

**Explanatory Memorandum to the Code of Practice on the exercise of social services functions in relation to Part 3 (Assessing the needs of individuals) 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 3 (Assessing the needs of individuals) 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 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. It will transform the way social services are delivered, primarily through promoting people's independence to give them stronger voice and control. Integration and simplification of the law will also provide greater consistency and clarity to people who use social services, their carers, local authority staff and their partner organisations, the courts and the judiciary. The Act promotes equality, improvements in the quality of services and the provision of information people receive, and a shared focus on prevention and early intervention.

The Act introduces changes to the way in which assessments are provided for all individuals and families; and the way in which assessments are provided for the support of carers. The aim is for greater consistency of practice across Wales and more proportionate application of assessments to enable people to receive the help that they need while minimising administrative burdens.

The purpose of an assessment for care and support should be to work with an individual, carer and family, and other relevant individuals to understand their needs, capacity and resources and the outcomes they need to achieve, and then to identify how they can best be supported to achieve them. At the core of this is a conversation about promoting independence and development by maximising people's control over their day to day lives and helping address difficulties or problems which are stopping them doing this. It is essential to ensure that people are enabled to identify their own well-being outcomes, and to identify how they can achieve those outcomes.

This is a model of assessment and care planning that requires the assessment process to look at what resources a person has within themselves, and from their family, friends and local community, and aims to build on that to help people reach their personal well-being outcomes. It is consistent with the principles that underpin the Mental Capacity Act 2005. It is an approach to assessment and care planning that recognises that needs can be met not only through the provision of services but through active support and assistance to enable people to meet their own needs. For example, by assisting people to access local services themselves or supporting people to develop the skills and confidence they need.

### **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 code sets out:

- A clear process for assessing the needs of an individual for care and support, or support in the case of a carer.
- A single process of assessment that will apply to all people – children, adults and carers.
- A process of review and re-assessment that will apply to assessments.

Underpinning these changes is the need for more effective arrangements that are used and understood by all professionals in their work with individuals. Ensuring that practitioners work with people to identify what matters to them, and identify the contribution people themselves and communities can make to their own well-being, is central to the system. Improving these arrangements locally and getting greater consistency of practice across Wales will help drive the right care, at the right time, in the right place.

This code of practice:

- is about working in partnership with people and their carers to build on their strengths and understand their needs to enable them to maintain their independence and well-being.
- supports people's right to have respectful conversations about their well-being, and to exercise a strong voice and control in decisions about their care.
- aims to simplify and minimise administrative burdens so people get better services and better outcomes. Practitioners will be able to

spend more time working directly with people to better understand their needs and act earlier in helping them.

- supports practitioners to exercise their professional judgement working in partnership with people to agree solutions that are in the best interest of the individual.
- will drive integrated practice and will shape relationships between practitioners, and between practitioners and the individuals they support. It will lead to improved outcomes for individuals; a motivated workforce and raise public confidence in their dealing with health and social care professionals.
- describes how local government in Wales, working with their communities and with their health and third sector partners, should ensure they have integrated well-being, assessment, care and support planning and review, which will support the wider agenda and be the catalyst to support the broader integration of social care and health care provision.
- describes how the process of assessment can focus both on people's needs and on their capacities, and through that support people to contribute to their own personal outcomes.

## **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 on 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."

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 the consultation responses is available on the Welsh Government website:

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

## **6. Regulatory Impact Assessment**

The code is not subordinate legislation made by statutory instrument and for that reason a Regulatory Impact Assessment 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 (Assessment) (Wales) Regulations 2015 under Part 3 of the Act, to consider the impact on costs and benefits of introducing the regulations and the approach to the assessment process for care and support. The RIA presents two different options in relation to the policy objectives of the regulations:

- Option 1: To retain the current approach to assessment
- Option 2 to create a national system for assessments through the introduction of regulation

The RIA concluded that option 2 will ensure that the assessment process is proportionately applied, so that it is appropriate to the needs of the individual, and considers the individual's circumstances. The Welsh Government also considers that there will be long term cost savings through the introduction of the new assessment process. The Explanatory Memorandum and RIA was laid before the National Assembly on 08 May 2015, to support scrutiny of the regulations, and has been approved and accepted.

The code of practice sets out the guidance for local authorities and other interested parties to conduct their assessments 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 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](http://www.wales.gov.uk)