

Explanatory Memorandum to the code of practice on the exercise of social services functions in relation to looked after and accommodated children under part 6 of the Social Services and Well-being (Wales) Act 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 code of practice in accordance with 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 looked after and accommodated children under part 6 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.

Part 6 of the Act replaces Part 3 of the Children Act 1989. Section 17 of the 1989 Act is not replicated in Part 6 of the Act. The way that the Act is structured means that the assessment of children in need and their families, and delivery of any services required to meet any identified needs are dealt with under Parts 3 & 4 of the Act.

The Code of Practice on Part 6 is consistent with the Code of Practice covering the Outcomes Framework in Part 2 and the duties under Part 11 to ensure that children and young people in custodial settings who were looked after immediately prior to being sentenced to custody continue to have their needs assessed and met whilst in the secure estate. Children who are remanded to custody in the secure estate will become looked after and will have an assessment of their needs under Part 6 of the Act, they will receive appropriate services under Part 6 until they are freed or sentenced to custody in the secure estate. 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.

This code of practice is issued under section 145 of the Social Services and Well-being (Wales) Act 2014 ("The Act".)

The Social Services and Well-Being (Wales) Bill received Royal Assent on 1 May 2014 to become an Act of the National Assembly for Wales. The Act comes into effect on 06 April 2016.

Local authorities, when exercising their social services functions, **must** act in accordance with the **requirements** contained in this code. Section 147 (Departure from requirements in codes) does not apply to any **requirements** contained in this code. In addition, local authorities must have regard to any guidelines set out here.

Social services functions are set out at schedule 2 of the 2014 Act. In this code a **requirement** is expressed as "must" or "must not". **Guidelines** are expressed as "may" or "should/should not".

This code of practice contains guidance on the duties contained in Part 6 sections 74 - 125 of the Act and regulations under sections 81, 83, 84, 87, 88, 89, 91, 92, 93, 94, 97, 98, 99, 100, 101, 102, 104, 106, 107, 108, 109, 116, 117, 119 and 122 of the Act.

In exercising their functions relating to looked after and accommodated children, local authorities must have regard to their overarching duties to have due regard to Part 1 of the United Nations Convention on the Rights of the Child as set out in section 7 of the Act.

Part 6 of the Act (looked after and accommodated children):

(a) provides for the interpretation of references to a child or young person looked after by a local authority (section 74)

(b) requires local authorities

- to secure sufficient accommodation in their areas for the children they look after (section 75), and
- to accommodate children without parents or who are lost or abandoned or are under police protection, in detention or on remand (sections 76 and 77)

(c) provides for the functions of local authorities in relation to the children they look after (sections 75 to 103, 124 and 125)

(d) provides for the circumstances in which local authorities may or must provide support for young people

- leaving, or who have left, local authority care
- formerly accommodated in certain establishments
- formerly fostered
- with respect to whom special guardianship orders are or were in force
- (sections 104 to 118)

(e) provides for the placement of children in secure accommodation (section 119)

(f) requires the assessment by local authorities of children who are accommodated by health authorities or education authorities or in care homes or independent hospitals and the provision of visits and services to those children (sections 120 to 123)

(g) introduces Schedule 1 which makes provision about contributions towards the maintenance of children looked after by local authorities.

The Welsh Government has sought to support implementation through a process that fully engages our stakeholders. Central to this approach has been 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

regulations and code of practice which in turn will deliver the policy aspirations underpinning the Act. This code is one of the outcomes of that exercise of co-production.

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

This code aims to set out local authority responsibilities under the Act for:

- care and support plans in relation to looked after and accommodated children and young people, including education and health
- the ways in which looked after children are to be accommodated and maintained, including placements of looked after children
- contact and visits to looked after and previously looked after children, including independent visitors
- arrangements for leaving care, personal advisers, pathway plans and assessments, suitable accommodation and support for higher education
- secure accommodation
- children accommodated in other types of establishment (by health and education authorities, or in care homes or independent hospitals).

This code of practice replaces previous statutory guidance on these issues.

This code should be read in conjunction with the code of practice on Part 11, which covers children and young people in youth detention accommodation, prison or bail accommodation. Certain provisions of the Act relating to how

looked after children and care leavers are to be maintained and/or accommodated are dis-applied when the child or young person is convicted of an offence and detained within the secure estate. These are re-applied when the child or young person is released.

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 45 substantive written responses to the consultations received, from a wide range of individuals including the Welsh Local Government Association (WLGA), the Children's Commissioner, Local Government representatives and Third Sector Organisations. Overall, responses to the consultation were positive and 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.

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/part6/?status=closed&lang=en>

6. Regulatory Impact Assessment

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

A full RIA has been completed for the Regulations under Part 6 of the Act, to consider the impact on costs and benefits of introducing the regulations on looked after and accommodated children. The regulatory impact assessments will be part of the Explanatory Memoranda that accompanies the following regulations

- The Care Leavers (Wales) Regulations 2015
- The Care Planning, Placement and Case Review (Wales) Regulations 2015
- The Children (Secure accommodation) (Wales) Regulations 2015
- The Visits to Children in Detention (Wales) Regulations 2015

The code of practice provides further detail and guidance for interested bodies on procedures for looked after and accommodated children as set out in the regulations.

However, consideration has been given to whether the impact of the code is in any case sufficient to warrant completion of an RIA. The code of practice has 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 shown 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 a full 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