

## **Explanatory Memorandum to the Care Leavers (Wales) Regulations 2015**

This Explanatory Memorandum has been prepared by the Health and Social Services Group and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Care Leavers (Wales) Regulations 2015. I am satisfied that the benefits outweigh any costs.

Mark Darkeford

**Minister for Health and Social Services**

21 October 2015

## **Part 1 – OVERVIEW**

### **1. Description**

The Social Services and Well-being (Wales) Act 2014 provides a single Act that brings together local authorities' duties and functions in relation to improving the well-being of people who need care and support and carers who need support. The Act provides the statutory framework to deliver the Welsh Government's commitment to integrate social services to support people of all ages, and support people as part of families and communities.

These Regulations make provision about the support to be provided to certain young persons who are no longer looked after by a local authority, that is category 2, 3 and 4 young persons. These Regulations make provision about the way in which the responsible local authority must carry out an assessment of the needs of category 2, 3 and 4 young persons, about the preparation and review of pathway plans and any other support the local authority intends to provide.

The function of personal advisers appointed for category 2, 3 and 4 young persons are also prescribed, as well as provisions about the suitability of accommodation, and the keeping of records about assessments and pathway plans.

### **2. Matters of special interest to the Constitutional and Legislative Affairs Committee**

There are no matters the Minister wishes to bring to the Committee's attention.

### **3. Legislative background**

The powers enabling these Regulations to be made are contained in Sections 104(2) and (6), 106(4), 107(7)(c) and (8), 108(6), 109(1) and (3), 116(2) and 196 (2) of the Social Services and Well-being (Wales) Act 2014.

This instrument is subject to the negative procedure and will come into force in April 2016.

#### Current legislation

The Children (Leaving Care) (Wales) Regulations 2001 support Part 3, and Schedule 2 of, the Children Act 1989 and set out the support to be provided to certain young persons who are no longer looked after by a local authority, that is category 2, 3 and 4 young persons.

#### Proposed Legislation

These Regulations revoke, and in part, replace the 2001 Regulations with some changes. The new statutory framework consists 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 Social Services and Well-being (Wales) Act 2014 (“the Act”) will ensure that all children and care leavers, who are looked after or accommodated by their local authority receive, as a minimum, the same standards of care and support as they currently experience under the Children Act 1989; the Regulations and code of practice enhance and strengthen current regulations where consideration has been given to improving outcomes for this group of vulnerable children and young people.

These Regulations support both the Act and the provisions within the Children Act 1989 (excluding Part 3 of and Schedule 2 to that Act, which no longer apply in relation to Wales).

#### **4. Purpose & intended effect of the legislation**

The purpose of these Regulations is to ensure that care leavers are given the same level of care and support that their peers would expect from a reasonable parent and that they are provided with the opportunities and chance needed to help them move successfully in to adulthood.

Transition to adulthood is often a turbulent time: transitions are no longer always sequential – leave school, work, relationship, setting up home, parenthood. Young people can become adult in one area but not in others. For many young adults, their transition to adulthood can be extended and delayed until they are emotionally and financially ready and they have the qualifications they need and aspire to, so that they have the opportunity to achieve their economic potential. Young people from care may not have this option. Whilst most young people know they can call on the support of their families to help them through unforeseen difficulties, care leavers may not be able to rely on unqualified support if things do not work out as they make their journey into adulthood.

‘Care leavers’ should expect the same level of care and support that others would expect from a reasonable parent. The local authority responsible for their care should make sure that they are provided with the opportunities they need, which will include offering them more than one chance as they grapple with taking on the responsibilities of adulthood.

The definition of a category 1 young person (a child aged 16 or 17 who is still being looked after by a local authority) is provided in the Care Planning, Placement and Review of Cases (Wales) Regulations 2015 and specifies the period a child must be looked after (13 weeks) and the age a child (14 years old) must have reached for those periods to have counted.

The Regulations make provision about the support to be provided to certain young persons who are no longer looked after by a local authority, including category 2, 3 and 4 young persons. The Regulations provides that an additional category of young person, a category 2 young person, which includes a child aged 16 or 17 and who was detained or admitted to hospital and who was previously looked after by a local authority for 13 weeks, is subject to the same access to suitable accommodation as other category 2 young persons.

An assessment of the needs of each category 2, 3 and 4 young person must be undertaken by the local authority to ensure that the care leaver has an appropriate support structure in place, suitable financial support and the necessary life skills required for independent living. In addition local authorities must also prepare a pathway plan setting out the advice and support available to the young person and how the local authority intends to meet the young person's needs. This should include assistance in relation to education, training, employment and provide suitable accommodation. Records of the assessment of needs, the pathway plan and any review of the pathway plan must be established and maintained for each looked after child by the responsible local authority.

The functions of personal advisers in relation to category 2, 3 and 4 young persons are prescribed in these Regulations. These include a new duty for the personal adviser to visit a child who has been provided with suitable accommodation by the local authority, within 7 days of the child moving in and at two monthly intervals thereafter.

## **5. Consultation**

A 12 week consultation on these Regulations ran between 8 May 2015 and 31 July 2015. Further details on the consultation process are set out in the Regulatory Impact Assessment in Part 2.

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

### **Options**

#### **Option 1 – Do the minimum and retain the current approach of assessment for Care Leavers**

Under this option the current approach used by local authorities for assessing the needs of category 2, 3 and 4 young persons is retained. However, retaining the current approach for assessment and not introducing these Regulations will lead to Welsh Ministers not being in compliance with 104(2) and (6), 106(4), 107(7)(c) and (8), 108(6), 109(1) and (3), 116(2) and 196 (2) of the Social Services and Well-being (Wales) Act 2014 which require Regulations to be made setting out the support to be provided to certain young persons who are no longer looked after by a local authority.

#### **Option 2 – Bring the Regulations into force and implement the enhanced provisions for Care Leavers**

Making the Regulations will provide a consistent and coherent framework for the support local authorities must provide to category 2, 3 and 4 young persons who are no longer looked after by a local authority. Under this option the full range of duties in the Act for looked after children and care leavers will be implemented together with ensuring that wellbeing outcomes for children and young people are considered throughout the Regulations.

#### **Option 1 – Do the minimum and retain the current approach of assessment for Care Leavers**

##### **Costs**

Retaining the current system will add no extra burden to the current expenditure of local authorities. This option is therefore cost neutral.

##### **Benefits**

If the system remains the same local authorities will not need to change any of their processes and procedures nor require any further training of staff already working in the social care system. No further benefits have been identified under this option.

#### **Option 2 – Bring Regulations into force and implement the enhanced provisions for Care Leavers**

##### **Costs**

Under this option the Welsh Government considers that there will be large parts of the Regulations that are cost neutral as the duties are not dissimilar to those under the Children Act 1989. The Regulations broadly re-enact provisions in the 2001 Regulations with some changes resulting in a change of process and procedure which would not result in any significant additional costs to a local authority.

For example, the Regulations extend the support for category 2 young people so that those aged 16 or 17 who are detained or admitted to hospital are subject to the same access to suitable accommodation as other category 2 young persons. In addition, a new duty is placed on a personal adviser to visit a child who has been provided with suitable accommodation by the local authority, within 7 days of the child moving in, and at two monthly intervals thereafter.

National data for care leavers aged 19 by accommodation type<sup>1</sup> shows a total of 375 care leavers provided with suitable accommodation provided for by the local authority. This equates to an average of 17 care leavers a year provided with accommodation per local authority. The new duty placed on a personal adviser to visit each child provided with accommodation will not incur a significant additional cost burden for each local authority over and above the previous duties and visiting requirements of a personal advisor.

### **Benefits**

Option 2 allows for greater integration of the whole Act into the care and support being offered to looked after children under Part 6 of the Act. Children and young people who are looked after and leaving care will have their wishes and feelings taken into account when decisions are being made which will impact upon their lives. This will allow them greater voice and control over those decisions whilst also ensuring a smoother transition to adulthood depending on the circumstances of the individual.

### **Risks**

If the system is not changed, in light of the evidence for the need for change, there is a risk of reputational damage for the Welsh Government.

The current model cannot deliver the Welsh Government's commitment to the equality of provision in the Sustainable Social Services (SSS) framework. The current system provides different systems for children, adult and carers and does not provide an integrated service for all people, which is a requirement of the Sustainable Social Services framework.

### **Summary and Preferred Option**

The Welsh Government consider that option 1 – retaining the current model of assessment for care leavers - is not sustainable.

The Welsh Government considers option 2 to be the preferred option. The introduction of the Regulations will ensure that the Act is applied in its entirety for looked after children and care leavers that better meets the needs of the individual, and considers the individual's circumstances. The proposed model will ensure a comprehensive assessment of needs is carried out to enable care leavers to transition to adulthood, live their lives independently and are provided with a stronger voice and control over the decisions that affect them.

### **Consultation**

A 12 week consultation on these Regulations ran between 8 May 2015 and 31 July 2015. Two consultation events were held as part of the consultation process attracting

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<sup>1</sup> Care leavers on their 19th birthday during year ending 31 March by local authority and activity, 2014-15

over 200 attendees representing a range of organisations. Attendees were asked to participate in discussions on the implementation of the Regulations, and to share information from the events with their wider networks to provoke deeper engagement with the proposals and a wider span of consultation responses.

There were 45 responses received from a variety of stakeholders, including the Welsh Local Government Association (WLGA), the Children’s Commissioner, Local Government representatives and Third Sector Organisations.

There was general support for the proposed system change to an outcomes-based approach with a simplified assessment and care planning process and greater integration of services.

The consultation responses identified a need for the Code of Practice to be updated to include more detail about pathway planning for care leavers and planning for transition to adulthood. In response to points raised during the consultation process, amendments were made to the Regulations, and the codes of practice were re-drafted to ensure that the process for assessment is clear to follow.

A detailed consultation response report has been published on the Welsh Government’s website.

### Competition Assessment

<b>Competition Filter Test</b>	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulations do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisations?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

The filter test shows that it is not likely that the regulation will have any detrimental effect on competition; therefore a detailed assessment has not been conducted.

We do not consider it necessary to undertake a competition assessment for these Regulations since they will not affect the business sector in any significant way

### **Post implementation review**

The Social Services and Well-being (Wales) Act 2014 contains provisions to allow the Welsh Ministers to monitor functions of the Act carried out by local authorities and other bodies. The Welsh Ministers may require these bodies to report on their duties in implementing these Regulations.

The Welsh Government will continue to monitor the impact of the Regulations on areas such as the Welsh language, tackling poverty, equality and the United Nations Principles for Older Persons.

As required by the Rights of Children and Young Persons (Wales) Measure 2011, the Welsh Ministers will have due regard to the UN Convention on the Rights of the Child when exercising relevant functions under the Act.