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Llywodraeth Cymru
Welsh Government

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Executive Summary

Implementation of the Social Services and Well-being (Wales) Act 2014

Regulations and Code of practice in relation to
Part 11 (Miscellaneous and general) of the Social
Services and Well-being (Wales) Act 2014

The Social Services and Well-being (Wales) Act 2014

The Social Services and Well-being (Wales) Act 2014 forms the basis for a new statutory framework for social care in Wales.

Ministers have made it clear that they wish the core elements of this framework to be in place for April 2016, when the Act will be implemented.

The framework will consist of three main elements, the Act itself, regulations made under the Act, and codes of practice/statutory guidance. These three elements work together to form the framework within which social services will operate from April 2016.

The process of making codes and regulations under the Act

The regulations, codes and statutory guidance have been developed through a consultative process with key stakeholders and are now presented to stakeholders across Wales for their input.

The consultation on and laying of the Regulations to be made under the Act will be conducted principally in two tranches. The first tranche will be made available for a 12-week public consultation starting in November 2014. It is anticipated that the second tranche consultation exercise will be undertaken between May and July 2015. The intention is to lay these regulations before the Assembly in May 2015 to give the health and social care sector the maximum amount of time to adjust to the new requirements ahead of implementation in 6 April 2016.

What the first tranche of regulations and codes of practice covers

The first of the tranches deals with core provisions around eligibility, assessment, care and support planning and direct payments in Parts 2 to 4 of the Act, together with provisions in Part 7, around safeguarding, and Part 11 around ordinary residence and related disputes.

Coverage of the code of practice and regulations in relation to Part 11 of the Act

Adults and Children in prison, youth detention accommodation or bail accommodation

The Act places new duties on local authorities to meet the care and support needs of adults in prison, youth detention or bail accommodation in Wales; and the care and support needs of children and young people in prison, youth detention or bail accommodation in England and Wales. There are no

regulations relating to adults and children in prison, youth detention accommodation and bail accommodation. This document therefore relates to the Code of Practice on Sections 185-188. The code of practice aims to set policy on meeting the 'care and support' needs of adults, children and young people while they are in custody, and to prepare them for the care and support they may need when they are resettled back into the community. The code of practice sets out how local authorities should implement the duties under the Act.

From April 2016 local authorities in Wales will be responsible for assessing and meeting the 'care and support' needs of:

- Adults in the secure estate in Wales;
- Welsh children who are in the secure estate whether in England or Wales; and
- certain categories of English children placed in the secure estate in Wales.

The Act is drafted on an inclusive basis and so the provisions within the Act fully apply to all adults and children in the secure estate with the exception of four provisions which are covered in section 187. The effect of these provisions is that a prisoner:

- **cannot be a carer** if they are detained in prison, approved premises or youth detention accommodation.
- **cannot receive direct payments** towards meeting the cost of their care and support needs if they are in prison, approved premises or bail accommodation.
- **cannot express a preference for their accommodation** while they are in custody although they would be able to do so if they were expressing a preference for accommodation they would occupy on their release.
- **cannot have their property protected** if they are in prison, youth detention or bail accommodation.

Ordinary Residence and dispute resolution

Where a person is considered to be ordinarily resident is crucial in deciding which local authority is required to meet his or her care and support needs.

'Ordinary residence' is one of the key tests which must be met to establish whether a local authority is required to meet a person's eligible needs. It is therefore crucial that local authorities establish, at the appropriate time, whether a person is ordinarily resident in their area, and whether such duties arise. To help local authorities do this, the Code of practice sets out requirements and guidelines on determining ordinary residence in relation to assessment and meeting eligible care and support needs, on determining ordinary residence when an adult moves into certain types of accommodation; on out of area disputes between authorities about a person's ordinary residence and portability of care and support, and on the process for seeking a determination by the Welsh Ministers or appointed person.

Regulations under section 194 of the Act specify the types of accommodation to which the ordinary residence rules apply. At present only care home accommodation is covered. The draft regulations extend this to adult placements (commonly known as shared lives). We are seeking views on whether any other types of accommodation should be included.

Regulations under section 195 set out the procedures to be followed for determining disputes between local authorities about ordinary residence (section 194), or between a sending and a receiving authority about the application of section 56 of the Act (portability of care and support).