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Assembly

Research and Information Service Bill Paper

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Health and Personal Social Services (Amendment) Bill

NIAR 684-15

This paper summarises the Health and Personal Social Services (Amendment) Bill and provides some analysis of the provisions of the Bill.

Executive Summary

The Health and Personal Social Services (Amendment) Bill was introduced in the Northern Ireland Assembly on 23 November 2015. The purpose of the Bill is to make amendments to the Health and Personal Social Services Act (Northern Ireland) 2001 to:

- give the Northern Ireland Social Care Council (NISCC) greater flexibility and range of sanctions for regulation of the social work and social care workforce in Northern Ireland; and
- increase the scope for the NISCC to confer awards in recognition of achievement of standards of proficiency by social workers in Northern Ireland

Proposals for the provisions of the Bill were contained in two consultations:

1. In June 2012, to:
 - a. Introduce a 'fitness to practise' model
 - b. Introduce a sanction of 'warning'
2. In November 2012, to give the NISCC powers to accredit a greater range of learning models

The substantive clauses of the Bill are as follows:

Clause 1: Additional powers in respect of registered persons. These empower the NISCC to apply the additional sanctions of conditions, warnings or advice in disciplinary hearings.

Clause 2: Powers to obtain and disclose information. These require individuals to provide information and permit to the NISCC to publish information relating to a person's fitness to practise.

Clause 3: Social workers and social care worker to be registered in the Northern Ireland register. Currently, workers registered with other relevant regulatory bodies are not required to do so.

Clause 4: Recognition of attainment of standards by social workers. The NISCC can hereby bestow accreditation on learning processes other than formal education and training.

Clause 5: Appeals to the Care Tribunal. This extends the provisions of Clause 1 to the Tribunal.

A number of concerns for consideration have emerged in relation to the Bill. These can be summarised as follows:

It is intended that the whole Northern Ireland social care workforce is to be registered. There are concerns that this may place an additional burden on individuals and employers.

Assurances have been sought of the speed and efficiency with which the proposed disciplinary processes will be undertaken.

The provisions are intended as part of a move from a 'conduct' model to a 'fitness to practise' model, in line with developments in other jurisdictions. It is unclear as to the extent to which this legislation achieves this.

The NISCC agrees fees with providers for accredited learning processes. There are questions as to the extent of financial burden for workers on lower pay to be required to pay fees.

North-south mobility of social work professionals is impaired by the different policy and legislative frameworks in Northern Ireland and the Republic of Ireland, as well as differing standards in qualifications. There may be opportunities to increase north-south co-operation in this area.

The NISCC already publishes information on conduct hearings and the issue of warnings is already practised.

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1 Introduction

The Health and Personal Social Services (Amendment) Bill was introduced in the Northern Ireland Assembly on 23 November 2015¹. The purpose of the Bill is to make amendments to the Health and Personal Social Services Act (Northern Ireland) 2001² to³:

- give the Northern Ireland Social Care Council (NISCC) greater flexibility and range of sanctions for regulation of the social care workforce in Northern Ireland; and
- increase the scope for the NISCC to confer awards in recognition of achievement of standards of proficiency by social workers in Northern Ireland

The Bill Paper:

- Provides background to the Bill
- Summarises the provisions of the Bill
- Provides some analysis of the potential impact of the provisions of the Bill

In this paper, the term ‘social worker’ is taken to be a person with a recognised social work qualification⁴. ‘Social care worker’ is taken as a worker in a social care setting. The term ‘social care workforce’ as used in this paper encompasses both of these descriptions⁵.

¹ Health and Personal Social Services (Amendment) Bill: <http://www.niassembly.gov.uk/assembly-business/legislation/primary-legislation-current-bills/health-and-personal-social-services-amendment-bill/>.

² Health and Personal Social Services Act (Northern Ireland) 2001: <http://www.legislation.gov.uk/nia/2001/3/contents>.

³ Health and Personal Social Services (Amendment) Bill Explanatory and Financial Memorandum (EFM), p.1: <http://www.niassembly.gov.uk/globalassets/documents/legislation/bills/executive-bills/session-2015-2016/health-and-personal-social-services-amendment-bill/hpss-amendment-efm---as-introduced.pdf>.

⁴ ‘Social Workers’, NISCC website, accessed 14 December 2015.

⁵ See Section 2, Health and Personal Social Services Act (Northern Ireland) 2001.

2 Background to the Bill

In 2011 the UK Government issued a Command Paper, *Enabling Excellence*, which outlined proposed changes to the regulation of health and social care professionals. The Paper identified a need to reduce the costs of regulation and to reduce duplication⁶. In 2014 the Law Commission, the Scottish Law Commission and the Northern Ireland Law Commission published a joint report on the regulation of health and social care⁷. Government responded in January 2015, accepting most of the recommendations⁸.

The regulation of social care professionals is devolved in Northern Ireland and the reports above refer to social care regulation in England only, but changes to regulation in Northern Ireland are influenced by broader changes in the health regulatory framework across the UK.

The Northern Ireland Social Care Council (NISCC)⁹ was established by the Health and Personal Social Services Act (Northern Ireland) 2001¹⁰. The functions of the NISCC are provided for in Section 1(2) of the 2001 Act:

- (2) It shall be the duty of the Council to promote—
- (a) high standards of conduct and practice among social care workers; and
 - (b) high standards in their training

These functions are described as follows¹¹:

Northern Ireland Social Care Council (NISCC) is the regulatory body for the social care workforce in Northern Ireland. Our role is to register social care workers; to set standards for their training & practice and to support professional development across the workforce.

⁶ HM Government (2011), *Enabling Excellence: Autonomy and Accountability for Healthcare Workers, Social Workers and Social Care Workers*, London: HM Government:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/216580/dh_124374.pdf.

⁷ Law Commission, the Scottish Law Commission and the Northern Ireland Law Commission (2014), *Regulation of Health Care Professionals, Regulation of Social Care Professionals in England*, London: Law Commission:

http://www.lawcom.gov.uk/wp-content/uploads/2015/03/lc345_regulation_of_healthcare_professionals.pdf.

⁸ Department of Health (2015), *Regulation of Health Care Professionals, Regulation of Social Care Professionals in England: The Government's response to Law Commission report 345, Scottish Law Commission report 237 and Northern Ireland Law Commission report 18*, London: Department of Health:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/399020/Response_Cm_8995.pdf.

(2014) Cm 8839 SG/2014/26

⁹ Northern Ireland Social Care Council website: <http://www.niscc.info/>.

¹⁰ For a background to the NISCC, see Research and Library Research Publication 02/00 *Regulation of Social Care Workers* November 2000: http://archive.niassembly.gov.uk/research_papers/research/0200.pdf.

¹¹ 'About us', NISCC website, accessed 30 November 2015: <http://www.niscc.info/index.php/about-us>.

Consultations

In June 2012, the NISCC and the Department of Health, Social Services and Public Safety (DHSSPS) published a consultation on the regulatory system for social care workers. This proposed the following changes¹²:

Proposal 1: to introduce a 'Fitness to Practise' model of regulation

It is proposed that the NISCC should introduce a 'Fitness to Practise' model of regulation similar to other workforce regulators. We believe that this will enable the NISCC to better protect the public, through the explicit consideration of a registrant's future fitness to practise, in relation to misconduct, ill health or incompetence. We propose to seek an amendment to the HPSS (NI) Act 2001.

We also propose to seek an amendment to the HPSS Act (NI) 2001, to provide the NISCC with the power to apply conditions on a registrant's practice. This would allow a more proportionate response to concerns raised about a registrant's fitness to practise.

Proposal 2: to introduce a sanction of a 'Warning'

The Council for Healthcare Regulatory Excellence (CHRE) has recommended that workforce regulators in health should harmonise the terminology used about sanctions, to aid greater public understanding. They recommend that Regulators should use the term 'warning' (instead of admonishment). We would concur with this suggestion and would seek to make this change.

Ninety responses were received for this consultation, 87% of which were reported to be supportive of the proposals¹³.

In November 2012, a further consultation was published with proposals to give the NISCC powers to recognise learning achieved through continuous professional development. Thirty eight responses were received for this consultation and there was a high level of support received for these proposals¹⁴.

Fitness to Practise

Social workers, social care workers and social work students register online with the NISCC¹⁵ (for a fee¹⁶) and this process requires applicants to commit to abide by the NISCC's Code of Practice¹⁷ and to undertake 90 hours of training and learning. The

¹² NISCC and DHSSPS (2012), *Consultation Document: Proposals to Reform the NISCC Model of Regulation*, Belfast: NISCC and DHSSPS, p.2.

¹³ Committee for Health, Social Services and Public Safety, Health and Personal Social Services (Amendment) Bill: Departmental Briefing, Official Report, 23 September 2015: <http://data.niassembly.gov.uk/HansardXml/committee-15008.pdf>.

¹⁴ Ibid.

¹⁵ 'Registration Explained', NISCC website, accessed 30 November 2015: <http://www.niscc.info/index.php/employers/workforce-registration/registration-explained>.

¹⁶ As at 30 November 2015: social care worker £25; social care manager £55; social worker £55; social work student £20.

¹⁷ Northern Ireland Social Care Council (2002), *Codes of Practice for Social Care Workers and Employers of Social Care*

NISCC investigates complaints reported regarding breaches of the Code of Practice and can apply sanctions where these are upheld. The sanctions that can be applied are as follows¹⁸:

- Admonishment (warning) placed on the registrant's registration record for five years
- Suspension (from the Register) for a period up to two years
- Removal from the Register

In the year ending 31 March 2015, there were 22,853 registrants on the Register. Sanctions applied during that year were as follows¹⁹:

- 14 registrants were admonished
- 5 registrants were suspended from the Register
- 22 registrants were removed from the Register
- 2 registrants had their cases adjourned and will be concluded in 2015/2016

The NISCC carries out quality assurance checks on all approved social work education/training in Northern Ireland to ensure that it is consistent with requirements. This is regulated through a Quality Assurance Framework²⁰.

In line with developments elsewhere in the UK and Ireland, the NISCC has been moving to a 'fitness to practise' model²¹. 'Fitness to practise' has been described as follows²²:

When we say that someone is 'fit to practise' we mean that they have the skills, knowledge and character needed to practise their profession safely and effectively. However, fitness to practise is not just about professional performance. It also includes acts by a registrant which may affect public protection, or confidence in the profession or the regulatory process. This may include matters not directly related to professional practice.

Workers, Belfast: NISCC:

http://www.niscc.info/files/Codes/2002Sep_NISCCCodesOfPracticeWordVersionEnglish_Publication_Approved_AFMCK.pdf.

¹⁸ 'Conduct Hearings and Decisions', NISCC website, accessed 30 November 2015:

<http://www.niscc.info/index.php/employers/conduct-workforce-regulation/conduct-hearings-decisions>.

¹⁹ NISCC (2015), *Annual Report and Accounts of the Northern Ireland Social Care Council 2014/15*, Belfast: NISCC, pp.20, 22:

http://www.niscc.info/files/About%20Us/2015%20documents/20151105_Web_NISCC_Annual_Report2014-15_Job91738.pdf.

²⁰ NISCC (2012), *Quality Assurance Framework for Education and Training Regulated by the Northern Ireland Social Care Council*, Belfast: NISCC:

http://www.niscc.info/files/Regulating%20Training/Quality_Assurance_Framework_document_Revised_January_2012.pdf.

²¹ Standards of Conduct and Practice, NISCC website, accessed 2 December 2015: <http://www.niscc.info/index.php/standards-of-conduct-and-practice-draft>.

²² Health and Care Professions Council (2015), *The Fitness to Practise Process*, London: HCPC, p.1: http://www.hpc-uk.org/assets/documents/10001FC8TheFTPprocess_cfw.pdf.

This is the approach of the Health and Care Professions Council in England²³; similar changes were made in Wales²⁴ and the Republic of Ireland²⁵ in 2014; and in Scotland change is planned for 2016²⁶.

The next section looks at the Bill in detail and considers how the provisions compare across the UK and the Republic of Ireland.

²³ HCPC (2015), *Fitness to Practise: What does it mean?*, London: HCPC: <http://www.hcpc-uk.org/assets/documents/10004B32FitnessstoPractise.whatdoesitmean.pdf>.

²⁴ CCW (2014), *The Care Council for Wales (Fitness to Practise) Rules 2014*, Cardiff: CCW, p.11.

²⁵ CORU (2015), *Guide to Fitness to Practise*, Dublin: CORU, p.3: [http://coru.ie/uploads/documents/FTP1 -
Guide to Fitness to Practise Final.pdf](http://coru.ie/uploads/documents/FTP1-_Guide_to_Fitness_to_Practise_Final.pdf).

²⁶ SSSC (2015), *Codes of Practice and Fitness to Practise Consultation*, Dundee: SSSC, pp.18-33: <http://www.sssc.uk.com/about-the-sssc/multimedia-library/publications/codes-of-practice-and-fitness-to-practise-consultation-november-2015/download>.

3 Provisions of the Health and Personal Social Services (Amendment) Bill

This section summarises the substantive clauses of the Bill. Where applicable, comparisons are made with the powers and practices of the following organisations:

- Health and Care Professions Council (HCPC)²⁷, which regulates health, psychological and social work professionals in England
- Scottish Social Services Council (SSSC)²⁸, which registers key groups of social service workers in Scotland
- Care Council for Wales (CCW)²⁹, which regulates the social care profession in Wales
- Health and Social Care Professionals Council (CORU)³⁰, which is the multi-profession health regulator for the Republic of Ireland

It should be noted that the powers conferred on these bodies originate from different sources. Inclusion for comparative purposes should not be taken as legal equivalence.

Clause 1: Additional powers in respect of registered persons

Clause 1 provides for the extension of the range of sanctions currently available to the NISCC in the disposal of conduct cases³¹. These additional measures include³²:

1. Making a person's registration subject to conditions
2. Reaching agreement with the registrant that she or he will comply with specified undertakings
3. Giving warnings or advice to registrants

This is in line with practice elsewhere, for example:

The HCPC in England has the power to remove or suspend a registrant, impose conditions or issue a 'caution order'³³.

The SSSC in Scotland can impose sanctions such as a warning, conditions, warning and conditions, suspension, suspension and conditions or removal³⁴.

²⁷ Health and Care Professions Council website: <http://www.hcpc-uk.org/>.

²⁸ Scottish Social Services Council website: <http://www.sssc.uk.com/>.

²⁹ Care Council for Wales website: <http://www.ccwales.org.uk/>.

³⁰ Health and Social Care Professionals Council: <http://www.coru.ie/>.

³¹ Committee for Health, Social Services and Public Safety, Health and Personal Social Services (Amendment) Bill: Departmental Briefing, Official Report, 23 September 2015.

³² EFM, p.2.

³³ Health and Social Work Professions Order 2001, Article 29(5): [http://www.hcpc-uk.org/Assets/documents/10004784HCPC-ConsolidatedHealthandSocialWorkProfessionsOrder\(July2014\).pdf](http://www.hcpc-uk.org/Assets/documents/10004784HCPC-ConsolidatedHealthandSocialWorkProfessionsOrder(July2014).pdf).

³⁴ SSSC (2012), Indicative Sanctions and Use of Interim Orders: Guidance for Sub-Committees, Dundee: SSSC, paragraph 4.3: <http://www.sssc.uk.com/about-the-sssc/multimedia-library/publications/1467-indicative-sanctions-guidance/download>.

The CCW in Wales can admonish a registrant, or make a Conditions of Practice Order, a Suspension Order or a Removal Order³⁵.

CORU in the Republic of Ireland has the power to admonish or censure, attach conditions to registration, suspend registration, cancel registration or prohibit application for a specified period³⁶.

Clause 2: Powers to obtain and disclose information etc.

This clause provides for new powers³⁷:

1. To obtain information to assist in the functions of registration and making a determination on a person's fitness to practise
2. To require a person to provide details of all relevant employers for investigations
3. To publish information relating to a person's fitness to practise, where this is in the public interest

Employers and others are currently not compelled to provide such information and this clause is intended to progress registration and conduct cases in a timely manner³⁸. A similar power is provided for in the legislation for England³⁹.

The relevant regulatory bodies in England⁴⁰, Scotland⁴¹, Wales⁴² and the Republic of Ireland⁴³ have powers to publish the outcomes of determinations in relation to fitness to practice. The NISCC already publishes outcomes of conduct hearings⁴⁴.

Clause 3: Social workers etc. to be registered in Northern Ireland register

The purpose of this clause is to require all social workers and social care workers who work in Northern Ireland to register with the NISCC⁴⁵. Currently, such workers who are registered with an equivalent body in England, Wales or Scotland can work in Northern Ireland without additional registration⁴⁶.

³⁵ CCW (2014), *Care Council for Wales (Fitness to Practise) Rules 2014*, Cardiff: CCW, p.39:

<http://www.ccwales.org.uk/edrms/146246/>.

³⁶ Health and Social Care Professions Act 2005, Section 65(1): http://coru.ie/uploads/documents/HSCP_Act_2005.pdf.

³⁷ EFM, p.2.

³⁸ Committee for Health, Social Services and Public Safety, Health and Personal Social Services (Amendment) Bill: Departmental Briefing, Official Report, 23 September 2015.

³⁹ Health and Social Work Professions Order 2001, Article 25.

⁴⁰ Health and Social Work Professions Order 2001, Article 37; hearing decisions are published on the HCPC website: <http://www.hcpc-uk.org/complaints/hearings/archive/>.

⁴¹ Decisions are published on the SSSC website: <http://www.sssc.uk.com/fitness-to-practise/hearings-and-decisions/decisions>.

⁴² Care Council for Wales (Fitness to Practise) Rules 2014, Paragraph 58; hearing outcomes are published on the CCW website: <http://www.ccwales.org.uk/hearings/outcomes/>.

⁴³ Health and Social Care Professions Act 2005 Section 71.

⁴⁴ Conduct – Workforce Regulation, NISCC website, accessed 4 December 2015:

<http://www.niscc.info/index.php/registrants/conduct-workforce-regulation/conduct-hearings-decisions>.

⁴⁵ EFM, p.2.

⁴⁶ Committee for Health, Social Services and Public Safety, Health and Personal Social Services (Amendment) Bill: Departmental Briefing, Official Report, 23 September 2015.

The NISCC is registering the social care workforce in phases by job title⁴⁷. The following are required to be registered with the NISCC⁴⁸:

- Social workers
- Workers in a social work job role
- Care workers in an adult residential home, nursing home or children's home
- Managers in residential care home, day care setting or domiciliary care setting

The following groups will be required to register in the next 'phase'⁴⁹:

- Day care workers
- Supported living workers
- Domiciliary care workers

There is a memorandum of understanding between the four UK regulating bodies for social care workers and social workers (HCPC, SSSC, CCW and NISCC)⁵⁰. This includes:

- Agreed common principles
- Mutual recognition of qualifications
- Mutual recognition of standards of practice
- Reciprocal eligibility for registration
- Cross-referral of concerns
- Information sharing for investigations
- Exchange of information
- Advanced warning of publicity affecting another council

Usually, a person in a social work profession who is required to register in one jurisdiction must do so, even if that person is registered in another jurisdiction. For example, in England a person may work only on a temporary basis if registered in

⁴⁷ Workforce Registration, NISCC website, accessed 3 December 2015: <http://www.niscc.info/index.php/employers/workforce-registration>.

⁴⁸ Section 8, Health and Personal Social Services Act (Northern Ireland) 2001; Regulation 4, The Northern Ireland Social Care Council (Social Care Workers Prohibition) and Fitness of Workers Regulations (Northern Ireland) 2013: <http://www.legislation.gov.uk/nisr/2013/225/contents/made>.

⁴⁹ NISCC (2015), Why Register? Benefits and Responsibilities of your Registration, Belfast: NISCC, p.1: http://www.niscc.info/files/Registration/Reg%20Roll%20Out%20Pack%202015/20151028_WhyRegister.pdf.

⁵⁰ Memorandum of Understanding between the Care Council for Wales, the Health and Care Professions Council, the Northern Ireland Social Care Council and the Scottish Social Services Council, 13 November 2013: <http://www.hcpc-uk.org/assets/documents/1000434CSocialwork-MemorandumofUnderstanding.pdf>.

Scotland, Wales or Northern Ireland without registration with the HCPC, but otherwise must register⁵¹.

While social work skills and values are universal and transferable across borders, there are considerable differences in legislation, social policy and service delivery between the UK and the Republic of Ireland⁵². However, there is some degree of recognition of qualifications across jurisdictions. For example, the Social Care Council for Wales includes certain qualifications from University College Dublin and the National University of Ireland alongside otherwise all UK qualifications for registration in Wales⁵³. Also, guidance from the NISCC on registration to practice in Northern Ireland lists the Irish National Qualification in Social Work as an eligible qualification for applying to register as a social worker in the UK⁵⁴.

Clause 4: Recognition of attainment of standards by social workers

The provisions of Clause 4 empower the NISCC to make rules relating to the standard of proficiency for social workers and means by which they may be attained⁵⁵. This is to broaden the range of learning and training for which the NISCC can award certificates of proficiency⁵⁶.

As well as initial qualifications to register to practise, social workers and social care workers are expected to undertake post-qualification learning. Other regulatory bodies have broad remits in terms of the learning and training they accredit. Guidance from the HCPC in England states⁵⁷:

Unlike many other quality assurance approaches, the way we approve programmes is based on whether a programme can show that it meets our standards, rather than whether it leads to a particular type or level of academic award. This means that we are not commenting on or confirming whether a student is fit for an academic award. It also means that we are active at both undergraduate and postgraduate level, as well as outside of the formal higher education setting.

The SSSC in Scotland has been reviewing social work education and the first phase of this review has suggested an 'integrated learning' model that addresses a perceived separation between academic learning and practice learning. Phase two will look at

⁵¹ UK Social Work Registration, HCPC website, accessed 3 December 2015: <http://www.hcpc-uk.co.uk/aboutregistration/regulators/socialwork/>.

⁵² Ellis Barry, Ellis Walsh and Sara Karlsson (2003), 'Crossing Borders: North – South Collaboration in Practice', *Social Work in Europe* 10(1), 39.

⁵³ Schedule 1, Social Care Council for Wales (Registration) Rules 2015b.

⁵⁴ NISCC (2011), Registration of Social Workers Trained and Qualified Outside the UK, Cardiff: NISCC, p.36: http://www.niscc.info/files/Induction%20Standards/CountryAssessmentGuideline_NEW_Feb_2011.pdf.

⁵⁵ EFM, p.3.

⁵⁶ Committee for Health, Social Services and Public Safety, Health and Personal Social Services (Amendment) Bill: Departmental Briefing, Official Report, 23 September 2015.

⁵⁷ HCPC (), An introduction to our education processes, London: HCPC, p.12: http://www.hcpc-uk.org/Assets/documents/10003662An_introduction_to_our_education_processes.pdf.

how this might be achieved⁵⁸. Similarly, the CCW in Wales has been conducting a project⁵⁹:

exploring the accreditation of quality assured lifelong learning in social care, early years and childcare, which will form part of the Credit and Qualifications Framework for Wales. Our vision is that accredited learning will be available to all workers in Wales within either social care or early years and childcare, and that this will be used to drive up standards of service delivery as part of the professionalisation of the workforce.

In the Republic of Ireland, CORU has developed a framework for Continuing Professional Development (CPD). In this framework⁶⁰:

a broad, flexible range of learning styles and activities should be recognised for CPD purposes, including work-based activity, professional activity, formal education and self-directed learning. Registrants should engage in a balance of such learning activities.

Clause 5: Appeals to the Care Tribunal

This clause provides the Care Tribunal with increased flexibility in responding to appeals, to include placing a condition on practise which would improve fitness to practise⁶¹. This allows the Tribunal to apply conditions in line with the additional sanctions available to the NISCC provided for by clause 1⁶².

The Care Tribunal hears appeals on cases relating to a range of care settings, including decisions on the registration of social workers and social care workers⁶³.

The next section discusses some issues and themes that have been raised in relation to the Bill.

⁵⁸ SSSC (2015), Review of Social Work Education: Statement on progress 2014-2015, Dundee: SSSC, p.15: <http://www.sssc.uk.com/about-the-sssc/multimedia-library/publications/review-of-social-work-education-statement-of-progress-2014-2015/download>.

⁵⁹ CCW (2012), *Guide to the Recognition of Quality Assured Lifelong Learning on the Credit and Qualifications Framework Wales in Social Care, Early Years and Childcare*, Cardiff: CCW, p.5: <http://www.ccwales.org.uk/edrmsdocredirect.aspx?db=2&doc=116718>.

⁶⁰ CORU (2013), *Framework for Registration Boards Continuing Professional Development Standard and Requirements*, Dublin: CORU, p.11: http://coru.ie/uploads/documents/Final_CPD_framework_document_Final.pdf.

⁶¹ EFM, p.3.

⁶² Committee for Health, Social Services and Public Safety, Health and Personal Social Services (Amendment) Bill: Departmental Briefing, Official Report, 23 September 2015.

⁶³ The Care Tribunal, NI Courts and Tribunals Service website, accessed 1 December 2015: <http://www.courtsni.gov.uk/en-GB/Tribunals/CareTribunal/Pages/default.aspx>.

4 Issues and Themes

This section briefly summarises some issues and themes relevant to the Health and Personal Social Services (Amendment) Bill, drawn from the Second Stage debate in the Northern Ireland Assembly⁶⁴. These are summarised below.

What will the registration of all social workers and social care workers mean in practice, and will there be any additional burden on individuals or private companies?

The DHSSPS social services workforce is shown in the following table⁶⁵.

Headcount	Total
Hospital Social Workers	152
Elderly Social Workers	348
Physical Disability / Sensory Impairment Social Workers	211
Child / Family Care Social Workers	1,997
Learning Disability Social Workers	220
Mental Health Social Workers	354
Training & Education Social Workers	64
Community Development Social Workers	32
Managers/Multiservices Managers/Social Work Audit Social Workers	303
AYE Social Workers	36
Social Work Placement Students	8
Social Care Staff	3,988
Table Total	7,713

The combined Northern Ireland workforce (including private) has been reported as 5,500 social workers and 18,000 residential care staff registered with the NISCC. To this would be added the 12,000 domiciliary and day care staff in Northern Ireland⁶⁶ when registration for these groups becomes compulsory in the next phase⁶⁷.

The requirement for the social care workforce in Wales to register has also been increasing. The following groups of workers must register to practise in Wales:

- People who hold a social work qualification and practise social work or call themselves a social worker
- Students participating on an approved social work degree course in Wales

⁶⁴ Second Stage: Health and Personal Social Services (Amendment) Bill (NIA Bill 68/11-16), Official Report: Tuesday 01 December 2015: <http://aims.niassembly.gov.uk/officialreport/report.aspx?&eveDate=2015/12/01&docID=250899>.

⁶⁵ Derived from Table 5d, Northern Ireland Health and Social Care Workforce Census 2015:

<https://www.dhsspsni.gov.uk/publications/northern-ireland-health-and-social-care-hsc-workforce-census-march-2015>.

⁶⁶ Community Care, 23 June 2015: <http://www.communitycare.co.uk/2015/06/23/compulsory-registration-domiciliary-day-care-workers-introduced-northern-ireland/>.

⁶⁷ Section 3(b), Health and Personal Social Services Act (Northern Ireland) 2001, empowers the Department to specify social care workers of any description to register by order.

- Residential Child Care Managers and Workers Adult Care Home Managers
- Mandatory registration was introduced for Domiciliary Care Managers on 28 February 2013

From 2017, housing support workers and workers in care at home services in Wales will also have to register⁶⁸.

However, in England there is no requirement for social care workers to register. This was considered, but the HCPC put forward the following rationale for not doing so⁶⁹:

This is a large, often low paid and transient workforce with significant numbers of part time workers. This poses challenges for the proportionality and cost effectiveness of any approach to regulation. The diversity of this workforce is such that it may not be feasible to regulate it in the same way as single professions which have limited and well defined routes of entry and scopes of practice.

We have concluded that 'full statutory regulation' for the whole of this workforce, in line with existing models, is unlikely to be viewed as a proportionate or cost effective regulatory response. We have instead explored other options which, although not offering the same level of protection as full statutory regulation, would nonetheless improve public protection.

Instead, a model of a statutory code of conduct and a register of those found unfit to practice was proposed.

In the Republic of Ireland, the statutory regulation of social workers is to be followed by a register of social care workers. The Social Care Workers Registration Board was appointed in 2015 and registration is to commence in 2017⁷⁰.

Will the new disciplinary processes mean that all cases are dealt with quickly and efficiently?

There are no specific timescales attached to conduct investigations in Northern Ireland. The NISCC explains this in the following terms⁷¹:

How long it takes to conclude a case will depend on the nature of the investigation we need to carry out and how complicated the issues are. In the first instance, the NISCC Conduct Team will review the information provided

⁶⁸ Registration, CCW website, accessed 4 December 2015: <http://www.sssc.uk.com/about-the-sssc/multimedia-library/publications/parts-of-register-and-regd-dates/download>.

⁶⁹ HCPC (2014), Proposal for regulating adult social care workers in England, London: HCPC, p.3: [http://www.hpc-uk.org/assets/documents/100049BFHCPCPolicyStatement-RegulatingtheadultsocialcareworkforceinEngland\(Nov2014\).pdf](http://www.hpc-uk.org/assets/documents/100049BFHCPCPolicyStatement-RegulatingtheadultsocialcareworkforceinEngland(Nov2014).pdf).

⁷⁰ 'Appointment of members to the Social Care Workers Registration Board', CORU press release, 27 March 2015: http://www.coru.ie/en/news/details/social_care_workers_registration_board_established_by_minister_for_health_I.

⁷¹ Registrant's Guide to Conduct - How We Investigate Complaints, NISCC website, accessed 4 December 2015: <http://www.niscc.info/index.php/registrants/conduct-workforce-regulation/how-we-investigate-complaints>.

to assess whether there is sufficient information to support the allegation that a registrant may have breached the Code of Practice. We may delay a case until an on-going employer investigation, police investigation or criminal trial is concluded. We will close a case if there is insufficient evidence to support the allegation, or if no public risk is identified.

Is the legislation future-proof, in comparison with other jurisdictions?

As explained above, elements of the Bill reflect a context of developments elsewhere in the UK and the Republic of Ireland, summarised as follows:

- Move from a 'conduct model' to a 'fitness to practise' model
- Extension of statutory registration of social care professionals
- Flexibility in outcomes of 'conduct' or 'fitness to practise' hearings
- Flexibility in accreditation of learning processes

The 'fitness to practise' model is in the process of being introduced. As indicated in Section 1, new standards of conduct and practice were introduced in November 2015 and disciplinary processes are still referred to as 'conduct hearings', and a new model is not yet embedded, as suggested by the Minister of Health, Social Services and Public Safety during the Second Stage debate on the Bill⁷²:

It is important that the conduct model used by the care council is fit for purpose, efficient, cost effective and commands the confidence of service users, the wider public and the social care workforce. The council's current conduct model has been in place since 2003, and whilst it has been robust and has ensured that those unsuitable to provide care have been excluded from the workforce, it needs to be updated to keep pace with best-practice developments in regulatory practice in Northern Ireland and across the United Kingdom.

What is a nature of advice and what levels of warning will exist?

It is unclear what form advice or warnings will take under the provisions of the Bill. The SSSC issues guidance on the application of sanctions in Scotland. With regard to warnings, the guidance states the following⁷³:

⁷² Northern Ireland Assembly Official Report 1 December 2015:

<http://aims.niassembly.gov.uk/officialreport/report.aspx?&eveDate=2015/12/01&docID=250899>.

⁷³ SSSC (2012), *Indicative Sanctions and Use of Interim Orders: Guidance of Sub-Committees*, Dundee: SSSC, pp.20-22:

<http://www.sssc.uk.com/about-the-sssc/multimedia-library/publications/1467-indicative-sanctions-guidance/download>.

Warning

A warning may appear to be the least severe sanction as it permits the Registrant to continue working. However a warning could remain on the Registrant's entry for up to 5 years. It could have more impact than a short period of suspension. A warning does not directly affect a Registrant's ability to practise, but is disclosed if an employer enquires about the Registrant's

entry on the Register. It will be recorded against their entry for up to five years, and can be disclosed to any Preliminary Proceeding Sub-Committee or Conduct Sub-Committee in the future if further complaints are received about the Registrant. A warning may be appropriate where the behaviour is at the lower end of the spectrum of misconduct; where the Sub-committee wish to mark that the behaviour was unacceptable and must not happen again.

If a Sub-committee is minded to issue a warning, it should consider whether the sanction provides adequate public protection as far as the Registrant's suitability is concerned, bearing in mind that the Registrant will be entitled to work as a social service worker. This sanction may be appropriate if the Registrant's character and circumstances are such that, whatever the history, a Sub-committee is confident that there is no risk to the public or people who use services.

It may also be the appropriate sanction for cases where there may be a low risk of recurrence, and where the lapse has been corrected and was of itself of a minor nature and does not involve serious wrong-doing.

This sanction may be appropriate when most or all of the following factors are present (this list is not exhaustive):

- evidence that the behaviour would not have caused direct or indirect harm to service users
- evidence of insight into failings and of willingness to change the behaviour
- behaviour was an isolated incident, which was not deliberate
- genuine and timely expression of regret/apologies
- acting under duress
- previous good history

- no repetition of behaviour since incident
- evidence that rehabilitative/corrective steps have been taken
- relevant and appropriate references and testimonials.

Warnings may also be accompanied by conditions.

At what stage will a registrant's fitness to practise be published?

The NISCC publishes the following on its website⁷⁴:

- Scheduled conduct hearings
- Interim Suspension Orders (while investigation is ongoing)
- Active conduct hearings
- Archived conduct hearings

The Interim Suspension Order list does not provide details of allegations, but the scheduled hearings list does. Full details of the conduct hearing decisions are included in the active and archived decisions lists. Hearings are in any case held in public, except under specific circumstances, and decisions are therefore in the public domain.

Publication timescales are as follows⁷⁵:

Determination	Published	Notice of Decision Published?
Admonishment	Until expiry	Yes
Suspension Order	Until expiry	Yes
Removal Order	For five years from the date of imposition of the order	Yes
Successful Appeals	For one month	Yes
Facts not found or Misconduct not found	For one month	Yes
Interim Suspension Order	Until expiry	No

⁷⁴ Conduct – Workforce Regulation, NISCC website, accessed 7 December 2015:

<http://www.niscc.info/index.php/registrants/conduct-workforce-regulation/conduct-hearings-decisions>.

⁷⁵ NISCC (2015), *Disclosure Policy*, 29 July 2015, Belfast: NISCC, p.9:

http://www.niscc.info/files/Conduct/20150729_Disclosure_Policy_FINAL_SIGNED_AMcG_v1-1.pdf.

The publication of hearing decisions by the NISCC is in keeping with practice by the HCPC⁷⁶, SSSC⁷⁷ and CCW⁷⁸.

Is a 14-day limit for providing relevant information to the Council the best practice approach?

The HCPC in England has a power to require persons to provide information⁷⁹. However a timescale is not indicated in the legislation.

Will there be any consideration of those who are registered with CORU in the Republic of Ireland?

There has been a long history of cross-border co-operation between Northern Ireland and the Republic of Ireland in the area of social work⁸⁰, not least through projects and partnerships such as Co-operation and Working Together (CAWT), which works to improve the health and wellbeing of the border populations⁸¹.

While there are opportunities for mutual learning in the areas of policy and practice⁸², the key impediment to north-south mobility is the mutual recognition of qualifications⁸³. As stated above (p.15), the Irish National Qualification in Social Work is included in the NISCC guidance for qualifications recognised for registration in Northern Ireland, but there are no UK qualifications in the list published by CORU for registration in that jurisdiction⁸⁴.

Who will pay fees for awards and what cost would there be to care-givers, particularly those on lower incomes?

The NISCC sets standards for the training and practice of social care workers and to supports professional development across the workforce. To this end, the Council approves post-qualifying education and training courses, the guidance for which states that candidates pay a fee agreed between the training provider and the Council⁸⁵. The guidance does not specify the nature or extent of costs to the candidate.

⁷⁶ Hearings and Decisions, HCPC website, accessed 7 December 2015: <http://www.hcpc-uk.org/complaints/hearings/index.asp?month=12&year=2015&EventType=H>.

⁷⁷ Hearings and Decisions, SSSC website, accessed 7 December 2015: <http://www.sssc.uk.com/fitness-to-practise#hearings-and-decisions>.

⁷⁸ Hearings, CCW website, accessed 7 December 2015: <http://www.ccwales.org.uk/hearings/>.

⁷⁹ Health and Social Work Professions Order 2001, Article 25.

⁸⁰ Deirdre Heenan and Derek Birrell (2011), *Social Work in Ireland: Conflict and Change*, Bristol: Policy Press, pp.96-104.

⁸¹ Co-operation and Working Together website: <http://www.cawt.com/default.aspx?CATID=1019>.

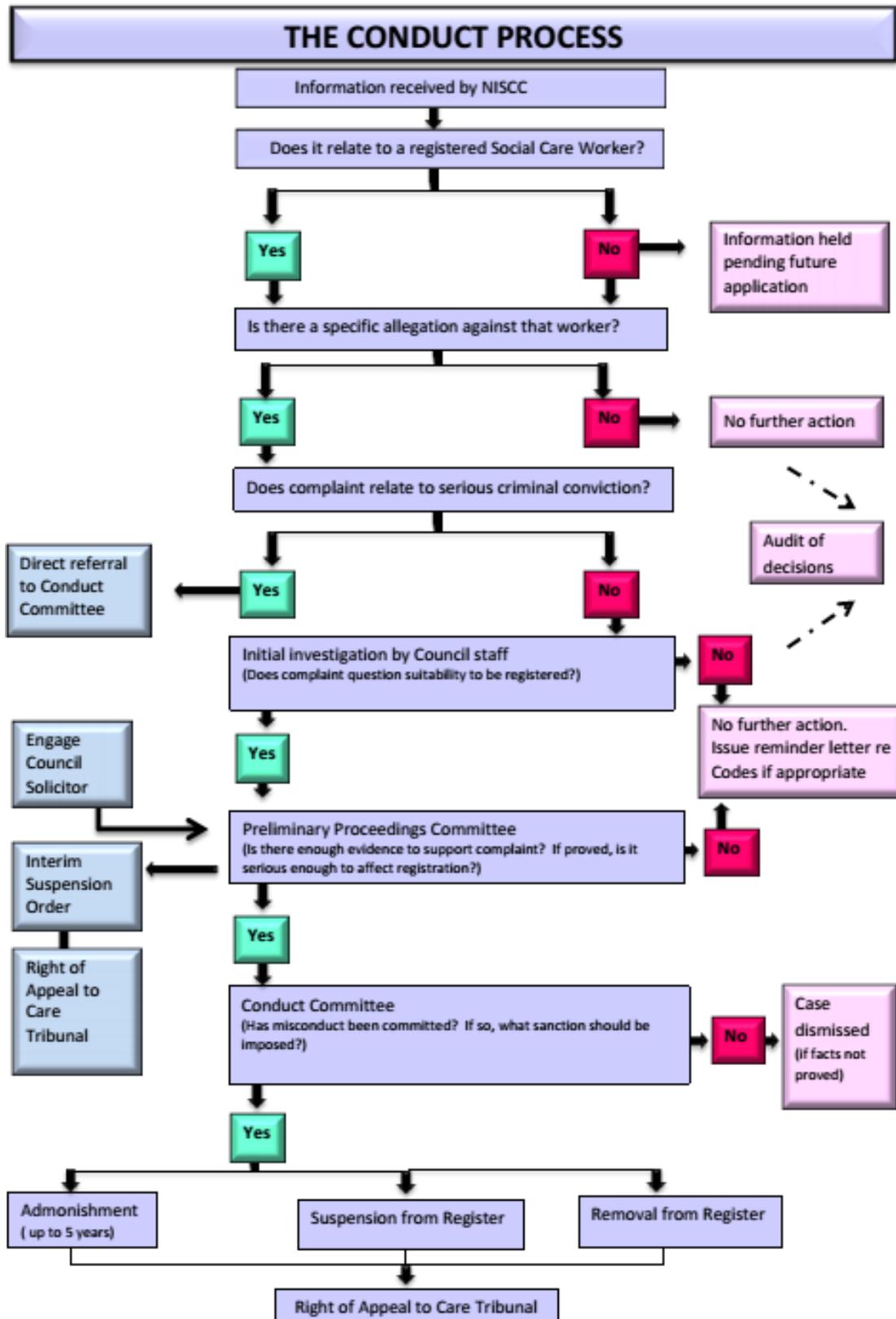
⁸² Caroline McGregor and Suzanne Quinn (2015), 'Revisiting our History post-'Celtic Tiger': So What's New?' in Alastair Christie, Brid Featherstone, Suzanne Quinn and Trish Walsh (2015), *Social Work in Ireland: Changes and Continuities*, London: Palgrave, pp.9-10.

⁸³ Deirdre Heenan and Derek Birrell (2011), *Social Work in Ireland: Conflict and Change*, Bristol: Policy Press, pp.104-5.

⁸⁴ Social Workers – Approved Qualifications, CORU website, accessed 7 December 2015: http://www.coru.ie/en/education/social_workers_approved_qualifications.

⁸⁵ NISCC (2006), Rules for the Approval of Post Qualifying Education and Training in Social Work in Northern Ireland 2006, Belfast: NISCC, pp.5, 6: http://www.niscc.info/files/Regulating%20Training/1206_PQ_Rules_Appoval.pdf.

Appendix 1: Conduct Hearing Flowchart⁸⁶



⁸⁶ Conduct hearing picture guide 2014, NISCC website: http://www.niscc.info/files/Conduct/2014_Picture_Guide_Conduct.pdf.