

*Draft Regulations laid before the National Assembly for Wales under section 33 of the Social Services and Well-being (Wales) Act 2014 Act, for approval by resolution of the National Assembly for Wales.*

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DRAFT WELSH STATUTORY  
INSTRUMENTS

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**2015 No. (W. )**

**SOCIAL CARE, WALES**

**The Care and Support (Eligibility)  
(Wales) Regulations 2015**

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These regulations set out the test which a local authority must apply to determine whether or not an individual with needs identified in an assessment under section 19, 21 or 24 of the Social Services and Well-being (Wales) Act 2014 is entitled to have those needs met by a local authority. The regulations set out the tests to be applied in relation to adults, to children and to carers.

Where needs do meet these eligibility criteria then section 32 requires a local authority to consider what could be done to meet those needs and whether it should impose a charge in accordance with Part 5 of the Social Services and Wellbeing (Wales) Act 2014.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained at

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**2015 No. (W. )**

**SOCIAL CARE, WALES**

**The Care and Support (Eligibility)  
(Wales) Regulations 2015**

*Laid before the National Assembly for Wales* \*\*\*

*Coming into force* \*\*\*

The Welsh Ministers, in exercise of the powers conferred by sections 32(3)(4) and (5) of the Social Services and Well-being (Wales) Act 2014<sup>(1)</sup>, make the following Regulations.

A draft of these Regulations was laid before the National Assembly for Wales under section 33 of that Act and has been approved by a resolution of the National Assembly for Wales.

**Title, commencement, application and interpretation**

1.—(1) The title of these Regulations is The Care and Support (Eligibility) (Wales) Regulations 2015.

(2) These Regulations come into force on XXXXXXXX and apply in relation to Wales.

(3) In these Regulations—

“the Act” means the Social Services and Well-being (Wales) Act 2014;

“carer” has the meaning given in section 3 of the Act;

“eligibility determination” means a determination under section 32(1)(a) of the Act;

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(1) 2014 anaw 4.

“personal outcomes” means the outcomes which have been identified in relation to a person by an assessment under sections 19, 21, or 24 of the Act; “specified outcomes” means the outcomes specified in regulation 6.

### **Eligibility determinations**

2.—(1) When the local authority is making an eligibility determination in relation to an adult who has been assessed as having one or more needs for care and support, any one of those needs meets the eligibility criteria if it is of a description specified in regulation 3.

(2) When a local authority is making an eligibility determination in relation to a child who has been assessed as having one or more needs for care and support, any one of those needs meets the eligibility criteria if it is of a description specified in regulation 4.

(3) When a local authority is making an eligibility determination in relation to a carer who has been assessed as having one or more needs for support, any one of those needs meet the eligibility criteria if it is of a description specified in regulation 5.

### **Needs which meet the eligibility criteria – adults with needs for care and support**

3. The need meets the eligibility criteria if—

- (a) the need arises from the adult’s physical or mental ill-health, age, disability, dependence on alcohol or drugs, or other similar circumstances;
- (b) the need relates to one or more of the specified outcomes;
- (c) the need is such that the adult is not able to meet that need, either—
  - (i) alone,
  - (ii) with the support of others who are willing to provide that support, or
  - (iii) with the assistance of services in the community to which the adult has access; and
- (d) the adult is unlikely to achieve one or more of their personal outcomes which relate to one or more of the specified outcomes unless—
  - (i) the local authority provides or arranges care and support to meet the need; or
  - (ii) the local authority enables the need to be met by making direct payments.

#### **Needs which meet the eligibility criteria – children with needs for care and support**

- 4.—(1) The needs meet the eligibility criteria if—
- (a) either—
    - (i) the need arises from the child’s physical or mental ill-health, age, disability, dependence on alcohol or drugs, or other similar circumstances; or
    - (ii) the need is one that if unmet is likely to have an adverse effect on the child’s development;
  - (b) the need relates to one or more of the specified outcomes;
  - (c) the need is one that neither the child, the child’s parents nor other persons caring for the child are able to meet, either—
    - (i) alone or together,
    - (ii) with the support of others who are willing to provide that support, or
    - (iii) with the assistance of services in the community to which the parents or other persons caring for the child have access; and
  - (d) the child is unlikely to achieve one or more of their personal outcomes which relate to one or more of the specified outcomes unless—
    - (i) the local authority provides or arranges care and support to meet the need; or
    - (ii) the local authority enables the need to be met by making direct payments.
- (2) In this regulation—
- (i) references to a child’s development include the physical, intellectual, emotional, social and behavioural development of that child;
  - (ii) “other persons caring for the child” includes persons with parental responsibility<sup>(1)</sup> or relatives who have a role in providing care for the child;
  - (iii) “relative” is defined in section 197 of the Act.

#### **Needs which meet the eligibility criteria - carers with needs for support**

- 5.—(1) The needs meet the eligibility criteria if—
- (a) the need arises as a result of providing care for either—

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(1) “Parental responsibility” is defined in section 3 of the Children Act 1989 (c.41).

- (i) an adult who has needs which fall within Regulation 3 (a) and which relate to one or more of the specified outcomes, or
- (ii) a disabled child;
- (b) the carer cannot meet the need whether—
  - (i) alone;
  - (ii) with the support of others who are willing to provide that support; or
  - (iii) with the assistance of services in the community to which the carer has access; and
- (c) the carer is unlikely to achieve one or more of their personal outcomes which relate to the specified outcomes unless—
  - (i) the local authority provides or arranges support to the carer to meet the carer’s needs;
  - (ii) the local authority provides or arranges care and support to the person for whom the carer provides care, in order to meet the carer’s needs; or
  - (iii) the local authority enables the needs to be met by making direct payments.

**Outcomes to which needs for care and support must relate**

6.—(1) For the purposes of regulations 3(b) and 4(b), the outcomes to which a need must relate are—

- (a) ability to carry out basic self-care or domestic routines;
- (b) protection from abuse or neglect;
- (c) involvement in work, education, learning or in leisure activities;
- (d) maintenance or development of family or other significant personal relationships;
- (e) development and maintenance of social relationships and involvement in the community;
- (f) in the case of an adult, fulfilment of caring responsibilities for a child; or
- (g) in the case of a child, achieving developmental goals.

(2) In this regulation “basic self-care” means essential tasks that a person carries out as part of normal daily life including—

- (i) eating and drinking;
- (ii) maintaining personal hygiene;
- (iii) getting up and getting dressed;
- (iv) moving around the home;

- (v) preparing meals;
- (vi) keeping the home clean, safe and hygienic.

**Exclusion of care provided by carers when making an eligibility determination**

- 7.—(1) When a local authority considers whether—
- (a) in accordance with regulation 3(c)(ii), an adult is able to meet a need with the support of others;
  - (b) in accordance with regulation 3(d), an adult is likely to achieve one or more of their personal outcomes without the intervention of the local authority;
  - (c) in accordance with regulation 4(c)(ii), a child’s needs can be met with the support of others; or
  - (d) in accordance with regulation 4(d), a child is unlikely to achieve one or more of their personal outcomes without the intervention of the local authority,

a local authority must disregard the matters set out in paragraph (2).

- (2) The matters to be disregarded in the circumstances set out in paragraph (1) are—
- (a) in the case of an adult, any care given to the adult by a carer; and
  - (b) in the case of a child, care provided to that child by the child’s family or a carer.<sup>(1)</sup>

*Mark Drakeford*

Minister for Health and Social Services, one of the Welsh Ministers

Date

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(1) But note section 35(6) of the Act which provides that the duty on a local authority to meet an adult’s needs for care and support does not apply where the local authority is satisfied that the needs are being met by a carer and section 37(5) of the Act which provides that the duty on a local authority to meet a child’s needs for care and support does not apply where the local authority is satisfied that the needs are being met by the child’s family or a carer.