public – on the internet or in a report. If you would prefer your response to be kept confidential, please enter YES in the box.	