

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 Barnardo's Cymru – CSR 09 / Tystiolaeth gan Barnardo's Cymru – CSR 09



Title: Care and Support (Eligibility) (Wales) Regulations 2015 and Code of Practice

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1. Information and working context of Barnardo's Cymru

Barnardo's Cymru has been working with children, young people and families in Wales for over 100 years and is one of the largest children's charities working in the country. We currently run 85 diverse services across Wales, working in partnership with 18 of the 22 local authorities. In 2013-14 we worked with in the region of 8,300 children, young people and families directly and a further almost 22,000 through less direct work; including open groups and outreach work. Barnardo's Cymru services in Wales include: care leavers and youth homelessness projects, young carers schemes, specialist fostering and adoption schemes, family centres and family support, parenting support, community development projects, family support for children affected by parental imprisonment, domestic abuse and parental substance misuse, short breaks and inclusive services for disabled children and young people, assessment and treatment for young people who exhibit sexually harmful or concerning behaviour and specialist services for children and young people at risk of, or abused through, child sexual exploitation and young people's substance misuse services.

Every Barnardo's Cymru service is different but each believes that every child and young person deserves the best start in life, no matter who they are, what they have done or what they have been through. We use the knowledge gained from our direct work with children to campaign for better childcare policy and to champion the rights of every child. We believe that with the right help, committed support and a little belief, even the most vulnerable children can turn their lives around.

- **This response may be made public.**
- **This response is on behalf of Barnardo's Cymru.**

Barnardo's registered Charity Nos. 216250 and SCO37605
Rhifau Cofrestru'r elusen Barnardo's 216250 a SCO37605

Question 1a – What are your views as to whether the draft Regulations and Code of Practice as drafted will achieve the desired aims of the Act?

1.1. The draft Regulations are clear in setting out needs that meet the eligibility criteria and the draft Code of Practice provides greater clarity on the intended application of the aims of the Act than the earlier consultation draft. However the need to consider whether the needs are needs that meet eligibility criteria, apply the national eligibility test and apply these across the five elements of assessment appears complex. Work will be needed to support consistent practice in the implementation of these requirements.

1.2. We still believe that the Code of Practice on Part 4 of the Act and on Part 3 of the Act should provide stronger guidance on the application of best interests considerations in relation to eligibility and social care decisions about children.

1.3. Often social care intervention in the lives of children is based on concerns about impaired parenting capacity or family circumstances which, mean that children may not be receiving the nurture, protection and support they need to develop and secure good well-being through their families. The state places expectations through legislation on the way in which families should provide for children in order to support their best interests and has powers to intervene where these expectations are not met. In this way due regard to Article 3 of the United Nations Convention on the Rights of the Child (UNCRC) is demonstrated. Application of best interests considerations in relation to children will strengthen the potential to achieve the desired aims of the Act in terms of prevention, securing good well-being outcomes, reducing the escalation of social care needs and safeguarding children.

1.4 We note that on page 16 of the Code of Practice on Part 3 of the Act it states 'that the process of assessment of is about ensuring the best interests of the child are met'. This relates to further amendments being developed with a small task and finish group of which we are members. We very much welcome this addition and would like to see reference to ensuring the best interests of the child are a consideration in social care decisions about children reflected throughout the Codes of Practice on Part 3 and Part 4 of the Act.

Question 1b – Do you believe that the draft Regulations and Code of Practice are appropriate to ensure the right access to care and support for people who require it in Wales?

1.5 The eligibility test and associated personal well-being outcomes and five elements of assessment should in theory lead to social care focussed on securing good well-being outcomes for children. The process of preventative provision as an offer for those who do not meet the eligibility test should also support better outcomes. However in practice for children's services these processes are already in place in authorities across Wales with Families First, Team Around the Family and social service intervention operating at different levels of need and systems for families to move between levels of intervention as needs change.

1.6. There must be a clear recognition that in the case of children the majority of contact with the Information, Advice and Assistance (IAA) service will come via referrals based on an identified need for intervention, that signposting to preventative services from the IAA service may not be affective in responding to children and their families- referral is likely to be the main route to preventative services. Work is also needed to address preventative work with families who 'fail to engage' so that children's well-being is supported even where parents have difficulty in accepting preventative interventions that may reduce the need for children to have care and support intervention later on.

Question 1c – Do you believe that the draft Regulations and Code of Practice sufficiently address any concerns previously raised?

1.7. The Act requires that those exercising functions under the Act must have due regard to the UNCRC. This is

referenced at para 1.5 of the Code of Practice on Part 4 of the Act. However there is no guidance on how this might be interpreted, achieved or monitored.

1.8. Further we have not seen a published CRIA in relation to these draft Regulations and Code of Practice or in relation to any other regulation and guidance introduced under the Act. It is imperative that regulation and guidance introduced under an Act which is built on a 'people model' is subject to assessment that clearly demonstrates that due regard to the UNCRC in line with the duty on the Minister has been considered and applied.

1.9. The inclusion of further amendments to the Code of Practice on Part 3 of the Act to ensure maintenance of the key principles of the Framework for the Assessment of Children in Need and their Families goes some way to addressing concerns we have raised in the past.

1.10. Section 21 of the Social Services and Well-being (Wales) Act - Duty to assess the needs of a child for care and support includes:

(7) For the purposes of the needs assessment a disabled child is presumed to need care and support in addition to, or instead of, the care and support provided by a child's family.

The need to protect the entitlements of disabled children as provided under Section 17 of the Children Act 1989 was the subject of concern and debate during scrutiny of the Social Services and Well-being (Wales) Act. The Deputy Minister made a statement committing to address these concerns during the passage of the Bill. This information has been included in the Code of Practice on Part 3 of the Act we believe that it should also be included in the Code of Practice on Part 4 of the Act.

1.11. We remain concerned that the grounds for the refusal to accept an assessment in the Code of Practice on Part 3 of the Act and for refusal of a care and support plan under the Code of Practice on Part 4 of the Act should be subject to a blanket provision that refusal can be overridden where a local authority considers that this is in the best interests of the child. Section 23 of the Act does provide that the refusal of an assessment does not discharge a local authority from their duty in relation to a child where: *The local authority is*

satisfied, in the case of a refusal given by a person with parental responsibility for the child, that not having the assessment would be inconsistent with the child's well-being. This provision as worded on the face of the Act is omitted from the Code of Practice on Part 3 of the Act.

1.12. The provisions and direction on the development and review of care and support plans appear to be robust. However we remain of the opinion that in order to provide children with a sense of voice and control in line with the policy intent of the Act there should be a presumption that a child will require an advocate to support them in participating and being heard in the assessment and care planning process. This in combination with workforce development to support a clear child right's approach to social care work would provide for a co-production approach to social care for children in line with the policy intent of the Act.

Question 2 – What are your views as to whether there are likely to be any barriers to the implementation of the provisions?

2.1 Although there are some good examples of user led organisations, cooperatives and social enterprises led by the parents of disabled children the capacity to increase the range of preventative services beyond existing preventative services in this way will be limited. The development of user led organisations, cooperatives and social enterprises being established by parents where the need for preventative services is related to parenting capacity or family stress is likely to be limited. As a third sector organisation we have experience of supporting parents into volunteering and mutual support opportunities following the completion of an intervention that has reduced care and support needs and built parental confidence. However this requires support and parents are not usually ready to engage in this way until a successful intervention is complete.

2.2. The capacity to meet needs early through preventative services for children and families is likely therefore to be limited to existing funded and commissioned programmes such as Families First. In fact many of the early preventative community based services that were funded under the old Cymorth Grant funding have been now been lost.

2.3. In our experience the level of need among families referred into Families First is increasing with families presenting with more complex needs. It is difficult to see how

without further resources more children will be able to be diverted into preventative services in order to avoid escalation of need and decrease the need for eligible care and support needs to be met. The picture for children may therefore remain static. This is not to claim that quality work is not already being delivered via Families First and social services provision. Rather that the current stretch on services is unlikely to be alleviated by the provisions of the Act.

2.4. In other words there are limits to the extent to which the needs of children with non-eligible care and support needs can be met through current provision.

Question 3 – What are your views on the likely consequences of the draft Regulations and Code of Practice for current and future service users and carers?

3.1. We are not clear at this time how significant the Regulations and Code of Practice will be as applied to the delivery of social care for children. We do believe that stronger direction on the duty to have due regard to the UNCRC for those exercising functions under the Act, including those functions covered by this draft Regulation and Code of Practice, will ensure that the within a people model recognition that the child 'needs special safeguards and care' (as set out in the Declaration on the Rights of the Child) will be better secured. This in turn will support the realisation of the policy intent of the Act as applied to children.