

National Assembly for Wales / Cynulliad Cenedlaethol Cymru
[Health and Social Care Committee](#) / [Y Pwyllgor Iechyd a Gofal Cymdeithasol](#)

[The Care and Support \(Eligibility\) \(Wales\) Regulations 2015](#) / [Rheoliadau Gofal a Chymorth \(Cymhwysra\) \(Cymru\) 2015](#)

Evidence from Wales Carers Alliance – CSR 05 / Tystiolaeth gan Gyngghrair Cynhalwyr Cymru – CSR 05

National Assembly for Wales' Health and Social Care Committee

Consultation on the Care and Support (Eligibility) (Wales) Regulations 2015

Wales Carers Alliance briefing paper

19.05.15

1. The Wales Carers Alliance appreciated the opportunity to take part in the Technical Groups convened by Welsh Government during the development of the regulations and codes of practice for the Social Services and Wellbeing (Wales) Act 2014. We were able to contribute to the Eligibility Technical Group and welcomed the constructive atmosphere amongst officials and representatives from the statutory and voluntary sector whilst dealing with complex and difficult issues.
2. The Alliance would however wish to raise a number of remaining concerns in regards to the Care and Support (Eligibility) (Wales) Regulations 2015, both in terms of the general aims of the Act in relation to setting national eligibility criteria and the detail of the regulations.
3. We understand the overarching aims of the Act to refocus on people's strengths, capacity and capabilities but we are concerned that this change of emphasis could easily result in additional demand and expectation being placed on unpaid carers to meet the care and support needs of the people they care for. It is vital then that primary and secondary legislation provides a clear legal framework for the decisions which need to be made by local authorities in these matters.

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4. The first general point that we would like to make in regards to the “Can and Can Only” test is that during consultation events held in early 2015 by Carers Wales with 58 carers from 16 counties across Wales, the majority of carers commented that they found the “Can and Can Only” test difficult to understand and were indeed concerned that it would lead to increased pressure on carers to provide care and support to their loved ones.
5. The Alliance welcomes the high profile given to carers in the Act. Both the primary and secondary legislation relating to assessments make it clear that an assessment of needs must be carried out in a manner which disregards the willingness or availability of a carer to provide care and support. The “Can and Can Only” test and eligibility regulations however reintroduce the availability of “*others who are willing to provide that care*” directly into decisions about whether a person is legally entitled to have their needs met by a local authority. We believe that there is an inherent risk for carers in this approach, especially as the stated aim of the legislation is to “reduce the number of people who will require a care and support plan” and thereby have an enforceable right to support from their local authority.
6. The Alliance was therefore particularly disconcerted to see the removal of Regulation 7 from the original consultation draft. Regulation 7 specifically addressed the importance of a local authority disregarding the care given by a carer (to an adult or a child) when making decisions in regards to need and eligibility. We recognise that the Code of Practice on eligibility in paragraph 2.35 does provide some clarity on this issue. Specifically, that a local authority ‘**must** identify those needs which would be deemed as eligible if the carer was not meeting needs’.

However, there still remains the risk of confusion in how the Code relates to the regulations. This risk, coupled with the removal of Regulation 7, increases the likelihood of local authorities deciding that the care and support needs of an adult or disabled child can be readily met by their carer. This would potentially place undue pressure on carers to take on or maintain increasing or unsustainable levels of care.

Clauses 3(c)(ii), 4(c)(ii), 5(c)(ii) of the revised regulations refer to “others who are *willing* to provide that care” but the Alliance are concerned that this does not provide sufficiently clear direction on the relationship between eligibility and the willingness and availability of a carer to provide care and support. We also feel that the regulations and the Code of Practice only recognise the willingness of the carer to provide the care, and not the willingness of the

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individual with care needs to receive care from the carer. The original Regulation 7 may have been confusing but at least attempted to address this issue.

7. The Alliance welcomes that the Code of Practice on Eligibility states in paragraph 2.35 that the local authority 'must ensure the individual is involved as a full partner' in the assessment of eligibility. This is a welcome addition to the Code that strengthens the individual's role in determining the extent to which they can meet their well-being outcomes with the support of others or through services to which they have access.
8. Local authorities have a general duty to plan for and provide community preventative services whereas the eligibility regulations deal with decisions relating to individual legal rights and entitlements. There is no individual right or entitlement to access preventative services, this is a potential area for major dispute where local authorities may consider that a certain service or community activity is adequate to meet a person's needs but that person disagrees. This would have direct consequences for decisions about eligibility.

The Alliance is concerned that the regulations and guidance do not say enough about the links between the two. For instance, whose responsibility is it to show that a person's assessed needs can be met with the assistance of services in the community? We would expect regulations and guidance to require a local authority to demonstrate that they have relevantly signposted or made referrals on to a range of community services when making their decisions on eligibility.

Unless adequately resourced with a comprehensive range of community services there is a real risk of placing more pressure on carers instead of assisting them. It is worth mentioning that cuts in budgets in local authorities over recent years have resulted in the closure of many preventative services run by authorities and the third sector e.g. day care and short breaks.

9. The regulations refer to a range of well-being related factors but these do not correlate directly with the attributes of wellbeing specified in Part 2 of the Act. In particular, we can not see any reason for the exclusion of "suitability of living accommodation" from 3(b), 4(b) and 5(b) of the regulations and would want living accommodation to be included.
10. Although it is outside of the immediate remit of these regulations we would also like to highlight, that unlike the Care Act in England, the Social Services and Wellbeing (Wales) Act does not provide a right of appeal to decisions made by local authorities. Currently the only mechanism open to carers and those they care for to object to the outcome of eligibility decisions is to make a formal complaint. The Alliance believes that this oversight weakens

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the overall intentions of the Act and would like to see a formal appeals process introduced by legislation at the earliest opportunity.

11. On a minor note, there does not appear to be a footnote on the definition of “disabled” mentioned in point 19 of the statement setting out the amendments made following consultation.

About Wales Carers Alliance

Wales Carers Alliance exists to represent the concerns and further the interests of carers in Wales. There are over 370,000 carers across Wales providing unpaid care to friends and family, together the 18 member organisations of Wales Carers Alliance work with and for carers to promote the well-being of all carers.

Current members of the Wales Carers Alliance :

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