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Welsh Government

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Consultation Document

Implementation of the Social Services and Well-being (Wales) Act 2014

Regulations and codes of practice in relation to Part 3 of the Act, on Assessment, and Part 4 of the Act, on Meeting Needs, including care and support planning and direct payments

Date of issue: **6 November 2014**

Action required: Responses by **2 February 2015**

Overview

This consultation seeks your views on the regulations and codes of practice being made to support local authorities and their partners in delivering the requirements of the Social Services and Well-being (Wales) Act 2014.

How to respond

You can respond to this consultation by completing, by the closing date, the consultation response form at the back of this document and returning it to us by post to:

Sustainable Social Services Implementation Branch
Social Services Directorate
Welsh Government
Crown Buildings
Cathays Park
Cardiff
CF10 3NQ

Alternatively the consultation response form is available on our website (www.wales.gov.uk/consultations/?lang=en) and can be returned to us by e-mail to: sswbimplementation@Wales.GSI.Gov.UK.

Further information and related documents

MS Word, Large print, Braille and alternative language versions of this document are available on request.

Sustainable Social Services for Wales: A Framework for Action:
www.wales.gov.uk/topics/health/publications/socialcare/guidance1/services/?lang=en

From Vision to Action The report of the independent commission on Social Services in Wales: www.icssw.org/vision/?lang=en

Law Commission Report on Adult Social Care Legislation:
www.lawcommission.justice.gov.uk/areas/adult-social-care.htm

Social Services and Well-being (Wales) Bill Consultation:
www.wales.gov.uk/consultations/healthsocialcare/bill/?lang=en

Welsh Government Factsheets on Information, Advice and Assistance, Assessment, Care Planning and Carers:
www.wales.gov.uk/topics/health/socialcare/act/resources/?lang=en

The Social Services and Well-being (Wales) Act 2014:
www.legislation.gov.uk/anaw/2014/4/contents/enacted

The National Outcomes Framework for people who need care and support and carers who need support (working document):
www.wales.gov.uk/topics/health/socialcare/well-being/?lang=en

Well-being statement for people who need care and support and carers who need support:
www.wales.gov.uk/topics/health/publications/socialcare/strategies/statement/?lang=en

Report of the Eligibility Technical Group:
www.wales.gov.uk/topics/health/socialcare/act/resources/draft-regulations/?lang=en

Policy intent – Regulations and other subordinate legislation under the Social Services and Well-being Bill:
www.wales.gov.uk/topics/health/publications/socialcare/guidance1/8420843/?lang=en

Contact details

For further information:

Sustainable Social Services Implementation Branch
Social Services and Integration Directorate
Crown Buildings
Cathays Park
CARDIFF
CF10 3NQ

email: sswbimplementation@wales.gsi.gov.uk
telephone: 029 2080 1172

Data protection

How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full.

Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

The Foreword

The Social Services and Well-being (Wales) Act 2014, which received Royal Assent on 1 May 2014, creates a new legal system for social services. It creates a framework that brings together and modernises the law for social services in Wales, increasing the emphasis on preventative action, bringing people closer to decisions about the services that affect them, and addressing the challenges of economic and demographic change.

You will all be aware of the Prudent Healthcare principles which have been widely debated during 2014. The cultural shift towards minimum appropriate intervention, 'only do what only you can do', promotion of equity and remodelling the relationship between user and provider on the basis of co-production has been widely welcomed in healthcare settings. These principles, however, extend far wider and touch on the core of social services in Wales, mirroring the focus on citizen voice, user control and co-production set out in Sustainable Social Services. The challenge in social care, as in healthcare, is to develop sustainable models of service, both in terms of financial and workforce resources, to help us effectively manage demand whilst being equitable and fair for all. Our drive should be to promote independence and not dependency and, to draw on a phrase we used many years ago, we also need to consider how we add 'life to years' not simply 'years to life'. By applying these principles to the implementation of the Social Services and Well-being (Wales) Act 2014 we aim to achieve a system that is fit for the needs of all users.

The new statutory framework for delivering social services will have three parts. The first part, the Act itself, is already in place. The other two parts will consist of regulations and of codes of practice or statutory guidance, which will help supply the detail and help those charged with functions under the Act to understand how they are to carry these out.

The Welsh Government's policy intent in relation to the major groups of regulation-making powers under the Act was set out in a written statement issued by Gwenda Thomas AM, the then Deputy Minister for Social Services, on 30 January 2014. The regulations and codes set out in this consultation document turn this policy intent into concrete form and supply those remaining two parts of the statutory framework.

To get to this point, my officials have worked closely with stakeholders through a series of technical groups to develop and refine the details of our policy for regulations, codes of practice and statutory guidance. I would like to pay tribute here to those stakeholders, and to thank them for their valuable contribution to the process of making the Act a reality.

It is my intention that, by consulting on and laying these regulations together we will be able to present a coherent system of assessment, determination of eligibility and care planning. At the same time we will secure the availability of direct payments as one way of meeting needs, and create a powerful new framework for safeguarding.

In line with the Welsh Ministers' Regulatory Impact Assessment Code for subordinate legislation, I am committed to undertaking a full regulatory impact assessment for the regulations to be made under the Act. I will of course be using the evidence gathered as part of this consultation process to inform this assessment and I hope that you will take the opportunity offered through our consultation questions to contribute to this.

I intend that these regulations, associated codes of practice and statutory guidance will be laid before the Assembly in May 2015.

The second tranche of subordinate legislation will be made available for consultation from May 2015, again supported by stakeholder engagement and the work of technical and advisory groups. This tranche will create a system that secures outcomes for looked after and accommodated children, drives regional collaboration and puts in place a system of charging, financial assessment and paying for care. It will support the making of representations and provision of advocacy, and address the issues raised by provider failure.

Following full public consultation I plan that these regulations, their associated codes of practice and statutory guidance will be laid in the Assembly in the winter of 2015.

The work I describe builds upon the national consensus that we have for the changes we need to make. All the key aspects of taking Sustainable Social Services forward are being undertaken with the close involvement of citizens and strong leadership from local government, the NHS and private and third sector providers. I will continue to work with the national Partnership Forum, Leadership Group and Citizens Panel to support this, and secure a new

shared ambition that people who use services are fully and firmly at the heart of our programme for change.

Mark Drakeford AM
Minister for Health and Social Services

This consultation

This consultation seeks your views on the regulations and codes of practice which have been developed in order to help local authorities and their partners implement Parts 3 and 4 of the Social Services and Well-being (Wales) Act 2014. (“the Act”).

The regulations will be made under the appropriate sections of the Act, whilst the codes of practice are issued under section 145 of the Act, which allows the Welsh Government to issue codes of practice to local authorities on the exercise of social services functions. What is a social services function is set out in Schedule 2 of the Act.

This consultation document relates to the draft regulations and codes of practice on **assessing needs**, flowing from part 3 of the Act, and on **meeting needs**, flowing from Part 4.

Where are we now?

The Social Services and Well-being (Wales) Act 2014 received Royal Assent on 1 May 2014. The Act forms the basis for a new statutory framework for social care in Wales.

The focus now turns to achieving implementation of the Act. The Welsh Ministers have made it clear that they wish the core elements of the new statutory framework to be in place for April 2016, when the Act will be implemented.

The statutory framework will consist of three main elements, the Act itself, regulations made under the Act, and codes of practice/statutory guidance. These three elements work together to form the framework within which social services will operate from April 2016.

The regulations and codes have been under development through a consultative process with key stakeholders and are now presented to stakeholders across Wales for their input.

The evidence for change

The evidence for change was set out in *Sustainable Social Services: A Framework for Action*¹ and in the consultation on the Social Services (Wales) Bill which set out the key principles of the Bill.

¹ See **Further information and related documents**

Social Services are at the heart of Welsh public life. They support 150,000 young, old and disabled people every year to achieve their potential and help make them safe. Many of these services are delivered in partnership with others, including housing, health and education services. Society is changing and social services must change in response. There has been and will continue to be shifts in the public's expectations of social services, as a result of demographic change and changes in our society. Social services need to alter and to respond to all of these.

Furthermore, demand is rising across social services, yet the financial outlook for all public services is difficult. Whilst we have protected social services expenditure, we need to make a more fundamental change than just pursuing the obvious efficiency measures if we are to make social services sustainable. Our White Paper *Sustainable Social Services for Wales: A Framework for Action* sets out a programme of change to meet these challenges based on the following nine principles:

- A strong voice and real control
- Supporting each other
- Safety
- Respect
- Recovery and restoration
- Adjusting to new circumstances
- Stability
- Simplicity
- Professionalism

These have been informed by discussion with stakeholders and debates in the National Assembly for Wales and elsewhere since *Sustainable Social Services for Wales* was published. They sit alongside the evidence of the Independent Commission on Social Services in Wales, the Law Commission review² of adult social care legislation and our Review of Safeguarding³. All this forms the backbone of our case for change.

This evidence, and the process of considering it through the National scrutiny process on the Bill, has informed and shaped the contents of the Act. The next stage, the development of the regulations and codes of practice or statutory guidance, has been informed by key strategic inputs such as *More than just words*, our Strategic Framework for Welsh Language Services in Health, Social Services and Social Care⁴, and by evidence sourced through technical groups consisting of key stakeholders. These groups have looked at the Act's provisions, and the policy underpinning these, in detail, and provided advice to officials on how the regulations and codes of practice should be framed in order to achieve the aims of the Act and, through this, the requirements of *Sustainable Social Services: A Framework for Action*. This

² See **Further information and related documents**

³ <http://wales.gov.uk/topics/health/publications/socialcare/reports/advisory/?lang=en>

⁴ <http://wales.gov.uk/topics/health/publications/health/guidance/words/?lang=en>

process has secured a range of valuable input which Welsh Government officials have drawn upon to develop the draft regulations and codes of practice covered by this consultation.

The proposals

Assessment

The Act creates a right to an assessment for people – adults, children and carers – where it appears to the local authority that the individual may have needs for care and support (or support needs in the case of a carer).

The aim is to simplify the assessment process so that it is appropriate to the needs of the individual and considers the person's circumstances in the round.

The framework for all assessment, simple and complex, sets a national minimum core data set followed by an analysis of **5 inter-related factors** to ensure that local authorities consider the person's circumstances in the round.

A **simple assessment** may only require use of a common local template, which may be undertaken when a person accesses the Information Advice and Assistance Service. A more **complex assessment** will include the simple assessment and additional specialist assessments to form a more comprehensive integrated assessment. At the end of all assessments the person must have a clear understanding of the **outcome** of the assessment and what will happen next.

The assessment process is integral to the wider system of care and support and the eligibility test flows naturally from the assessment process.

Eligibility

The eligibility framework set out under the Act creates an enforceable right for the individual, where the local authority must consider what could be done to meet needs, and then determine whether any of the needs meet the eligibility criteria and therefore must be met by the local authority.

Through the new model of social care the eligibility model will remove the traditional threshold for access to managed care and support and replace it with a more responsive model that considers an individual response for each person.

Determining eligibility is not about giving a right to any one service; it is about guaranteeing access to care and support to meet well-being outcomes. In the new model local authorities will address the needs of their populations through targeted early intervention and prevention to reduce the demand on

more intensive support. However, where these services do not meet the needs of the person a care and support plan will be developed.

Care and Support Plans

A care and support plan is created when an assessment identifies that services cannot be delivered without a plan or where the service can be delivered without a plan but the individual needs on-going support to access these services.

A care and support plan **must** identify the personal outcomes and set out the best way to help achieve them. It is not the intention to try to replace existing local and specialist arrangements for care and support planning, nor to require a single national template for a 'care and support plan', although there will be certain minimum requirements about the content. The complexity or severity of the individual's need will determine the scope and detail of the care and support plan and the range of interventions.

Where there is a plan in place for the individual that meets the requirements of a care and support plan it can be considered as meeting the duty of the local authority.

Where the care and support plan involves visits to the person's home for the purpose of providing care and support, those visits **must** be of sufficient length to ensure the appropriate delivery of the care and support.

Direct payments

Direct payments are monetary amounts provided by local authorities to individuals, or their representatives, to enable them to meet their eligible care and support needs. Direct payments empower people to have choice and control over the way in which their care and support needs are met, which complements their existing support mechanisms to achieve their desired well-being outcomes.

Direct payments replace care and support provided directly, or commissioned by, a local authority. They can be for all, or part, of a person's care and support needs. In the latter case the remainder of their care and support needs will be met in an alternative manner.

Our proposals will see a continuation of direct payments as a means of achieving people's well-being outcomes but in a manner which enhances their ability to determine the care and support they consider is right for them. Also, our proposals will secure the extension of the availability of direct payments for other forms of care and support (for example for long term residential care) and to individuals who are currently excluded from receiving direct payments (for example those with drug or alcohol problems).

A more detailed summary of our proposals can be found in the **Executive Summary** at **Annex A**.

Consultation documents

This consultation seeks your comments and views on the following key documents:

- A draft of **The Care and Support (Assessment) (Wales) Regulations 2015** (Annex B)
- A draft of the **Code of Practice on Assessment** issued under section 145 of the Social Services and Well-being (Wales) Act 2014 (Annex C)
- A draft of **The Care and Support (Eligibility) (Wales) Regulations 2015** (Annex D)
- A draft of **The Care and Support (Direct Payments) (Wales) Regulations 2015** (Annex E)
- A draft of **The Care and Support (Care Planning) (Wales) Regulations 2015** (Annex F)
- A draft of the **Code of Practice on Meeting Needs** issued under section 145 of the Social Services and Well-being (Wales) Act 2014 (Annex G)

A consultation response form can be found at **Annex H**.

**Consultation
Response Form**

Your name:

Organisation (if applicable):

email / telephone number:

Your address:

Assessing and meeting needs							
1. To what extent do you agree that the approach to eligibility, assessment and care planning is clear and simple to apply?							
Agree	<input type="checkbox"/>	Tend to agree	<input type="checkbox"/>	Tend to disagree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
2. To what extent do you agree that the terms and definitions of the 5 Elements of Assessment set out in the Annex to the code on Part 3 (assessment) are clear?							
Agree	<input type="checkbox"/>	Tend to agree	<input type="checkbox"/>	Tend to disagree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
Please explain							
3. To what extent do you agree that the assessment model enables an integrated approach with other service providers providing support i.e. health, children and families, housing, mental health services?							
Agree	<input type="checkbox"/>	Tend to agree	<input type="checkbox"/>	Tend to disagree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>

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4. To what extent do you agree that the eligibility test set out in regulations and the code of practice on Part 4 (meeting needs) supports consistent delivery across Wales to ensure a national threshold?

Agree	<input type="checkbox"/>	Tend to agree	<input type="checkbox"/>	Tend to disagree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
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What will further support this?

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5. To what extent do you agree that the roles of assessment coordinators and care coordinators should be reserved for specified practitioners?

Agree	<input type="checkbox"/>	Tend to agree	<input type="checkbox"/>	Tend to disagree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
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6. To what extent do you agree that the regulations and codes of practice on Parts 3 and 4 provide a framework for meeting the needs of children?

Agree	<input type="checkbox"/>	Tend to agree	<input type="checkbox"/>	Tend to disagree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
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7. To what extent do you agree that the code and regulations on Part 4 will enable more people to have greater control over their care and support through direct payments?							
Agree	<input type="checkbox"/>	Tend to agree	<input type="checkbox"/>	Tend to disagree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
What will further support this?							
8. To what extent do you agree that the code and regulations on Part 4 support people to employ close relatives to manage or provide their care and support?							
Agree	<input type="checkbox"/>	Tend to agree	<input type="checkbox"/>	Tend to disagree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
9. To what extent do you agree that the Codes issued for Part 3 and 4 support local authorities to ensure people are full partners in the design and delivery of care and support?							
Agree	<input type="checkbox"/>	Tend to agree	<input type="checkbox"/>	Tend to disagree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
Other							
<p>The Welsh Government is interested in understanding whether the proposals in this consultation document regarding part 3: assessing needs and part 4: meeting needs will have an impact on groups with protected characteristics. Protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, and sexual orientation.</p> <p>10. Do you think that the proposals in this consultation will have any positive impacts on groups with protected characteristics? If so, which</p>							

and why/why not?

11. Do you think that the proposals in this consultation will have any negative impacts on groups with protected characteristics? If so, which and why/why not?

12. Re-balancing the care and support system to deliver the new legal framework will require reprioritisation of resources. What are the key actions that need to be taken to achieve this?

13. We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to tell us about them.

Responses to consultations may be made public – on the internet or in a report. If you would prefer your response to be kept confidential, please enter YES in the box.