These notes refer to the Health and Social Care (Wales) Act 2025 (asc 1)
which received Royal Assent on 24 March 2025

HEALTH AND SOCIAL CARE (WALES) ACT 2025

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Health and Social Care (Wales) Act 2025 which was passed by Senedd Cymru on 4 February 2025 and received Royal Assent on 24 March 2025.

2. They have been prepared by the Welsh Government's Health, Social Care and Early Years Group in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by Senedd Cymru.

3. The Explanatory Notes should be read in conjunction with the Act. They are not meant to be a comprehensive description of the Act. Where an individual section of the Act does not seem to require any explanation or comment, none is given.

POLICY BACKGROUND

4. Following the 2011 White Paper on Sustainable Social Services, social care law in Wales has been reformed and consolidated through the Social Services and Well-being (Wales) Act 2014 ("the 2014 Act") and the Regulation and Inspection of Social Care (Wales) Act 2016 ("the 2016 Act").

5. The Social Services and Well-being (Wales) Act 2014 established a new framework for local authority social services in Wales.

6. The Regulation and Inspection of Social Care (Wales) Act 2016 provides a statutory framework for the regulation and inspection of social care services and a framework for the regulation of the social care workforce in Wales.

7. This Act seeks to make further improvements to social care in Wales, by amending the 2014 and 2016 Acts to restrict the extraction of profit from the care of looked after children; and by making a number of amendments to those Acts to ensure that they operate fully and effectively.

8. In addition, the Act enables the introduction of direct payments within NHS Continuing Healthcare (CHC), which is intended to align with the direct payments that can be made in social care.

9. This Act has been developed following a consultation on proposed changes to primary legislation on social care and continuing health care which ran between August and November 2022. The consultation documents, responses, and a summary of responses, have been published on the Welsh Government's website: Proposed changes to legislation on social care and continuing health care | GOV.WALES .

GENERAL OVERVIEW OF THE ACT

10. The Act is comprised of 30 sections (within three Parts) and two Schedules.

- Part 1 of the Act relates to social care and contains two Chapters:
  - Chapter 1 makes amendments to the 2014 and 2016 Acts intended to restrict the extraction of profit by providers of children's care home services, secure accommodation services and fostering services;
  - Chapter 2 makes a number of miscellaneous amendments in relation to social care services, social care workers and local authority social services, intended to ensure that the 2014 and 2016 Acts can operate fully and effectively.

  This Part of the Act also introduces Schedule 1 which makes minor and consequential amendments in relation to this Part.
- Part 2 of the Act relates to health care and makes amendments to the National Health Service (Wales) Act 2006 in order to enable the introduction of direct payments within NHS Continuing Healthcare (CHC). This Part of the Act also introduces Schedule 2 which makes minor and consequential amendments in relation to this change.
- Part 3 of the Act contains a number of general provisions, including in relation to regulations made under the Act, interpretation, powers to make consequential and transitional provisions, and coming into force arrangements.

COMMENTARY ON SECTIONS
PART 1
SOCIAL CARE

CHAPTER 1
PROVISION OF SOCIAL CARE SERVICES TO CHILDREN: RESTRICTIONS ON PROFIT

Section 1 – Overview of Chapter 1

11. Section 1 provides an overview of the main provisions of Part 1, Chapter 1 of the Act. It summarises the subjects covered in each subsequent section of the Chapter.

Section 2 – Restricted children's services

12. Section 2 inserts new provision into Part 1 of the 2016 Act that defines a restricted children's service for the purposes of that Part. The new provision is inserted in new section 2A and in amendments to Schedule 1 to the 2016 Act. Section 2 also amends section 1 of the 2016 Act (overview of Part 1) in consequence of these changes.

13. New section 2A(1) (inserted by section 2(b) of the Act) defines each of the regulated services to which the new provisions inserted by the Act into Part 1 of the 2016 Act apply as a "restricted children's service" for the purposes of that Part. These are a care home service (in so far as it is a "children's home service" defined for this purpose as a care home service provided at one or more places at which the service is provided wholly or mainly to children), a fostering service, and a secure accommodation service.

14. Section 2(c) inserts new sub-paragraph (3A) into paragraph 1 of Schedule 1 to the 2016 Act. Sub-paragraph (3A) provides that a school that constitutes a care home service by virtue of sub-paragraph (3) does not constitute a children's home service unless it has provided more days of accommodation to children who are looked after children than to children who are not looked after children for any period of 12 months falling within the previous 24 months, or it intends to provide more days of accommodation to looked after children than to children who are not looked after children for any period of 12 months falling within the following 24 months.

Section 3 – Applications for registration in respect of restricted children's services

15. Section 3(3) inserts new sections 6A (registration in respect of a restricted children's service) and 6B (registration in respect of a restricted children's service: definitions) into the 2016 Act.

16. Under new section 6A(1), to be registered in respect of a restricted children's service a person who is not a local authority must be a not-for-profit entity.

17. Section 6A(2), (3) and (4) provide that a "not-for-profit entity" is a person that meets these two tests:
    - the person's objects or purposes primarily relate to the welfare of children, or to such other public good as the Welsh Ministers may prescribe (regulations prescribing such public good may not be made unless a draft of the instrument has been laid before and approved by a resolution of Senedd Cymru);
    - the person is one of the following four types of undertaking (that are defined in section 6B, and in relation to which the law restricts the extraction of profit): a charitable company limited by guarantee without a share capital; a charitable incorporated organisation; a charitable registered society; a community interest company limited by guarantee without a share capital.

18. As a consequence of the insertion of sections 6A and 6B into the 2016 Act, section 3(2) inserts a new subsection (1A) into section 6 of the 2016 Act. This new subsection requires a person applying to be registered in respect of a restricted children's service to supply the Welsh Ministers with prescribed information showing that the person is a not-for-profit entity. The power to prescribe the information is to be exercised by regulations made in a statutory instrument under section 187 of the 2016 Act.

Section 4 – Registration in respect of a restricted children's service: transitional arrangements

19. Section 4 inserts a new Schedule 1A into the 2016 Act to make provision about transitional arrangements in respect of service providers who are already registered prior to the coming into force of new section 6A (as to which see section 3).

20. After the commencement of section 6A, the requirement in respect of a restricted children's service imposed under that section (to be a not-for-profit entity) will apply to all new entrants to the register maintained by the Welsh Ministers under the 2016 Act and all existing service providers for so long as they remain registered. However, paragraphs 1 and 2 of Schedule 1A make provision for a transitional period during which providers who were registered in respect of a service before it became a restricted children's service (by virtue of section 6A coming into force) are not subject to the requirements in section 6A(1) except for the purposes of any applications that the service provider makes under section 11 of the 2016 Act to vary registration to add a restricted children's service or to provide the existing restricted children's service at or in relation to a new place.

21. The transitional period begins when section 6A comes into force in respect of the service and ends on a day appointed by the Welsh Ministers in regulations.

22. As provided for by paragraph 3 of the Schedule, the Welsh Ministers may make regulations which impose conditions on existing service providers during the transitional period, including restrictions on the type of service they may provide and the description of looked after children they may accommodate. For example, this would enable Welsh Ministers to limit the circumstances in which providers who are subject to the transitional provisions may accept placements from local authorities in England. The power could also be used to prevent providers who are subject to the transitional provisions from providing a place for any new child after a certain date, or to require that only specialist services of a certain description may be provided.

23. If a service provider fails to comply with these conditions, the Welsh Ministers may vary or cancel their registration in accordance with sections 18 and 19 of the 2016 Act.

24. In the case of a provider of a fostering service to whom paragraph 2 applies a failure by that provider to comply with requirements imposed during the transitional period by regulations made under section 87 of the 2014 Act will also trigger the Welsh Ministers' power to vary or cancel the provider's registration. Section 87 of the 2014 Act is referred to because this is the power which enables regulations to be made which restrict the ability of providers of fostering services who are subject to paragraph 2 of Schedule 1A to approve new foster parents.

25. Under paragraph 4 of the Schedule, providers of existing services may apply to vary their registration so that their registration in respect of an existing service is subject to the requirement in section 6A(1) and, accordingly, any conditions that might have been imposed on them under paragraph 3 of the Schedule no longer apply. By contrast, if a provider of an existing service applies under section 11(1)(a)(i) or (ii) of the 2016 Act to vary their registration in respect of a restricted children's service that is not the existing service, the provider must apply to the Welsh Ministers for their registration in respect of the existing service to be subject to the requirement in section 6A(1). This ensures that providers will not be able to be registered as subject to the 6A(1) requirement in relation to one service, or in respect of a place or places, and registered as not subject to the requirement in relation to another service or place(s). Variations under this paragraph are subject to the notice procedures set out in sections 18 to 20 of the 2016 Act and the associated appeal rights under section 26 of the 2016 Act.

26. Section 4(4) amends section 45 of the 2016 Act so that the Welsh Ministers may also prescribe by regulations that it is an offence for a provider to fail to comply with conditions imposed in regulations made under paragraph 3 of Schedule 1A. As the power to create a criminal offence in the regulations is conferred by section 45 of the 2016 Act, the penalties set out in section 51 of the 2016 Act will apply where this power is exercised, as will the power to issue penalty notices under section 52 of the 2016 Act.

Section 5 – Grant or refusal of registration in respect of a restricted children's service

27. Section 5 amends section 7 (grant or refusal of registration as a service provider) of the 2016 Act in consequence of the introduction of the requirements in respect of restricted children's services set out in new section 6A of the 2016 Act (as inserted by section 3).

28. Subsection (2) inserts new paragraph (aa) into subsection (1) to require that the Welsh Ministers only grant an application for registration in respect of a restricted children's service if the applicant meets the requirement in section 6A(1).

29. Subsection (3) inserts new paragraph (aa) into subsection (3) to provide that a grant of application in respect of a restricted children's service must be subject to a condition that the service provider notify the Welsh Ministers of any circumstances under which the provider no longer meets the requirement in section 6A(1).

Section 6 – Fit and proper person: relevant considerations

30. As further explained in paragraphs 31 to 33, section 6 amends the 2016 Act to provide that unreasonable or disproportionate financial arrangements entered into by a service provider registered in respect of a restricted children's service are evidence to which the Welsh Ministers must have regard when deciding if the provider is a fit and proper person. (If the Welsh Ministers are no longer satisfied a person is fit and proper, they may cancel the person's registration – see section 15(1)(b) of the 2016 Act.)

31. Section 9 of the 2016 Act provides that in deciding whether a service provider is a fit and proper person, the Welsh Ministers must have regard to all matters they think appropriate but that they must in particular have regard to evidence of various things including whether the service provider has been responsible for, contributed to, or facilitated misconduct or mismanagement in the provision of a regulated service (see section 9(6)).

32. Section 6(2) amends section 9(7) of the 2016 Act so that it specifies that, when the Welsh Ministers are having regard to evidence of whether a service provider (that is registered in respect of a restricted children's service) is unfit on the basis of misconduct or mismanagement, they must consider whether the provider has entered into a financial arrangement that falls within new section 9A.

33. Section 6(3) inserts new sections 9A and 9B into the 2016 Act. New section 9A(1) provides that a financial arrangement falls within section 9A if it is an arrangement with or for the benefit of a "relevant person" (defined in section 9B, and including persons such as the provider's officers and employees) that is unreasonable or disproportionate in all the circumstances and that, in consequence, may undermine the pursuit of the service provider's objects or purposes (which must, under section 6A(3), primarily relate to children's welfare or other prescribed public goods). New section 9A(2) sets out matters to which regard must be had when determining whether a financial arrangement of this sort has been entered into.

Section 7 – Providers of restricted children's services: information contained in annual return

34. Section 7 amends section 10 (annual return) of the 2016 Act to impose new requirements about what must be included in a service provider's annual return.

35. Paragraph (a) inserts a new paragraph (viiia) into section 10(2)(a) of the 2016 Act, requiring that the annual return includes information (as prescribed by the Welsh Ministers) about evidence relevant to the fit and proper person test in section 9 of the 2016 Act.

36. Paragraph (b) inserts new subsections (2A) and (2B) into section 10 of the 2016 Act. New subsection (2A) requires that for a service provider, other than a local authority, that is registered in respect of a restricted children's service the annual return must include information (as may be prescribed by the Welsh Ministers) showing that the provider meets the requirement in section 6A(1) (as inserted by section 3 of the Act - see paragraphs 16 and 17 of these Explanatory Notes for an explanation of new section 6A). Subsection (2B) provides that this does not apply to providers to whom section 6A does not apply by virtue of paragraph 2(3) of Schedule 1A (as inserted by section 4 of the Act, and specifying transitional arrangements for service providers of these services).

37. Paragraph (c) amends subsection (6) of section 10 of the 2016 Act, with the effect that the first set of regulations made under subsection (2)(a)(viiia) (prescribing information about evidence relevant to the fit and proper person test) and the first set of regulations made under subsection (2A) (prescribing information to satisfy the Welsh Ministers that the provider meets the requirement in section 6A(1)) will be subject to the draft affirmative procedure in the Senedd.

Section 8 – Variation or cancellation of registration as a provider of a restricted children's service

38. Section 8 amends the 2016 Act to include new provisions in relation to the variation or cancellation of registration as a provider of a restricted children's service.

39. Subsection (2) amends section 11 (application for variation of registration as a service provider) by inserting a new subsection (4) which requires that an application to vary registration to provide a restricted children's service must contain information to satisfy the Welsh Ministers that the service provider meets the requirement in section 6A(1).

40. Subsection (3) amends section 12 (grant or refusal of application for variation) to provide that the Welsh Ministers may only grant an application if they are satisfied that the service provider meets these requirements.

41. Subsection (4) amends section 13 (variation without application) to provide that the Welsh Ministers may vary a service provider's registration to remove a restricted children's service if the service provider does not meet the requirement in section 6A(1). Subsection (5) inserts new subsection (3A) which refers to paragraph 3(4)(a) of Schedule 1A under which there is provision made concerning the application of section 13 in relation to providers to which paragraph 2 of that Schedule applies.

42. Subsection (6)(a) amends section 15 (cancellation without application) to provide that the Welsh Ministers may cancel a service provider's registration if each of the services that the service provider is registered in respect of is a restricted children's service and the service provider does not meet the requirement in section 6A(1). Subsection (6)(b) inserts new subsection (1A) which refers to paragraph 3(4)(b) of Schedule 1A under which there is provision made concerning the application of section 15 in relation to providers to which paragraph 2 of that Schedule applies.

Section 9 – Restricted children's services: information contained in the register of service providers

43. Section 9 amends section 38 (register of service providers) of the 2016 Act by inserting new subsection (2A) which introduces new requirements in respect of entries in the register of service providers. The new requirements are that the entry in the register must show whether any of the services are a restricted children's service, and in the case of a provider of a restricted children's service the entry in the register must show that the provider's registration in respect of that service is subject to the requirement in section 6A(1), and that the condition in section 7(3)(aa) is imposed on the provider's registration in respect of that service. However, these requirements do not apply in respect of the registration of a provider of a restricted children's service that is not subject to the requirement in section 6A(1) during the transitional period defined in Schedule 1A.

Section 10 – Local authority duty to secure sufficient accommodation

44. Section 10 amends section 75 (general duty of local authority to secure sufficient accommodation for looked after children) of the 2014 Act.

45. The wording of subsection (1) is amended to specify that the local authority must take all reasonable steps to secure accommodation for children mentioned in subsection (2). The requirement in subsection (1)(a) that the accommodation to which the local authority duty relates is within the local authority's area is amended to include accommodation that is near to the local authority's area. This enables local authorities to make arrangements with other local authorities to develop new children's homes and foster care placements. It acknowledges that there may be circumstances in which a child placed outside of the local authority's area may be nearer to their home community than if they were placed in a different part of the local authority's area.

46. New paragraphs (aa) and (ab) are added to subsection (1), specifying that, where the accommodation is with a local authority foster parent or a children's home, it should meet the relevant requirement described in new section 81A(4)(a) or 81A(4)(b) respectively (to be inserted by section 13 of the Act).

47. Subsection (5) amends subsection (3) to require that a local authority in discharging its duty under subsection (1) must have regard to the benefit of there being a range of accommodation within or near to its area that is capable of meeting the differing needs of the children mentioned in subsection (2). This change from "number of accommodation providers" to "range of accommodation" shifts the focus from the number of providers to the range of accommodation, and whether there are different types of placements in the right locations that are capable of meeting the needs of children. The duty could therefore potentially be met by there being accommodation provided by one provider, such as the local authority itself.

48. Subsections (6) and (7) amend subsection (4) and section 197(1) to amend the definition of "children's home" for the purposes of section 75, so that the duty applies only in relation to accommodation in children's homes and with local authority foster parents.

Section 11 – Duty to prepare and publish an annual sufficiency plan

49. Section 11 amends the 2014 Act to insert new sections 75A, 75B and 75C.

50. Section 75A requires local authorities to prepare and publish an annual sufficiency plan before the beginning of each financial year. The plan must detail the steps the local authority will take in that year to fulfil its duty under section 75(1). The plan must be in a form prescribed by regulations, and it must be approved by the Welsh Ministers before it is published (the process for this is set out in sections 75B and 75C). It must include, for the financial year to which it relates: the estimated number of children the local authority will be looking after who it will be unable to place under section 81(2); an assessment of the extent to which the available accommodation meets the relevant requirements in section 81A(3) as well as the extent to which that accommodation is within, or near to, the local authority's area. The plan must also include prescribed information about for-profit and private providers[1] who are likely to be named in applications for approval of supplementary placements, an estimate of the number of such applications that are anticipated and the reasons why that number of applications is likely to be made.

51. Section 75B of the 2014 Act sets out the procedure for the approval of the annual sufficiency plan. Before publishing the plan, a local authority must prepare a draft and submit it to the Welsh Ministers for approval. The first draft must be submitted no later than 4 months before the beginning of the financial year to which it relates, while subsequent drafts must be submitted no later than 2 months before the beginning of the financial year. The Welsh Ministers must notify the local authority of a decision to approve the draft plan.

[1] In this context, a 'private provider' is a provider of restricted children's services in England which is not a local authority. The Act makes the distinction between such providers and 'for-profit providers' because providers in England will not be subject to the regime applying in Wales and therefore will not be identifiable from the register as being 'for-profit' or 'not-for-profit', as Welsh providers will. Local authorities seeking to place a child with a provider in England will therefore simply have to identify whether the provider is a local authority, and if it is not, an application for approval of a supplementary placement will be required.

52. Section 75C of the 2014 Act sets out the procedure to be followed if the Welsh Ministers decide not to approve a draft of an annual sufficiency plan submitted by a local authority under section 75B. In this case, the Welsh Ministers must notify the local authority of their decision and provide the reasons for it. They must also specify a period within which the local authority must submit a further draft of the plan. The local authority must then submit a further draft of the plan, along with a report explaining how the authority has taken into account the reasons provided by the Welsh Ministers. If the Welsh Ministers decide not to approve the further draft, the same procedure applies. If the Welsh Ministers do approve a further draft, they must notify the local authority of that decision.

Section 12 – Duty to secure accommodation: reporting

53. Section 12 inserts a new section 75D into the 2014 Act. Section 75D requires local authorities to report on their duty under section 75 to secure accommodation. The annual report prepared by a local authority under section 144A must include information on how the steps taken by the local authority have increased, or are expected to increase, the amount of accommodation available that meets the requirements of section 75(1). The report must also include the number of applications made by the local authority for approval to place children in supplementary placements, as well as the reasons for any difference between the estimated and actual number of applications.

Section 13 – Ways in which looked after children are to be accommodated

54. Section 13 amends section 81 of the 2014 Act and inserts into the 2014 Act new sections 81A, 81B, 81C and 81D (after section 81).

55. Section 81 imposes a duty on a local authority to arrange for a looked-after child to live with a parent, a person with parental responsibility or a person in whose favour a child arrangements order has been made. However, where this is not consistent with the looked-after child's well-being, or is not reasonably practicable, under section 81A, the local authority must accommodate the child in the "most appropriate placement available". (However, this is subject in both cases to any decision made by the authority that it would be appropriate for the child to be placed with a prospective adopter (as to which see section 81C)).

56. In the context of section 81A, a "placement" means accommodating a child:
- with an individual who is a relative, friend or other person connected with the child and who is also a local authority foster parent (commonly referred to as a "kinship placement"),
- with (another) local authority foster parent,
- in a children's home, or
- (subject to section 82 of the 2014 Act) in accordance with other arrangements that comply with any regulations made for the purposes of section 81A. There are a variety of circumstances where a local authority may decide to place a child in a setting other than foster care or a care home service for children. For example, a local authority may place an older child aged 16 or 17 in supported accommodation as preparation for independent living.

57. As in the case of existing section 81, decisions about where to place a looked-after child under section 81A are to be made subject to the need to take account of what is referred to as the "principal" duty on local authorities in Part 6 of the 2014 Act. This is set out in section 78 and requires an authority to safeguard and promote the well-being of children it is looking after.

58. The changes made by section 13 reflect changes made to the 2016 Act that restrict the making of profit in the provision of fostering services and children's care home services as "restricted children's services".

59. The key change made by this section (found in section 81A(2) and (4)) relates to the decision taken by a local authority as to the most appropriate placement available for a looked-after child. The existing section 81(7) requires a local authority to take a number of matters into account when making this decision. These are expressed as requirements under the existing section 81 at subsections (8) and (9).

60. These matters must still be taken into account under section 81A(5), but as a result of section 81A(4), if the local authority considers that the most appropriate placement (in accordance with new section 81A(2)) is with a foster parent or in a children's home (giving preference – subject to the principal duty under section 78 – to a kinship placement), then (although this is also subject to the principal duty), the authority will now have to place the child in a way that is consistent with the profit-restricting requirement in section 6A(1) of the 2016 Act. This is achieved by section 81A(4) requiring the local authority to only use the following types of foster parents and children's homes (provided that doing so does not put the authority in breach of the principal duty):
    - local authority foster parents who are authorised as such by the local authority, a different local authority, or an independent fostering agency that is registered subject to the requirements of section 6A(1) of the 2016 Act;
    - children's homes in respect of which one of the following persons is registered as the provider: the local authority, a different local authority, or a service provider that is registered subject to the requirements of section 6A(1) of the 2016 Act.

61. If more than one placement with such a foster parent or in such a children's home (as appropriate) is available, the amended legislation requires the local authority to once again consider what is the most appropriate placement available in accordance with section 81A(2) – this time to consider *which* placement of this type should be chosen. In doing so it must have regard to a number of factors specific to the needs of the child in question. These factors are set out in new section 81A(5)(a), which replicate provisions that were previously in section 81(7) and (8).

62. As the factors to be considered reflect interests of a looked-after child that may conflict or overlap, and as they are all subject to the principal duty in section 78, the wording of the duty imposed upon a local authority (previously under s81(7)) has been changed to require the local authority to have regard to these factors (while having to safeguard and promote the well-being of the child). The various aspects of a child's well-being are set out in the definition of "well-being" in section 2 of the 2014 Act.

63. If a placement with such a foster parent or children's home provider is not available, or if placing a child in such a placement where one is available would not be consistent with the local authority's principal duty under section 78, the local authority must once again consider what is the most appropriate placement available in accordance with section 81A(2).

64. At this point the local authority must necessarily consider placements that may be available with other providers, again having regard to the factors referred to in section 81A(5)(a), and also giving preference to a kinship placement (subject again to the principal duty under section 78).

65. Where a local authority places a looked-after child in a placement that does not meet the requirements of the new section 81A(4) , the authority must make an application to the Welsh Ministers for approval (see section 81B regarding "supplementary placements").

66. As a result of new section 81A(7), a relevant code of practice issued by the Welsh Ministers in accordance with section 145 of the 2014 Act will have to include provision on how a local authority exercises its functions under section 81.

67. Section 81B(3) sets out what information must be provided when making an application for approval of a supplementary placement, which includes (among other matters) an explanation of why the local authority considers that they would be acting inconsistently with their duty under section 78 of the 2014 Act if they did not place the looked-after child with the for-profit or private provider (as applicable).

68. If the Welsh Ministers reject the application, they must direct the local authority to:
    - take their reasons for rejecting the application into account, and
    - reconsider placing the child in a way that does not run contrary to the requirements in section 81A(4).

69. After doing so, the local authority may resubmit the application if they continue to consider that placing the child with a for-profit or private provider is necessary bearing in mind the principal duty under section 78, but the authority must explain:
    - how they have taken the Welsh Ministers' reasons for rejecting the initial application into account, and
    - why they continue to consider that the child should be placed in a supplementary placement.

70. New section 81C replicates what is currently found in subsections (10) to (12) of section 81, setting out the placement duties that apply in respect of a child that the local authority is satisfied ought to be placed for adoption.

71. New section 81D replicates what is currently found in subsection (13) of section 81, which provides that a local authority may determine the terms of any arrangements or placements it makes in respect of a looked-after child under section 81, 81A, 81B or 81C.

CHAPTER 2
MISCELLANEOUS AMENDMENTS IN RELATION TO SOCIAL CARE SERVICES, SOCIAL CARE WORKERS AND LOCAL AUTHORITY SOCIAL CARE FUNCTIONS

Section 14 – Duty to submit and publish annual return

72. Section 14 amends section 10 of the 2016 Act which requires a service provider to submit an annual return to the Welsh Ministers who must then publish that return. Section 14 amends section 10 so that the provider (and not the Welsh Ministers) is required to publish its own annual return on its website, and to make a copy of that return available upon request. The amendments also provide that a service provider must publish its return within a time limit prescribed by the Welsh Ministers and that failure to do so is a summary offence punishable by a fine (see section 14(3) which amends section 48 of the 2016 Act).

Section 15 – Application for cancellation of service provider's registration: information to be provided

73. Section 15 amends section 14 of the 2016 Act to provide the Welsh Ministers with the power to require that an application to cancel a service provider's registration must contain prescribed information and be made in the prescribed form.

Section 16 – Cancellation and variation of service provider's registration without application: notice procedures

74. Section 16 amends sections 13 and 15 of the 2016 Act, which set out the powers of the Welsh Ministers to vary a service provider's registration (section 13) and cancel a service provider's registration (section 15) subject to the improvement notice procedure (set out in sections 16 and 17 of the 2016 Act). Section 16 amends these sections such that the applicable notice procedure depends on the grounds on which the Welsh Ministers are proposing to vary or cancel the provider's registration. As a result of these amendments, where variation or cancellation is on certain grounds in respect of which there is no improvement action that a service provider could be required to take, the notice of proposal procedure in section 18 of the 2016 Act will apply instead. This would apply, for example, where the service provider no longer provides a specific regulated service or the service provider no longer provides that regulated service at, from or in relation to a specific place.

Section 17 – Information, inspection and investigations

75. Section 17 amends Chapter 3 of the 2016 Act so that it makes further provision in relation to the Welsh Ministers' powers to carry out inspections and investigations and to require the provision of information in relation to various functions they have under the 2016 Act, including in respect of investigating offences.

Section 18 – Meaning of social care worker: childcare workers

76. Section 18 amends section 79 of the 2016 Act to provide Welsh Ministers with the power by regulations to extend the definition of social care workers for the purpose of the 2016 Act to include childcare workers (including play workers).

77. Childcare workers are individuals who are employed by or work (including as agency workers) for a person registered under Part 2 of the Children and Families (Wales) Measure 2010 as a day care provider, to provide care and supervision to children.

Section 19 – Fitness to practise cases: powers to extend interim orders

78. Section 19 amends Chapter 4, of Part 6 of the 2016 Act which makes provision in respect of interim orders and review of interim orders in fitness to practise proceedings. Interim orders imposed by the regulator are a means to enable temporary restrictions to be applied to a registered person while investigations are undertaken into fitness to practise allegations made against the person. The amendment provides panel (interim orders panel or fitness to practise panel before which the interim order proceedings are brought) with the power to extend an interim order for up to 18 months in total, removing the need for applications to be made to the First-tier Tribunal for extensions which do not push the total length of the order beyond that limit. An application to the First-tier Tribunal will continue to be required where an interim order is to be extended beyond 18 months (see section 148 of the 2016 Act).

Section 20 – Direct payments in social care

79. Section 20 amends Part 4 of the 2014 Act so as to allow a local authority to make direct payments to a person (an individual or a body) nominated by an adult entitled to receive a direct payment under section 50 of the 2014 Act regardless of the whether that adult lacks capacity (within the meaning of the Mental Capacity Act 2005) to receive and manage the direct payments themselves.

80. The amendments made by section 20 are intended to ensure that all persons who are entitled to receive a direct payment under Part 4 of the 2014 Act (including payments made in respect of after-care services under section 117 of the Mental Health Act 1983) have the same entitlement to nominate a person to receive and manage the direct payments on their behalf whether or not they have mental capacity (or in the case of a child under the age of 16, the local authority is satisfied that the child has sufficient understanding to make an informed decision about consenting to receive a direct payment).

81. Those amendments insert new sections 49A and 53A into the 2014 Act and substitute sections 50, 51 and 52.

82. The new section 49A gives the Welsh Ministers power to make regulations which may require or allow a local authority to make direct payments but only where the relevant conditions specified in sections 50 (direct payments: conditions for payment to meet an adult's needs), 51 (direct payments: conditions for payment to meet a child's needs) or 52 (direct payments: conditions for payment to meet a carer's needs) are met by the person who is entitled to receive care and support under Part 4 of the 2014 Act.

83. Section 20 also inserts new section 53A into Part 4 of the 2014 Act. This replaces existing provision made by section 53(11) which currently provides that regulations made under sections 50 and 51 may enable a local authority to discharge its duty to provide after-care services under section 117 of the Mental Health Act 1983 ("the 1983 Act") by making direct payments, and introduces Schedule A1 (which contains modifications to the existing provision made by sections 50, 51 and 53).

84. Section 20 substitutes Schedule A1. New Schedule A1 sets out in full the conditions which must be met before a local authority may make direct payments in discharge of its duty to provide or secure services for a person entitled to after-care under section 117 of the 1983 Act (rather than by making modifications to the relevant provision in Part 4 of the 2014 Act). The substituted Schedule A1 contains provision that enable a person entitled to receive a direct payment in lieu of receiving after-care to nominate a person to receive the direct payments on their behalf.

Section 21 – Accommodation of children

85. Section 21 amends sections 76 and 81 of the 2014 Act to clarify the scope of references in those sections to "child arrangements orders". The references were inserted as consequential amendments when residence orders (to which these provisions previously referred) were replaced by child arrangements orders (see section 12 and Schedule 2 of the Children and Families Act 2014 (c. 6)). However, child arrangements orders cover a wider range of matters than residence orders, and include contact arrangements for children. The Act therefore amends the references to "child arrangements orders" in sections 76 and 81 of the 2014 Act to clarify that reference to child arrangements orders only relate to those orders which specify the person with whom a child should live.

Section 22 – Social care: minor and consequential amendments

86. Section 22 introduces Schedule 1 which makes minor and consequential amendments in relation to the provisions in Part 1 of the Act, in respect of social care.

87. Paragraph 2(6) of Schedule 1 amends paragraph 1(4) of Schedule 1 to the 2016 Act to make it clear that the provision of accommodation and care to a child by a local authority constitutes a care home service.

PART 2
HEALTH CARE

88. This Part contains provisions that amend the National Health Service (Wales) Act 2006 ["the 2006 Act"] which is the principal legislation governing the operation of the National Health Service (NHS) in Wales. The amendments allow the Welsh Ministers to make direct payments to individuals in lieu of the provision of services by or on behalf of the NHS to meet their needs (or to direct Local Health Boards to make such payments on their behalf using existing powers under the 2006 Act).

89. Direct payments within the context of social care are monetary amounts paid by local authorities in accordance with duties under the 2014 Act to individuals (or their representatives) to enable them to secure services to meet their eligible needs for care and support (or the needs of a carer). These payments are made in lieu of the local authority providing or arranging services to meet those needs and are made under provisions in and by virtue of Part 4 of the 2014 Act.[2]

90. It is intended that the new powers will be used to enable the Welsh Ministers to make direct payments (in appropriate cases) in lieu of the provision of services where an individual is eligible to receive NHS Continuing Health Care ("CHC"). CHC is a package of ongoing care that is arranged and funded solely by the NHS where the individual has been found to have a "primary health need" (as opposed to a need for local authority care and support). Such care is provided to an individual aged 18 or over, to meet needs that have arisen as a result of disability, accident or illness. In such cases, the NHS is responsible for providing for all of that individual's assessed health and social care needs – including accommodation, if that is part of the overall need. Services for persons entitled to CHC can be provided in any setting outside hospital, such as in a person's own home, in a care home or hospice. The 2006 Act does not currently allow direct payments to be made in lieu of services, to those eligible to receive CHC, or otherwise.

91. The Welsh Government's 2021 *Programme for Government* set out a commitment to "improve the interface between continuing health care and direct payments". Accordingly, in 2022 the Welsh Government consulted on the principle of introducing direct payments as an option within CHC. The consultation responses to the proposal conveyed a high level of support for the principle of introducing direct payments for CHC.

Section 23 – Overview of Part 2

92. This section provides an overview of the main provisions of Part 2 of the Act. It summarises the subjects covered in each subsequent section of the Part.

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2 See sections 50 to 53 of the 2014 Act and S.I. 2015/1815 (W. 260).

Section 24 – Direct payments for health care

93. This section inserts new provision into Part 1 of the 2006 Act in order to allow the Welsh Ministers to make direct payments to individuals in lieu of the provision of services to meet their assessed needs under the 2006 Act.

94. The Welsh Ministers have exercised power under section 12 of the 2006 Act to make regulations which direct Local Health Boards (LHBs) to exercise specified functions of the Welsh Ministers under the 2006 Act on their behalf. These powers may be exercised further to direct the LHBs to exercise the Welsh Ministers' power to make direct payments in lieu of the provision of services.

95. Section 10B(6) contains a regulation-making power which, if exercised by the Welsh Ministers, would enable LHBs to make direct payments in discharge of the LHBs' duty to provide after-care services under section 117 of the Mental Health Act 1983.

96. Where the Welsh Ministers use the power in section 10B(1) to make direct payments, they must make arrangements for the provision of information, advice or other support to the patient, their payee or other representative. Similarly, if the Welsh Ministers make regulations under section 10B(6) to enable LHBs to make direct payments in discharge of LHBs' duties under section 117 of the Mental Health Act 1983, the regulations must make provision about information, advice or other support to be provided by LHBs.

97. The amendments also insert section 10C into the 2006 Act, which provides that the Welsh Ministers may make regulations which specify when and how direct payments may be made. Regulations made under this provision may provide that direct payments are to be offered only in specified circumstances, or may prevent such payments being made to specified persons.

98. The amendments also insert section 10D into the 2006 Act, which provides that the Welsh Ministers and LHBs may make arrangements with other organisations to provide assistance with direct payments.

99. Amendments are also made to section 203 of the 2006 Act, the effect of which is that the first set of regulations to be made under section 10B(6) of the 2006 Act will be subject to the draft affirmative procedure in the Senedd.

Section 25 – Direct payments for health care: minor and consequential amendments

100. This section introduces Schedule 2, which makes a number of minor and consequential amendments to other Acts as consequence of the new provision in Part 1 of the 2006 Act in relation to direct payments. The Schedule contains amendments to the Mental Health Act 1983 (c. 20), the Disabled Persons (Services, Consultation and Representation) Act 1986 (c. 33), the 2006 Act, the Safeguarding Vulnerable Groups Act 2006 (c. 47), and the Public Services Ombudsman (Wales) Act 2019 (anaw 3).

Section 26 – Provision of health services by local authorities

101. This section makes amendments to section 47 of the 2014 Act. These address an unintended consequence arising from the drafting of the 2014 Act, in order to incorporate the full statutory test which is intended to determine the limits of the powers of a local authority to provide health care services.

102. Section 47 of the 2014 Act establishes the limit of health services that a local authority may lawfully be expected to provide to meet health care needs. Subsections (1) and (2) contain the exceptions for the provision of health services by local authorities.

103. The "quantity and quality" test, developed by the Court of Appeal as a result of the *Coughlan* case (*R. v. North and East Devon Health Authority, ex parte Coughlan* [1999 EWCA civ 1871], and sometimes referred to as the "*Coughlan test*", determines the limit of the powers of a local authority to provide health care services. It was intended that the provision made by section 47 of the 2014 Act would follow the Law Commission's recommendations in its report into Adult Social Care (The Law Commission (LAW COM No. 326) Adult Social Care), including that the *Coughlan* test should be codified in statute. However, the Social Services and Well-being (Wales) Bill as introduced contained the first limb only of the *Coughlan* test which is now set out in section 47 of the 2014 Act.

104. The amendments made by section 26 therefore insert the second limb of the *Coughlan* test into section 47(1) and (2) of the 2014 Act, in order to give effect to the original policy intent.

PART 3
GENERAL

Section 30 – Short title

105. This section provides that the Act's short title is the Health and Social Care (Wales) Act 2025.

RECORD OF PROCEEDINGS IN SENEDD CYMRU

106. The following table sets out the dates for each stage of the Act's passage through the Senedd. The Record of Proceedings and further information on the passage of this Act can be found on the Senedd website at:
https://business.senedd.wales/mgIssueHistoryHome.aspx?IId=43830

Stage	Date
Introduced	20 May 2024
Stage 1 - Debate	22 October 2024
Stage 2 Scrutiny Committee – consideration of amendments	28 November 2024
Stage 3 Plenary - consideration of amendments	28 January 2025
Stage 4 Approved by the Senedd	4 February 2025
Royal Assent	24 March 2025