

# WELSH HEALTH CIRCULAR



Llywodraeth Cymru  
Welsh Government

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**STATUS: COMPLIANCE**

**CATEGORY: LEGISLATION**

**Title:**  
*Implications of the Social Services and Well-being (Wales) Act 2014 for Health Boards and NHS Trusts (updated as at April 2016)*

**Date of Expiry / Review:**  
*This WHC supersedes WHC (2015) 045*

**For Action by:**  
*Health Boards and NHS Trusts*

**Action required from:**  
*6 April 2016*

**Sender:**  
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**Enclosure(s):**  
*Hyperlinks to the legislative framework, the Learning @ NHS Wales website, the Care Council for Wales' Information and Learning Hub and the Welsh Government Care and Support homepage.*

## **INTRODUCTION**

The [Social Services and Well-being \(Wales\) Act 2014](#) (“the Act”), which came into force on 6 April 2016, creates a new legislative framework that brings together and modernises the law governing social care in Wales.

The Act aims to improve wellbeing outcomes for people who need care and support, and carers who need support, through better co-ordination and enhanced collaboration between public bodies, including local authorities and the NHS, working together in regional partnerships.

The Act places an individual’s voice at the centre of decisions about their care and support:

- It will ensure that people have access to clear information, advice and assistance about the care and support available in their area, and places duties on the local authority to put an Information, Advice and Assistance service in place for this purpose. It requires health boards and NHS Trusts to provide information to support this service within their area.
- It will introduce, for the first time, a strong statutory framework for the protection of adults, and national leadership arrangements for safeguarding people. Safeguarding arrangements will also be strengthened on a regional basis, with health boards and NHS Trusts as key partners.
- This is underpinned by a new ‘duty to report’ which applies to health boards and NHS Trusts where they suspect that an adult or child is at risk. The local authority will then be under a duty to make further enquires.
- Finally, the Act also promotes the importance of both prevention and early intervention to help people live independently.

In many respects, the Act shares similarities with the principles of Prudent Healthcare. These principles go to the core of social services in Wales, and mirror the focus on citizen voice, user control and co-production set out in *Sustainable Social Services: A Framework for Action* (2011). 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 fair and equitable for all.

The Act was developed through close working between NHS and social services colleagues and with the active involvement of the national Partnership Forum and Leadership Group, in both of which, representatives of the health sector in Wales played a significant part. Fundamentally, the Act seeks to promote integration between the two sectors to the greatest extent possible, and will rely for its success on all partners delivering their responsibilities under it. To this end there are a number of duties expressly placed on health boards and NHS Trusts, though not always both. Some of these duties are touched upon above, and dealt with in greater detail below.

While the principal components of the new legislative framework are set out on the face of the Act, the Act is enabling in nature and consequently is supplemented by a suite of subordinate legislation - regulations, codes of practice and guidance - to fill in the detail of the new system and support its operational implementation.

The regulations provide the further detail or prescription needed in implementing the Act, whilst the codes of practice and statutory guidance offer further clarity to help people and organisations (primarily local authorities) work within the new framework created by the Act. They also came into force on 6 April 2016, unless otherwise stated.

## **COLLABORATIVE DELIVERY**

Joint working between local authorities and their partners, including health boards and NHS Trusts, will ensure successful implementation of the new approach. Implementation work is being led by regional teams based on the current health board footprint, through joint leadership arrangements, mirroring those put in place on a national level. From 6 April 2016, these will segue into Regional Partnership Boards established under Part 9 of the Act, on which health boards in particular are represented.

Since 2013/14, in support of implementation and preparedness, Welsh Government has provided regional partnerships with access to the Delivering Transformation grant. This funding stream has enabled local government and its partners to put in place the requirements of the new Act. In 2015/16 the level of funding was doubled to £3m, and this level of funding will continue through 2016/17, to support the embedding process.

## **SECTIONS OF THE ACT (AND RELEVANT SUBORDINATE LEGISLATION) RELATING TO HEALTH OR THE PROVISION OF HEALTH CARE SERVICES**

### **PART 2 – General Functions**

- **Section 14: The assessment of needs for care and support, support for carers and preventative services**

The Act imposes general and strategic duties on local authorities and health boards to gain a better understanding of the characteristics and needs of their local populations, in order to effectively plan and provide a sufficient range and level of care and support services.

This section requires **local authorities and health boards to jointly assess** the extent to which there are people who need care and support, or carers who need support in their area. They should also assess the extent to which these needs are not being met, and the range and level of services required to meet identified needs.

The joint assessment must also identify the range and level of preventative services required within their area (under section 15, described below) and consider how all services provided under the Act will be delivered through the medium of Welsh.

Section 14 also seeks to ensure that this population assessment is taken into account as part of broader integrated planning frameworks, for example, within Local Well-being Plans (required under the Well-being of Future Generations (Wales) Act 2015 and NHS Integrated Medium Term Plans. This assessment will also inform local authorities in meeting their section 16 duty to promote social enterprises.

Local authorities and health boards **must jointly produce and publish a report** of the outcome of their population assessments, the first one being prepared and submitted to the Welsh Ministers by 1 April 2017.

Furthermore, section 166 of the Act has enabled the Welsh Ministers to make regulations requiring partnership arrangements between health boards and the local authorities in the relevant health board areas for the purposes of carrying out specified functions. One of the specified functions is the undertaking of population needs assessments.

The Intermediate Care Fund (ICF) aligns closely with this work. It reinforces the emphasis on preventative and early stage intervention. It also enabled local authorities, health boards and third and independent sector organisations, in planning delivery of their regional programmes, to gain a better understanding of the needs of their locality, what services are being provided to meet those needs, and by whom.

- **Section 14A: Plans following assessments of needs under section 14**

Section 14A<sup>1</sup> requires health boards and local authorities to each produce an area plan based on the results of the population needs assessment. Work to prepare additional regulations and guidance in this area is underway with duties coming in to force in November 2016.

- **Section 15: Preventative services**

This requires local authorities to plan and provide services designed to prevent, delay or reduce needs for care and support. Health boards are required to **have regard to the importance of achieving these preventative purposes** when exercising their functions.

- **Section 17: Provision of information, advice and assistance**

Health Boards and NHS Trusts are required to **provide the local authority with information about the care and support it provides** in the respective local authority's area.

The [code of practice on Part 2](#) of the Act (General Functions) was issued on 18 December 2015.

[The Care and Support \(Population Assessments\) \(Wales\) Regulations 2015](#)

[The Care and Support \(Partnership Arrangements for Population Assessments\) \(Wales\) Regulations 2015](#)

[The Social Services and Well-being \(Wales\) Act 2014 \(Social Enterprise, Co-operative and Third Sector\) \(Wales\) Regulations 2015](#)

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<sup>1</sup> As inserted by para 34 of Schedule 4 of the Regulation and Inspection of Social Care (Wales) Act 2015 [http://www.legislation.gov.uk/anaw/2015/2/pdfs/anaw\\_20150002\\_mi.pdf](http://www.legislation.gov.uk/anaw/2015/2/pdfs/anaw_20150002_mi.pdf)

## **PART 3 – Assessing the Needs of Individuals**

- **Section 29: Combining needs assessments and other assessments**

A local authority may carry out a care and support needs assessment for a person at the same time as it, or another body, carries out another assessment. The local authority may **carry out the other assessment on behalf of, or jointly with, another body** (for example a health board or an NHS Trust).

The [code of practice on Part 3](#) of the Act (Assessing the Needs of Individuals) was issued on 18 December 2015.

[The Care and Support \(Assessment\) \(Wales\) Regulations 2015](#)

## **PART 4 – Meeting Needs**

- **Section 47: Exception for provision of health services**

Specifies that local authorities cannot provide or arrange services or facilities that would be required under the NHS (Wales) 2006 Act or the NHS Act 2006, unless doing so would be incidental or ancillary to other actions within the local authority's powers.

The [code of practice on Part 4](#) of the Act (Meeting Needs) was issued on 18 December 2015.

## **PART 7 – Safeguarding**

- **Sections 128 and 130: Duty to report adults or children at risk**

This section requires health boards and NHS Trusts (as relevant partners) to **inform local authorities if they have reasonable cause to suspect that an adult or child within their area is at risk.**

- **Section 134: Safeguarding Children Boards and Safeguarding Adults Boards**

This section relates to the establishment of Safeguarding Children Boards and Safeguarding Adults Boards. Regulations set out those areas in Wales where there will be Safeguarding Boards. The respective health boards and NHS Trusts will be partners and therefore require representation on the Boards. The statutory guidance on Part 7 provides advice about the appropriate level of safeguarding board partners' representation to secure effective decision making by the boards.

The National Independent Safeguarding Board has been appointed by the Welsh Ministers. It will advise the Welsh Ministers on safeguarding matters and will be a source of advice and guidance for safeguarding boards.

[Statutory guidance in relation to Part 7 \(Safeguarding\)](#) was issued on 5 April 2016.

[The Safeguarding Boards \(Functions and Procedures\) \(Wales\) Regulations 2015](#)

[The Safeguarding Boards \(General\) \(Wales\) Regulations 2015](#)

[The National Independent Safeguarding Board \(Wales\) \(No.2\) Regulations 2015](#) (came into force on 25 November 2015)

## **PART 9 – Co-operation and Partnership**

Part 9 of the Act relates to co-operation and partnership, and provides the Welsh Ministers with several regulation making powers. *Regulations provide for the establishment of Regional Partnership Boards (RPBs) at a Health Board area level.* The focus of these Boards is on **improving outcomes and the wellbeing of people**. The regulations also seek to improve efficiency and effectiveness of service delivery. These RPBs will be expected to respond in a preventative way to the population assessment required by section 14 of the Act.

The RPBs are required to establish **pooled funds** in relation to the exercise of their family support functions and in relation to any functions they exercise jointly in response to the population assessment of care and support needs required by the Act.

RPBs will be responsible for delivering initiatives supported through the £60m intermediate care fund in 2016-17. Together partners will develop measures to maximize independent living and safeguard frail and older people and those with autism and learning disabilities with complex needs.

Pooled funds will also be required in relation to the exercise of functions relating to the provision of **care home** accommodation for adults from April 2018. In the meantime health boards and local authorities should agree on the capacity of services they need from care homes and provide and develop integrated commissioning arrangements.

- **Section 162** requires local authorities to make arrangements with their 'relevant partners', which include health boards and NHS Trusts, to promote co-operation. This co-operation is required in relation to adults with needs for care and support, and adults who are carers. This includes improving the wellbeing, and the quality of care and support, and protecting adults at risk of abuse or neglect.

All relevant partners **must co-operate with the local authority in making arrangements** under this section and may provide staff, goods, services, accommodation, establish and maintain a pooled fund and share information with one another. The local authority and its relevant partners must also have regard to statutory guidance published by the Welsh Ministers.

- **Section 163** makes amendments to the Children Act 2004 and sets out arrangements (mirroring those required by section 162) for local authorities to

promote co-operation with their relevant partners, including health boards and NHS Trusts, in relation to children. This includes improving well-being, quality of care and support and protecting children at risk of abuse, neglect or other kinds of harm.

- **Section 164** requires health boards and NHS Trusts to **co-operate with and provide information to local authorities** when requested – except where to do so would be incompatible with their own duties or otherwise have an adverse effect on their own functions – to enable them to exercise their social services functions.

Section 27 of the Children Act 1989 (as amended by regulations made under the Act) requires health boards and NHS Trusts in Wales to co-operate with local authorities in England when requested, if it is compatible with their own statutory or other duties and obligations and does not unduly prejudice the discharge of any of their functions. A reciprocal duty is placed on health bodies in England by section 164A of the Act, as inserted by those regulations<sup>2</sup>.

- **Section 165** provides that a local authority must exercise its social services functions with a view to integrating care and support provision with health provision and health-related provision where this would:
  - promote the well-being of children or adults with needs for care and support, or carers with needs for support;
  - contribute to the prevention or delay of people's development of care and/or support needs;
  - improve the quality of care and/or support including the outcomes to be achieved.
- **Section 166** has enabled regulations to specify the partnership arrangements between local authorities and health boards. The regulations allow the Welsh Ministers to specify:
  - which local authorities and health boards should have partnership arrangements;
  - the form of the partnership arrangements;
  - the operation and management of these arrangements, including information sharing.
- **Section 167** provides for regulations to enable local authorities and health boards to pay towards any expenditure incurred in relation to partnership arrangements under section 166. This includes making payments directly or by contributing to a pooled fund. A local authority and a health board<sup>1</sup> may also provide staff, goods, services, accommodation or other resources in connection with partnership arrangements.

The regulations make provisions which require a **pooled fund to be established**, and which determine the contributions to be made by partners to the pooled fund, for expenditure in relation to posts, services, administration or any other costs related to partnership arrangements.

- **Section 168** provides for regulation making powers to establish partnership boards, in relation to partnership arrangements. The regulations specify the

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<sup>2</sup> The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 [http://www.legislation.gov.uk/wsi/2016/413/pdfs/wsi\\_20160413\\_mi.pdf](http://www.legislation.gov.uk/wsi/2016/413/pdfs/wsi_20160413_mi.pdf)



membership of partnership boards (including members of health boards), the objectives, functions and procedures, the form of reports, their content, timing and publication.

- **Section 169** requires the Welsh Ministers to issue and periodically revise guidance about partnership working in relation to section 166. This applies to partners, which include local authorities and health boards. The guidance also applies to a team or person carrying out partnership arrangements and any partnership boards established under section 168.

[Statutory guidance in relation to Part 9](#) (Partnership Arrangements) was issued on 18 December 2015.

[The Partnership Arrangements \(Wales\) Regulations 2015](#)

## **PART 10 – Complaints, Representations and Advocacy Services**

- **Section 171: Complaints about social services**

This section allows for regulations to make provision for the consideration of complaints relating to services provided by local authorities. This includes services under section 33 of the National Health Services (Wales) Act 2006 or section 75 of the National Health Service Act 2006. No new regulations have been made under this section but the existing regulations in relation to the consideration of complaints are treated as having been made under this section and will continue to apply.

- **Section 179: Investigation of complaints about privately arranged or funded social care and palliative care**

This section gives effect to Schedule 3 of the Act. This inserts a new Part 2A, Part 2B and Part 3A in to the Public Service Ombudsman (Wales) Act 2005 which gives the Ombudsman powers to investigate complaints about certain kinds of social care and palliative care.

- **Section 180: Independent advocacy services for complaints about privately arranged or funded palliative care**

This section makes amendments to section 187 of the National Health Service (Wales) Act 2006 to make it clear that the duty to provide independent advocacy services applies only in relation to health care complaints to the Ombudsman. This includes complaints about independent palliative care providers.

- **Sections 181 and 182: Provision of advocacy services and restrictions**

The advocacy code of practice sets out local authorities' responsibilities for securing advocacy support to enable adults and children to be able to express their views wishes and feelings in relation to the exercise of duties under the Act. The code recognises the shared responsibilities for the provision of advocacy support across the NHS. The code therefore reinforces the opportunities to co-



ordinate commissioning arrangements through formal and informal partnership arrangements under Part 9 of the Act including contributing to a pooled fund in order to secure improved well-being of children.

The [code of practice on Part 10](#) of the Act (Advocacy) was issued on 18 December 2015.

[The Social Services Complaints Procedure \(Wales\) Regulations 2014](#) are relevant to section 171

## **IMPLICATIONS FOR HEALTH BOARDS AND NHS TRUSTS**

In light of the significant duties imposed upon health boards and NHS Trusts by the Act, you are advised to note the content of the sections referred to above and their associated regulations, codes of practice and statutory guidance. It is important that health boards and NHS Trusts continue to work with their local authority partners in implementing these duties from the commencement of the Act.

Under arrangements supported by the Delivering Transformation grant (as described above) implementation work is being driven on a regional basis, led by Regional Implementation Managers, a list of whom can be found below. The Welsh NHS Confederation, in conjunction with the Association of Directors of Social Services Cymru and WLGA, is leading on delivery at a national level.

<b>Cardiff &amp; Vale</b>	Nichola Poole - <a href="mailto:npoole@valeofglamorgan.gov.uk">npoole@valeofglamorgan.gov.uk</a>
<b>Cwm Taf</b>	Sian Nowell - <a href="mailto:Sian.Nowell@rctcbc.gov.uk">Sian.Nowell@rctcbc.gov.uk</a>
<b>Gwent</b>	Mark Saunders - <a href="mailto:Mark.Saunders@torfaen.gov.uk">Mark.Saunders@torfaen.gov.uk</a>
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<b>Powys</b>	Sue Hughes - <a href="mailto:sue.hughes@powys.gov.uk">sue.hughes@powys.gov.uk</a>
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## **FURTHER INFORMATION**

Please visit the Learning at NHS Wales website to enhance your knowledge about the Act and its implications: [www.learning@NHSWales](http://www.learning@NHSWales)

A range of additional learning resources can also be found on the Care Council for Wales website: [www.ccwales.org.uk/getting-in-on-the-act-hub/](http://www.ccwales.org.uk/getting-in-on-the-act-hub/)

The Welsh Government Care and Support homepage:  
<http://gov.wales/topics/health/socialcare/act/?lang=en>