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Welsh Government

## Consultation Document

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

Regulations and statutory guidance in relation to  
Part 7 of the Act, on Safeguarding

Date of issue: **6 November 2014**

Action required: Responses by **2 February 2015**

## Overview

This consultation seeks your views on the regulations, code of practice and statutory guidance being made to support local authorities and their partners in delivering the requirements of the Social Services and Well-being (Wales) Act 2014.

## How to respond

You can respond to this consultation by completing, by the closing date, the consultation response form at the back of this document and returning it to us by post to:

Sustainable Social Services Implementation Branch  
Social Services Directorate  
Welsh Government  
Crown Buildings  
Cathays Park  
Cardiff  
CF10 3NQ

Alternatively the consultation response form is available on our website ([www.wales.gov.uk/consultations/?lang=en](http://www.wales.gov.uk/consultations/?lang=en)) and can be returned to us by e-mail to: [sswbimplementation@Wales.GSI.Gov.UK](mailto:sswbimplementation@Wales.GSI.Gov.UK).

## Further information and related documents

**MS Word, Large print, Braille and alternative language versions of this document are available on request.**

*Sustainable Social Services for Wales: A Framework for Action:*  
[www.wales.gov.uk/topics/health/publications/socialcare/guidance1/services/?lang=en](http://www.wales.gov.uk/topics/health/publications/socialcare/guidance1/services/?lang=en)

*From Vision to Action* The report of the independent commission on Social Services in Wales: [www.icssw.org/vision/?lang=en](http://www.icssw.org/vision/?lang=en)

Law Commission Report on Adult Social Care Legislation:  
[www.lawcommission.justice.gov.uk/areas/adult-social-care.htm](http://www.lawcommission.justice.gov.uk/areas/adult-social-care.htm)

Social Services and Well-being (Wales) Bill Consultation:  
[www.wales.gov.uk/consultations/healthsocialcare/bill/?lang=en](http://www.wales.gov.uk/consultations/healthsocialcare/bill/?lang=en)

Welsh Government Factsheets on Information, Advice and Assistance, Assessment, Care Planning and Carers:  
[www.wales.gov.uk/topics/health/socialcare/act/resources/?lang=en](http://www.wales.gov.uk/topics/health/socialcare/act/resources/?lang=en)

The Social Services and Well-being (Wales) Act 2014:  
[www.legislation.gov.uk/anaw/2014/4/contents/enacted](http://www.legislation.gov.uk/anaw/2014/4/contents/enacted)

The National Outcomes Framework for people who need care and support and carers who need support (working document):  
[www.wales.gov.uk/topics/health/socialcare/well-being/?lang=en](http://www.wales.gov.uk/topics/health/socialcare/well-being/?lang=en)

Well-being statement for people who need care and support and carers who need support:  
[www.wales.gov.uk/topics/health/publications/socialcare/strategies/statement/?lang=en](http://www.wales.gov.uk/topics/health/publications/socialcare/strategies/statement/?lang=en)

Policy intent – Regulations and other subordinate legislation under the Social Services and Well-being Bill:  
[www.wales.gov.uk/topics/health/publications/socialcare/guidance1/8420843/?lang=en](http://www.wales.gov.uk/topics/health/publications/socialcare/guidance1/8420843/?lang=en)

Safeguarding Advisory Panel initial report:  
[www.wales.gov.uk/topics/health/publications/socialcare/reports/advisory/?lang=en](http://www.wales.gov.uk/topics/health/publications/socialcare/reports/advisory/?lang=en)

## Contact details

For further information:

Sustainable Social Services Implementation Branch  
Social Services and Integration Directorate  
Crown Buildings  
Cathays Park  
CARDIFF  
CF10 3NQ

email: [sswbimplementation@wales.gsi.gov.uk](mailto:sswbimplementation@wales.gsi.gov.uk)  
telephone: 029 2080 1172

## Data protection

**How the views and information you give us will be used**

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full.

Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

## **The Foreword**

The Social Services and Well-being (Wales) Act 2014, which received Royal Assent on 1 May 2014, creates a new legal system for social services. It creates a framework that brings together and modernises the law for social services in Wales, increasing the emphasis on preventative action, bringing people closer to decisions about the services that affect them, and addressing the challenges of economic and demographic change.

You will all be aware of the Prudent Healthcare principles which have been widely debated during 2014. The cultural shift towards minimum appropriate intervention, 'only do what only you can do', promotion of equity and remodelling the relationship between user and provider on the basis of co-production has been widely welcomed in healthcare settings. These principles, however, extend far wider and touch on the core of social services in Wales, mirroring the focus on citizen voice, user control and co-production set out in Sustainable Social Services. The challenge in social care, as in healthcare, is to develop sustainable models of service, both in terms of financial and workforce resources, to help us effectively manage demand whilst being equitable and fair for all. Our drive should be to promote independence and not dependency and, to draw on a phrase we used many years ago, we also need to consider how we add 'life to years' not simply 'years to life'. By applying these principles to the implementation of the Social Services and Well-being (Wales) Act 2014 we aim to achieve a system that is fit for the needs of all users.

The new statutory framework for delivering social services will have three parts. The first part, the Act itself, is already in place. The other two parts will consist of regulations and of codes of practice or statutory guidance, which will help supply the detail and help those charged with functions under the Act to understand how they are to carry these out.

The Welsh Government's policy intent in relation to the major groups of regulation-making powers under the Act was set out in a written statement issued by Gwenda Thomas AM, the then Deputy Minister for Social Services, on 30 January 2014. The regulations and statutory guidance set out in this consultation document turn this policy intent into concrete form and supply those remaining two parts of the statutory framework.

To get to this point, my officials have worked closely with stakeholders through a series of technical groups to develop and refine the details of our policy for regulations, codes of practice and statutory guidance. I would like to

pay tribute here to those stakeholders, and to thank them for their valuable contribution to the process of making the Act a reality.

It is my intention that, by consulting on and laying these regulations together we will be able to present a coherent system of assessment, determination of eligibility and care planning. At the same time we will secure the availability of direct payments as one way of meeting needs, and create a powerful new framework for safeguarding.

In line with the Welsh Ministers' Regulatory Impact Assessment Code for subordinate legislation, I am committed to undertaking a full regulatory impact assessment for the regulations to be made under the Act. I will of course be using the evidence gathered as part of this consultation process to inform this assessment and I hope that you will take the opportunity offered through our consultation questions to contribute to this.

I intend that these regulations, associated codes of practice and statutory guidance will be laid before the Assembly in May 2015.

The second tranche of subordinate legislation will be made available for consultation from May 2015, again supported by stakeholder engagement and the work of technical and advisory groups. This tranche will create a system that secures outcomes for looked after and accommodated children, drives regional collaboration and puts in place a system of charging, financial assessment and paying for care. It will support the making of representations and provision of advocacy, and address the issues raised by provider failure.

Following full public consultation I plan that these regulations, their associated codes of practice and statutory guidance will be laid in the Assembly in the winter of 2015.

The work I describe builds upon the national consensus that we have for the changes we need to make. All the key aspects of taking Sustainable Social Services forward are being undertaken with the close involvement of citizens and strong leadership from local government, the NHS and private and third sector providers. I will continue to work with the national Partnership Forum, Leadership Group and Citizens Panel to support this, and secure a new shared ambition that people who use services are fully and firmly at the heart of our programme for change.

**Mark Drakeford AM**  
**Minister for Health and Social Services**

## **This consultation**

This consultation seeks your views on the regulations and statutory guidance which have been developed in order to help local authorities and their partners implement Part 7 of the Social Services and Well-being (Wales) Act 2014 (“the Act”).

The regulations will be made under the appropriate sections of the Act, whilst the statutory guidance is issued under sections 131(1) and 139(3) of the Act.

This consultation document relates to the draft regulations and statutory guidance on **safeguarding**, flowing from Part 7 of the Act. It focuses on the core aspects of the changes that we are seeking to implement through the Act. Following the consultation it is our intention that the Guidance be consolidated as part of the safeguarding framework underpinned by Safeguarding Children: Working Together Under the Children Act 2004 (WAG 2006) and In Safe Hands Implementing Adult Protection Procedures in Wales (WAG 2000).

## **Where are we now?**

The Social Services and Well-being (Wales) Act 2014 has received Royal Assent, on 1 May 2014. The Act forms the basis for a new statutory framework for social care in Wales.

The focus now turns to achieving implementation of the Act. The Welsh Ministers have made it clear that they wish the core elements of the new statutory framework to be in place for April 2016, when the Act will be implemented.

The statutory 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 and relevant partners will operate from April 2016.

The regulations and statutory guidance have been under development through a consultative process with key stakeholders undertaken by the Safeguarding Advisory Panel.

The Deputy Minister established the Safeguarding Advisory Panel to provide advice on specific aspects of the proposals contained in the Social Services and Well-being (Wales) Bill 2013 relating to Safeguarding and Protection of children and adults.

The panel’s engagement with a range of stakeholders through workshops, individual meetings and discussion resulted in recommendations being formulated within a report which was provided in November 2013. The Deputy Minister published the report in February 2014.

The Safeguarding Advisory Panel have continued to contribute to the development of the secondary legislation, regulations and guidance ensuring

that the views of service users and other stakeholder groups were explored and reflected.

The outcome of this work is now presented to stakeholders across Wales for their input.

## **The evidence for change**

The evidence for change was set out in *Sustainable Social Services: A Framework for Action*<sup>1</sup> and in the consultation on the Social Services (Wales) Bill, which set out the key principles of the Bill.

Social Services are at the heart of Welsh public life. They support 150,000 young, old and disabled people every year to achieve their potential and help make them safe. Many of these services are delivered in partnership with others, including housing, health and education services. Society is changing and social services must change in response. There has been and will continue to be shifts in the public's expectations of social services, as a result of demographic change and changes in our society. Social services need to alter and to respond to all of these.

Furthermore, demand is rising across social services, yet the financial outlook for all public services is difficult. Whilst we have protected social services expenditure, we need to make a more fundamental change than just pursuing the obvious efficiency measures if we are to make social services sustainable. Our White Paper *Sustainable Social Services for Wales: A Framework for Action* sets out a programme of change to meet these challenges based on the following nine principles:

- A strong voice and real control
- Supporting each other
- Safety
- Respect
- Recovery and restoration
- Adjusting to new circumstances
- Stability
- Simplicity
- Professionalism

These have been informed by discussion with stakeholders and debates in the National Assembly for Wales and elsewhere since *Sustainable Social Services for Wales* was published. They sit alongside the evidence of the Independent Commission on Social Services in Wales, the Law Commission review<sup>2</sup> of adult social care legislation and our Review of Safeguarding<sup>3</sup>. All this forms the backbone of our case to change.

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<sup>1</sup> See **Further information and related documents**

<sup>2</sup> See **Further information and related documents**

<sup>3</sup> <http://wales.gov.uk/topics/health/publications/socialcare/reports/advisory/?lang=en>

This evidence, and the process of considering it through the National scrutiny process on the Bill, has informed and shaped the contents of the Act. The next stage, the development of the regulations and codes of practice or statutory guidance, has been informed by key strategic inputs such as *More than just words*, our Strategic Framework for Welsh Language Services in Health, Social Services and Social Care<sup>4</sup>, and by evidence sourced through technical groups consisting of key stakeholders. These groups have looked at the Act's provisions, and the policy underpinning these, in detail, and provided advice to officials on how the regulations and codes of practice or statutory guidance should be framed in order to achieve the aims of the Act and, through this, the requirements of *Sustainable Social Services: A Framework for Action*. This process has secured a range of valuable input which Welsh Government officials have drawn upon to develop the draft regulations and statutory guidance covered by this consultation.

## The proposals

We propose the strengthening of arrangements for children at risk through reporting, and through the reestablishment of Safeguarding Children Boards on a regional footprint.

Part 7 also introduces new legislation to protect adults at risk. This new framework introduces a duty to report adults at risk to the local authority; a duty for the local authority to make enquires into whether an adult is at risk and if any action needs to be taken; and, a new Adult Protection and Support Order through which an authorised officer can enter a premises to speak to an adult in private and determine if the adult is making decisions freely and whether any action is required. Part 7 also provides for new Safeguarding Adults Boards established on a parallel footprint to the Safeguarding Childrens Boards.

A National Independent Safeguarding Board is created to advise and support Safeguarding Boards and to make recommendations to Welsh Ministers to strengthen safeguarding in Wales. Whilst statutory guidance is not required in relation to the National Independent Safeguarding Board we have provided information to assist stakeholders to consider how the Safeguarding Boards can be supported by the National Independent Safeguarding Board to exercise their statutory function.

A more detailed summary of our proposals can be found in the **Executive Summary** at **Annex A**.

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<sup>4</sup> <http://wales.gov.uk/topics/health/publications/health/guidance/words/?lang=en>



## Consultation documents

This consultation seeks your comments and views on the following key documents:

- A draft of **the Adult Protection and Support Orders (Authorised Officer) (Wales) Regulations 2015** (Annex B)
- A draft of **the Safeguarding Boards (Functions and Procedures) (Wales) Regulations 2015** (Annex C)
- A draft of **the National Independent Safeguarding Board Regulations 2015** (Annex D)
- A draft of **the Safeguarding Boards (General) (Wales) Regulations 2015** (Annex E)
- A draft of **the Statutory Guidance issued in Relation to Safeguarding under Part 7 of the Social Services and Well-being (Wales) Act 2014** (Annex F)

A consultation response form can be found at **Annex G**.

**Consultation  
Response Form**

Your name:

Organisation (if applicable):

email / telephone number:

Your address:

<b>Safeguarding</b>							
<b>1. To what extent do you agree that the role of the authorised officer (who may apply for an adult protection and support order) should be restricted to an officer of the local authority?</b>							
Agree	<input type="checkbox"/>	Tend to agree	<input type="checkbox"/>	Tend to disagree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
Please explain							
<b>2. To what extent do you agree with the lead partners nominated by the Safeguarding Boards for each Safeguarding Children Board and each Safeguarding Adults Board, as set out at section 10.1?</b>							
Agree	<input type="checkbox"/>	Tend to agree	<input type="checkbox"/>	Tend to disagree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
Please explain							
<b>3. To what extent do you agree that the functions of a Safeguarding Board are aligned to their principal priorities?</b>							
Agree	<input type="checkbox"/>	Tend to agree	<input type="checkbox"/>	Tend to disagree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
What else should be prescribed?							

**4. To what extent do you agree with the criteria for undertaking a concise and extended Adult Practice Review?**

Agree	<input type="checkbox"/>	Tend to agree	<input type="checkbox"/>	Tend to disagree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
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If you do not agree, what criteria should be used?

**5. To what extent do you agree that the guidance is clear about the responsibilities of Safeguarding Boards to ensure appropriate membership?**

Agree	<input type="checkbox"/>	Tend to agree	<input type="checkbox"/>	Tend to disagree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
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**6. To what extent do you agree that the guidance is clear about the responsibilities of Safeguarding Boards to ensure engagement with a wide range of organisations involved in safeguarding in the Safeguarding Board area?**

Agree	<input type="checkbox"/>	Tend to agree	<input type="checkbox"/>	Tend to disagree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
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**7. To what extent do you agree that the regulations and guidance enable effective participation of users in the work of Safeguarding Boards?**

Agree	<input type="checkbox"/>	Tend to agree	<input type="checkbox"/>	Tend to disagree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
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**8. To what extent do you agree with the proposed content of the annual plan?**

Agree	<input type="checkbox"/>	Tend to agree	<input type="checkbox"/>	Tend to disagree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
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If you do not agree, please explain why

**9. To what extent do you agree with the proposed content of the annual report set out in Schedule 3 to The Safeguarding Boards (General) Regulations?**

Agree	<input type="checkbox"/>	Tend to agree	<input type="checkbox"/>	Tend to disagree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
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If you do not agree, please explain why

**10. To what extent do you agree that financial contributions should be prescribed for each Safeguarding Board partner?**

Agree	<input type="checkbox"/>	Tend to agree	<input type="checkbox"/>	Tend to disagree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
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**11. To what extent do you agree that the proposals for securing financial contributions to the Safeguarding Board set out fair and equitable arrangements?**

Agree	<input type="checkbox"/>	Tend to agree	<input type="checkbox"/>	Tend to disagree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
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<p><b>12. What are the key priorities for the first year of the National Independent Safeguarding Board?</b></p>
<p><b>13. How can arrangements for reviewing national safeguarding policy and procedures be taken forward under the responsibilities of the National Independent Safeguarding Board and the Safeguarding Boards?</b></p>
<p><b>Other</b></p>
<p><b>The Welsh Government is interested in understanding whether the proposals in this consultation document regarding Part 7: safeguarding will have an impact on groups with protected characteristics. Protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, and sexual orientation.</b></p>
<p><b>14. Do you think that the proposals in this consultation will have any positive impacts on groups with protected characteristics? If so, which and why/why not?</b></p>
<p><b>15. Do you think that the proposals in this consultation will have any negative impacts on groups with protected characteristics? If so, which and why/why not?</b></p>

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**16. Re-balancing the care and support system to deliver the new legal framework will require reprioritisation of resources. What are the key actions that need to be taken to achieve this?**

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**17. We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to tell us about them.**

<b>Responses to consultations may be made public – on the internet or in a report. If you would prefer your response to be kept confidential, please enter YES in the box.</b>	
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