

The Social Services & Well-being (Wales) Act 2014 overview

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Background

- 2011 Law Commission Report
- 2013 Social Services & Well-being (Wales) Bill introduced into Assembly
- 2014 1st May Royal Assent
- 2014-15 Regulations, codes and guidance drafted
- 2016 Full (or partial) implementation

The Welsh Act is materially different to the English Bill (the Care Bill) which is still expected to come into force in 2015. One effect of this will be that English court judgments may no longer be of direct relevance in Wales.

Details of the various debates/ amendments / statements etc concerning the Act can be accessed at www.senedd.assemblywales.org/mglIssueHistoryHome.aspx?lId=5664

Legislation to be repealed

- National Assistance Act 1948
- Health Services & Public Health Act 1968
- Chronically Sick and Disabled Persons Act 1970 (but only for adults)
- Health & Social Services & Social Security Adjudications Act 1983
- Disabled Persons (Services, Consultation and Representation) Act 1986
- NHS & Community Care Act 1990
- Carers Acts
- Health & Social Care Act 2001 (DPs)

Definitions (sections 2- 4)

Disability – has the same meaning as in the Equality Act 2010.

Carers – a person who provides or intends to provide care for an adult or disabled child (but excludes paid carers etc)

Individual – an adult, a carer or a disabled child

Underpinning principles (section 4)

The promotion of 'well-being'

- A general (target) duty
- Defined expansively in section 2
- The making explicit of the duty to promote an individual's well-being
 - applies when exercising 'functions' under the Act
 - 'individual' includes both 'adults in need and adult carers

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“Well-being” (section 2)

- physical and mental health and emotional well-being;
- protection from abuse and neglect;
- education, training or recreation;
- domestic, family and personal relationships;
- contribution made to society;
- securing rights and entitlements;
- social and economic well-being;
- suitability of living accommodation.

for adults

- control over day to day life;
- participation in work.

“Well-being”

LA must have regard to—

- the individual's views, wishes and feelings,
- the importance of promoting and respecting the dignity of the individual,
- the characteristics, culture and beliefs of the individual (including, for example, language), and
- the importance of providing appropriate support to enable the individual to participate in decisions that affect him or her to the extent that is appropriate in the circumstances, particularly where the individual's ability to communicate is impaired through age, disability or otherwise.

for adults

- the importance of beginning with the presumption that the adult is best placed to judge the adult's well-being, and
- the importance of promoting the adult's independence where possible.

UN principles (section 7)

Duty to have regard to the UN Principles for Older Persons (1991) and the UN Convention on the Rights of the Child (in Part 1 of the Schedule to the Rights of Children and Young Persons (Wales) Measure 2011)

Code of practice (sections 8-13)

- Welsh Ministers must issue a statement relating to the well-being of people in Wales in need care and support within 3 years of the Act receiving Royal Assent (section 8);
- Welsh Ministers must issue a code to help achieve the outcomes specified in the statement (including 'standards', 'measures' and 'targets') (section 9);
- LA's must 'act in accordance with any relevant requirements imposed upon it by a code' and 'have regard to any relevant guidance contained in that code' (section 10).

Prevention (sections 14 - 15)

Strategic duty: on LA's and LHB's:

- to assess the extent of need for range and level of preventative services (section 14);

LA duty to provide / arrange preventative services that will:

- contribute towards preventing or delaying the development in its area of needs for care and support;
- reduce the needs for care and support in its area;
- minimise the effect on disabled people of their disabilities;

- contribute towards preventing people from suffering abuse or neglect;
- enable people to live their lives as independently as possible.
- + Specific provisions for children

Promoting social enterprises etc (section 16)

LA's must promote:

- the development of social enterprises / co-ops / third sector organisations to provide care and support and preventative services;
- care and support and preventative services that involve service users in the design and running of services;

Information (section 17)

The provision of a service to provide adults in need / carers with information about care and support;

Includes:

- how the LA care system operates;
- the choice of types of care and support, and the choice of providers in the local authority's area,
- how to access the care and support that is available;
- how to raise concerns about safety /well-being of an adult who has needs for care and support

Assessment of adults in need (section 19)

Specific duty

- Mirrors existing s47 NHS&CC 1990 duty
- Duty to consult carer 'so far as is feasible'
- draft Care & Support (Eligibility Criteria) Regulations

Assessment of children in need (section 21)

Specific duty

- Much more specific than current s17 Children Act 1989 duty

Carers Assessments (section 24)

Specific duty that codifies the existing three Carers Acts – but drops (1) the 'regular & substantial' requirement; and (2) the requirement to 'request' an assessment.

Applies to carers of any age. Carers' assessments must include:

- whether the carer able / willing
- the outcomes the carer wishes in day-to-day life,
- whether the carer works or wishes to (and / or) to participate in education, training or recreation

Combined assessments of carer and cared for person (section 28)

Subject to relevant consents

Eligibility criteria (section 32 - 33)

The Act provides that eligibility criteria will be detailed in regulations. The intention is that draft guidance / criteria will be published for consultation in spring of 2014. In a statement in November 2013² the Welsh Government stated that:

Whilst assessment and eligibility will play an integral role in the new system ... [its] significance ... will be considerably reduced. ... the new system will place greater focus on prevention, transparency, and building on people strengths to enable [people in need] to exercise voice and control over what matters to them, their needs and aspirations. This will mean that more people will be supported outside the eligibility framework

the regulations and the Code will:

- set out a minimum threshold on what needs are eligible needs for care and support
- focus on the person's needs for care and support, the impact of those needs on their well-being, and the level of risk to the individuals if those needs are not met
- make it clearer for people what their entitlements are; and introduce a level of consistency about the threshold to give people more confidence that if they want to move to another area in Wales, and their circumstance have not changed, then their eligibility for care and support will continue
- set out the criteria for people who are to be 'passported' to be treated as eligible i.e. those who the local authority must protect from abuse or neglect, or risk of abuse or neglect, and also in the case of children: harm, or risk of harm
- prevent local authorities from tightening their eligibility criteria beyond that set out in the regulations
- place on-going responsibilities on local authorities to look at wider support across the new care and well-being system to ensure that a greater number of people with needs are supported in a range of ways that can be accessed outside the eligibility criteria.
- The eligibility framework must be sensitive to the differing needs, context and outcomes for children, adults and carers. It cannot therefore be a one size fits all.

On 1st February 2014 revised assessment and care planning guidance for older people (people aged 65 and over) came into force in Wales replacing the 'Unified Assessment Process'³ guidance (apart from its eligibility criteria in Chapter 5).

Duty to provide care & support for individuals in need (section 32)

If a local authority determines that any needs meet the eligibility criteria then the authority must—

- (a) consider what could be done to meet those needs;
- (b) consider whether it would impose a charge for doing those things, and if so, determine the amount of that charge.

This duty applies to adults (section 35), to disabled children (section 37), and to carers whether they are adults (section 40) or a child (section 42).

Self-funders (sections 35)

In addition to the duty to meet the needs of adults in need and adult carers whose financial resources are below the financial limit, the Act imposes a duty on LA's to meet the needs of self funders – if the self funder 'asks'.

² Written Statement Gwenda Thomas AM, Deputy Minister for Social Services *Assessment and Eligibility Framework* 5 November 2013.

³ NAFWC 'Creating a Unified & Fair System for Assessing & Managing Care' NAFWC 09/2002 (2002).

Care and support (section 34)

Duty to provide a range of 'services' for carers / dependent people

- a) accommodation in a care home, children's home or in premises of some other type;
- b) care and support at home or in the community;
- c) services, goods and facilities;
- d) information and advice.
- e) counselling and advocacy;
- f) social work;
- g) payments (including direct payments);
- h) aids and adaptations;
- i) occupational therapy.

Charging (section 59 - 73)

LA's can charge for care and support provided under sections 35 - 45 to meet a person's needs but only 'the cost that the local authority incurs in meeting the needs to which the charge applies' (section 59(2)). The Act also requires that the charge imposed be no more than is 'reasonably practicable for the person to pay' (section 66)

NHS interface (section 47)

Couglan – prohibits LA funding nursing care that the NHS has a 'power or duty' to provide;

- Section 47 – only prohibits LA providing nursing care that the NHS has a 'duty' to provide;

Couglan – enables a LA to fund nursing care provided if it is (1) merely ancillary or incidental to the provision of social care support, and (2) of a 'nature' that you would expect a social services to provide.

- Section 47 is silent as to the 'nature' of the nursing care, and so risks moving the NHS Continuing Healthcare boundary to further reduce the NHS obligations in this context.

Care & support plans (section 54 - 55)

Similar to current law.

Direct Payments (sections 50 - 53)

Little change

In England it is expected that these will be extended to cover residential care costs – it is unclear if this is being proposed in Wales.

Continuity of care (portability) (sections 56)

- If 1st authority notifies 2nd authority that person is moving;
- When move happens:
- If 2nd authority not assessed / or put in place care plan for adult in need and/or carer:
- Then 2nd authority must meet the same needs as 1st authority
- Until it has assessed / produced care plan

Safeguarding (section 126 – 142))

Part 7 of the Act deals with safeguarding – and includes children. In relation to adults there is a duty to make enquiries if adult with care & support needs:

- Is experiencing, or is at risk of abuse of neglect; and
- Is unable to protect him/herself against the abuse / neglect

The Act introduces a statutory duty on LA's to have Safeguarding Boards and in addition provides for an 'authorised officer' to apply to the magistrates court for 'an adult protection and support' order' which provides a power of entry to premises to enable the authorised officer and any other person accompanying the officer to:

- speak in private with a person suspected of being an adult at risk,
- ascertain whether that person is making decisions freely, and
- assess whether the person is an adult at risk and to make a decision what, if any, action should be taken.

The powers under s47 NAA 1948 are repealed (section 129);
The power to protect property is retained (section 58)

Human Rights Protection

On 1st May 2014 the Westminster Government announced its intention to amend the English Care Bill to insert a new clause (48) which will provide that where care or support is arranged by a local authority, or paid for (directly or indirectly, and in whole or in part) by the authority and that care is provided by a registered care provider to an adult or a carer either in their own home or in care home Then the provider is deemed to be a public authority for the purposes of the Human Rights Act 1998. The provision will apply to Wales.

Complaints (section 171 - 180)

Part 10 of the Act provides for further reform of social services procedures (adults and children – as well as for privately funded care). The 2012 Consultation on reforming the social services complaints process⁴ – proposed the removal of the third stage and the transfer of this responsibility to the Public Services Ombudsman for Wales (who would also be able to investigate complaints by self-funders concerning their social care services). Both provisions have already been implemented in England.

Advocacy (section 181 – 183)

Provides for regulations requiring local authorities to arrange for advocacy services for people with needs for care and support needs (whether or not those needs are being met by a local authority).

⁴ Welsh Government *Making things better - Review of Social Services complaints*. The consultation will close on the 30th May 2012 – see <http://wales.gov.uk/consultations/healthsocialcare/better/?lang=en>