

College of Occupational Therapists

Patron: Her Royal Highness The Princess Royal

President: Lord Walton of Detchant

Chief Executive: Julia Scott



Policy Officer – Wales



T: [REDACTED]
E: [REDACTED]
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National Assembly for Wales / Cynulliad Cenedlaethol Cymru
[Health and Social Care Committee / Y Pwyllgor Iechyd a Gofal Cymdeithasol](#)

[Regulation and Inspection of Social Care \(Wales\) Bill / Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol \(Cymru\)](#)

Evidence from College of Occupational Therapists – RISC 03 / Tystiolaeth gan Coleg y Therapyddion Galwedigaethol – RISC 03

12.3.15

Dear Chair and Members of the Health and Social Care Committee.

Consultation on the Regulation and Inspection of Social Care (Wales) Bill

Thank you for the invitation to provide written evidence for the above consultation. The College of Occupational Therapists will be submitting detailed evidence in April. However, The College also welcomes the opportunity to submit comments prior to the Ministerial scrutiny session. It is not possible to produce a full response in the time available so we hope you will accept this letter as a brief indicator of some of the main concerns for the College prior to us submitting a full response later.

The College welcomes the intention of the Bill to register and regulate persons providing the services listed in the long title, where they are not already registered. This is absolutely vital for protecting the public from poor practice and practitioners and to maintaining the safety and wellbeing of vulnerable people receiving services. Inspection and regulation of service providers and the creation of a Responsible Individual all appear to be good intentions. We have made some comments below which the committee may wish to consider when scrutinising the Minister:

Definition of Care (Part1; Chapter1; 3(i) (a).

The definition of care is concerning as it references solely physical tasks. While we note s3(a)(ii) identifies the 'mental' processes related to those tasks, as it stands it appears to push a focus on task and time rather than quality of the interaction. Relationships and the quality of human interaction is a vital element in providing high quality care services, as many recent reports and investigations such as Southern Cross, Mid Staffs and Operation Jasmine, have shown. Would this definition tend to encourage a focus on tasks? On providing services to meet physical needs only? How do emotional care and support, confidence building and other developmental elements fit this definition? We are concerned



that this definition does not acknowledge that the person being cared for may need cognitive, mental and emotional elements of their wellbeing, as defined in the Social Services and Wellbeing (Wales) Act (2014) to be included in their care.

Inspections

COT welcomes the intent to inspect services. As Welsh Government policy continues to promote the integration of services it is surprising that there is no reference to any potential to allow joint or integrated inspections, for example with Healthcare Inspectorate Wales. COT is unsure if integration of inspection is planned or whether in fact this Bill might prevent it. Is that possible or will the Bill prevent it? The College is aware that members of the profession experience frequent, separate inspections at present depending on their service registration. There is no reference in the Bill to the fact that each local authority as well as CSSIW and HIW may all inspect a single service, each requiring the same or similar information, usually in a different format. A prudent approach would be to streamline this system.

The College understands that at present a single inspector carries out inspections. In many other fields the use of a small team of inspectors allows for validation and triangulation of findings and would seem a good model to promote in this Bill. The College is also unclear whether 'lay' inspectors are service users and members of the public or other practitioners and managers.

Inspection appears to be only of defined services. We are unclear whether 'regulated activity' (s171) is the same as 'regulated services'. In schedule 1 regulated services are defined; yet the Social Services and Wellbeing (Wales) Act (2014) indicates the development of more variable, personalised and flexible services. How will these be included if they don't fit a traditional model of care home or domiciliary care or the definitions in schedule 1? The College notes that only care and support services will be regulated and assumes there will be no regulation of preventative or other services?

Social Care Wales (Part 3)

The objective (s67)(1) for Social Care Wales (SCW) does not limit the protection, promotion and maintenance of the safety and wellbeing of the public in Wales to social care matters. The COT is led to believe the intent of the Bill is that SCW will protect the public only in relation to registered social care practitioners and services. However, In s67(2) the functions do not appear to relate to this objective: this section includes all social care workers and a responsibility to maintain high standards. The College is unclear how this Bill interacts with the responsibility of other regulators. The College assumes this responsibility can only relate to the services and practitioners registered with and regulated by SCW? Practitioners registered with and regulated by other practitioners, such as occupational therapists and nurses will remain under the jurisdiction of those regulators. It is not fully clear how this covers staff who are not regulated at all as individuals, but who work in regulated services. Are the Responsible Individual and Registered Manager accountable for these staff??

There is potential for conflict of interest in placing so many roles in one body. The function of protecting the public should be paramount. Protecting the public is a significantly different role to those of a sector skills council, professional body or education provider for example. 'Trust Assurance and Safety –The Regulation of Health Professionals in the 21st Century' (2007 <http://www.official-documents.gov.uk/document/cm70/7013/7013.pdf>)



identifies a number of key principles that should underpin statutory professional regulation. The “overriding interest should be the safety and quality of the care that patients receive from [...] professionals” and that “**Regulators need to be independent of government, the professionals themselves, employers, educators and all the other interest groups involved**”(p2). This work came out of the Shipman Inquiry and the Foster review. The proposal for SCW should be examined against these principles for regulation.

The wider roles given to SCW (Part 5) with all social care workers are sometimes beyond the remit of public protection. In healthcare many of these are done through the Workforce Education Development Service (WEDS) or by other regulators. Clarity is needed on the groups that SCW will include in this work. For example, how will occupational therapists be supported in their practice in social care, even though they are not the responsibility of SCW in its regulatory role? How will the different responsibilities be separated? There is a missed opportunity here for improving integration in health and social care.

Social Care workers (Part4)

The definition of a social care worker (s78) includes a far wider group than the registered groups. The Bill needs to acknowledge that there are groups of social care workers who are also registered and regulated by other regulators. Clarity is needed on how or if SCW is responsible for those. Much of the wording in the Bill implies that all social care workers will be included. For example, s78 (3)(b) would include occupational therapists. Any regulations made under s78(2) will need to be clear of any overlap with existing regulator functions. The sections immediately after s78 refer to the register and continue to refer to issues relating to registered groups: even though “social care workers” are not registered groups. The College sees value in separation of the roles of regulator and other roles in relation to improvement or education for non-regulated groups to avoid confusion. (One example of this is s57. This section amends the Social Services and Wellbeing Act (2014) and allows for s94(A)(3) regulations to specify that a person not registered under S79 of the Regulation and Inspection of Social Care (Wales) Act cannot work for a local authority in relation to Accommodated and Looked After Children. Care will be needed to ensure that occupational therapists, speech and language therapists and nurses are not excluded by such regulations. S83 (b) refers to an “applicant for registration as a social care worker of any other description”. Yet the only groups to be registered appear to be social workers and registered managers. S83 (b)(i) requires completion of a course approved by SCW under s113 – which cross refers to s79. Occupational therapists courses, as with other groups registered by other regulators, are not approved by SCW but by the relevant regulator for each profession and by the professional body, as well as being quality assured by the Higher Education Institution.

Social Care workers: standards of conduct, education etc. (Part 5)

This part is sometimes not clear as to which workforce groups are included and which are not:

s111 (1)(a) – this refers to standards of conduct and practice for “social care workers”. The College is unclear if and how codes are to be applied to unregistered groups of staff or to staff registered with other regulators.

S111 (3) refers to codes for social workers when working as approved Mental Health Practitioners (AMHPs). However three other professions can be AMHPs, so surely the



same codes of conduct have to apply to every AMHP regardless of their initial professional background?

S111 (6) says a local authority making a decision about the conduct of any social care worker must (if directed to do so by Welsh Ministers) take into account any code published by SCW. However, the codes of other regulators may be more appropriate. How will this be accommodated?

The College supports the general principle to improve the education and career opportunities for all social care workers and to improve standards more widely including through monitoring or approval of courses. However, greater clarity is needed in relation to what is the role of a regulator, and thus requirements: what is the role more generally, and thus good practice but not required; what roles could be enhanced by opportunities for integration or joint working with other regulators, such as HCPC or NMC, and other employers, such as WEDS and the improvement functions of Public Health Wales.

Social Care Workers Fitness to Practise (Part 6)

The College is unclear what remit over fitness to practice SCW has other than for registered groups, in this case social workers and registered managers. Fitness to practice for occupational therapists is under the remit of the HCPC. S116 (5) appears to acknowledge this is only for workers registered with SCW: perhaps the part should not be titled to imply it means all social care workers? The College notes the reference to HCPC in s116 (4) but reads this as referring to social workers registered in England. S117 refers to a “registered person” is this only a person registered with SCW? What about a person registered with another registering body?

Co-operation and joint working by the Regulatory Bodies (Part 9)

S174 identifies the regulatory bodies as Welsh Ministers and SCW. The College questions why is there no reference to co-operation and joint working with HCPC and other regulators? The reasons the College would expect such co-operation include: the potential for an allegation to be made against a practitioner registered with both bodies, for example a social worker may be registered to work in both England and Wales or an occupational therapist may also be a registered manager: and the opportunity to streamline regulation and registration by recognising registration with one body removing the need for registration with a second. The College would expect the Bill to make provision for such working.

The College is disappointed there is no reference to co-operation in relation to the wider roles of SCW given the policy direction of greater integration. For example, workforce development and education commissioning for occupational therapists is undertaken by WEDS, there seems to be a missed opportunity to consider integrated workforce planning, joint course development and approval, integrated career frameworks etc. The College is aware of a lack of cross recognition of qualifications between health and social care. The Bill offers an ideal opportunity to co-operate in recognising qualifications across the sector to allow joint appointments; integrated working and movement of staff between local government and NHS employers and reduce the need for staff to ‘redo’ similar qualifications to named recognised qualifications by one part of the sector.

It is hoped the committee find these initial points useful and timely for the initial Ministerial scrutiny session. The College looks forward to submitting a full response to the consultation



later. If the committee have any further questions or would like some further explanation of the views of the College please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink that reads "Ruth Crowder". The signature is written in a cursive, flowing style.

Ruth Crowder
Policy Officer for Wales / Swyddog Polisi Cymru