

REGULATION AND INSPECTION OF SOCIAL CARE (WALES) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Regulation of Social Care Services

Chapter 6: Sections 56-58 – Local authority social services

102. The 2014 Act imposes statutory duties on local authorities in respect of their social services functions which are listed in Schedule 2 to that Act.

Section 56 - Reports by local authorities and general duty of the Welsh Ministers and Section 57 - reviews, investigations and inspections

103. Section 144 of the 2014 Act imposes a duty on local authorities to appoint a Director of Social Services for the purpose of its social services functions. Section 56 inserts section 144A into the 2014 Act placing a duty on local authorities to prepare and publish an annual report on the exercise of their social services functions.
104. The 2014 Act is the main piece of legislation relating to local authority social services functions (which, as mentioned above, are set out in Schedule 2 to that Act), sections 56 to 58 of this Act therefore insert provisions into the 2014 Act that are concerned with the Welsh Ministers' regulatory powers in respect of those functions.
105. Inserted section 149A provides a power to Welsh Ministers to review studies and research undertaken by others in relation to the exercise of the social services functions of local authorities in Wales. This could include a study undertaken by SCW pursuant to section 70 of the Act.
106. Inserted section 149B provides the Welsh Ministers with a power to review the exercise of local authority social services functions including the commissioning of services by local authorities in connection with the exercise of those services functions. For example, as a result of the duties under the 2014 Act to meet the needs of people who require care and support a local authority will be obliged to (among other things) have in place domiciliary support services. Local authorities can provide those services directly but they may also commission such services. If the Welsh Ministers decide to review a particular local authority with regard to the provision of domiciliary support then Welsh Ministers must have regard to the matters set out in section 149D – this includes the quality and effectiveness of the service (section 149D(b)) and the effectiveness of the service in achieving well being outcomes (section 149D(h)).
107. Part 8 of the 2014 Act (specifically sections 150 to 161) provide powers of intervention by central government in respect of the exercise by a local authority of its social services functions. Section 57(2) substitutes section 161 and inserts alternative provision in respect of powers of entry and inspection. Further, a duty is imposed upon Welsh Ministers by inserted section 161A to prepare and publish a code of practice. Section 161B provides a power to require information and section 161C establishes some

offences. The inserted provisions are broadly equivalent to the Welsh Minister's powers in respect of private service providers in Chapter 3 of the Act with some exceptions that are not relevant in the context.

Section 58 - Regulation of local authority functions relating to looked after and accommodated children

108. Part 6 of the 2014 Act makes provision in relation to looked after and accommodated children and there are a number of regulation making powers provided to the Welsh Ministers to make provision about the exercise of those functions.
109. Those functions under Part 6 are therefore to be regulated under new sections 94A and 94B inserted into the 2014 Act by section 58. Section 94A states that regulations can make provision for the regulation of local authority functions in relation to looked after and accommodated children and section 94B provides for regulations to specify that breaches of regulations under section 94A may be an offence. As with offences relating to breaches of requirements under Part 1 of the Act (see sections 44, 45 and 51) an offence under section 94B of the 2014 Act is an either way offence punishable by a maximum of 2 years in prison, an unlimited fine or both. This replaces the provisions about regulation of "relevant fostering functions" in Part 3 of the 2000 Act that are no longer applicable in relation to Wales (see the amendments made to the 2000 Act by Schedule 3 to this Act).