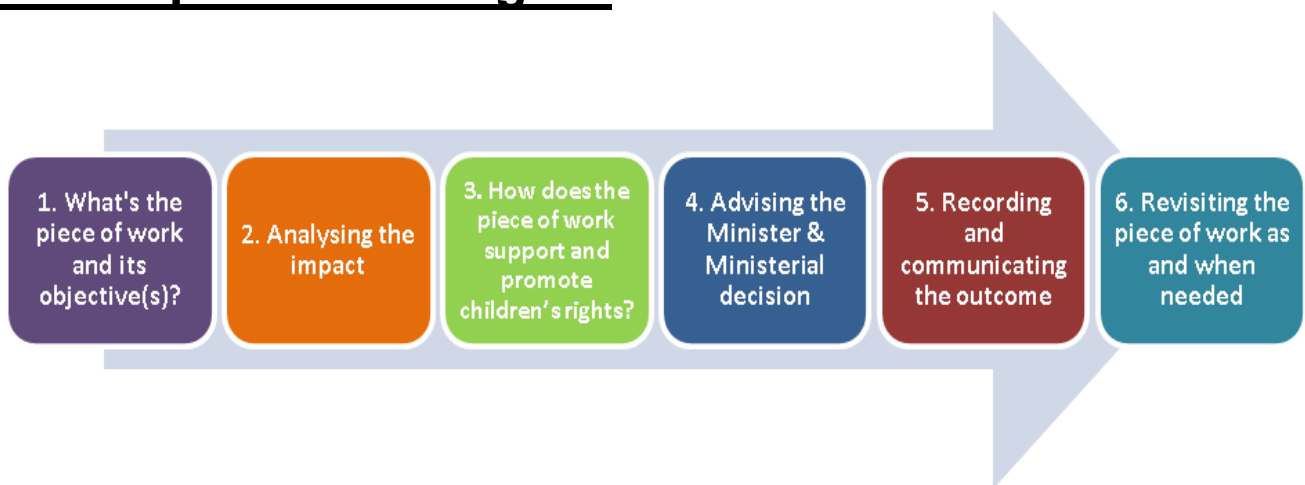




Children's Rights Impact Assessment (CRIA)

Title / Piece of work:	The Care and Support (Eligibility) (Wales) Regulations 2015
Branch :	Eligibility, Assessment & Care Planning Branch
Department:	Department for Health and Social Services
Date:	10 June 2015

Six Steps to Due Regard



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

The Social Services and Well-being (Wales) Act 2014 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 Welsh Government's commitment to integrate social services to support people of all ages, and support people as part of families and communities.

The Care and Support (Eligibility) (Wales) Regulations were laid before the National Assembly for Wales on 8 May 2015.

The regulations set out the process which a local authority must apply to determine whether or not an individual with needs identified in an assessment under section 19, 21 or 24 of the Act is entitled to have those needs met by a local authority. The regulations set out the process to be applied in relation to adults, to children and to carers.

The Social Services and Well-being (Wales) Act 2014 comes into effect in April 2016.

The regulations introduce a model for determining eligibility through assessment. They establish a national eligibility framework that will be consistently applied across Wales. Although the pattern of service delivery will vary from authority to authority, what remains constant is the right to care and support from a local authority where that care and support is not otherwise available to the individual with needs which relate to the specified outcomes.

Specifically, in the case of a child the regulations set out the test which a local authority must apply to determine whether or not the local authority must meet the care and support needs of a child in addition to or instead of care and support provided by the child's family. A disabled child is presumed to need care and support in addition to, or instead of, the care and support provided by the child's family.

In the case of a child who is a carer, the local authority must have regard to the developmental needs of the child and whether it is appropriate for the child to provide the care (or any care) in the light of those needs.

The regulations require that when a local authority is making an eligibility determination in relation to a child who has been assessed as having needs for care and support, the local authority is required to meet those needs if:

- The need arises from the child's physical or mental ill-health, age, disability, dependence on alcohol or drugs, or other similar circumstances; or
- The need is one that if unmet is likely to have an adverse effect on the child's development.

Additionally, the need must relate to one or more of the following:

- Ability to carry out self-care or domestic duties

- Ability to communicate
- Protection from abuse or neglect
- Involvement in work, education, learning, or in leisure activities
- Maintenance and development of family or other significant personal relationships
- Development and maintenance of social relationships and involvement in the community or
- Achieving developmental goals.

The new model for care and support is supported by the development of an integrated system which brings together assessment and eligibility into one process. This impact assessment on the eligibility regulations should be read in conjunction with the Impact Assessment on the regulations on assessment, and vice versa.

Step 2. Analysing the impact

The regulations and code of practice do 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. For example; for the first time a young person who is a carer will have the right to a determination of their eligibility for support as a carer, as well as the right to a determination of their eligibility for care and support as a child with needs for care and support.

The regulations support the implementation of a 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.

Similarly, those children and young people in the secure estate will have the same rights to an assessment and determination of eligibility by their local authority as they would have had if they were living in the community.

The regulations establish an eligibility framework with particular application to children with needs for care and support. These include a requirement about how the need arises, about whether it relates to one or more well-being factors, about whether or not the need can be met by the child, or the child's parents, either alone or with assistance, and about whether or not the child is likely to achieve their personal outcomes without the provision of care and support by the local authority.

This approach to determining eligibility is not a needs-based deficit model. The regulations support an outcome-based understanding of how to support children and meet their needs where the determination of eligibility is based entirely on an assessment process which places the child at the centre.

Well-being is a key concept throughout the Act and the regulations specifically ensure that the approach to assessment and eligibility is underscored by a duty to support people to

achieve their personal well-being outcomes – which include the physical, intellectual, emotional, social and behavioural development of a child.

The regulations take 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.

Local authorities must meet the needs of children which the local authority considers it is necessary to meet in order to protect the child from abuse or neglect or a risk of abuse or neglect or in order to protect the child from other harm or risk of such harm.

If the local authority considers it necessary in order to promote the well-being of the child it must take such steps as are reasonably practicable to enable the child to live with his/her family or promote contact between the child and his/her family.

There are many children with caring responsibilities in Wales. The Regulations provide young carers with equivalent rights to those that they care for, putting them on a similar legal footing. Where the carer is a child the local authority must have regard to his or her developmental needs and the extent to which it is appropriate for the child to provide the care.

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

The new assessment process supports the majority, if not all, of the outcomes within the UNCRC articles but the most relevant articles are:

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

In addition to the requirements of the Act there are regulations that apply specifically to people under the age of 18.

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 regulations apply for every child within the local authority's area.

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

The regulations provide the framework for local authorities to act in the best interests of the child when determining whether a child's needs are such that they are entitled to have their needs met by the local authority.

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

child.

The regulations create a consistent right for every child in Wales regarding the decision as to whether the child has needs which must be met by a local authority.

Article 5 (parental guidance). Governments must respect the rights and responsibilities of parents to guide and advise their child so that, as they grow, they learn to apply their rights properly.

The regulations require local authorities to recognise the role parents play in supporting the child to achieve their personal outcomes.

Article 6 (survival and development). Every child has the right to life. Governments must do all they can to ensure that children survive and grow up healthy.

When determining whether a child has needs which must be met by the local authority, the regulations require local authorities to consider needs which may arise due to ill-health and to needs which may have an adverse effect on the child's development.

The regulations safeguard children by requiring local authorities to consider needs which relate to protection from abuse or neglect.

Article 7 (registration, name, nationality, care). Every child has the right to a legally registered name and nationality, as well as the right to know and, as far as possible, to be cared for by their parents.

The regulations require local authorities to recognise the role parents play in supporting the child to achieve their personal outcomes.

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.

By establishing the extent to which a child's needs for care and support can be met by the child's family, the eligibility regulations support the requirement in the Act for local authorities to enable the child to live with the child's family or promote contact between the child and the child's family.

Article 15 (freedom of association). Every child has the right to meet with other children and young people and to join groups and organisations, as long as this does not stop other people from enjoying their rights.

When determining whether a child has needs which must be met by the local authority, the regulations require local authorities to consider needs that relate to involvement in work, education, learning, or in leisure activities and to the development and maintenance of social relationships and involvement in the community.

Article 18 (parental responsibilities; state assistance). Both parents share responsibility for bringing up their child and should always consider what is best for the child. Governments must help parents by providing services to support them, especially if the child's parents work.

When determining whether someone has needs which must be met by the local authority, the regulations require local authorities to consider a person's circumstances in the round, including needs, for both children and adults, that relate to the maintenance or development of family or other significant relationships, and for adults include the fulfilment of caring responsibilities for a child.

Article 19 (protection from all forms of violence). Governments must do all they can to ensure that children are protected from all forms of violence, abuse, neglect and mistreatment by their parents or anyone else who looks after them.

When determining whether a child has needs which must be met by the local authority, the regulations require local authorities to consider needs that relate to protection from abuse and neglect.

Article 22 (refugee children). If a child is a refugee or seeking refuge, governments must ensure that they have the same rights as any other child. Governments must help in trying to reunite child refugees with their parents. Where this is not possible, the child should be given protection.

The regulations apply to any child who is within the local authority's area.

Article 23 (children with disability). A child with a disability has the right to live a full and decent life in conditions that promote dignity, independence and an active role in the community. Governments must do all they can to provide free care and assistance to children with disability.

The Act states that a disabled child is presumed to need care and support in addition to, or instead of, the care and support provided by the child's family. When determining whether a child has needs which must be met by the local authority, the regulations require local authorities to consider needs which may arise due to disability. Also the regulations state that a carer may have a need for support that must be met by the local authority, if the need arises as a result of providing care for a disabled child.

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.

When determining whether a child has needs which must be met by the local authority, the regulations require local authorities to consider needs that relate to involvement in work, education, learning, or in leisure activities.

Article 29 (goals of education). Education must develop every child's personality, talents and abilities to the full. It must encourage the child's respect for human rights, as well as

respect for their parents, their own and other cultures, and the environment.

When determining whether a child has needs which must be met by the local authority, the regulations require local authorities to consider needs that relate achieving developmental goals

Article 31 (leisure, play and culture). Every child has the right to relax, play and join in a wide range of cultural and artistic activities.

When determining whether a child has needs which must be met by the local authority, the regulations require local authorities to consider needs that relate to involvement in work, education, learning, or in leisure activities.

Article 33 (drug abuse). Governments must protect children from the use of illegal drugs.

When determining whether a child has needs which must be met by the local authority, the regulations require local authorities to consider needs which may arise due to dependence on alcohol or drugs.

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

The regulations require that the determination of eligibility for entitlement for those needs to be met include needs that relate to protection from abuse and neglect.

Article 35 (abduction). Governments must ensure that children are not abducted or sold.

The regulations require that the determination of eligibility for entitlement for those needs to be met include needs that relate to protection from abuse and neglect.

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

The regulations require that the determination of eligibility for entitlement for those needs to be met include needs that relate to protection from abuse and neglect.

Step 4. Advising the Minister and Ministerial decision

The duty to meet the care and support needs of a child has been created under Section 37 of the Social Services and Well-being (Wales) Act 2014. The evidence provided in Steps 1-3 above sets out in more detail the way in which rights of children and young people have been addressed in drafting the regulations.

The model of determining eligibility through assessment was developed drawing on advice from the Technical Group. This 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.

Amendments were made to the regulations following a public consultation and advice was given to the Minister throughout this process.

Revised Policy Instructions: March 2015

Signature Submission Eligibility and Assessment Regulations: May 2015

The Minister for Health and Social Services has been advised that the Welsh Government will continue to monitor the impact of the regulation on areas such as the Welsh language, children's rights and equality.

No conflict with UNCRC articles has been identified.

Step 5. Recording and communicating the outcome

The approach was developed using the direct input of younger people. This secured their voices and identified specific issues relating to children and young people.

The Minister has been made aware of the considerations which informed this Impact Assessment throughout the development of the regulations.

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.

The final regulations were laid before the National Assembly for Wales for scrutiny on 8 May 2015. This CRIA will be published on the Welsh Government web-site during this period, alongside the associated code of practice.

A suite of child friendly literature has been developed to support the Act and regulations that underpin it.

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 to be considered.

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?

It is important that where any changes are made to spending plans, including where additional allocations have been made, that this has been assessed and evidenced as part of the CRIA process.

No

Please give any details:

There has not been any impact on the budget as a result of this CRIA.

Monitoring & Review

Do we need to monitor / review the proposal?

No

If applicable: set the review date

NA