



Welsh Government

Consultation Document

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

Regulations and code of practice in relation to Part 4 of the Act (direct payments and choice of accommodation) and Part 5 of the Act (charging and financial assessment)

Date of issue: **8 May 2015**

Action required: Responses by **31 July 2015**

Overview

This consultation seeks your views on the regulations and codes of practice 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 midnight on 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 (<http://wales.gov.uk/consultations/?lang=en>) and can be returned to us by e-mail to: 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:
<http://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: <http://www.icssw.org/vision/?lang=en>

Law Commission Report on Adult Social Care Legislation:
<http://lawcommission.justice.gov.uk/areas/adult-social-care.htm>

Social Services and Well-being (Wales) Bill Consultation:

<http://wales.gov.uk/consultations/healthsocialcare/bill/?lang=en>

Welsh Government Factsheets on Information, Advice and Assistance, Assessment, Care Planning and Carers:

<http://wales.gov.uk/topics/health/socialcare/act/resources/?lang=en>

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

<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):

<http://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:
<http://wales.gov.uk/topics/health/publications/socialcare/strategies/statement/?lang=en>

Contact details

For further information:

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Telephone: 029 20 82 6498

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, sets 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.

Many of you will be aware of the Prudent Healthcare principles which were widely debated during 2014. The cultural shift towards minimum necessary 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, 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 consist of regulations on the one hand and of codes of practice and statutory guidance on the other. These will supply the detail and help those charged with delivery of functions under the Act to understand how they are to carry these out. The **first tranche** of these regulations was consulted upon between November 2014 and February 2015 and work is now underway to prepare the final regulations based on this work. These regulations will be laid from May this year.

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 codes set out in this consultation

document turn this policy intent into concrete form and help 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.

This **second tranche** of subordinate legislation is being made available for consultation from 8 May 2015; this consultation will run for 12 weeks until 31 July. These regulations, codes of practice and statutory guidance have again been 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 provision of advocacy, and address the issues raised by provider failure.

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. This will of course use 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.

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

The work of implementing the Act – and through it the new system for social care required by Sustainable Social Services – goes beyond making subordinate legislation, as important as this is. We already have actions in place to support workforce readiness, awareness-raising among the wider population, and key regional implementation activity. As an example of this preparedness work the Care Council for Wales, as the lead body for workforce development, is leading on the development and implementation of a national learning and development strategy.

In support of implementation and preparedness in 2013/14 and 2014/15 we have provided regional and national partnerships with access to the *Delivering Transformation* grant. This funding enables local government and its partners

to put in place the requirements of the new Act. On 27 February this year I announced that the Welsh Government would double its funding available through the delivering transformation grant to £3m in 2015/16.

The work described here 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 partners. I will continue to work with the national Leadership Group, Partnership Forum and Citizen Panel to support this, and secure our 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 code of practice which have been developed in order to help local authorities implement Part 4 (direct payments and choice of accommodation) and Part 5 (charging and financial assessment) 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 code of practice is issued under section 145 of the Act, which allows the Welsh Government to issue codes of practice to local authorities on the exercise of social services functions. What is a social services function is set out in Schedule 2 of the Act.

This consultation document relates to the draft regulations and code of practice on setting reimbursements and contributions for direct payments and on choice of accommodation in Part 4 of the Act. It also relates to the draft regulations and code of practice on charging and financial assessments in Part 5 of the Act.

Where are we now?

The Social Services and Well-being (Wales) Act 2014 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 will operate from April 2016.

The regulations, codes and statutory guidance have been under development through a consultative process with key stakeholders and are 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* and in the consultation on the Social Services (Wales) Bill, which set out the key principles of the Bill¹.

¹ See **Further information and related documents**

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 of adult social care legislation², our Review of Safeguarding³ and the advice and deliberations of the National Leadership Group, Partnership Forum and Citizen's Panel. All this forms the backbone of our case for change.

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 Care⁴, and *Enabling Wales*, 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 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

² See **Further information and related documents**

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

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

which Welsh Government officials have drawn upon to develop the draft regulations, codes of practice and statutory guidance covered in the consultation on tranche one and in this consultation.

The proposals

Sections 50-53 (direct payments) and section 57 (choice of accommodation) of Part 4 of the Act, and Part 5 of the Act (charging and financial assessment), relate to situations where a charge can be made in relation to care and support that is being provided under the Act. Part 5 provides local authorities with the discretion to charge a person for care and support that is being provided (or support that is being provided to a carer) who has the financial means to pay such a charge. This includes the provision of homecare and other community based care and support, residential care and support, preventative services and assistance. Sections 50-53 of Part 4 provide a similar discretion to set a contribution or reimbursement for direct payments, where care and support needs are being met through the provision of these. A local authority cannot set a charge, contribution or reimbursement that is more than the cost of the care and support being provided or arranged and has to be assured that the person upon whom these are levied has the financial means to meet them. Section 57 of Part 4 also provides that where a person is in residential care, the local authority can arrange accommodation that costs more than it would normally provide if a person is willing to pay the difference in cost.

The overall aim of these arrangements is to put in place a charging framework under the Act that strikes an appropriate balance between minimising the impact of charging upon care and support recipients with low financial means, while allowing local authorities to obtain a reasonable contribution towards the costs of providing or arranging care and support to ensure its continued provision.

This framework will be largely based on existing arrangements and initially contain no material change over current Welsh Government policy in relation to charging for social care and support. The framework does, however, create more streamlined and consistent arrangements that consolidate aspects of charging and financial assessment. Essentially the new framework will:

- introduce one set of financial assessment and charging arrangements rather than the differing arrangements for residential and non-residential care and support which presently exist;
- introduce greater transparency so that each person required to pay a charge receives a written statement detailing the charge and its calculation. This will also assist in correcting errors and informing a person who proposes to challenge a charge that they consider has been levied inappropriately;
- introduce a consistent, universal review process to enable a person to challenge charges made and any form of care and support;

- introduce mandatory deferred payments in residential care to enable those whose property may need to be sold to pay for this to delay the sale until a more appropriate time for them;
- ensure that as part of the information and public awareness strategy on the Act, there is greater awareness amongst the public that care and support is chargeable and of the need to plan for this.

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

Consultation documents

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

- A draft of the Care and Support (Choice of Accommodation) (Wales) Regulations 2015 (**Annex B**)
- A draft of the Care and Support (Charging) (Wales) Regulations 2015 (**Annex C**)
- A draft of the Care and Support (Financial Assessment) (Wales) Regulations 2015 (**Annex D**)
- A draft of the Care and Support (Deferred Payments) (Wales) Regulations 2015 (**Annex E**)
- A draft of the Care and Support (Review of Charging Decisions and Determination) (Wales) Regulations 2015 (**Annex F**)
- A draft of the Code of Practice on Part 4 (Direct Payments and Choice of Accommodation) and Part 5 (Charging and Financial Assessment) issued under section 145 of the Social Services and Well-being (Wales) Act 2014 (**Annex G**)

A consultation response form can be found **below**.

Consultation Response Form

Your name:

Organisation (if applicable):

email / telephone number:

Your address:

Charging for care and support - general

- 1. Do you agree that the regulations and code of practice provide a clear framework for financial assessment and charging of recipients of care and support?**

Agree	<input type="checkbox"/>	Tend to agree	<input type="checkbox"/>	Tend to disagree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
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Please provide details of anything that you consider has not been included or has been included incorrectly.

Financial assessment and determination of charges

- 2. Do you agree that the financial assessment arrangements identify the relevant forms of income and capital care and support recipients will have that should be taken into account?**

Agree	<input type="checkbox"/>	Tend to agree	<input type="checkbox"/>	Tend to disagree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
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Are there any forms of income or capital not identified? If so, how should these be treated for the purposes of determining a charge?

Financial assessment and determination of charges

- 3. Do you agree that the arrangements for determining a charge strike an appropriate balance between minimising the impact upon care and support recipients with low financial means, while allowing local authorities to obtain a contribution towards the cost of provision?**

Agree	<input type="checkbox"/>	Tend to agree	<input type="checkbox"/>	Tend to disagree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
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What will further support this?

Choice of accommodation

- 4. Do you agree that the choice of accommodation arrangements for those entering residential care provide them with additional choice over their accommodation?**

Agree	<input type="checkbox"/>	Tend to agree	<input type="checkbox"/>	Tend to disagree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
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Please provide details of anything that you consider would provide prospective residents with more choice.

Deferred payments							
<p>5. Do you agree that the revised deferred payment arrangements for those entering residential care with property will enable them to have an improved choice over the timing of any sale of this to pay for such care?</p>							
Agree	<input type="checkbox"/>	Tend to agree	<input type="checkbox"/>	Tend to disagree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
<p>What will further support this?</p>							
Prevention and assistance							
<p>6. Do you agree that the different arrangements to charge for prevention and assistance strike an appropriate balance between promoting take up of these such services enabling local authorities to recover some of the costs of providing or arranging them?</p>							
Agree	<input type="checkbox"/>	Tend to agree	<input type="checkbox"/>	Tend to disagree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
<p>What will further support this?</p>							
Other							
<p>The Welsh Government is interested in understanding whether the proposals in this consultation document regarding parts 4 and 5 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.</p>							
<p>7. 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?</p>							

8. 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?

9. 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?

10. 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.

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.