



Ein cyf/Our ref: LF/MD/0695/15

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Dear David,

13 July 2015

Regulation and Inspection of Social Care (Wales) Bill

Further to our meeting on Wednesday 8 July, please find enclosed the further information in respect of the European Convention on Human Rights and the Bill.

Human Rights

I am satisfied that the provisions of the Bill are compatible with the rights contained in the European Convention on Human Rights. As the Committee will be aware to be within competence, the provisions in the Bill must be compatible with the Convention. Human rights issues were considered as part of the overall legal advice which I received and which enabled me to make the declaration in the Explanatory Memorandum that the Bill is within the legislative competence of the Assembly.

The aims of the Bill are to regulate the people who provide care and support for the most vulnerable people in our society. I have considered whether the aims of the Bill could be achieved by less intrusive measures but I am satisfied that the functions imposed are necessary and proportionate to those aims. The general objective of both regulators in exercising their functions under the Bill is to protect, promote and maintain the safety and well-being of people who use regulated service and the public. I have set out below some further information about how the Convention rights shaped the way in which the Bill has been drafted

Regulation of services

The context of the system of service regulation established in Part 1 of the Bill is contained within section 4 of the Bill which sets out the general objectives of the Welsh Ministers, the service regulator, in exercising its functions under Part 1. Those objectives are to protect, promote and maintain the safety and well-being of people who use regulated services and to promote and maintain high standards in the provision of regulated services.

The principle of regulation and the requirement for registration of social care services have been analysed with reference to Article 1 Protocol 1 and Article 2. Interferences with a person's possessions by way of the provisions within the Bill that permit the imposition of conditions and the variation or cancellation of a person's registration and the market oversight regime have all been analysed with regard to the extent to which those interferences are both necessary and proportionate having regard to the objective of the regulator as set out in section 4 of the Bill and the nature of the interferences involved

The provisions in the Bill that deal with the application process for registration or variation of a registration have been drafted so as to ensure compliance with Articles 6 and 8 of the Convention. There are rights provided for the provider to make representations and rights of appeal provide to the First Tier Tribunal.

The urgent cancellation provisions have again been analysed with reference to Article 1 Protocol 1, Article 6 and 8. I gave a specific example to the Health and Social Care Committee of how the urgent cancellation procedure in sections 21 and 22 of the Bill have been strengthened to offer greater protection for providers in that the Court may now determine when an order for urgent cancellation will take effect. Further, provision is made that allows the Tribunal to make any order including an interim order so as to allow a "stay" of the original order of the magistrates court (see sections 21 and 22).

The provisions that provide powers to inspectors have been scrutinised with reference to Articles 6 and 8 and the specific powers of seizure were considered with reference to Article 1 Protocol 1. There is new provision that requires Welsh Ministers to publish a code of practice about the manner in which inspections are to be carried out in order to provide transparency and certainty to providers in relation to how the powers of the regulator may be exercised

Regulation of the workforce

Great care has been taken in drafting this Bill to ensure that there is an appropriate balance between the need to protect vulnerable people in receipt of care and support that is regulated under this Bill, with the rights of those people who are registered and providing the care and support. The provisions in the Bill that deal with the registration and the fitness to practise of the workforce have been drafted so as to ensure compliance with Articles 6 and 8 of the Convention.

The processes for taking any action against a member of the social care work force registered under the provisions of this Bill are clearly set out on the face of the Bill. The provisions are sufficiently robust to allow the regulator to take necessary action when those registered have acted inappropriately and/or put vulnerable people at risk but at the same time a number of safeguards have been included to ensure that the workforce is protected. The process is a staged one to ensure that any allegations of wrongdoing are fully considered before proceeding and to ensure that vexatious allegations are not pursued (e.g. section 118 – preliminary consideration and section 119 – eligibility for onward referral). The use of fitness to practise panels rather than determination by members and staff of the regulator ensures a level of independence and promotes the lay led approach both of which provide assurances as to the fairness of proceedings. In the case of sanctions that can be imposed by a fitness to practise panel, there is a system of review to ensure that the reasons for the sanction being imposed are still relevant and where they are not, the reviewing fitness to practise panel may remove or alter the sanction. In addition, all decisions of the fitness to practise panel are capable of appeal to the Tribunal. The process laid out on the face of the Bill ensures compliance with the Article 6 right to a fair hearing.

There is also protection of the Article 8 right to respect for family and private life. Social Care Wales will have to exercise its powers compatibly with Convention rights in every case. Any interference with a social care worker's privacy would be to ensure that he or she is fit to practise in order to protect the public. There is provision in the Bill to ensure that all investigations must be undertaken by reference to clearly defined criteria with a view to ascertaining whether a person's fitness to practise is impaired. Although there are provisions which allow for the sharing of certain information with specified persons and in some circumstances for the publication of information, there are caveats to these provisions; namely, information will not be shared or published if it relates to a registered person's physical or mental health. Furthermore, the purpose of any publication or disclosure is to protect, promote and maintain the safety and well-being of the public.

Best wishes,

Mark.

Mark Drakeford AC / AM

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

