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Llywodraeth Cymru
Welsh Government

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Consultation Document

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

Regulations and code of practice in relation to Part 2 of the Act, on General Functions, including Well-being, Population Assessment, Prevention, Promotion of Social Enterprises and Provision of Information, Advice and Assistance

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

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 code of practice which have been developed in order to help local authorities and their partners implement Part 2 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 code of practice is 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 code of practice on Well-being, Population Assessment, Prevention, Promotion of Social Enterprises and Provision of Information, Advice and Assistance, flowing from Part 2 of the Act.

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, codes and statutory guidance 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* and in the consultation on the Social Services (Wales) Bill, which set out the key principles of the Bill¹.

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

¹ See **Further information and related documents**

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 review of adult social care legislation², 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 process has secured a range of valuable input which Welsh Government officials have drawn upon to develop the draft regulations and code of practice covered by this consultation.

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>

The proposals

Social services must be based on the **well-being** of people who need care and support, and carers who need support. Well-being is everyone's right and everyone's responsibility. People must be supported to do what matters to them and have greater voice and control over care and support: this will set the foundations for improvement across the sector. Chapter 1 of the Code of Practice ("the Code") sets out the duty on local authorities to promote well-being and other overarching duties when exercising social services functions under the Act. .

The purpose of the **population assessment** is to ensure that local authorities and Local Health Boards jointly produce a clear and specific evidence base in relation to care and support needs and carers' needs to inform various planning and operation decisions. Draft regulations and Chapter 2 of the Code set out the requirements for undertaking this population assessment.

Prevention is at the heart of the Welsh Government's programme to transform, and make sustainable, social services in Wales. Chapter 3 of the Code sets out the requirements on social services to provide or arrange a range of preventative services. The population assessment must include identifying the range and level of services required to deliver the preventative services required.

Under section 16 of the Act a new general duty is placed on local authorities that will require local authorities to promote models of service which are **social enterprises, co-operatives**, other models which involve people who need care and support in the design and delivery of their services, and the third sector. This underpins the overall aim of the Act of putting people at the centre and provides a legal framework where local authorities will actively look at values based organisations in identifying the most suitable business model to deliver services – ensuring that they consider the use of social enterprises and co-operatives in their various forms as ways of delivering services. Regulations and Chapter 4 of the Code support local authorities in discharging this duty.

The **Information Advice and Assistance service** is the service that must help *all* people to access relevant, accurate, and timely information, advice and assistance about their local preventative well-being services which would be accessible and proportionate to their needs. The Service must be accessible to all and offer a consistent standard of service across Wales; requirements for this service are covered in chapter 5 of the Code.

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 (Population Assessment) (Wales) Regulations 2015** (Annex B)
- A draft of **The Care and Support (Partnership arrangement for population assessments) (Wales) Regulations 2015** (Annex C)
- A draft of **The Social Services and Well-being (Wales) Act 2014 (Social Enterprise, Co-operative and Third Sector) (Wales) Regulations 2015** (Annex D)
- A draft of the **Code of Practice on General Functions** issued under section 145 of the Social Services and Well-being (Wales) Act 2014 (Annex E)

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

**Consultation
Response Form**

Your name:

Organisation (if applicable):

email / telephone number:

Your address:

Chapter 1: Well-being							
1. To what extent do you agree that this chapter will support local authorities to promote well-being in undertaking their social services functions?							
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?							
2. To what extent do you agree that this chapter will support local authorities to deliver better well-being outcomes for people who need care and support and carers who need support?							
Agree	<input type="checkbox"/>	Tend to agree	<input type="checkbox"/>	Tend to disagree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
What else would help support and deliver this?							
3. To what extent do you agree that this chapter supports local authorities to empower people to have an equal relationship with social services?							
Agree	<input type="checkbox"/>	Tend to agree	<input type="checkbox"/>	Tend to disagree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>

Chapter 2: Population Assessment

4. To what extent do you agree that the proposed structure of the population assessment report is clear and appropriate?

Agree	<input type="checkbox"/>	Tend to agree	<input type="checkbox"/>	Tend to disagree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
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5. To what extent do you agree that this chapter provides for an effective assessment of the support needs of carers?

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. What arrangements should be put in place to further support those undertaking population assessments?

7. To what extent do you agree that it is appropriate that population assessment reports are approved within local authorities by the full council on submission by the council's executive or board?

Agree	<input type="checkbox"/>	Tend to agree	<input type="checkbox"/>	Tend to disagree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
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8. To what extent do you agree that the role of the lead co-ordinating body is sufficiently clear?

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 further detail should be included?

Chapter 3: Preventative Services

9. To what extent do you agree that the requirements placed on local authorities to provide preventative services are clear?

Agree	<input type="checkbox"/>	Tend to agree	<input type="checkbox"/>	Tend to disagree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
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10. To what extent do you agree that this chapter makes clear the requirement for preventative services to meet the needs identified in the population assessment undertaken as a result of section 14 of the Act?

Agree	<input type="checkbox"/>	Tend to agree	<input type="checkbox"/>	Tend to disagree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
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Chapter 4: Social Enterprises

11. To what extent do you agree that this chapter will support local authorities in their duty to promote social enterprises, co-operatives, user led services and the third sector?

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 else is needed to support this duty?

12. To what extent do you agree that progress on promoting the duty in Section 16 should be reported as part of the overall requirement to report on the population assessment?							
Agree	<input type="checkbox"/>	Tend to agree	<input type="checkbox"/>	Tend to disagree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
13. To what extent do you agree that this chapter will support an environment where people can be supported to be involved in the design and delivery of services?							
Agree	<input type="checkbox"/>	Tend to agree	<input type="checkbox"/>	Tend to disagree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
What else would support this?							
Chapter 5: Provision of information, advice and assistance							
14. To what extent do you agree that the national standards for information, advice and assistance in this chapter will support local authorities to deliver a high quality Information, Advice and Assistance Service to all people?							
Agree	<input type="checkbox"/>	Tend to agree	<input type="checkbox"/>	Tend to disagree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
15. What more is needed in this chapter to ensure an Information, Advice and Assistance Service that is accessible and responsive to all people?							

16. Are there elements of the Information, Advice and Assistance Service that could be better delivered through national collaboration between local authorities?
Other
The Welsh Government is interested in understanding whether the proposals in this consultation document regarding part 2: general functions 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.
17. Do you think that the proposals in this consultation will have any positive impacts on groups with protected characteristics? If so, which and why/why not?
18. 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?
19. 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?

20. 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.