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Llywodraeth Cymru
Welsh Government

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Consultation Document

Guidance in relation to Part 4 of the Act

Section 47 of the Social Services & Well-being (Wales) Act 2014

Date of issue: **17 September 2015**
Action required: Responses by **15 October 2015**

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Overview

The purpose of this consultation is to seek your views on Section 47 Social Services & 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 3 NQ

Alternatively the consultation response form is available on our website www.gov.wales/consultations/?lang=en and can be returned to us, by midnight on the closing date, via e-mail to: sswbimplementation@wales.gsi.gov.uk.

Further information and related documents

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

Contact details

For further information please contact:

sswbimplementation@wales.gsi.gov.uk

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

Email: sswbimplementation@wales.gsi.gov.uk
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.

This consultation

The purpose of this consultation is to seek your views on Section 47 of the Social Services & Well-being (Wales) Act 2014 (the Act)

Where are we now?

The Act 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 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 of adult social care legislation, our Review of Safeguarding 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.

Further information and related documents

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, 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 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.

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

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

The proposals

The purpose of this consultation is to seek your views on Section 47 of the Act.

The specified health body for the purposes of section 47(6)

Section 47(6) and (7) of the Act 2014 replaces section 26(1C) and (1D) of the National Assistance Act 1948. The purpose of Section 47(6)(a) is similar to section 26(1C) of the 1948 Act in that it allows a local authority to arrange for the provision of accommodation together with nursing care provided by a

registered nurse, if it has obtained the consent of the appropriate health body. Regulations under section 47(6)(a) are required to stipulate which is the appropriate health body in such cases.

Sections 47(6)(b) and 47(7) make similar provision to section 26(1D) of the 1948 Act in so far as they enable arrangements for the provision of such accommodation in urgent cases and - when the arrangements are temporary - without the need to obtain consent of the appropriate health body, provided that consent is obtained as soon as is feasible after the temporary arrangements are made.

Although the wording is different, the effect of the provisions in the 1948 Act and the 2014 Act is the same, with the exception that under the 2014 Act, provision can now be made in the regulations for which Local Health Board must give consent in the case of accommodation in Scotland or Northern Ireland.

The regulations under section 47(6)(a) specify which is the appropriate NHS body (or trust in Northern Ireland) for the giving of consent to arrangements made by Welsh local authorities for nursing home accommodation in Wales, Scotland, Northern Ireland and England respectively.

It is proposed that in the case of arrangements by a Welsh local authority for the provision of nursing home accommodation within Wales, consent must be obtained from the Local Health Board for the area in which the accommodation is provided (see regulation 3(1)(a))

In the case of arrangements by a Welsh local authority for the provision of nursing home accommodation in Scotland or Northern Ireland, consent must be obtained from the Local Health Board for the area in which the local authority making the arrangements is located (see regulation 3(1)(b))

In the case of arrangements by a Welsh local authority for the provision of nursing home accommodation in England, consent must be obtained from the responsible commissioning group (see regulation 3(1)(c)). Regulation 3(2) defines which is the responsible commissioning group for these purposes.

The provisions in these regulations are in line with the arrangements for the funding of NHS funded nursing care. The four UK governments have reached separate bilateral agreements as to which NHS body (or Trust in Northern Ireland) should be responsible for the cost of NHS funded nursing care required for individuals placed cross-border into a care home. In general terms:

- Where the cross-border placement is between England and Scotland or between England and Northern Ireland (in either direction) the health service of the country of the first authority will be responsible for nursing costs.

- Where the cross-border placement is between England and Wales (in either direction), the second authority's health service will be responsible for the costs of NHS nursing care.

- Where the cross-border placement is between Wales and Scotland, Wales and Northern Ireland, or between Scotland and Northern Ireland, the first authority's health service will retain responsibility for the costs of NHS funded nursing care.

		Placement to:			
		England	Scotland	Wales	Northern Ireland
Placement from:	England	X	CCG (England)	Local health Board (Wales)	CCG (England)
	Scotland	NHS Board (Scotland)	X	NHS Board (Scotland)	NHS Board (Scotland)
	Wales	CCG (England)	Local health Board (Wales)	X	Local health Board (Wales)
	Northern Ireland	HSCT (NI)	HSCT (NI)	HSCT (NI)	X

Arrangements for the resolution of disputes for the purposes of section 47(8)

Regulation 4(1) requires a local authority to make arrangements in connection with the resolution of disputes between the authority and a health body about whether or not a service or facility is required to be provided under a health enactment. "Health body" is defined in section 47(10) and includes health bodies in Wales, England, Scotland and Northern Ireland.

Regulation 4(2) provides that such arrangements must include arrangements in connection with the resolution of disputes about (a) decisions as to a person's eligibility for Continuing NHS Healthcare and (b) the contribution of a health body or local authority to a joint package of care for a person who is not eligible for Continuing NHS Healthcare.

Regulation 4(3) sets out the matters which must be included in the arrangements. The arrangements must include—

a) a procedure for resolving such disputes which has been agreed with the health body;

b) provision for meeting the needs of the person to whom the dispute relates pending the resolution of the dispute;
c) a requirement that any dispute does not prevent, delay, interrupt or otherwise adversely affect the meeting of the needs of the person to whom the dispute relates.

Consultation Questions

1. Are the regulations clear as to which relevant health body the local authority must obtain consent from, in order to make arrangements for the provision of accommodation together with nursing care by a registered nurse?

2. Is it clear what arrangements the local authority must make in connection with the resolution of disputes between the local authority and health body about whether or not a service or facility is required to be provided under a health enactment?

A consultation response form can be found below.

Consultation Response Form

Your name:

Organisation (if applicable):

email / telephone number:

Your address:

1. Are the regulations clear as to which relevant health body the local authority must obtain consent from, in order to make arrangements for the provision of accommodation together with nursing care by a registered nurse?
2. Is it clear what arrangements the local authority must make in connection with the resolution of disputes between the local authority and health body about whether or not a service or facility is required to be provided under a health enactment?

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here: ☐