

Explanatory Memorandum to the code of Practice on the exercise of social services functions in relation to part 4 (Meeting needs) of the Social Services and Well-being (Wales) Act 2014.

This Explanatory Memorandum has been prepared by the Department of Health and Social Services and is laid before the National Assembly for Wales in conjunction with the above code of practice in accordance with Standing Order 27.1 and Standing Order 27.14

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the code of practice in relation to Part 4 (Meeting Needs) of the Social Services and Well-being (Wales) Act 2014. I am satisfied that the benefits outweigh any costs.

Mark Drakeford

Minister for Health and Social Services

16 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.

This code of practice sets out the duties of a local authority in meeting needs for care and support, or support in the case of a carer, following an assessment. Including:

- determining the point at which an individual will have an enforceable right to support from the local authority and the authority has a legal duty to provide or arrange care and support.
- Setting eligibility criteria that will apply to all people – children, adults and carers.
- setting out the requirements of a care and support plan; and
- setting out the circumstances required by a local authority when making direct payments.

This code of practice on eligibility, care planning and direct payments is fundamentally linked to the code of practice on assessment and review under Part 3 of the Act. Both codes are critical to the design and delivery of the new system for accessing and delivering care services.

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

Section 146 of the Act lays down the procedure to be followed before issuing and approving this code of practice. As set out in section 146 the draft code of practice was subjected to a 12 week public consultation. The code of practice will be laid before the National Assembly for 40 days, after which time, if no resolutions are made, Welsh Ministers must issue the code of practice.

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

3. Legislative background

The powers enabling the making of this code are contained in Sections 145 and 146 of the Act. Section 145 of the Act permits Welsh Ministers to issue, and from time to time revise, one or more codes of practice on the

exercise of social services functions. Section 146 of the Act lays down the procedure to be followed when issuing or revising a code under Section 145.

4. Purpose and intended effect of the legislation

The primary objective of the policy is to promote an individual's independence and ensure they have a stronger voice and control over their care and support services. It is a principle of the Act that local authorities should respond in a person-centred, co-productive way to each individual's particular circumstances. The framework for eligibility presented in this code is a rights-based approach that promotes the individual's voice and control by requiring local authorities to consider a bespoke response for each person; and to do this in partnership with the individual, and their advocate where one has been identified. It also recognises the contribution people can make to their own well-being and their responsibility to do so.

The code of practice sets out the process for meeting needs and finding solutions to enable an individual to achieve their personal outcomes through care and support plans, or support plans in the case of a carer. The approach to determining eligibility must also ensure that individuals are able to receive help to meet their care and support needs whether they are deemed eligible or not.

The provision of direct payments is an important mechanism, where appropriate, to meet an individual's need for care and support. This code of practice sets out the steps a local authority must take and the information which they must provide to the individual or their representative so they are able to make an informed decision as to whether they wish to receive a direct payment.

The approach to determining eligibility must be an outcome-based approach to eligibility that relates closely to the National Outcomes Framework. The starting point is the meaning of 'well-being' as set out in Part 2 of the Act and the local authority must determine whether the provision of care and support, or support in the case of a carer, will assist the person to meet their personal outcomes within that framework of well-being. The local authority must be clear about what matters to the person, and what the person themselves can do to maximise their own well-being.

The eligibility framework set out under the Act is designed to ensure that the duties of the local authority are clear and that the rights of the individual are upheld. These are:

- An enforceable right of the individual whereby the local authority must assess their need for care and support and must consider what could be done to meet needs and determine whether any of the needs meet the eligibility criteria, or must otherwise be met by the local authority.

- Eligibility criteria against which the needs of all individuals are to be assessed, but also to provide an automatic right to eligibility for those adults at risk of abuse or neglect or in the case of a child, at risk of abuse, neglect or other harm.
- An approach to determining eligibility for care and support that recognises the distinction between the local authority's general duties (as set out in Part 2 of the Act) and the establishment of an enforceable right for the individual to have their needs met by the local authority providing or arranging the provision of care and support (as required by parts 4 of the Act) if the needs meet the eligibility criteria.
- A requirement that an individual with needs for care and support has a right to the delivery of care and support provided or arranged by the local authority through a care and support plan where those needs cannot be met by themselves alone (or in the case of a child together with parents or other persons caring for the child), or with the support of others, or with the assistance of services in the community.

5. Consultation

Section 146 (1) of the Act states that before issuing or revising a code under section 145 Welsh Ministers must consult on a draft code. The code was consulted upon in a 12 week consultation that ran from 8 May 2015 to 31 July 2015.

Prior to going to formal consultation the Code was developed through the establishment of technical groups made up of representatives with the relevant expertise, technical knowledge and practical experience to work with officials on the detailed policy necessary to develop the code of practice.

There were 103 substantive written responses to the consultations received, from a wide range of individuals, representative groups, duty bearers and professional organisations. There was general support for the proposed system change to an outcomes-based approach with a simplified assessment and care planning process and the greater integration of services. In particular, there was clear support from our statutory partners. ADSS Cymru and WLGA commented that: "There needs to be absolute clarity about the future use of the eligibility framework to enable people to hold conversations about what will make a difference to their lives, rather than focus on whether they are eligible for care and support."

Following the Welsh Government formal consultation, the Health and Social Care Committee held a public consultation to consider the draft Eligibility Regulations between 14 and 29 May.

There were 10 written responses received from the public consultation. The responses received following the Health and Social Care Committee consultation provided general support for the amendments made post-consultation.

This support reflects the extensive work undertaken through the technical groups and wider stakeholder engagement during the development of the regulations and codes of practice. As a result the approach taken was widely supported but the responses did outline some particular areas for further consideration.

To address the issues raised the Welsh Government has worked directly with representatives from the relevant organisations to further refine the regulations and codes of practice and address the particular issues raised during the consultation. Following the consultation, the code was reviewed and amendments were made, where appropriate, to take into account the views of respondents.

A summary report of Welsh Government's formal consultation response is available on the Welsh Government website:

<http://gov.wales/consultations/healthsocialcare/part-3-and-4>

The evidence submitted following the Health and Social Care Committee public consultation is available on the National Assembly for Wales website:

<http://senedd.assembly.wales/mgConsultationDisplay.aspx?ID=177>

6. Regulatory Impact Assessment

The code is not subordinate legislation made by statutory instrument and for that reason an RIA is not required under section 4.2 of the Welsh Ministers' Regulatory Impact Assessment Code.

However, a full RIA has been completed for the Care and Support (Eligibility) (Wales) Regulations 2015, Care and Support (Care Planning) (Wales) Regulations 2015 and Care and Support (Direct Payments) (Wales) Regulations 2015 under Part 4 of the Act, to consider the impact on costs and benefits of introducing the regulations and the approach to the meeting the needs of individuals for care and support.

The individual RIAs concluded that the policies are central to the success of the Social Services and Well-being (Wales) Act, and there will be long term cost savings through the introduction of the process. The Explanatory Memorandum and RIA for Eligibility and Care Planning was laid before the National Assembly on 8 May 2015, to support scrutiny of the regulations, and has been approved and accepted. The Explanatory Memorandum and RIA for Direct Payments will be laid before the National Assembly for Wales in November 2015.

The code of practice sets out the guidance for local authorities and other interested parties to conduct their process to meet the needs of individuals in accordance with the regulations.

The code of practice has also been subjected to a broad spectrum of impact assessments including: Equality Impact Assessment, Welsh Language Impact Assessment and Children's Rights Impact Assessment. These impact assessments have also indicated that there are no significant negative impacts on any of the areas under consideration. Additionally, the code does not create any additional regulatory financial burden; therefore an RIA has not been completed.

In relation to the implementation of the full statutory framework, there may be associated implementation costs for local authorities and other bodies in the form of training and preparedness requirements. Financial support is being made available to local authorities and supporting partners to support implementation. In 2013-14 and 2014-15, a Delivering Transformation grant of £1.5 million per annum was made available to the six regional partnerships and selected national partners to enable local government and its partners to put in place the requirements of the new Act. This funding has been increased to £3m in 2015-16.

The impact assessments are available on the Welsh Government website:
www.wales.gov.uk