

Explanatory Memorandum to the code of practice on the role of the director of social services issued under part 8 of the Social Services and Well-being (Wales) Act 2014

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 27.1 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 on the role of the director of social services. I am satisfied that the benefits outweigh any costs.

Mark Drakeford AM

**Minister for Health and Social Services
28 January 2016**

Part 1 – OVERVIEW

1. Description

The Social Services and Well-being (Wales) Act 2014 (“the Act”) provides a new legislative framework 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 focus on well-being, rights and responsibilities.

Section 144 within Part 8 of the Act consolidates the requirement that a local authority must appoint an officer, known as the director of social services, for the purposes of its social services functions as set out in Schedule 2 of the Act.

The director of social services will have a key role in providing the strategic leadership necessary to ensure the effective implementation of the Act.

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 the making of this code are contained in Sections 144 and 145 of the Act.

Section 144 states that the Welsh Ministers must specify, through a code issued under section 145 of the Act, the competencies which a person must demonstrate in order for a local authority to appoint them as the director of social services.

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.

This code is subject to annulment in pursuance of a resolution of the National Assembly for Wales (the negative procedure).

The code will come into force on 6 April 2016.

4. Purpose and intended effect of the legislation

The purpose of the code of practice is to articulate the essential strategic leadership role of the director of social services in ensuring the effective delivery of high quality care and support services in keeping with the principles of the Act.

Specifically, the code of practice identifies:

- The required competencies of a director of social services;
- The governance and accountability arrangements for the director;
- the specific functions of the director in the delivery of the Act including the director's role and responsibilities in relation to safeguarding, looked after children and maintaining standards across the whole social care workforce; and
- The requirement to produce an annual report.

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 on in a 6 week consultation that ran from 23 October 2015 to 4 December 2015.

Prior to formal consultation, a high level reference group was established to inform the development of a draft code of practice. This group was made up of representatives with the relevant expertise, technical knowledge and practical experience required to work with officials on the detailed policy to develop the code of practice. The report of this group was produced in August and significantly informed the development of the draft code prepared for consultation.

There were 17 substantive written responses received to the consultation from a wide range of individuals, representative groups, duty bearers and professional organisations. Overall, responses to the consultation were broadly supportive of the proposals put forward in the draft code. Generally, suggestions made by respondents focussed on matters of detail, small additions and amendments to the text.

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/code-of-practice/?status=closed&lang=en>

6. Regulatory Impact Assessment

No statutory instruments specifically in relation to the role of the director of social services have been developed and therefore a RIA is not required under 4.2 of the Welsh Ministers Regulatory Impact Assessment code.

However, consideration has been given to whether the impact of the code is sufficient to warrant completion of an RIA. The code 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. Therefore a full RIA has not been completed.

All local authorities are already required to appoint a director of social services as a result of the Local Authority Social Services Act 1970. Although the code updates the role of the director of social services to focus on delivering care and support services in keeping with the principles of the Act, it does not represent a fundamental change from the existing role as set out in *statutory guidance on the role and accountabilities of the director of social services*, issued in June 2009. All corporate duties placed on the director of social services in the new code are consistent with the previous guidance. Although there will continue to be a cost to local authorities to employ someone to fulfil the role of 'director of social services', there are no new financial requirements placed on Local Authorities as a result of the code of practice on the role of the director of social services.

Financial support is available to ensure that the new social services functions contained within the Act which the director of social services oversees are implemented effectively. 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.

There will be a minimal one-off cost to Welsh Government in terms of analysing and responding to the consultation on the draft code. This cost will be in terms of staff time and will total no more than £2000.

There will also be a minimal recurring cost to local authorities in terms of preparing the annual report on the role of the director of social services, required by Chapter 6 of the code. This requirement stems from Section 56(i) of the Regulation and Inspection of Social Care (Wales) Act 2016 which amends the Social Services and Well-being (Wales) Act to require a local authority to prepare and publish an annual report about the exercise of the social services functions of the authority in respect of that year.

However, producing an annual report is not a new requirement as the current *statutory guidance on the role and accountabilities of the director of social services* already states that 'the director of social services must report annually to their Council on the delivery, performance and risk as well as plans for improvement of the whole range of social services functions'.

The new code updates the annual reporting requirement to require the report to set out how the local authority has achieved the six quality standards of well-being outcomes as described in the *code of practice in relation to measuring social services performance*, issued under the Act.

However, this new requirement will not result in any additional financial costs to the local authority when producing the annual report.

The impact assessments completed for the code will be available on the Welsh Government website www.wales.gov.uk