



# Health and Social Care (Quality and Engagement) (Wales) Act 2020

2020 asc 1

## PART 1

### OVERVIEW

#### 1 Overview of this Act

In this Act—

- (a) Part 2 imposes requirements in respect of improvement in the quality of health services;
- (b) Part 3 makes provision for and about a duty of candour in respect of health services;
- (c) Part 4 establishes, and makes provision about the functions of, the Citizen Voice Body for Health and Social Care, Wales;
- (d) Part 5 makes provision about the constitution of NHS trusts; for minor and consequential amendments to other legislation; and contains supplementary provision about this Act (including about the procedure for making regulations under the Act).

## PART 2

### IMPROVEMENT IN HEALTH SERVICES

#### 2 Quality in the provision of health services

- (1) The 2006 Act is amended as follows.
- (2) In Part 1 (promotion and provision of the health service in Wales), after section 1 (Welsh Ministers' duty to promote health services) insert—

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### **“1A Welsh Ministers’ duty to secure quality in health services**

- (1) The Welsh Ministers must exercise their functions in relation to the health service with a view to securing improvement in the quality of health services.
  - (2) For the purposes of this section—
    - “health services” means any services provided or secured in accordance with this Act;
    - “quality” includes, but is not limited to, quality in terms of—
      - (a) the effectiveness of health services,
      - (b) the safety of health services, and
      - (c) the experience of individuals to whom health services are provided.
  - (3) The Welsh Ministers must publish an annual report on the steps they have taken to comply with the duty in subsection (1).
  - (4) The report must include an assessment of the extent of any improvement in outcomes achieved by virtue of those steps.
  - (5) The Welsh Ministers must lay a copy of the report before the National Assembly for Wales.”
- (3) In Chapter 1 of Part 2 (health service bodies: Local Health Boards), after section 12 (functions of Local Health Boards) insert—

### **“12A Local Health Boards’ duty to secure quality in health services**

- (1) Each Local Health Board must exercise its functions with a view to securing improvement in the quality of health services.
- (2) For the purposes of this section—
  - “health services” means any services provided or secured in accordance with this Act;
  - “quality” includes, but is not limited to, quality in terms of—
    - (a) the effectiveness of health services,
    - (b) the safety of health services, and
    - (c) the experience of individuals to whom health services are provided.
- (3) Each Local Health Board must publish an annual report on the steps it has taken to comply with the duty in subsection (1).
- (4) The report must include an assessment of the extent of any improvement in outcomes achieved by virtue of those steps.
- (5) The Welsh Ministers must issue guidance to Local Health Boards in relation to the requirements imposed by subsections (1) and (3).
- (6) The guidance must, in particular, include guidance about—
  - (a) the evidence to be used in support of an assessment required by this section, and
  - (b) the conduct of such an assessment.

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- (7) Each Local Health Board must have regard to guidance issued under subsection (5).”
- (4) In Chapter 2 of Part 2 (health service bodies: NHS trusts), after section 20 (general duty of NHS trusts) insert—

**“20A Duty of NHS trusts to secure quality in health services**

- (1) Each NHS trust must exercise its functions with a view to securing improvement in the quality of health services.
- (2) For the purposes of this section—
- “health services” means any services provided or secured in accordance with this Act;
- “quality” includes, but is not limited to, quality in terms of—
- (a) the effectiveness of health services,
- (b) the safety of health services, and
- (c) the experience of individuals to whom health services are provided.
- (3) Each NHS trust must publish an annual report on the steps it has taken to comply with the duty in subsection (1).
- (4) The report must include an assessment of the extent of any improvement in outcomes achieved by virtue of those steps.
- (5) The Welsh Ministers must issue guidance to NHS trusts in relation to the requirements imposed by subsections (1) and (3).
- (6) The guidance must, in particular, include guidance about—
- (a) the evidence to be used in support of an assessment required by this section, and
- (b) the conduct of such an assessment.
- (7) Each NHS trust must have regard to guidance issued under subsection (5).”
- (5) In Chapter 3 of Part 2 (health service bodies: Special Health Authorities), after section 24 (exercise of health service functions by Special Health Authorities) insert—

**“24A Duty of Special Health Authorities to secure quality in health services**

- (1) Each Special Health Authority must exercise its functions with a view to securing improvement in the quality of health services.
- (2) For the purposes of this section—
- “health services” means any services provided or secured in accordance with this Act;
- “quality” includes, but is not limited to, quality in terms of—
- (a) the effectiveness of health services,
- (b) the safety of health services, and
- (c) the experience of individuals to whom health services are provided.

- (3) Each Special Health Authority must publish an annual report on the steps it has taken to comply with the duty in subsection (1).
- (4) The report must include an assessment of the extent of any improvement in outcomes achieved by virtue of those steps.
- (5) The Welsh Ministers must issue guidance to Special Health Authorities in relation to the requirements imposed by subsections (1) and (3).
- (6) The guidance must, in particular, include guidance about—
  - (a) the evidence to be used in support of an assessment required by this section, and
  - (b) the conduct of such an assessment.
- (7) Each Special Health Authority must have regard to guidance issued under subsection (5).
- (8) This section does not apply in relation to a cross-border Special Health Authority (within the meaning of section 8A(5)).”

### **PART 3**

#### DUTY OF CANDOUR

##### *Application of the duty*

### **3 When the duty of candour applies**

- (1) The duty of candour comes into effect in relation to an NHS body if it appears to the body that both of the following conditions are met.
- (2) The first condition is that a person (the “service user”) to whom health care is being or has been provided by the body has suffered an adverse outcome.
- (3) The second condition is that the provision of the health care was or may have been a factor in the service user suffering that outcome.
- (4) For the purpose of the first condition a service user is to be treated as having suffered an adverse outcome if the user experiences, or if the circumstances are such that the user could experience, any unexpected or unintended harm that is more than minimal.

##### *Procedural and other requirements*

### **4 Duty of candour procedure**

- (1) Regulations must provide for a procedure (the “candour procedure”) to be followed by an NHS body in relation to which the duty of candour has come into effect.
- (2) The regulations must require an NHS body, as part of the candour procedure—
  - (a) on first becoming aware that the duty of candour has come into effect, to give notification of this in accordance with the regulations to the service user concerned or someone acting on the service user’s behalf;

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- (b) to notify a person mentioned in paragraph (a), in accordance with the regulations, of—
  - (i) the identity of a person who has been nominated by the body as a point of contact for the service user in respect of the candour procedure;
  - (ii) any further enquiries carried out by the body in respect of the circumstances in which the duty of candour came into effect.
- (3) The regulations must also make provision—
  - (a) for an apology to be offered by the body;
  - (b) in connection with the provision of support to a service user given notification under subsection (2)(a);
  - (c) about record-keeping.
- (4) The regulations may make any other provision in respect of the candour procedure that the Welsh Ministers consider appropriate.

## **5 Primary care providers: duty to prepare report**

- (1) As soon as practicable after the end of each financial year, a primary care provider must prepare a report under this section.
- (2) The report must state whether, during the reporting year, the duty of candour has come into effect in respect of the provision of health care by the primary care provider.
- (3) If the duty of candour has come into effect during the reporting year, the report must—
  - (a) specify how often this has happened during the reporting year,
  - (b) give a brief description of the circumstances in which the duty came into effect, and
  - (c) describe any steps taken by the provider with a view to preventing similar circumstances from arising in future.
- (4) If during the same financial year the primary care provider has provided health care on behalf of two or more Local Health Boards, a separate report is to be prepared under this section in respect of each of those bodies.
- (5) In this section and sections 6 to 8—
  - (a) references to a financial year are to each period of 12 months ending on 31 March;
  - (b) references to a reporting year, in relation to a report, are to the financial year to which the report relates.

## **6 Supply and summary of report under section 5**

- (1) A primary care provider that has prepared a report under section 5 in respect of the provision of health care on behalf of a Local Health Board must, as soon as practicable after the end of the reporting year, supply the report to that Local Health Board.
- (2) A Local Health Board to which reports have been supplied under subsection (1) must, as soon as practicable after the end of the reporting year prepare a summary of those reports.
- (3) The summary must—

- (a) specify how often, during the reporting year, the duty of candour has come into effect in respect of health care provided on behalf of the Local Health Board by a primary care provider,
- (b) give a brief description of the circumstances in which the duty came into effect, and
- (c) describe any steps taken by the primary care provider with a view to preventing similar circumstances from arising in future.

## **7 Local Health Board, NHS trust and Special Health Authority: reporting requirements**

- (1) As soon as practicable after the end of each financial year, a Local Health Board, NHS trust or Special Health Authority must prepare a report under this section.
- (2) The report must state whether, during the reporting year, the duty of candour has come into effect in respect of the provision of health care by the body.
- (3) If the duty of candour has come into effect during the reporting year, the report must—
  - (a) specify how often this has happened during the reporting year,
  - (b) give a brief description of the circumstances in which the duty came into effect, and
  - (c) describe any steps taken by the body with a view to preventing similar circumstances from arising in future.

## **8 Publication of section 6 summary and section 7 report**

- (1) An NHS body to which section 7 applies must publish the report prepared by it under that section as soon as practicable after the end of the reporting year.
- (2) In the case of an NHS body that is a Local Health Board, the report must include the summary prepared by it under section 6.

## **9 Confidentiality**

- (1) A report published by an NHS body under section 8 must not name—
  - (a) anyone to whom health care is being or has been provided by or on behalf of the NHS body;
  - (b) anyone acting on behalf of a person within paragraph (a).
- (2) In determining what information to include in a report under section 8, an NHS body must have regard to the need to avoid providing information that, while not naming an individual, is in the circumstances likely to enable the identification of that individual.

## **10 Guidance given by the Welsh Ministers**

In exercising functions under or by virtue of this Part, an NHS body must have regard to any guidance issued by the Welsh Ministers.

## **11 Interpretation of “health care” and other terms**

- (1) A reference in this Part to health care is to services provided in Wales under or by virtue of the 2006 Act for or in connection with—

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- (a) the prevention, diagnosis or treatment of illness;
  - (b) the promotion and protection of public health.
- (2) In subsection (1), “illness” has the meaning given in section 206 of the 2006 Act.
- (3) A reference in this Part to an NHS body is to—
- (a) a Local Health Board;
  - (b) an NHS trust;
  - (c) a Special Health Authority;
  - (d) a primary care provider.
- (4) A person is a primary care provider, for the purposes of this Part, in so far as (and only in so far as) the person provides health care on behalf of a Local Health Board by virtue of a contract, agreement or arrangement under Part 4, 5, 6 or 7 of the 2006 Act between the person and the Local Health Board.
- (5) Health care provided by one NHS body (the “providing body”) on behalf of another NHS body (“the arranging NHS body”), by virtue of a contract, agreement or arrangement made under the 2006 Act between the providing body and the arranging body, is to be treated for the purposes of this Part as being provided by the providing body, not the arranging body.
- (6) Health care provided by a person other than an NHS body (the “provider”), on behalf of an NHS body, whether by virtue of a contract, agreement or arrangement made under the 2006 Act or otherwise, is to be treated for the purposes of this Part as being provided by the NHS body, not the provider.
- (7) In this Part—
- “candour procedure” (“*gweithdrefn gonestrwydd*”) has the meaning given by section 4(1);
  - “harm” (“*niwed*”) includes psychological harm, and in the case of a service user who is pregnant, loss of or harm to the unborn child;
  - “service user” (“*defnyddiwr gwasanaeth*”) has the meaning given by section 3(2);
  - “Special Health Authority” (“*Awdurdod Iechyd Arbennig*”) means a body established under section 22 of the 2006 Act; but does not include any cross-border Special Health Authority (within the meaning of section 8A(5) of the 2006 Act) other than NHS Blood and Transplant.

## PART 4

### THE CITIZEN VOICE BODY FOR HEALTH AND SOCIAL CARE

#### *Establishment and general objective etc. of Citizen Voice Body*

## 12 Establishment of Citizen Voice Body

- (1) The Citizen Voice Body for Health and Social Care, Wales (referred to in this Part as “the Citizen Voice Body”) is established as a body corporate.
- (2) Schedule 1 makes provision about the Citizen Voice Body’s constitution and related matters.

### **13 General objective**

- (1) The Citizen Voice Body's general objective, in exercising its functions, is to represent the interests of the public in respect of health services and social services.
- (2) For the purposes of achieving that objective, the Citizen Voice Body must seek the views of the public, in whatever way it thinks appropriate, in respect of health services and social services.
- (3) In making arrangements to comply with subsection (2), the Citizen Voice Body must in particular have regard to the importance of ensuring, where appropriate, face-to-face engagement between its staff, or any other persons acting on its behalf, and any individuals from whom views are being sought.

### **14 Public awareness and statement of policy**

- (1) The Citizen Voice Body must take steps to promote public awareness of its general objective and of its functions.
- (2) The Citizen Voice Body must prepare and publish a statement of its policy setting out how it proposes to—
  - (a) promote awareness of its functions, and
  - (b) seek the views of the public for the purposes of its general objective.
- (3) The statement of policy must in particular specify how, in exercising its functions, the Citizen Voice Body proposes to ensure that—
  - (a) the Body represents the interests of people in all parts of Wales,
  - (b) the Body is accessible to people throughout Wales, and
  - (c) members of the Body's staff and any other persons acting on the Body's behalf are able to engage effectively with people throughout Wales.

#### *Making representations*

### **15 Representations to public bodies**

- (1) The Citizen Voice Body may make representations to a person mentioned in subsection (2) about anything it considers relevant to the provision of a health service or the provision of social services.
- (2) The persons are—
  - (a) a local authority;
  - (b) an NHS body.
- (3) A person to whom representations under subsection (1) are made must have regard to the representations in exercising any function to which the representations relate.
- (4) The Welsh Ministers must issue guidance to the persons mentioned in subsection (2), in relation to representations made under this section.
- (5) Those persons must have regard to the guidance.



## **16 Advocacy services etc. in respect of complaints about services**

- (1) The Citizen Voice Body may provide assistance (by way of representation or otherwise) to any individual making, or intending to make a complaint to which any of the following subsections applies.
- (2) This subsection applies to any complaint in respect of which, by virtue of section 187 of the 2006 Act, the Welsh Ministers are required to arrange for the provision of independent advocacy services.
- (3) This subsection applies to any complaint under regulations under section 171 of the 2014 Act (complaints about social services).
- (4) This subsection applies to any complaint to a service provider in respect of a regulated service (within the meaning of the [Regulation and Inspection of Social Care \(Wales\) Act 2016 \(anaw 2\)](#)).
- (5) This subsection applies to any complaint to the Public Services Ombudsman for Wales which relates to—
  - (a) a local authority’s social services functions;
  - (b) a matter to which, by virtue of section 42(1)(a) and (b) of the [Public Services Ombudsman \(Wales\) Act 2019 \(anaw 3\)](#), Part 5 of that Act applies (investigations by Ombudsman in relation to action taken by care home providers or domiciliary care providers).
- (6) The Citizen Voice Body may also provide assistance (by way of representation or otherwise) to an individual making, or intending to make a complaint capable of being considered as representations under section 174 of the 2014 Act (representations relating to certain children etc.); but this is subject to subsection (7).
- (7) The Citizen Voice Body may not provide assistance under subsection (6) to an individual if the individual is eligible for assistance in relation to the complaint by virtue of arrangements made under section 178(1)(a) of the 2014 Act (duty of local authorities to arrange assistance for children in respect of representations falling within section 174 of the 2014 Act).
- (8) In exercising its functions under this section, the Citizen Voice Body must have regard to the importance of ensuring, where appropriate, face-to-face engagement between its staff, or any other persons acting on its behalf, and any individuals to whom any assistance under this section is being or may be provided.
- (9) In this section, “2014 Act” means the [Social Services and Well-being \(Wales\) Act 2014 \(anaw 4\)](#).

### *Duties imposed on certain public bodies in respect of Citizen Voice Body*

## **17 Duty to promote awareness of activities of Citizen Voice Body**

- (1) A person mentioned in subsection (2) must make arrangements to bring the activities of the Citizen Voice Body to the attention of people who are receiving, or may receive, health services or social services provided by or on behalf of the person.
- (2) The persons are—
  - (a) a local authority;
  - (b) an NHS body.

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## **18 Duty to supply information to Citizen Voice Body**

- (1) A person mentioned in subsection (2) must supply the Citizen Voice Body with such information as the Citizen Voice Body reasonably requests for the purpose of carrying out its functions.
- (2) The persons are—
  - (a) a local authority;
  - (b) an NHS body.
- (3) Nothing in this section requires or permits any disclosure of information which is prohibited by any enactment or other rule of law.
- (4) A person who refuses to disclose information in response to a request made under subsection (1) must give the Citizen Voice Body its reasons in writing for not disclosing the information.

*Access to premises by Citizen Voice Body: duty to have regard to code of practice*

## **19 Code of practice on access to premises**

- (1) The Welsh Ministers must prepare and publish a code of practice about—
  - (a) requests made by the Citizen Voice Body for access to premises for the purpose of seeking the views of individuals in respect of health services or social services, and
  - (b) where access to those premises has been agreed, engagement with individuals at those premises for that purpose.
- (2) “Premises” in subsection (1) means any premises at which health services or social services are being provided.
- (3) The Citizen Voice Body must have regard to the code.
- (4) Each local authority and NHS body must have regard to the code (so far as the code is relevant) in exercising any function that relates to the provision of health services or social services.
- (5) In preparing the code the Welsh Ministers must consult—
  - (a) the Citizen Voice Body;
  - (b) each local authority;
  - (c) each NHS body;
  - (d) such other persons as the Welsh Ministers consider appropriate.

*Co-operation in the exercise of functions*

## **20 Co-operation between the Body, local authorities and NHS bodies**

- (1) The Citizen Voice Body, local authorities and NHS bodies must make arrangements to co-operate with a view to supporting each other in the exercise of their relevant functions.
- (2) For the purposes of subsection (1) “relevant functions”—
  - (a) in relation to the Body, means its functions under sections 13(2) and 14(1);

- (b) in relation to local authorities and NHS bodies, means their functions under section 17(1).

#### *Interpretation of this Part*

### **21 Meaning of “health services” and “social services”**

- (1) References in this Part to health services are to services provided (whether in Wales or elsewhere) under or by virtue of the 2006 Act, for or in connection with—
  - (a) the prevention, diagnosis or treatment of illness;
  - (b) the promotion and protection of public health.
- (2) In subsection (1), “illness” has the meaning given in section 206 of the 2006 Act.
- (3) References in this Part to social services are to services provided in the exercise of a local authority’s social services functions.
- (4) In subsection (3), “social services functions”, in relation to a local authority, has the same meaning as it has for the purposes of the [Social Services and Well-being \(Wales\) Act 2014 \(anaw 4\)](#) (see, in particular, section 143 of that Act).

### **22 Meaning of other terms**

In this Part—

“local authority” (“*awdurdod lleol*”) means a council for a county or county borough in Wales;

“NHS body” (“*corff GIG*”) means—

- (a) a Local Health Board;
- (b) an NHS trust;
- (c) a Special Health Authority;

“Special Health Authority” (“*Awdurdod Iechyd Arbennig*”) means a body established under section 22 of the 2006 Act; but does not include any cross-border Special Health Authority (within the meaning of section 8A(5) of the 2006 Act).

#### *Abolition of Community Health Councils etc.*

### **23 Abolition of Community Health Councils, and connected matters**

- (1) Section 182 of the 2006 Act, which provides for the continuance or establishment of Community Health Councils for areas in Wales, is repealed, and those Community Health Councils are abolished.
- (2) Schedule 10 to the 2006 Act, which makes further provision about Community Health Councils, is also repealed.
- (3) Schedule 2 makes provision relating to the transfer of property, rights and liabilities, in connection with the abolition of Community Health Councils.

## PART 5

### MISCELLANEOUS AND GENERAL

#### *Constitution of NHS trusts*

#### **24 Vice-chairs of boards of directors of NHS trusts**

- (1) Part 1 of Schedule 3 to the 2006 Act (constitution, establishment etc. of NHS trusts) is amended as follows.
- (2) In paragraph 3 (board of directors)—
  - (a) after sub-paragraph (1)(a) insert—
    - “(aa) if the Welsh Ministers consider it appropriate, a vice-chair appointed by them, and”, and
  - (b) omit “and” at the end of sub-paragraph (1)(a).
- (3) In paragraph 4 (regulations relating to the appointment etc. of the board of directors), in sub-paragraph (1)(a), after “chairman” insert “, the vice-chair”.
- (4) In paragraph 11 (pay and allowances of chairman and non-executive directors)—
  - (a) in sub-paragraph (1)(a), after “chairman” insert “, the vice-chair (if any)”, and
  - (b) in sub-paragraph (1)(b), after “chairman” insert “, the vice-chair (if any)”.

#### *General*

#### **25 Regulations**

- (1) A power to make regulations under this Act is to be exercised by statutory instrument.
- (2) A power to make regulations under this Act includes power to make different provision for different purposes.
- (3) A statutory instrument containing regulations under section 28 that amends or repeals any enactment contained in primary legislation may not be made unless a draft of the instrument has been laid before, and approved by resolution of, the National Assembly for Wales.
- (4) A statutory instrument containing regulations made under any other provision of this Act is subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (5) In subsection (3), “primary legislation” means—
  - (a) an Act or Measure of the National Assembly for Wales;
  - (b) an Act of Parliament.

#### **26 Interpretation**

In this Act—

“the 2006 Act” (“*Deddf 2006*”) means the [National Health Service \(Wales\) Act 2006 \(c. 42\)](#);

“Local Health Board” (“*Bwrdd Iechyd Lleol*”) means a body established under section 11 of the 2006 Act;

“NHS trust” (“*ymddiriedolaeth GIG*”) means a body established under section 18 of the 2006 Act;

“regulations” (“*rheoliadau*”) means regulations made by the Welsh Ministers.

## **27 Minor and consequential amendments**

Schedule 3 contains minor and consequential amendments.

## **28 Power to make transitional etc. provision**

- (1) Regulations may, if the Welsh Ministers consider it necessary or appropriate for the purposes of this Act, make—
  - (a) supplementary, incidental or consequential provision;
  - (b) transitory, transitional or saving provision.
- (2) Regulations under this section may amend, repeal or revoke any enactment.
- (3) “Enactment” means a provision contained in any of the following, whenever enacted or made—
  - (a) an Act or Measure of the National Assembly for Wales;
  - (b) an Act of Parliament;
  - (c) subordinate legislation made under an Act or Measure referred to in paragraph (a) or (b).

## **29 Coming into force**

- (1) This section and section 30 come into force on the day after the day this Act receives Royal Assent.
- (2) The other provisions of this Act come into force on a day appointed by the Welsh Ministers in an order made by statutory instrument.
- (3) An order under subsection (2) may—
  - (a) make different provision for different purposes;
  - (b) make transitional, transitory or saving provision.

## **30 Short title**

The short title of this Act is the Health and Social Care (Quality and Engagement) (Wales) Act 2020.