

Explanatory Memorandum to the Social Care Wales (Proceedings before Panels) (Amendment) Regulations 2026

This Explanatory Memorandum has been prepared by the Health and Social Services Department and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of *The Social Care Wales (Proceedings Before Panels) (Amendment) Regulations 2026*. I am satisfied that the benefits justify the likely costs.

Dawn Bowden MS

Minister for Children and Social Services

6 February 2026

PART 1

1. Description

- 1.1 Section 175(1) of the Regulation and Inspection of Social Care (Wales) Act 2016 (“the 2016 Act”) provides the Welsh Ministers with the power, by regulations, to make such provision as they think appropriate for and in connection with proceedings brought under the 2016 Act before registration appeals panels, interim orders panels and fitness to practice panels.
- 1.2 The Social Care Wales (Proceedings Before Panels) (Amendment) Regulations 2026 (‘the 2026 Regulations’) amend regulations 18(1)(b) and 30(1)(b) of the Social Care Wales (Proceedings Before Panels) Regulations 2016 (“the 2016 Regulations”) to allow an interim order panel or fitness to practice panel (‘a panel’) to extend an interim order for a period of up to 18 months in total from the date it was first made, without a hearing, in specified circumstances. This reflects the change made to section 147 of the 2016 Act by section 19(2) of the Health and Social Care (Wales) Act 2025 (“the 2025 Act”) and ensures that the 2016 Regulations are consistent with section 147 as amended.
- 1.3 The amendments within the 2026 Regulations amend existing provisions, to provide more flexibility to Social Care Wales (‘SCW’) in its role as the workforce regulator and specifically while reviewing interim orders in fitness to practise proceedings.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

- 2.1 None.

3. Legislative background

- 3.1 Commencement Order (No.1) for Health and Social Care (Wales) Act 2025 – brings into force section 19 of the 2025 Act. This amends section 147 of the 2016 Act to allow a panel reviewing interim orders to extend an interim order without the need to apply to the First Tier Tribunal – an amendment is also required to the Social Care Wales (Proceedings Before Panels) Regulations 2016 (‘the 2016 Regulations’) to reflect the new power relating to extending interim orders.
- 3.2 If it is not taken forward at the same time as the changes brought about by the 2025 Act, the panel will have to hold a hearing to extend an interim order under the new power contained in section 147(1)(f) of the 2016 Act (as inserted by the 2025 Act). This could have a detrimental impact and unintended consequences for all parties – i.e. increased applications, increased workload and costs, and cause undue delays in the process. This would be unfair to both the regulator (SCW) and the individuals affected by the interim orders.
- 3.3 The proposals described at 1.2 above 2026 Regulations are subject to the Senedd Annulment procedure.

4. Purpose and intended effect of the legislation

- 4.1 The amendments within the 2026 Regulations will allow a panel to extend an interim order for up to a maximum of 18 months (from the date first made) without a hearing in specified circumstances.
- 4.2 This will continue to ensure that hearings are fair and proportionate, as they extend the requirement to seek the registered individual's agreement to not holding a full hearing. This will ensure that the matter relating to the interim order can be dealt with promptly.
- 4.3 This power will save SCW time and resources that can be reinvested back into supporting the social care sector, and is consistent with the powers held by the panel when reviewing an interim order and making a determination under sections.171(b) to (3) of the 2016 Act (e.g.to make no changes to the interim order (s.147(e)).
- 4.4 For registered persons, the changes will not, overall, impact upon the current procedure or process, as it still affords them the right to agree to the matter being determined without a hearing. However, if the panel determines that it can resolve the matter more quickly, it will result in a more streamlined process. The right of appeal against a panel's decision is still safeguarded.

5. Consultation

- 5.1 The Welsh Government undertook a 12-week consultation on these proposals, alongside several other amendments to the 2016 Act. The consultation opened on 17 August 2022 and ran until 7 November 2022, with just over 190 responses received. Of these, only 50 responses answered the questions relating to the workforce proposals.
- 5.2 The majority of those respondents agreed with our proposals in the main, although many of them did not elaborate their views other than to agree. A more detailed outline of the consultation analysis can be found at <https://www.gov.wales/proposed-changes-legislation-social-care-and-continuing-health-care>
- 5.3 Some respondents felt that further clarity around the proposals was needed to help understand them but generally agreed with the purposes, of streamlining processes to make them more efficient, proportionate and appropriate to the circumstances.
- 5.4 The questions around interim orders and panels' ability to review them saw many agree that the proposals would provide clarity, streamline the process and ensure that these orders were being used proportionately and appropriately and were subject to regular review.

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Background

- 6.1 Parts 2 to 8 and Schedule 2 of the Regulation and Inspection of Social Care (Wales) Act 2016 ('the 2016 Act') provide the basis on which Social Care Wales ('SCW') is established and undertakes functions in relation to the registration, regulation and training of social care workers.
- 6.2 Amendments to the 2016 regulations are necessary to ensure that the procedure for panels reviewing interim orders reflect the changes made by section 19 of the Health and Social Care Act 2025 ('the 2025 Act') to section 147 of the 2016 Act.
- 6.3 Failure to make this change will leave an anomaly that would require SCW to conduct a full hearing, even when there is a reason not to.
- 6.4 The amendment makes a minor adjustment to reflect the changes brought about by section 19 (Fitness to practise cases: powers to extend interim orders) of the 2025 Act.

7. Options

- 7.1 We have identified and considered the options, determining that there are only viable two options - whether to make the amendments to existing Regulations, or not. The regulator asked for the initial primary legislation changes (made through the 2025 Act) to rectify some operational and administrative issues they have encountered because the original wording of section 147 of the 2016 Act, which restricted the ability of panels reviewing interim orders to act in a flexible and proportionate way.
- 7.2 The amendments made by the 2026 Regulations will ensure that the 2016 Regulations, going forward, reflect the new flexibility relating to extending interim orders.

Option one: Do nothing - retain the status quo

- 7.3 If we do nothing, there would not be any significant impacts or additional costs to the operation of SCW's interim orders panels.
- 7.4 The amendment within the 2026 Regulations relates to interim orders set by the regulator's Fitness to Practise panels. Interim orders enable temporary restrictions to be applied to a registered person while investigations are undertaken into fitness to practice allegations made against them.
- 7.5 If the 2016 Regulations are not amended, the panel will be required to hold a hearing in order to extend an interim order for up to a maximum of 18 months (from the date first made) in accordance with section 147(1)(f) of the 2016 Act (as inserted by the 2025 Act). By contrast, where upon review of an interim order panel a makes a decision under section 147(b) to (e) of the 2016 Act (e.g. to replace an interim conditional registration order with an interim suspension order), the matter may be determined without a hearing in specified

circumstances. If no change is made even in circumstances where the registered person agrees to the extension of the interim order a hearing would be required.

7.6 SCW estimate that, of the 45,000 currently registered workforce, there are 377 Fitness to Practise cases currently dealt with per annum (90 full hearings and 287 cases dealt with as paper exercises). Of this number, SCW estimates that it will need to apply to the His Majesty's Courts and Tribunal Service (HMCTS) for 34 cases to be extended beyond 18 months at a cost of £2,000 per case, or £68,000 in total, at April 2024.

7.7 Whilst some of these costs would be recouped by the charging of registration fees, these do not cover the full cost of registering and regulating the workforce. Additional funding has been provided from Welsh Government to uplift SCW's grant-in-aid funding, to cover these costs, however, it can still be a significant cost to the regulator.

7.8 The Fitness to Practise review panels would continue to be delivered in the same way as currently.

Option two: Introduce the amendment to the regulation to allow Interim Panels to determine when a hearing is necessary

7.9 Failure to make the necessary amendments to the 2016 Regulations would mean that an interim order panel would not have the power to extend an interim order in accordance with section 147(1)(f) of the 2016 Act without a hearing, even if they have secured the registered individual's consent.

7.10 The streamlining of these services will, in turn, deliver benefits to the administration of the regulator's role and functions as it completes the fitness to practise processes.

7.11 It will also ensure that the process is more streamlined for registered individuals, allowing for greater clarity and quicker decisions.

8. Costs and benefits

Provision for an Interim Panel to determine when a hearing is not needed

Option 1 - Do nothing - retain the status quo

Social Care Wales

8.1 Currently, SCW can impose an interim suspension order on a registered individual worker if their conduct has been called into question and an investigation into these allegations has been considered necessary. These orders can be imposed from between one month and 18 months by the regulator.

8.2 An Interim order panel can, if conditions meet certain criteria, determine whether it is necessary to hold a hearing to determine an interim order. If an individual does not engage in this process, an interim order panel has no discretion and

must continue with a full hearing.

8.3 This will not change if the necessary amendment is not implemented.

UK Government (Ministry of Justice/HM Courts and Tribunals Service)

8.4 The amendment within the 2026 regulations relating to extending interim orders could have a positive impact upon the UK justice system, presenting some potential resource savings for HM Courts and Tribunals Service (HMCTS) and the workforce regulator, SCW.

8.5 Currently, SCW must apply to HMCTS if it wishes to extend an interim order beyond the deadline it initially set (which can be up to 18 months). The intention of the powers set out in the 2016 Act had been to allow SCW to set an interim order up to a maximum of 18 months but then apply to HMCTS should it seek to extend to order beyond the 18-month maximum, if considered necessary.

8.6 The amendments within the 2026 Regulations will not increase any costs to HMCTS, as this is an administrative matter for SCW.

Welsh Government

8.7 There are no additional costs for the Welsh Government, as these costs are met as part the annual grant-in-aid package to the regulator.

Social care workforce/Employers

8.8 There are no additional costs for the either the social care workforce or their employers.

Option 2: Making amendments to provide for an Interim Panel to determine when a hearing is not needed.

Social Care Wales

8.9 Amendments made by the 2026 Regulations will allow a panel to extend an interim order in accordance with section 147(1)(f) of the 2016 Act without the need for a full hearing, providing it meets the specified criteria. This will enable the panel to consider the matter through a more streamlined panel process.

8.10 This will mitigate the administrative burden and avoid the costs to hold a full hearing, thereby streamlining the process and ensuring that decisions can be delivered in a timely manner.

Welsh Government

8.11 There are no immediate additional costs for the Welsh Government. Any costs incurred by the regulator will be met from within existing grant-in-aid funding.

8.12 Any savings generated by the amendments will be reinvested into regulating and supporting the social care sector, so we do not expect a need for additional

funding. However, we will keep this under review.

Social care workforce/Employers

8.13 We expect the amendments will have no immediate impacts upon these groups.

8.14 The current processes and procedures are not being affected, but an unintended consequence could see beneficial changes and resource saving implications for individuals as they propose to streamline processes and ensure that they are proportionate.

Summary and preferred option

If the 2016 Regulations are not amended by the 2026 Regulations, the panel will be required to hold a hearing in order to extend an interim order for up to a maximum of 18 months (from the date first made) in accordance with section 147(1)(f) of the 2016 Act (as inserted by the 2025 Act). We have therefore chosen to take forward option 2, to ensure that all relevant elements of the legislation are brought into line. If no change is made, even in circumstances where the registered person agrees to the extension of the interim order, a full hearing would still be required.

9. Competition Assessment

A competition filter test has been applied to the 2026 Regulations and it shows that the amendments are not likely to have any detrimental effect on competition. Therefore, a detailed assessment has not been conducted.

It is considered not necessary to undertake a competition assessment for the 2026 Regulations, as they will not affect the business sector in any significant way.

10. Post implementation review

The Welsh Government will work with Social Care Wales to develop a post-implementation review of the registration programme by 2027.