



Children’s Rights Impact Assessment (CRIA)

Title / Piece of work:	Code of Practice on the exercise of social services functions in relation to part 11 (Miscellaneous and General) of the Social Services and Well-being (Wales) Act
Department:	Department for Health and Social Services
Date:	November 2015

Step 1. What’s the piece of work and its objective(s)?

The Social Services and Well-being (Wales) Act 2014 (the Act) provides a single act that brings together local authorities’ duties and functions in relation to improving the well-being of people who need care and support, and carers who need support. The Act provides the statutory framework to deliver the Welsh Government’s commitment to integrated social services departments with a strong family orientation.

The Act received Royal Assent on 1 May 2014. The Act and its associated codes of practice and regulations will come into effect in April 2016.

Part 11 of the Act contains provision supported by two sets of regulations and a single overarching code of practice.

The code of practice sets out how local authorities should implement the duties under the Act. It 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. For adults in the secure estate in Wales with care and support needs the responsibility falls to the local authority with a prison within its boundaries. For Welsh children and young people the responsibility falls to the individual’s ‘home local authority whether they are in the secure estate in England or Wales.

The code of practice also sets out requirements and guidelines on determining ordinary residence in relation to assessment and meeting eligible care and support needs; determining ordinary residence when an adult moves into certain types of accommodation out of area; and disputes between authorities about a person’s ordinary residence and portability of care and support, and the process for seeking a determination by the Welsh Ministers or appointed person.

Key milestones in advance of April 2016 are:

April 2013: Draft well-being statement for people who need care and support and carers who need support published;

June 2014: National outcomes framework for people who need care and support and carers who need support – working document published;

November 2014 – February 2015: Public consultation on the Implementation of the Social Services and Well-being (Wales) Act, including the code of practice in relation to Part 11;

July 2015: Regulations under Part 11 of the Act laid before the National Assembly for Wales:

- Care and Support (Ordinary Residence) (Specified Accommodation) (Wales) Regulations 2015.
- The Care and Support (Disputes about Ordinary Residence, etc.) (Wales) Regulations 2015

July 2015: The code of practice for part 11 published as a working document on Welsh Government website to support scrutiny of these regulations;

Autumn 2015: The final code of practice in relation to Part 11 of the Act laid before the National Assembly for Wales;

April 2016: Commencement of the Social Services and Well-being (Wales) Act 2014: Regulations under part 11 of the Act will come into effect on 6 April 2016.

A strong voice and real control is central to the legislative framework. This optimises everyone's opportunity for well-being and an appropriate level of independence. Everyone, child or adult, can be given a voice – an opportunity – a right – to be heard as an individual, as a citizen, to have control over their day to day lives.

The impact assessment should be read in conjunction with the impact assessment on Assessment and Eligibility (Parts 3 and 4 of the 2014 Act).

Step 2. Analysing the impact

No specific negative impacts have been identified under this policy.

The code of practice does not diminish any rights for children and young people that they previously had under other legislation i.e. Children Act 1989, and in part enhances them. The code of practice supports the implementation of the people model which removes arbitrary demarcations between the care and support provided to young people and that provided to adults. This establishes a framework for understanding eligibility which ensures continuity of care and support and smoother transition from childhood to adulthood.

A fundamental positive impact introduced through the Act and supported by the code of practice is that children and young people in the secure estate will have the same rights to an assessment and determination of eligibility by their home local authority as they would have had if they were living in the community.

The code of practice on those in the secure estate states that local authorities should

develop referral arrangements to ensure that when information about the children and family of offenders is gathered, a referral is made to the local authority where those children are living. This will enable the families' home local authority to assess the impact that the removal of a parent might have on the family, and identify whether any children of the family have any needs for care and support.

In relation to a child, a duty on any person exercising functions under the Act to have regard to the UN convention for the rights of children has been placed on the face of the Act. This will ensure that all children – without discrimination in any form – continue to have their human rights protected as established by the UNCRC in law.

The Act takes forward Wales' distinctive and internationally regarded rights based approach to children's social care. The rights conferred on children in the regulations apply to all children regardless of their circumstances. References in the regulations to a child's development are defined as including: the physical, intellectual, emotional, social and behavioural development of the child.

Public consultations have been carried out throughout the life of this work:

The Welsh Government undertook a public consultation of the Bill between March 2012 and June 2012. The draft Bill was also subject to a scrutiny process by the National Assembly for Wales. This led to an amendment to add 'suitability of living accommodation' to the definition of well-being as defined in the Bill that was passed by the Assembly on 18 March 2014.

The Welsh Government undertook a further public consultation on the approach to the development of the national outcomes framework, which includes the well-being statement between November 2012 and February 2013, and received responses from a wide range of children's organisations such as Children in Wales and the Children's Commissioner for Wales.

A public consultation on Tranche 1 (Parts 2, 3, 4 7 and 11) of the Social Services and Well-being (Wales) Act 2014 took place between November 2014 and February 2015. The consultation sought views on whether the codes of practice will have any positive or negative impacts on groups with protected characteristics (including age). Responses were received from children's organisations and children's charities, including the National Society for the Prevention of Cruelty to Children, and Action for Children. As part of the consultation it was suggested that special arrangements may be required for local authorities and local health boards to successfully engage with children. This suggestion has been acknowledged and the code was amended accordingly.

In addition to the public consultations, the well-being statement has been further developed by service users and carers who form the National Social Services Citizen Panel for Wales. The National Citizens Panel works as part of the collaborative leadership arrangements, securing the voice of service users and carers in the transformation of social services in Wales.

A Steering Group for those in the secure estate was set up as part of the wider engagement structure to provide steer on for adults and children. The group comprises membership from organisations which represent the statutory, voluntary and private sectors as well as representation from the Youth Justice Board and the Children Commissioners office. The Steering Group provided significant steer on the development

on a delivery model that will underpin the code of practice and support a pragmatic and proportionate approach to implementation;

Two working groups were subsequently established to focus on the development of two national pathways to provide guidance on the progression along from court stage, prior to sentencing, entering prison, upon inter-prison transfer, planning for release and upon release. Specifically the group developed a young person pathway to set out the journey for meeting the care and support needs of young people in the secure estate held in custody in Wales, and in planning for, and upon their release in the community.

A young persons summary of the Social Services and Well-being (Wales) Act has been developed, available at:

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

A child friendly version of the well-being statement for people who need care and support and carers who need support has been produced and is published on the Welsh Government website:

(<http://wales.gov.uk/docs/dhss/publications/140624wellbeingchildren.pdf>).

The consultation on the code of practice for Part 11 of the Social Services and Well-being (Wales) Act 2014 included a children and young persons summary, available at:

<http://gov.wales/consultations/healthsocialcare/part11/?status=closed&lang=en>

The duties under the Act 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 effect of the implementation of the duties under the Act will be monitored through I two annual data sets (adults and children) by the Welsh Government each May. There are key measures that will take account of the collection for those in the secure estate, these include monitoring the use of the information, advice and assistance services and the numbers of assessments and re-assessments completed for individuals in the secure estate. The data collected will be measured alongside the data collected for those receiving care and support in the community.

A longer term evaluation programme is also being developed to monitor the effect of the changes.

Step 3. How does your piece of work support and promote children's rights?

An assessment of relevant UNCRC articles took place as part of the Explanatory Memorandum process for the Social Service and Well-being (Wales) Bill. A link is attached (pages 91 to 93 within the linked document):

<http://www.assemblywales.org/bus-home/bus-business-fourth-assembly-laid-docs/pri-ld9181-em-e.pdf?langoption=3&ttl=PRI-LD9181-EM%20-%20Social%20Services%20and%20Well-being%20%28Wales%29%20Bill%20-%20Explanatory%20Memorandum>

Following Royal Assent and the development of secondary regulations and codes of practice under Part 11 of the Act the assessment has been updated. The positive impacts

for children or their families can be related to articles of the UNCRC:

Article 1 (definition of the child). Everyone under the age of 18 has all the rights in the Convention.

and

Article 2 (without discrimination). The Convention applies to every child whatever their ethnicity, gender, religion, abilities, whatever they think or say, no matter what type of family they come from.

The term 'young people' is used throughout the code of practice to mean children and young people under the age of 18 years. The code of practice sets out that local authorities must meet the care and support needs of a child, up to 18 years of age accommodated in the secure estate, as they would for any child living within the community, and to help them towards self support.

The ordinary residence rules apply to all children and young people equally, regardless of any protected characteristics. They simply determine which local authority has the responsibility for assessing and meeting an individual's care support needs, and how any disputes between local authorities are to be handled. The codes of practice on Part 3 (assessment) and Part 4 (meeting needs) set out how children and young people's needs are to be assessed and met.

Article 3 (best interests of the child). The best interests of the child must be a top priority in all actions concerning children.

The code of practice set out that during transition to adulthood while in the secure estate, that the local authority must act in the best interest of the child to have the existing arrangements remain in place until they leave the young persons' secure accommodation, this may be co-ordinated between the relevant parties.

Article 4 (protection of rights). Governments must do all they can to fulfil the rights of every child.

The code of practice places a clear responsibility that every child in Wales should have the same rights and entitlements under the Act as anyone else living in a community (unless the Act specifies otherwise).

Article 9 (separation from parents). Children must not be separated from their parents unless it is in the best interests of the child (for example, in cases of abuse or neglect). A child must be given the chance to express their views when decisions about parental responsibilities are being made. Every child has the right to stay in contact with both parents, unless this might harm them.

The code of practice sets out that the requirement of the local authority to maintain contact with the young person, and their parents/carers, to support them throughout the duration of their sentence.

The code of practice also sets out that local authorities should develop referral arrangements to ensure that when information about the children and family of offenders is gathered and that a referral is made to the local authority where those children are living. This will enable the home local authority to assess the impact that the removal of a parent might have on the family, and identify whether any children of the family have any needs for care and support.

Local authorities should consider the needs of the wider family when an individual is sentenced and when that individual is released.

Article 19. Governments should ensure that children are properly cared for, and protect them from violence, abuse and neglect by their parents or anyone else who looks after them.

The new policy will ensure that local authorities follow the safeguarding policies of custodial settings and work with youth detention and secure children's unit staff to ensure children and young people in custodial settings are safeguarded.

Article 28 (right to education). Every child has the right to an education. Primary education must be free. Secondary education must be available to every child. Discipline in schools must respect children's human dignity. Wealthy countries must help poorer countries achieve this.

Local authorities must ensure that a significant range of services are provided to young people in the secure estate, including access to education and work opportunities.

Article 36 (other forms of exploitation). Governments must protect children from all other forms of exploitation that might harm them.

Article 34 (sexual exploitation). Governments must protect children from sexual abuse and exploitation.

Article 40 Article 40 (Juvenile justice): Children who are accused of breaking the law have the right to legal help and fair treatment in a justice system that respects their rights. Governments are required to set a minimum age below which children cannot be held criminally responsible and to provide minimum guarantees for the fairness and quick resolution of judicial or alternative proceedings.

For Welsh children and young people the responsibility falls to the individual's 'home local authority whether they are in the secure estate in England or Wales.

Local authorities with responsibilities for young people in the secure estate will also retain lead responsibility for their safeguarding while they are detained.

- **How are you improving the way children and young people access their rights?**
- **What are the main issues that the CRIA should focus on?**

The Rights of Children and Young People Measure 2011 requires the Welsh Ministers to give due regard to the UNCRC in the development of all legislation and policy. The Children Act 1989 and the UNCRC laid the foundation for the development of the definition of well-being in the Act.

The Act requires that any persons exercising functions under the Act to have due regard of the UNCRC.

Well-being and the outcomes people wish to achieve is at the centre of the legislation; the definition of well-being in the Act, and the well-being statement, both recognise that securing rights and entitlements is key to ensuring that children can speak for themselves or have someone who can do it for them so that they are involved in the decisions that affect their life.

The Act focuses on well-being, on rights, on entitlements and on empowering people to have a new relationship with social services. The code of practice for part 11 sets out that children and young people have the same rights and entitlements under the 2014 Act as anyone else living in a community unless the 2014 Act specifies otherwise.

The code of practice sets out that local authorities must ensure that the information, advice and assistance offered is accessible for all individuals who need it. All young people will

participate in an induction course where they receive information about their rights and entitlements while they are in custody, this will include detail of their rights under the Act.

Step 4. Advising the Minister and Ministerial decision

The duty to meet the care and support needs of a child or young person within the secure estate is set out under Section 186 of the Act. For children and young people under 18 years the Welsh home local authority must meet the care and support duties under the 2014 Act for young people in the secure estate whether they are detained in England or Wales, as they would if they were living in the community. The evidence provided in steps 1 – 3 of this impact assessment set out how the rights of children and young people have been addressed in the code of practice.

Ministerial agreement has been sought throughout the entirety of this programme for work. The advice to the Minister of Health and Social Services confirms that this CRIA has been completed.

In considering the articles of the UNCRC Part 11 of the Social Services and Wellbeing (Wales) Act 2014 gives greater effect to the UNCRC.

Step 5. Recording and communicating the outcome

The policy areas developed under Part 11 drew on advice from the Technical Groups. These had a membership of key stakeholders including those with experience and knowledge of children's social care services, both in the statutory and third sector.

A series of engagement events, in line with the formal consultation, were held with representatives from the Association of Directors of Social Services Heads of Children's Services, the National Probations Service, National Offender Management Service, as well as focus groups with young people themselves.

The regulations and codes of practice will be laid before the National Assembly for Wales in advance of implementation in April 2016. A learning and development plan has been developed by the Care Council for Wales to support implementation and a communication plan will support general awareness of implementation.

Step 6. Revisiting the piece of work as and when needed

The Social Services and Well-being (Wales) Act 2014 contains provisions to allow for Ministers to monitor functions of the Act carried out by local authorities and other bodies. Ministers may require these bodies to report on their duties in implementing these regulations.

The Welsh Government intends to commission an evaluation to enable the impact of the new national model of assessment and eligibility (under parts 3 and 4 of the Act) to be considered. This will include assessing meeting the needs of children and young people in the secure estate.

Officials will continue to monitor the impact of the regulations in relation to UNCRC.

Budgets

As a result of completing the CRIA, has there been any impact on budgets?	No
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Please give any details:
There has not been any impact on the budget as a result of this CRIA.
A Regulatory Impact Assessment on the two sets of regulations under part 11 have been completed to show the cost implications of introducing the regulations.

Monitoring & Review

If applicable: set the review date	NA
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