

# CITY OF CARDIFF COUNCIL CYNGOR DINAS CAERDYDD

**AUDIT COMMITTEE: 8 December 2014**

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## **OUTSTANDING ACTIONS**

**AGENDA ITEM: 11.2**

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### **Reason for this Report**

1. The agenda for this meeting contains five Outstanding Actions which will provide Members of the Audit Committee with an update on items that have been brought to previous meetings.

### **Background**

2. (i) At its meeting on the 15<sup>th</sup> September, the Committee received an internal audit report which highlighted a limited assurance opinion in relation to the Glyn Derw Michaelston Federation. Members requested the Director of Education provide an explanatory note relating to the Committee's concerns around setting of the budget for 2013-14.
3. (ii) At its meeting on the 15<sup>th</sup> September, the Committee received Internal Audit's Annual Report 2013-14, and enquired whether audit work was being undertaken on tenants sub-letting Council properties. Members requested a report on the investigation of sub-letting. The attached report outlines the City of Cardiff Council's approach to Social Housing Fraud.
4. (iii) At its meeting on the 20<sup>th</sup> May 2013, the Committee received a briefing on the implementation of the Principal Bridge Inspection Programme for Highway Bridges and Structures, as it had been highlighted as a significant matter in the Annual Governance Statement for the previous financial year. Members received assurances that the risks were being managed but felt it appropriate to receive an update after 12 months.
5. (iv) At its meeting on the 25<sup>th</sup> June 2014, the Committee received a presentation from the Director Health & Social Care around their Risks and Challenges. The Committee requested an update on Delayed Transfer of Care at a future meeting.
6. (v) Also at the meeting on the 25<sup>th</sup> June, the Committee requested an update on the implications on the Corporate Risk relating to the Social Services and Well-being (Wales) Act 2014. This update provides Members with information on the approach being taken to implementation.

### **Issues**

7. Updates for the five outstanding actions are included in the attached papers.

## **Legal Implications**

8. There are no direct legal implications arising from this report.

## **Financial Implications**

9. There are no direct financial implications arising from this report.

## **RECOMMENDATION**

10. The Committee notes the content of this report.

## **CHRISTINE SALTER CORPORATE DIRECTOR RESOURCES**

The following updates are attached:

11.2(i): Glyn Derw Michaelston Federation

11.2(ii): Social Housing Fraud

11.2(iii): Highway Bridges & Structures

11.2(iv): Delayed Transfer of Care (DToC)

11.2(v): Implementation of the Social Services Wellbeing Act 2014

## **BRIEFING REPORT FROM THE DIRECTOR EDUCATION & LIFELONG LEARNING**

**SUBJECT: GLYN DERW MICHAELSTON FEDERATION**

**AUDIT COMMITTEE: 8<sup>TH</sup> DECEMBER 2014**

### **Reason for Report**

At its meeting on the 15<sup>th</sup> September, the Committee received an internal audit report which highlighted a limited assurance opinion in relation to the above. Members requested the Director of Education provide an explanatory note relating to the Committee's concerns around setting of the budget for 2013-14.

### **Response**

It is noted that the question related to 2013/14 budget.

At this time, the federation made no attempt to balance the financial position and instead accumulated an ever increasing deficit.

The projected deficit for the federation by the end of March 2014 was £1.3 million with future years projected to increase the deficit by a further £4 million in three years. This medium term plan was deemed to be unacceptable. In respect of the 2013/14 budget plan, there was an unwillingness from the Council to accept a budget plan which increased the deficit by £500,000 across the federation to the originally set cumulative deficit of £1.3 million.

The federation contained two Secondary Schools with each having pupil numbers in the region of 500. This number for a Secondary School is not a viable number and will lead to significant financial difficulties. Whilst conversations were ongoing in 2013/14 about further potential efficiencies, including operating on one site, they did not result in a quick resolution.

However, the federation did work closely with officers to look to reduce the collective deficit and it actually out turned at £1.05 million. The Federation has also worked closely with Finance in order to produce a 2014/15 budget which does not add to the increased deficit. However, the pupil numbers are reducing further and there are significant pressures on school budgets thus the position needs regular review. The 2014/15 budget has, therefore, been approved but the Medium term plan remains to be agreed. Work is continuing in respect of year groups being taught on the same site even if the two schools still operate separately.

There are significant financial challenges to this federation and there is a partnership in place to look to reduce the financial impact of these schools operating with the pupil numbers of approximately 500/550 each. There is no complacency and there is an acknowledgment by all that this deficit needs to be reduced at some point, whilst these schools continue to operate.

The attached letter shows that a warning notice was issued to the school. This set out the challenge of balancing budgets for the federation by 31 March 2017.

**Nick Batchelar**  
**Director Education and Lifelong Learning**  
**October 2014**

Attached: Warning Notice



My Ref: **CS/AK/ia**

17th June 2013

**Private & Confidential**

Dr N Evans  
Chair of Governors,  
Glyn Derw and Michaelston Federation  
Penally Road  
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Dear Dr Evans

**Warning Notice – Deficit Budget Glyn Derw Michaelston Federation**

We are writing to formally advise you that Cardiff Council is issuing a Warning Notice (as described in the *Code of Practice on LEA-School Relations* and within Section 15 of the School Standards and Framework Act 1998) to the Governing Body of the Glyn Derw and Michaelston Federation. This letter constitutes the Warning Notice.

Council officers have engaged with governors and the Executive Headteacher of the Glyn Derw and Michaelston Federation over the last two years about the financial situation in the two schools and the ongoing budget deficit. We believe that officers have engaged fully and constructively with the governors and Executive Headteacher to assist in resolving these issues. Unfortunately, we do not believe that sufficient progress is being made in ensuring that at some date in the near future, the school will be able to resolve the majority of the deficit already incurred within the funding provided by the formula funding mechanism.

Our only desire in issuing this warning notice is to further assist the Federation in resolving the difficulties as soon as possible. The specific circumstance that caused this Warning Notice is that:

- Both schools in the Federation are operating with substantial deficits which the governing body has no satisfactory plans to eliminate.

The Warning Notice is an instruction to the Governing Body that it cannot ignore. You should arrange to meet with the other members of the Governing Body to discuss this warning notice and respond to me by 5pm on Friday 5<sup>th</sup> July 2013. A failure to respond or a negative response may trigger the next action specified within the legislation, that is, the suspension of delegated powers. Failure to meet the deadlines specified below may also trigger such action.

The Warning Notice is that the Governing Body must:

- By 5<sup>th</sup> July 2013:

- Send to the Council an achievable medium term financial plan outlining how the Glyn Derw Michaelston Federation will balance the two budgets by 31<sup>st</sup> March 2017.

Yours sincerely,



**Christine Salter**

**Corporate Director Resources / Cyfarwyddwr Corfforaethol Adnoddau**



**Andrew Kerr**

**Corporate Director Operations/ Cyfarwyddwr Corfforaethol Gweithrediadau**

## BRIEFING REPORT FROM THE AUDIT & RISK MANAGER

**SUBJECT: SOCIAL HOUSING FRAUD**

**AUDIT COMMITTEE: 8<sup>TH</sup> DECEMBER 2014**

### Reason for Report

1. At its meeting on the 15<sup>th</sup> September, the Committee received Internal Audit's Annual Report 2013-14, and enquired whether audit work was being undertaken on tenants sub-letting Council properties. Members requested a report on the investigation of sub-letting.
2. This briefing report outlines the City of Cardiff Council's approach to Social Housing Fraud.

### Introduction

3. Social Housing is a public asset and a precious resource which should be used appropriately. It provides affordable housing to low income households. Abuse of the system results in a loss to the public purse, denies those with a rightful housing need and increases waiting lists.
4. Social Housing Fraud involves obtaining properties by deception (for example, individuals claiming to be homeless when they already own a property or are already living at an address), or continuing to claim to be living at a property when they have moved out and sublet it. Detection and prevention of Social Housing Fraud means properties can be recovered and re-let, with individuals sanctioned where applicable.
5. The government introduced The Prevention of Social Housing Fraud Act 2013 to tackle this issue. This made Social Housing Fraud a criminal matter and gave local authorities the power to prosecute those who unlawfully sublet their social housing.
6. The Act came into force in Wales on 5<sup>th</sup> November 2013. It created new offences and makes provision for the investigation and prosecution of these offences. Regulations with provision for powers to require information for housing fraud investigation purposes came into force in Wales on 28<sup>th</sup> March 2014.
7. The new act outlines two criminal offences:–
  - Where the tenant sublets or parts with possession of a property without consent, ceases to occupy the property as their only or principal home, and knows that it is a breach of tenancy.
  - A more serious offence where a tenant dishonestly, in breach of tenancy, sublets or parts with possession of a property without consent, and ceases to occupy the property as their only or principal home.
8. The first offence only requires knowledge that the tenant sublet their home in breach of their tenancy agreement, the second requires proof this was done dishonestly.

9. There are various defences a tenant can use. For example:-

- If a tenant is not occupying the property due to actual or threatened violence towards them, or a family member residing with them for the same reason.
- If the landlord has consented to the subletting;
- Or, where the remaining occupier (not the tenant) can apply to court for a transfer of the tenancy (under family law legislation, for example).

### **Prevention and Detection**

10. The Council's Social Housing stock is managed by the Communities, Housing and Customer Services Service Area with responsibility for allocations, lettings and tenancy management.

11. Allocation and lettings are prioritised according to need and the Council's duty to house certain vulnerable members of society. All applicants are assessed and processed by the Council. Tenancies are let on an introductory or secure basis. The Council's tenancy agreement outlines the following:-

- Tenants must use their property as their only or main home.
- Tenants must inform the Council if they intend to be away for more than 6 weeks.
- Tenants must not sublet the whole of their property.
- Secure Tenants have the right to take in lodgers and sublet part of their home.

12. The Communities, Housing and Customer Services Service Area have implemented various measures to help detect and prevent Social Housing Fraud, including:-

- Proof of residency, ID checks, photographic record checks, and verification at application, viewing and sign up stages.
- Induction for tenants at sign up regarding tenancy and breaches of agreement.
- New tenant follow up visits.
- Training for housing staff on Housing Fraud.
- Tenancy Audit Visits.
- Follow ups on access difficulties, denial, or nil responses - i.e. to gas checks.
- Participation in the National Fraud Initiative.
- Awareness campaigns.
- Articles in the Tenants Times Newsletters.
- Posters in communal areas.
- Information on [www.cardifftenants.co.uk](http://www.cardifftenants.co.uk).
- The Council's Tenancy Cheats Report Hotline.

### **Investigating Housing Fraud**

13. Social Housing Fraud can be reported by:-

- Telephoning the Council's 24 hour Tenancy Cheats Hotline Number
- Using the email address [stoptenancycheats@cardiff.gov.uk](mailto:stoptenancycheats@cardiff.gov.uk)
- Using the Online reporting facility on [www.cardiff.gov.uk](http://www.cardiff.gov.uk)
- In person at any of the Council's Hubs

14. Social Housing Fraud Reports can come about through a variety of sources, for example - anonymously, by a neighbour or following anti-social behaviour issues. Wherever Social Housing Fraud is reported to the Council (or suspected by a member of staff) an enquiry is undertaken in conjunction with partner organisations where appropriate.

15. Initial appraisal and enquiries are undertaken by Tenancy Officers who will endeavour to carry out a thorough enquiry to verify if information is correct or malicious.
16. The Tenancy Officer enquiries involve checking systems and records, undertaking visits, gathering evidence (including details from Electoral Register, Land Registry, TV Licence, DVLA, Financial Institutions, Immigration Status, Employers and Schools), and taking statements as applicable.
17. Issues identified at the pre-tenancy stage (such as false information to gain a tenancy or identity fraud) can result in any of the following actions depending on the nature and severity of the activity:-
  - Amending the application
  - Withdrawal of offers made
  - Temporary suspension of the application
  - Removal from the waiting list
  - Referral to the Internal Audit Investigation Team
  - Prosecution
18. Where Housing Fraud is identified during a tenancy the actions taken can include any of the following depending on the nature and severity of the activity:-
  - Demotion
  - Notice seeking possession
  - Notice to quit
  - Eviction
  - Referral to the Internal Audit Investigation Team
  - Prosecution

## **Outcomes**

19. During 2013/14 the Internal Audit Investigation Team received 23 Housing Fraud referrals. The majority of enquiries resulted in no further action, due mainly to tenants being found to be in occupation, or insufficient evidence to support the allegation. Legal advice was sought regarding 2 cases and the Housing Fraud issue in each case was deemed unsuitable to pursue.
20. Five properties were recovered as a result of tenants being found not to be in occupation, handing in their notice or handing in their keys.
21. The Communities, Housing and Customer Services Service Area have advised that the number of reports of Housing Fraud have reduced during 2014/15 (along with consequent referrals to the Investigation Team), and the majority of their Tenancy Officer Social Housing Fraud enquiries are associated with abandoned properties rather than sublet.
22. Whilst the Council has adopted measures to address and identify Social Housing Fraud within its own housing stock, the issues in Cardiff may not be comparable with the London Boroughs, where rents are significantly higher and the incentives to sublet greater.



## **Actions**

23. The Communities, Housing and Customer Services Service Area have received presentations from 2 companies (LOCTA and Experian) who have both offered their services (at a cost) to undertake data matching to attempt to identify housing fraud – at present both have been unsuccessful.
24. The National Fraud Initiative (NFI) includes data matching for Social Housing Fraud. This is a biennial, nationwide data matching exercise run by the Audit Commission, which the Council participates in on a mandatory fee paying basis.
25. The next exercise is imminent and the Council will submit data during October 2014. Matching will take place between October and December 2014. The output is due to be released in January 2015 and will include reports to identify potential illegal sublets, ineligible tenants and multiple tenancies.
26. The Audit Commission is also running a pilot NFI 2014/15 Social Housing Waiting List data match - to identify ineligible applicants, or those who have misrepresented their circumstances, or made false applications pre-tenancy.
27. The aim of the new match is to remove ineligible applicants, reduce waiting lists and save temporary accommodation costs.
28. The pilot is currently available (at no additional cost) on an invitation only basis. The Audit Commission have extended the opportunity to the Council to participate, and preparations are currently ongoing.
29. Data for the pilot is due to be extracted between October and December 2014. Matching will take place between January and March 2015, and the output will be released in March/April 2015.

**DEREK KING**  
**AUDIT & RISK MANAGER**  
**October 2014**

## **BRIEFING REPORT FROM THE PRINCIPAL ENGINEER, BRIDGE MANAGEMENT**

**SUBJECT: HIGHWAY BRIDGES AND STRUCTURES**

**AUDIT COMMITTEE: 8<sup>TH</sup> DECEMBER 2014**

### **Reason for Report**

1. At its meeting on the 20<sup>th</sup> May 2013, the Committee received a briefing on the implementation of the Principal Bridge Inspection Programme for Highway Bridges and Structures, as it had been highlighted as a significant matter in the Annual Governance Statement for the previous financial year. Members received assurances that the risks were being managed but felt it appropriate to receive an update after 12 months.
2. This briefing aims to provide Members of the Audit Committee with an update of information regarding the implementation of the Principal Bridge Inspection Programme for Highway Bridges and Structures. The programme has this year commenced the third year of the six year programme.

### **Background**

3. The code of practice for the "Management of Highway Structures", published in September 2005 provides guidance to highway authorities regarding how highway structures should be managed to ensure that they are "Safe for Use and Fit for Purpose".
4. The CoP confirms a best practice inspection regime which includes General Inspections 2 yearly and Principal Inspections 6 yearly.
5. This regime follows the requirements of the Highways Agency & Welsh Government on the Motorway and Trunk Road Network.
6. General Inspections are by definition and overview inspection without gaining special access to areas of the structure inaccessible from either ground level or entering confined spaces.
7. Principal Inspections are a detailed inspection of all elements of the structure and may involve the use of access platforms, or the use of specialist divers to enter confined areas in low bridges and culverts.
8. The Highway Authority is responsible for 493 structures in Cardiff. This comprises 1 Tunnel, 5 Viaducts, 231 Bridges, 62 Subways, 108 Culverts and 86 Retaining Walls.
9. Prior to the implementation of this rolling programme, the last programme of detailed inspections was as part of the Bridge Assessment Programme circa 1998 to 2000, following the introduction of 44 tonne vehicles on the highway network. However it should be noted that that programme did not include bridges constructed post 1975, hence many of the newer PDR structures were not included.

### **Issues**

10. Prior to 2010 Principal Inspections were only undertaken on an ad hoc basis with no specific budget allocation to enable a programme to be put in place.
11. The non compliance with the Code of Practice was identified as a major risk to the Authority.

12. The practice of not undertaking Principal Inspections led to a reactive maintenance regime and is not aligned to the principals of Asset Management.
13. The programme is such that structures on the main routes (A48 & A4232) into Cardiff have been prioritised. One major Viaduct has been included each year in order of age since construction; other structures are divided such that a proportion of each group is undertaken each year.
14. Work is currently ongoing to develop in co-ordination with ADEPT Wales a methodology of prioritising Principal Inspections and varying their regularity depending on their current condition and network criticality. Programming of the next cycle of PI's utilising this approach will commence 2018/19.
15. The first two years of the inspection programme has inspected approximately one third of the council's highway structures asset. These inspections have identified £1,065,000 of remedial works that need to be prioritised and undertaken to maintain the structures asset in a steady state condition.
16. The works identified in the inspections have been incorporated in the evaluation of the Capital Works bids for 2015/16.

**Tony Williams**  
**Principal Engineer, Bridge Management**

September 2014

## **BRIEFING REPORT FROM THE DIRECTOR HEALTH & SOCIAL CARE**

**SUBJECT: DELAYED TRANSFERS OF CARE (DTC)**

**AUDIT COMMITTEE: 8<sup>TH</sup> DECEMBER 2014**

### **Reason for Report**

At its meeting on the 25<sup>th</sup> June 2014, the Committee received a presentation from the Director Health & Social Care around their Risks and Challenges. The Committee requested an update on the above issue at a future meeting.

### **1. Background to measurement of DTC data**

In 2013, a review was commissioned by the Community and Hospital Interface Group on Delayed Transfer of Care (DTC), using the recommendations from the 2007 Welsh Audit Office Report on DTC. A Hospital community interface national task and finish group was established jointly chaired by senior representatives from the local authority and health boards. Four work streams were set up, one of which had the remit to determine and recommend data measures that can be consistently applied across organisations. The task and finish group recommended that an alternative data reporting method and stricter processes locally should be developed, to include:-

- Local requirements:
  - a) Operational systems to support management of DTC i.e. use of Patient Administration Systems (PAS) to manage patients throughout their inpatient stay.
  - b) Local processes for identifying patients who could potentially become a DTC (flagging those patients with a Length of stay (LoS) >20 days). The justification for this being that studies have shown that patients who have a length of stay longer than 20 days are at risk of losing their independence and require further help post discharge from hospital).
  - c) Clear and accurate nationally approved definitions to establish a 'DTC' and at what point a patient's care is considered a 'delay'.
  - d) Guidance for measuring a DTC, for example at what point you start and stop the clock.
  - e) An agreed list of categories which apply to ALL inpatients in order to effectively manage delays.
  
- National Requirements:
  - a) At an All Wales Level, Welsh Government (WG) requires information relating to patients who are categorised as DTC (these relate to categories 3-5 above) and the reasons for their delay.
  
  - b) In order to avoid manual data entry and additional burden on the Service it is proposed that WG consider retrieving the relevant information from PAS which can be extracted and reported centrally via the NHS Wales Informatics Service (NWIS). An infrastructure which is already in existence for extracting inpatient data from

hospital PAS systems and submitting to the Patient Episode Database for Wales (PEDW).

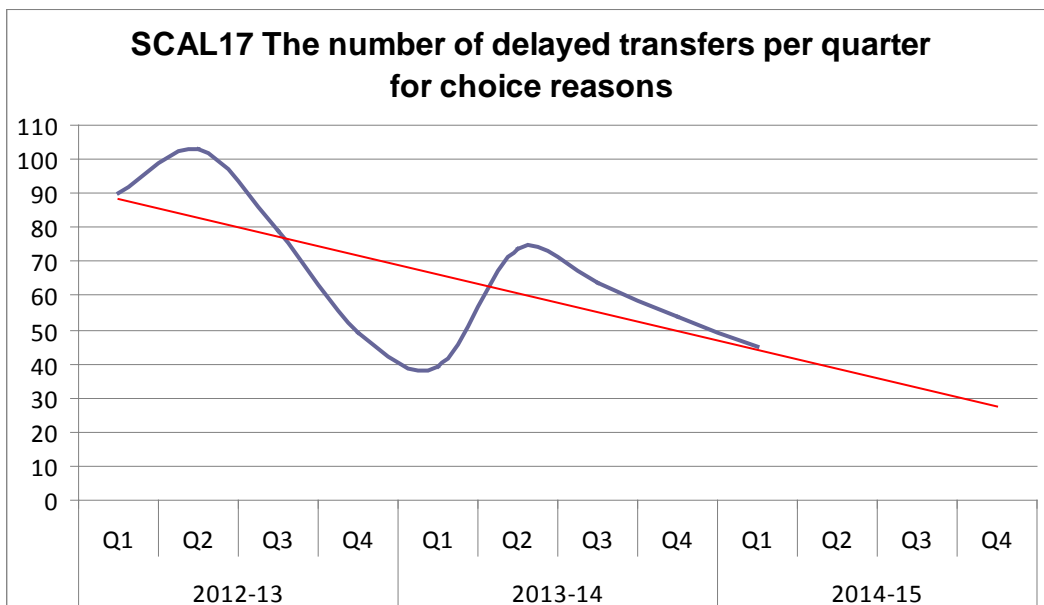
- c) In order to establish a national data set for the reporting of DToC at an all Wales level, it is proposed that WG establish a set of reporting outputs which they require from the data to ensure that the information extracted from PAS satisfies their business purposes. This will also inform some of the guidance and definitions which will need to be implemented for use locally.

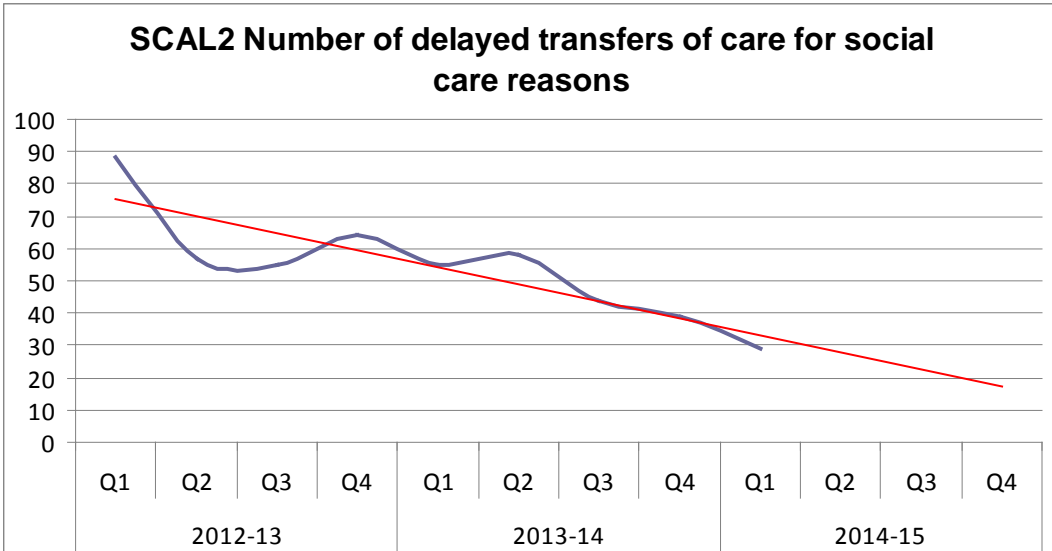
The recommendations are still being considered.

## 2. DToC position in Cardiff

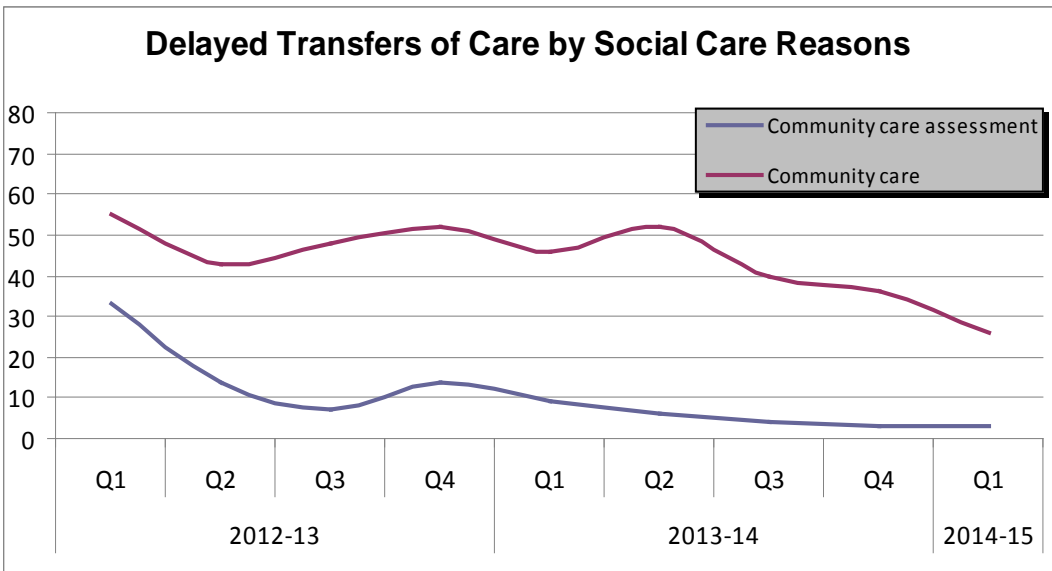
2.1 Currently, there are two local and one national set of performance indicators used (Appendix 1).

2.2 Since 2012 Performance has been consistently improving as illustrated by the trend lines. (Appendix 2) (Appendix 3)

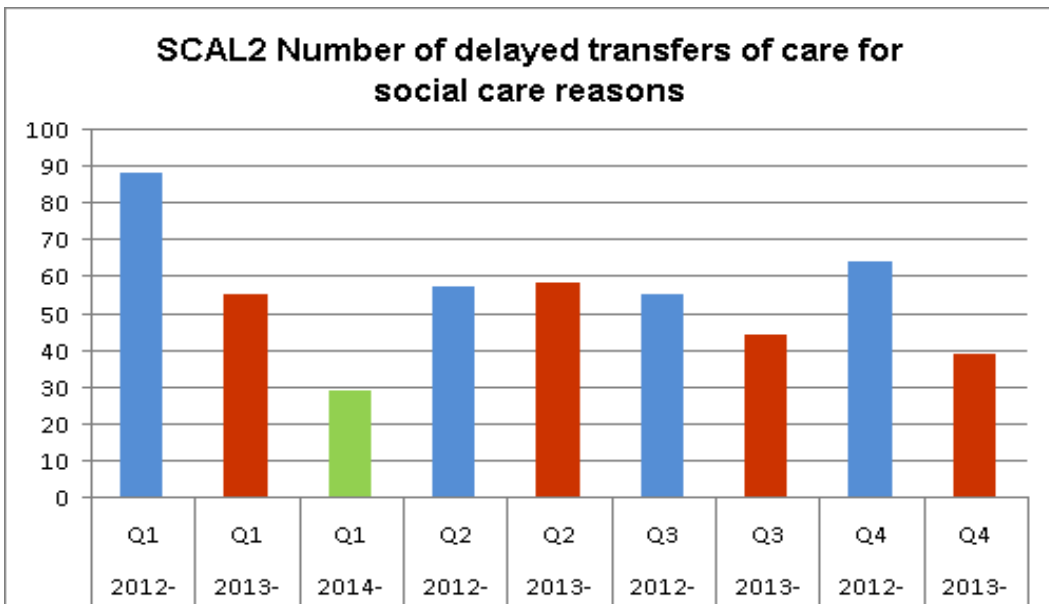


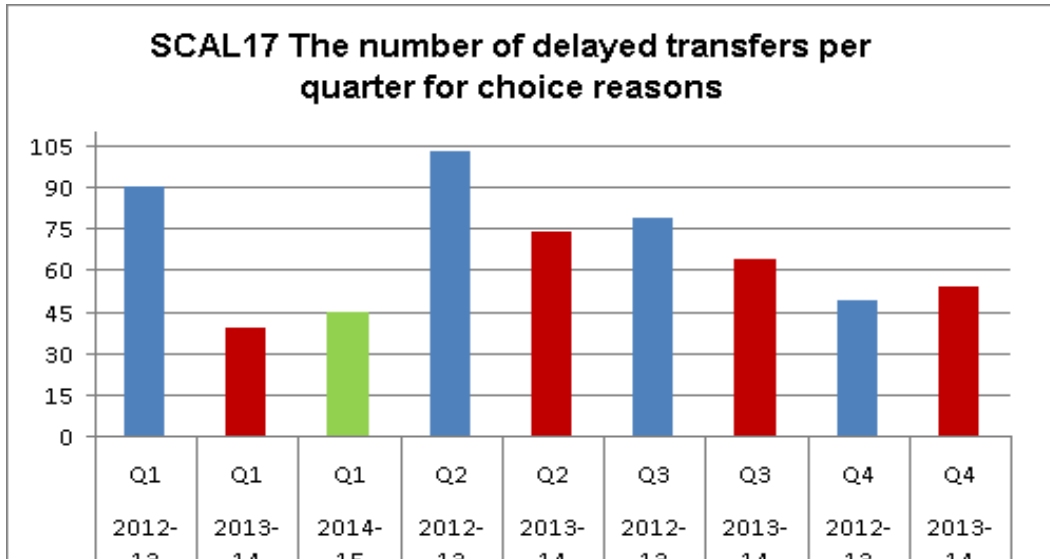


SCA001



Year on Year comparisons 2012-14





### 3. Reasons for improvements in DTOC

#### 3.1. Integrated Discharge Service

The social work teams at the University Hospital of Wales (UHW) and University Hospital Llandough (UHL) have joined with the Discharge Liaison Nurses and Placement Advisors to create Wales' first Integrated Discharge Service. The two teams, one in each of the hospital sites, are co-located in one office and are jointly managed by Cardiff Council, Vale of Glamorgan Council and the University Health Board in what is seen as truly integrated working.

The aim of the service is to improve the patient's experience of planning for discharge through better co-ordinated approach by health and social care staff, especially for those people who will require care or support on discharge from hospital. Immediate benefits have been:

- One point of contact in each hospital for staff, patients and their families.
- Improved communication processes between health and social care staff especially on the wards
- Shared processes and paperwork
- Facilitating links and liaison with community services to support people when they return home but also to prevent unnecessary admissions to hospital in the first place

#### 3.2 Collaborative working

We continue to proactively engage with Cardiff and Vale UHB with strong collaborative working in relation to performance on DToC. There is weekly monitoring and reporting to Director on DToC. DTOC data is validated jointly with the UHB on a monthly basis

Two Community Resource Teams based in the North West and South East of the City are now fully established. The teams have City of Cardiff Council Health & Social Care staff co-located with UHB community staff and provide a city wide reablement service. The remit of the service is to maximise peoples' level of independence, prevent unnecessary admissions to hospital and facilitate earlier hospital discharge.

#### 3.3 Mental Health

There have been improvements in DTOC for people with Mental Health problems in relation to delays associated with Housing. The Specialist supported accommodation “move on” team run the DTOC list weekly, and resolve identified issues.

#### **4. Planned Improvement Actions 2014/15 funded by the Intermediate Care Fund**

##### **4.1. Preventing unnecessary hospital admissions**

- *Single Assessment Gateway*: All appropriate advice and services such as Benefit entitlements, Community Alarm, Telecare / Tele health, Care and Repair etc. The package of support on offer through the gateway will be offered to relevant individuals at the earliest possible opportunity. This is to provide people with appropriate support to live independently and, in doing so, mitigating the risk of hospital admittance. An early identification programme will be piloted with stakeholders (such as GPs) within communities in Cardiff. This will see more people and organisations than ever before invested in a programme of preventative action
- *Improving Medicines Management in Domiciliary Care: A Partnership Approach*: There is a proposal to support medicines management for those receiving packages of care in the domiciliary setting. It is estimated that between 5-17% of hospital admissions are due to adverse drug reactions, so reducing risks from poor medicines management is a key priority. This will improve patient safety through risk reduction, promote independence, dignity and a positive experience; and support individuals to remain in their own homes

##### **4.2. Facilitating earlier hospital discharge**

- *A Discharge Case Manager* is being piloted at UHW and is working closely with the UHB, to identify blockages in the pathway and to facilitate a smoother and timelier discharge for Mental Health patients.
- *Housing need* - An Independent Living Officer- managed through the Gateway but based in the Hospital will visit the patient early during their stay to assess current housing need, and liaise with other Health professionals to determine the future needs of the patient. Any identified need for adaptations will be progressed early, accelerating a safe discharge from hospital. Intermediate accommodation can then be provided while adaptations are completed and the individual will return to their home where they are able to live independently, with the risk of re-admittance to the hospital minimised.
- The H&SC Directorate is currently working towards the implementation of ‘Proactis’ system (on-line platform for submission of care home offer and pricing) to facilitate and secure options for service users when choosing a residential/nursing placement. Implementation date August 2014.



## Appendix 1 Current Performance Indicators

Reference	Title	What is measured	Type
SCA001	The rate of deleted transfers of care for social care reasons per 1,000 population aged 75 or over	<ul style="list-style-type: none"> <li>○ Census of patients across Wales takes place every 3<sup>rd</sup> Wednesday of the month.</li> <li>○ Includes cases coded to Social Care reasons (codes 1 and 2)</li> <li>○ The census is validated by officers of the relevant Health Board and Local Authority, to agree delays and codes.</li> <li>○ Information is recorded on a Welsh Government (WG) database HOWIS (Health of Wales Information Service) and uploaded to the WG, who collate the all-Wales information.</li> <li>○ Final data for the month includes Cardiff residents delayed in any hospital in Wales.</li> <li>○ Annual result is the sum of 12 censuses – there is duplication of the patients delayed for more than a month.</li> </ul>	NSI
SCAL2	The number of delayed transfers of care due to Social care reasons	The numerator for SCA001 – the actual number of delays with Section 1 or 2 coding.	Local
SCAL17	The number of delayed transfers of care for choice reasons	The number of delays with Section 7.03 coding, Choice related issues. For example, waiting for residential/nursing placement availability in home of choice.	Local

**Appendix 2**

SCAL2

Number of  
delayed transfers  
of care for social  
care reasons

Year	Quarter	Result Cumulative	Result Number
2012-13	Q1	88	88
2012-13	Q2	145	57
2012-13	Q3	200	55
2012-13	Q4	264	64
2013-14	Q1	55	55
2013-14	Q2	113	58
2013-14	Q3	157	44
2013-14	Q4	196	39
2014-15	Q1	29	29

Year	Quarter	Result Number
2012-13	Q1	88
2013-14	Q1	55
2014-15	Q1	29
2012-13	Q2	57
2013-14	Q2	58
2012-13	Q3	55
2013-14	Q3	44
2012-13	Q4	64
2013-14	Q4	39

Year	Quarter	Result Cumulative	Result Number
2012-13	Q1	88	88
	Q2	145	57
	Q3	200	55
	Q4	264	64
2013-14	Q1	55	55
	Q2	113	58
	Q3	157	44
	Q4	196	39
2014-15	Q1	29	29
	Q2		
	Q3		
	Q4		

		Community care assessment	Community care arrangements
<b>2012-13</b>	<b>Q1</b>	<b>33</b>	<b>55</b>
	Q2	14	43
	Q3	7	48
	Q4	14	52
2013-14	Q1	9	46
	Q2		6
	Q3		4
	Q4		3
2014-15	Q1		3
	Q2		
	Q3		
	Q4		

<u>Reference</u>	<u>Description</u>	2012-13				2013-14				2014-15			
		Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
SCAL2	Number of delayed transfers of care for social care reasons	88	57	55	66	55	58	44	39	29			
SCAL17	The number of delayed transfers per quarter for choice reasons	90	103	79	49	39	74	64	54	45			

SCAL17 The number of delayed transfers per quarter for choice reasons		
2012-13	Q1	90
2013-14	Q1	39
2014-15	Q1	45
2012-13	Q2	103
2013-14	Q2	74
2012-13	Q3	79
2013-14	Q3	64
2012-13	Q4	49
2013-14	Q4	54
2014-15	Q2	
2014-15	Q3	
2014-15	Q4	

### Appendix 3: Performance Indicators - Extract from Q1 2014-15 Performance Report

(The results columns are shaded to denote RAG status: )

<span style="color: green;">■</span> GREEN	exceeding target
<span style="color: orange;">■</span> AMBER	below target but above level for management intervention
<span style="color: red;">■</span> RED	intervention required

Type: – N National Indicator, L Local Indicator, SID Service improvement Data, PAM Public Accountability Measure

PI Ref	Title	Type	2012-13 outturn	2013-14 outturn	Target 2014-15	Inter- ventio n level	Q1	Q2	Q3	Q4	Notes
<b>Delayed Transfers of Care</b>											
SCA/001	The rate of delayed transfers of care for social care reasons per 1,000 population aged 75 or over.	N	11.53	8.47	6.52	8.41	1.25				
<b>Management actions:</b>											
SCAL2	The number of delayed transfers of care due to Social care reasons.	L	264	196	150	194	29				
<b>Management actions:</b>											
SCAL17	Number of delayed transfers for choice reasons.	L	321	231			45				
<b>Management actions:</b>											
The H&SC Directorate is currently working towards the implementation of 'Proactis' system (on-line platform for submission of care home offer and pricing) to facilitate and secure options for service users when choosing a residential/nursing placement. It is expected that this on line tendering system will be in place in August 14. Target setting for this indicator has been deferred until this scheme is implemented.											

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

## REPORT OF DIRECTOR OF HEALTH & SOCIAL CARE

### AGENDA ITEM: 11.2(v)

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#### Reason for this Report

1. To provide an update in respect of the Social Services and Well-being (Wales) Act 2014 and the approach being taken to implementation.

#### Background

2. In February 2011, the Deputy Minister for Social Services announced a new strategic plan for putting social services on a sound footing, "Sustainable Social Services for Wales – A Framework for Action".
3. In the strategy, setting out Welsh Government plans "to renew social services and social care for the next decade", the Deputy Minister made it clear that the changes are needed not because social services are in some way broken but because of significant changes in the social and financial context within which they are delivered. The strategic plan concludes that wholesale structural change is not necessary and that local government will continue to be accountable for service delivery, identifying need and determining service priorities. However, radical steps to reshape social services are required, in response to factors such as changes in family structures; demography; expectations about service user control; more fragmented communities and the impact of issues like substance misuse.
4. At Section 3, the strategy sets out eight priorities for action to be introduced in support of renewal. In summary, these are:
  - a strong national purpose and expectation; and clear accountability for delivery;
  - a national outcomes framework;
  - citizen centred services;
  - integrated services;
  - reducing complexity;
  - a confident and competent workforce;
  - safeguarding and promoting the wellbeing of citizens; and
  - a new improvement framework
5. The strategy acknowledges that social services and social care are facing real and unsustainable increases in demand across all categories of service users. It concludes that, as the public sector financial outlook is so bleak, the choice is either retrenchment or renewal. Retrenchment would see fewer people receiving services, greater expectations that people find their own solutions, increased burdens on informal carers and a growing number of disputes between services such as the NHS and social care about who is responsible for services. Renewal means focusing more clearly on delivery (including preventative services), continuing to innovate and creating sustainable services.

6. The Social Services and Well-being (Wales) Act received Royal Assent and became law on 1st May, 2014. Its purpose is to repeal or consolidate existing legislation and to specify the core legislative framework for social services and social care in Wales, giving effect to the policy stated in the White Paper "Sustainable Social Services for Wales: A Framework for Action". The Act is intended to transform the way social services are delivered through an approach that is focused on achieving the outcomes necessary to promote a person's well-being - as an individual, as part of a family and as part of their community.
7. To achieve this aim, the Act is intended to ensure that people have access to clear information, advice and assistance and that their voice is at the centre of decisions about their care and support. It introduces, for the first time, a statutory framework for the protection of adults and national leadership arrangements for safeguarding people. The Act recognises both the key role played by carers (giving them rights to support which are equivalent to the rights of those for whom they care) and also the importance of prevention and early intervention to help people live independently. Integration and simplification of the law should provide greater consistency and clarity to:
  - people who use social services
  - their carers
  - local authorities and their partner organisations
  - the courts and the judiciary
8. The fundamental principles of the new statutory framework system are about:
  - People – putting an individual and their needs, at the centre of their care, and giving them a voice in, and control over reaching the outcomes that help them achieve well-being.
  - Well-being – supporting people to achieve their own well-being and measuring the success of this care and support.
  - Earlier intervention - increasing preventative services within the community, to minimise the escalation of critical need.
  - Collaboration – Strong partnership working between all agencies and organisations.
9. The core components are set out on the face of the Act, describing the powers and duties placed on local authorities and other bodies.
10. However, the Act is deliberately enabling in nature. It will require Welsh Ministers to make a suite of subordinate legislation (with Regulations providing more detail or prescription) and to issue codes of practice and guidance with the force of law (to help people and organisations work within the new framework).
11. Ministers have agreed that the Act should come into force from April 2016.

## Content

12. The Act in its entirety can be found by following this link [www.legislation.gov.uk/anaw/2014/4/pdfs/anaw\\_20140004\\_en.pdf](http://www.legislation.gov.uk/anaw/2014/4/pdfs/anaw_20140004_en.pdf) and there is a hard copy in the Members' Room.
13. It is made up of 11 main areas.
  - 1 – Introduction (Sections 1-4 overview and definition of key terms)
  - 2 – General Functions (sections 5-18, including well-being duty and outcomes, local arrangements for preventative services and the provision of information, advice and assistance)

- 3 – Assessing the Needs of Individuals (Sections 19-31 - adults, children and carers)
- 4 – Meeting Needs (Sections 32-58, including eligibility, direct payments, and care and support plans)
- 5 – Charging and Financial Assessment (Sections 59-71, including financial assessments and deferred payments)
- 6 – Looked After and Accommodated Children (Sections 74-125, including leaving care)
- 7 – Safeguarding (Sections 126-142, including a duty to report children and adults at risk and the role of Safeguarding Boards)
- 8 – Social Services Functions (Sections 143-161 including the role of Directors of Social Services, codes and intervention by central government)
- 9 – Co-operation and Partnership (Sections 162-170, including the role of LHBs and NHS Trusts and joint arrangements for the provision of adoption services)
- 10 – Complaints and Representations (Sections 171-183, including the provision of advocacy services)
- 11 – Supplementary and General (Sections 184-200, including provider failure and issues of residence).

Some of the most important requirements are outlined in more detail in [Appendix 1](#), which contains a briefing note prepared by Professor Luke Clements.

- 14. To support local authorities, the NHS and other key partners to understand what the new duties in the Act will require in practice, the Social Services Improvement Agency has developed a flexible resource pack for both elected members and officers charged with delivering the changes. This resource will develop over time and reflect discussions with local government about what information they would find most useful. It can be found by following this link

[http://www.ssiacymru.org.uk/home.php?page\\_id=8596](http://www.ssiacymru.org.uk/home.php?page_id=8596)

### Relevant Issues and Options

- 15. The Welsh Government timetable for implementation is set out below.



- 16. Currently, the main focus is on drafting subordinate legislation. A consolidated statement of policy intent for the major pieces of subordinate legislation under the Act was published on January 30th; it is being used to underpin the development of regulations and codes of practice. A copy is attached at [Appendix 2](#)

17. Partly because the Act is intended to promote considerable integration between the health and social care sectors to the greatest extent possible, Welsh Government emphasises the need to secure implementation on a regional (i.e. LHB) basis. Some funding was provided to local government and partners (including Local Health Boards and the Welsh NHS Confederation) to support regional implementation activity in 2013 -14. A further grant of £1.5 million is available this year. To reinforce collaboration between local government and the NHS, the terms of the 2014-15 grant include the requirement to develop regional governance which reflect the national steering and engagement structure of Partnership Forum and Leadership Group. The other key deliverable of the grant is the development of a comprehensive regional implementation plan by the end of the financial year. In our region (the footprint of the University of Wales Health Board -UHB), the £194,910 grant is managed by the Vale of Glamorgan Council on behalf of the City of Cardiff, Vale of Glamorgan and UHB. [Appendix 3](#) contains the agreed timetable for the work.
18. Provision is also made for grants at the national level, to support strategic engagement and enable coordinated regional delivery. National grant recipients are the Association of Directors of Social Services Cymru and Welsh NHS Confederation, and (for the first time) the Health and Social Care Alliance and Care Forum Wales. The latter award recognises the key contribution of the private and voluntary sectors will need to make to successful implementation.
19. The “Communicating the Changes” project of the Sustainable Social Services for Wales Programme is dedicating a work stream solely to implementation of the Act. Proposals for a public information campaign are being explored, to be delivered during 2015-16, and communications planning for the remainder of this year includes a variety of targeted activity directed at local authority, independent care provider and NHS staff, together with stakeholders and citizens.
20. Training requirements for implementation have been considered by Welsh Government. A first level training programme is being designed for all core staff and partner agencies involved in delivering the Act, including the NHS. This will be produced as a ready-to-use ‘pack’, with a framework for delivery. Local authorities are expected to take a lead role in planning and delivering the training with their partners, in line with the expectations of their role under the Social Care Workforce Development Programme (SCWDWP). Welsh Government announced this month that it will continue investment in social care workforce development through the well-established grant funding made available to local authorities by means of the Programme.
21. However, it is important to note that SCDWP funding will now be on a regional footprint and it will need to be agreed with our partners, modelling recent practice in respect of many other national grants. 15% of the money available will be used to design a national training programme for implementation of the Act. Hence, the five priorities for the SCWDP grant in 2015-16 and 2016-17 will be:
  - to ensure staff engaged in duties delivered under the Social Services and Well-Being (Wales) Act 2014 have the knowledge, skills and competencies to operate under the new legal framework;
  - to ensure all core training and development, including induction and qualification training, is reframed to reflect the new legal framework;
  - to continue the current support for social work training in Wales;
  - to support the infrastructure for training across Wales, including local and regional partnership and joint working;
  - basic skills for the frontline social care workforce
22. The Act locates social care and social services within a wider framework of ‘wellbeing’, placing a new duty on local government to provide care and support for ‘people in need’ and emphasising the important role of prevention. Hence, the Act carries significant implications



not just for Social Services but also for other local government services and the wider public sector.

23. While the broad aims of the Bill have attracted considerable support, there is still much disquiet about how such a comprehensive programme of change can be managed and delivered, especially given the state of public sector finances for the foreseeable future. Welsh Government still maintains that, in the longer-term, implementing the Act will be cost neutral. This is predicated on a conviction that a focus on well-being, prevention and the provision of information and advice will divert and reduce demand for current and more expensive forms of care and support.
24. During the passage of the Bill through the Senedd, the Health and Social Care Committee concluded In its Stage 1 Report that: "We are not satisfied with the information that has been made available on the total cost of the Bill and have not received any evidence to convince us that the Bill will be cost neutral in the long term. We are mindful that the size and complexity of the Bill make it extremely difficult to cost. We also recognise the concerns of witnesses with regard to the current challenges facing public sector funding which will shape the context within which this Bill is delivered." The problems of establishing true costs are compounded by the nature of the Act which puts so much reliance on subsequent regulations and guidance.
25. The WLGA commissioned an independent report from the Institute of Public Care called "Transitional and longer-term implications of the Social Services and Well-being (Wales) Bill September 2013". Attached is the web-site link to the report. <http://www.wlga.gov.uk/health-social-services-publications/transitional-and-longer-term-implications>. The report still represents the best effort to date at providing a realistic appraisal of the current context for social services, the Act's likely impact, the costs of transformation and the significant challenges that must be overcome. It argues that, without the implementation of the well-being agenda at the heart of the Act, local partners will struggle to meet the demands placed on them through changing demographics and welfare reform while implementation of other elements (such as new assessment arrangements, safeguarding duties and advocacy responsibilities) could prove to be very costly.
26. The report explores the key implementation issues that the Welsh Government, local authorities and the NHS may need to consider as they look to work together to make the aspirations of the Act a reality in the current climate. For local authorities, the key tasks are to:
  - Undertake a rigorous self-assessment and agree a plan for service development with local area partners.
  - Agree the forms of local integration most needed to deliver the changes in pathways and services to secure better outcomes for citizens.
  - Explore with citizens and with local third sector partners how to create a culture of engagement and greater co-production in services.
  - Undertake a local cost-benefit analysis of their development plans and review budgets accordingly.
  - Place well-being at the heart of service provision.
  - Develop a commissioning strategy to realign services to focus on early intervention and prevention, and improve outcomes.
  - Seek to develop and commission services which offer cost-effective and integrated solutions to care.
  - Develop local arrangements which fit the proposed assessment and eligibility framework and support staff through guidance and training.

- Review existing information systems and information sharing protocols and identify improvements needed.
  - Develop and strengthen their partnership working across a range of agencies.
  - Respond to the demands of developing a 'whole' council approach to service delivery.
  - Work with the third sector to deliver cost-effective public services.
  - These are matters which will be addressed in regional and local implementation plans.
27. The Act is intended to help social services and local government to deal with unprecedented pressures in terms of demand for services (actual and projected), increased public expectations and demographic change and (in common with many other parts of the public sector) severely constrained financial resources. This presents formidable challenges in an environment in which many local authorities are already predicting overspends in their Social Services budgets. The impact of welfare reforms is increasing even more the need for help from social services and its partners.
28. Clearly, implementation will be complicated, requiring whole system change and new models of care in local areas. Transformational change is never easy. Efforts to modernise services face many obstacles, including:
- budgetary pressures and the need for savings;
  - potential opposition from service users and carers who value existing provision highly and depend upon it for an improved quality of life;
  - encouraging current service providers from all sectors to change their approach;
  - the scale of the agenda, with a need to focus on innovation and continuous improvement in all areas of service design, delivery and evaluation;
  - difficulties in finding the resources required to bring about transformational change;
  - the clear risks that the new legislation will impose increased costs; and
  - the risks of cost shunting from the NHS and other partners, including central government
29. The programmes of work undertaken across the City of Cardiff and with the Vale of Glamorgan and in our collaborative enterprises such as the South East Wales Improvement Collaborative (SEWIC) and the Integrating Health and Social Care Programme place this Council in a good position for responding positively to increased emphasis on implementing new service models. Wherever possible, we have been in the forefront of and our developing efforts to reshape the range of social care services available, based upon agreed principles:
- an emphasis on promoting preventative services which divert people from inappropriate and higher cost provision, manage demand at lower levels of intensity/intrusiveness and which can be accessed without complex assessments;
  - clear tiers of services, with known thresholds; and
  - service models which are underpinned by the concepts which service users and others believe are necessary to underpin a dignified life— independence, choice and control, wellbeing, social inclusion
30. However, as stated earlier, Welsh Government strategy is predicated on an assertion that there is a choice between retrenchment and renewal. We recognise that there are benefits to our residents in helping people early and stopping problems escalating (which mean that, when people finally do get care, it is a more intensive and costly). Too much time, skills and resources do go into over-elaborate assessment which does not help people with the things they are concerned about or achieve the outcomes they want for themselves. However, in the absence of a more sustainable solution to the question about how the costs of social care are to be met in the longer-term, it seems likely that both retrenchment and reshaping

will have to form part of any sustainable approach, requiring as many people as possible to take increased responsibility for meeting their own needs so that the most vulnerable can be safeguarded from harm. Budget cuts which threaten the potential loss of local government services that support well-being, such as leisure and libraries, can only make this shift more difficult to achieve.

31. Joint working across health and social care is a dominant theme within the Act. There are a number of duties expressly placed upon Local Health Boards and NHS Trusts in areas such as:
  - population and individual assessment and planning;
  - the provision of information, advice and assistance;
  - safeguarding; and
  - collaboration and co-operation itself
32. The need for radical change in the way the NHS and local government plan services together, provide pooled budgets, share risk and integrate practice and management across a wide range of services has never been greater. We must anticipate with urgency these key provisions to capitalise on existing arrangements for joint working and to drive the development of new opportunities for co-production and integrated delivery.

**Name of Officer** *SIÂN WALKER*  
10<sup>th</sup> November 2014

# The Social Services & Well-being (Wales) Act 2014

Professor Luke Clements<sup>1</sup>

To coincide with the Act receiving Royal Assent – a brief overview of the key provisions of the Act as they relate to disabled people (adults and children) as well as to older people 'in need' and carers

## Background

- 2011 Law Commission Report
- 2013 Social Services & Well-being (Wales) Bill introduced into Assembly
- 2014 1<sup>st</sup> May Royal Assent
- 2014-15 Regulations, codes and guidance drafted
- 2016 Full (or partial) implementation

The Welsh Act is materially different to the English Act (the Care Act 2014) which is still expected to come into force in 2015. One effect of this will be that English court judgments may no longer be of direct relevance in Wales.

The English Act puts a cap on the amount any individual will have to pay for their social care (known as the Dilnot reform) – and it is proposed that this will come into force in 2016. The Welsh Government has also committed itself to reform of the payment for social care system within the same timeframe<sup>2</sup> but is awaiting the outcomes of research on the budgetary impact of the Dilnot reforms in Wales.<sup>3</sup>

## Legislation to be repealed

The Act does not state which legislation is to be repealed (this power is left to the Welsh Ministers s198(2)) but one assumes the following will be repealed:

- National Assistance Act 1948
- Health Services & Public Health Act 1968
- Chronically Sick and Disabled Persons Act 1970
- Health & Social Services & Social Security Adjudications Act 1983
- Disabled Persons (Services, Consultation and Representation) Act 1986
- NHS & Community Care Act 1990
- Carers Acts
- Health & Social Care Act 2001 (DPs)

## Definitions (sections 2- 4)

Disability – has the same meaning as in the Equality Act 2010.

Carers – a person who provides or intends to provide care for an adult or disabled child (but excludes paid carers etc)

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<sup>1</sup> Cerebra Professor of Law, solicitor and Special Adviser to the Joint Parliamentary Select Committee that scrutinised the draft Care Bill (the Care & Support Bill 2013).

A copy of this note is accessible at [www.lukeclements.co.uk/whats-new/](http://www.lukeclements.co.uk/whats-new/)

<sup>2</sup> Health & Social Care Committee 13 November 2013 Paper to note: HSC(4)-32-13 Letter from the Deputy Minister for Social Services: paying for care and see also Welsh Government, Gwenda Thomas (Deputy Minister for Children & Social Services) Paying for Social care – Update Cabinet Written Statement, 17 March 2014.

<sup>3</sup> For an overview of the general policy position see National Assembly for Wales Paying for Social Care: Research Paper at <http://www.assemblywales.org/14-018.pdf>

Individual – an adult, a carer or a disabled child

### **Underpinning principles (section 4)**

The promotion of 'well-being'

- A general (target) duty
- Defined expansively in section 2
- The making explicit of the duty to promote an individual's well-being
  - applies when exercising 'functions' under the Act
  - 'individual' includes both 'adults in need and adult carers

"Well-being" (section 2)

- physical and mental health and emotional well-being;
- protection from abuse and neglect;
- education, training or recreation;
- domestic, family and personal relationships;
- contribution made to society;
- securing rights and entitlements;
- social and economic well-being;
- suitability of living accommodation.

for adults

- control over day to day life;
- participation in work.

"Well-being"

LA must have regard to—

- the individual's views, wishes and feelings,
- the importance of promoting and respecting the dignity of the individual,
- the characteristics, culture and beliefs of the individual (including, for example, language), and
- the importance of providing appropriate support to enable the individual to participate in decisions that affect him or her to the extent that is appropriate in the circumstances, particularly where the individual's ability to communicate is impaired through age, disability or otherwise.

for adults

- the importance of beginning with the presumption that the adult is best placed to judge the adult's well-being, and
- the importance of promoting the adult's independence where possible.

### **UN principles (section 7)**

Duty to have regard to the UN Principles for Older Persons (1991) and the UN Convention on the Rights of the Child (in Part 1 of the Schedule to the Rights of Children and Young Persons (Wales) Measure 2011)

### **Code of practice (sections 8-13)**

- Welsh Ministers must issue a statement relating to the well-being of people in Wales in need care and support within 3 years of the Act receiving Royal Assent (section 8);
- Welsh Ministers must issue a code to help achieve the outcomes specified in the statement (including 'standards', 'measures' and 'targets') (section 9);

- LA's must 'act in accordance with any relevant requirements imposed upon it by a code' and 'have regard to any relevant guidance contained in that code' (section 10).

### **Prevention (sections 14 - 15)**

Strategic duty: on LA's and LHB's:

- to assess the extent of need for range and level of preventative services (section 14);

LA duty to provide / arrange preventative services that will:

- contribute towards preventing or delaying the development in its area of needs for care and support;
  - reduce the needs for care and support in its area;
  - minimise the effect on disabled people of their disabilities;
  - contribute towards preventing people from suffering abuse or neglect;
  - enable people to live their lives as independently as possible.
- + Specific provisions for children

### **Promoting social enterprises etc (section 16)**

LA's must promote:

- the development of social enterprises / co-ops / third sector organisations to provide care and support and preventative services;
- care and support and preventative services that involve service users in the design and running of services;

### **Information (section 17)**

The provision of a service to provide adults in need / carers with information about care and support;

Includes:

- how the LA care system operates;
- the choice of types of care and support, and the choice of providers in the local authority's area,
- how to access the care and support that is available;
- how to raise concerns about safety /well-being of an adult who has needs for care and support

### **Assessment of adults in need (section 19)**

Specific duty

- Mirrors existing s47 NHS&CC 1990 duty
- Duty to consult carer 'so far as is feasible'
- draft Care & Support (Eligibility Criteria) Regulations

### **Assessment of children in need (section 21)**

Specific duty

- Much more specific than current s17 Children Act 1989 duty

### **Carers Assessments (section 24)**

Specific duty that codifies the existing three Carers Acts – but drops (1) the 'regular & substantial' requirement; and (2) the requirement to 'request' an assessment.

Applies to carers of any age. Carers' assessments must include:

- whether the carer able / willing
- the outcomes the carer wishes in day-to-day life,
- whether the carer works or wishes to (and / or) to participate in education, training or recreation

### **Combined assessments of carer and cared for person (section 28)**

Subject to relevant consents

### **Eligibility criteria (section 32 - 33)**

The Act provides that eligibility criteria will be detailed in regulations. The intention is that draft guidance / criteria will be published for consultation in spring of 2014. In a statement in November 2013<sup>4</sup> the Welsh Government stated that:

Whilst assessment and eligibility will play an integral role in the new system ... [its] significance ... will be considerably reduced. ... the new system will place greater focus on prevention, transparency, and building on people strengths to enable [people in need] to exercise voice and control over what matters to them, their needs and aspirations. This will mean that more people will be supported outside the eligibility framework

the regulations and the Code will:

- set out a minimum threshold on what needs are eligible needs for care and support
- focus on the person's needs for care and support, the impact of those needs on their well-being, and the level of risk to the individuals if those needs are not met
- make it clearer for people what their entitlements are; and introduce a level of consistency about the threshold to give people more confidence that if they want to move to another area in Wales, and their circumstance have not changed, then their eligibility for care and support will continue
- set out the criteria for people who are to be 'passported' to be treated as eligible i.e. those who the local authority must protect from abuse or neglect, or risk of abuse or neglect, and also in the case of children: harm, or risk of harm
- prevent local authorities from tightening their eligibility criteria beyond that set out in the regulations
- place on-going responsibilities on local authorities to look at wider support across the new care and well-being system to ensure that a greater number of people with needs are supported in a range of ways that can be accessed outside the eligibility criteria.
- The eligibility framework must be sensitive to the differing needs, context and outcomes for children, adults and carers. It cannot therefore be a one size fits all.

On 1<sup>st</sup> February 2014 revised assessment and care planning guidance for older people (people aged 65 and over) came into force in Wales replacing the 'Unified Assessment Process'<sup>5</sup> guidance (apart from its eligibility criteria in Chapter 5).

### **Duty to provide care & support for individuals in need (section 32)**

If a local authority determines that any needs meet the eligibility criteria then the authority must—

- (a) consider what could be done to meet those needs;
- (b) consider whether it would impose a charge for doing those things, and if so, determine the amount of that charge.

<sup>4</sup> Written Statement Gwenda Thomas AM, Deputy Minister for Social Services *Assessment and Eligibility Framework* 5 November 2013.

<sup>5</sup> NAFWC 'Creating a Unified & Fair System for Assessing & Managing Care' NAFWC 09/2002 (2002).

This duty applies to adults (section 35), to disabled children (section 37), and to carers whether they are adults (section 40) or a child (section 42).

### **Self-funders (sections 35)**

In addition to the duty to meet the needs of adults in need and adult carers whose financial resources are below the financial limit, the Act imposes a duty on LA's to meet the needs of self funders – if the self funder 'asks'.

### **Care and support (section 34)**

Duty to provide a range of 'services' for carers / dependent people

- a) accommodation in a care home, children's home or in premises of some other type;
- b) care and support at home or in the community;
- c) services, goods and facilities;
- d) information and advice.
- e) counselling and advocacy;
- f) social work;
- g) payments (including direct payments);
- h) aids and adaptations;
- i) occupational therapy.

### **Charging (section 59 - 73)**

LA's can charge for care and support provided under sections 35 - 45 to meet a person's needs but only 'the cost that the local authority incurs in meeting the needs to which the charge applies' (section 59(2)). The Act also requires that the charge imposed be no more than is 'reasonably practicable for the person to pay' (section 66)

### **NHS interface (section 47)**

*Couglan* – prohibits LA funding nursing care that the NHS has a 'power or duty' to provide;

- Section 47 – only prohibits LA providing nursing care that the NHS has a 'duty' to provide;

*Couglan* – enables a LA to fund nursing care provided if it is (1) merely ancillary or incidental to the provision of social care support, and (2) of a 'nature' that you would expect a social services to provide. Section 47 is however silent as to the 'nature' of the nursing care.

### **Care & support plans (section 54 - 55)**

Similar to current law.

### **Direct Payments (sections 50 - 53)**

Little change

In England it is expected that these will be extended to cover residential care costs – it is unclear if this is being proposed in Wales.

### **Continuity of care (portability) (sections 56)**

- If 1<sup>st</sup> authority notifies 2<sup>nd</sup> authority that person is moving;
- When move happens:
- If 2<sup>nd</sup> authority not assessed / or put in place care plan for adult in need and/or carer:
- Then 2<sup>nd</sup> authority must meet the same needs as 1<sup>st</sup> authority
- Until it has assessed / produced care plan



### **Looked after children etc (sections 74 - 125)**

Part 6 of the Act (sections 74 – 125) largely re-enacts the provisions in Part 3 of the Children Act 1989 relating to 'looked after and accommodated children – including independent reviewing officers, the Children Leaving Care provisions, secure accommodation etc.

### **Safeguarding (section 126 – 142))**

Part 7 of the Act deals with safeguarding – and includes children. In relation to adults there is a duty to make enquiries if adult with care & support needs:

- Is experiencing, or is at risk of abuse of neglect; and
- Is unable to protect him/herself against the abuse / neglect

The Act introduces a statutory duty on LA's to have Safeguarding Boards and in addition provides for an 'authorised officer' to apply to the magistrates court for 'an adult protection and support' order' which provides a power of entry to premises to enable the authorised officer and any other person accompanying the officer to:

- speak in private with a person suspected of being an adult at risk,
- ascertain whether that person is making decisions freely, and
- assess whether the person is an adult at risk and to make a decision what, if any, action should be taken.

The powers under s47 NAA 1948 are repealed (section 129);  
The power to protect property is retained (section 58)

### **Human Rights Protection**

On 1st May 2014 the Westminster Government announced its intention to amend the English Care Bill to insert a new clause (48) which will provide that where care or support is arranged by a local authority, or paid for (directly or indirectly, and in whole or in part) by the authority and that care is provided by a registered care provider to an adult or a carer either in their own home or in care home Then the provider is deemed to be a public authority for the purposes of the Human Rights Act 1998. The provision will apply to Wales.

### **Complaints (section 171 - 180)**

Part 10 of the Act provides for further reform of social services procedures (adults and children – as well as for privately funded care). The 2012 Consultation on reforming the social services complaints process<sup>6</sup> – proposed the removal of the third stage and the transfer of this responsibility to the Public Services Ombudsman for Wales (who would also be able to investigate complaints by self-funders concerning their social care services). Both provisions have already been implemented in England.

### **Advocacy (section 181 – 183)**

Provides for regulations requiring local authorities to arrange for advocacy services for people with needs for care and support needs (whether or not those needs are being met by a local authority).

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<sup>6</sup> Welsh Government *Making things better - Review of Social Services complaints*. The consultation will close on the 30<sup>th</sup> May 2012 – see <http://wales.gov.uk/consultations/healthsocialcare/better/?lang=en>



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## Policy Intent

Regulations and other subordinate legislation under the Social Services and Well-being Bill



**Policy Intent – Regulations and other subordinate legislation under the Social Services and Well-being Bill**

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## **Introduction**

This document represents a compilation of statements of policy intent in relation to the major regulations to be made under the Social Services and Well-being Bill, if enacted.

The statements are presented in the order in which the Bill provisions to which they relate appear in the Bill as amended at stage 2, and all section references within the statements likewise relate to section numbers in the amended Bill.

I have always been clear that the Bill is a framework Bill, a “Bill for a generation”, and that it is necessarily enabling in character, setting a broad framework for the sustainable social services of the future. Into this framework the detail will be added through the various pieces of subordinate legislation to be developed, scrutinised and embedded.

Whilst each piece of subordinate legislation will naturally undergo its own scrutiny process, I nevertheless recognise the value of sharing information at this point in the process of bringing *Sustainable Social Services – A Framework for Action* into being. To do so will help not only those who are charged with scrutinising the Bill, but also those who will be given the task of shaping and implementing the new pattern of social services on the ground, to see and understand the Bill provisions as a more coherent whole.

This document is therefore presented to Assembly Members and to stakeholders in a spirit of openness and transparency, with a view to supporting the democratic process through informed scrutiny.

As Members will know, I am committed to taking forward the development of subordinate legislation under the Bill in collaboration with Members and with stakeholders across the Social Services sector, and I look forward to our continued engagement over these crucial issues.

**Gwenda Thomas, AM**  
**Deputy Minister for Social Services**

<b>REGULATIONS RELATING TO:</b>	Assessment of needs for care and support, support for carers and preventative services
<b>BILL PART:</b>	2
<b>SECTION:</b>	11(2) <sup>1</sup>
<b>DESCRIPTION OF THE POWER/REGULATION</b>	
<p>Section 11 places duties on local authorities and Local Health Boards to work together jointly to assess the extent of needs for care and support (including the needs of carers) in the local authority's area and the extent to which needs for care and support are not being met, the services required to meet those needs and the range of services needed to prevent, delay or reduce need for care and support; that is, preventative services.</p> <p>This local needs assessment is to take place in addition to any other assessment of the health and well-being needs of the local population which may be required by regulations under section 40 of the National Health Service (Wales) Act 2006 or section 26 of the Children Act 2004. Subsection (3) amends section 40 of the NHS (Wales) Act to require that this local needs assessment is taken into account when preparing the joint Health Social Care and Well-being Strategy or when this Strategy is reviewed. Subsection (4) amends section 26 of the Children Act 2004 to achieve the same effect in respect of Children and Young People's Plans.</p> <p>Regulations under section 11(2) enable the Welsh Ministers to prescribe further requirements for the carrying out of assessments of needs for care and support and preventative services of an area and may, for example, provide for the timing and review of assessments.</p>	
<b>WHY THE REGULATION POWER IS REQUIRED</b>	
<p>Section 11 enables implementation of the general duties on local authorities and Local Health Boards (LHBs) in relation to the well-being of the population in their area. It provides for new enhanced duties on them jointly to assess for their area:</p> <ul style="list-style-type: none"> <li>• the extent of needs for care and support in the population;</li> <li>• the extent of support needs for carers;</li> <li>• the extent to which needs for care and support are not being met;</li> <li>• the range of services needed to meet the care and support needs identified; and</li> <li>• the range of services needed to prevent, delay or reduce needs for care and support - preventative services, as described in section 12.</li> </ul> <p>In order to plan for delivering these services they must assess the needs of the group or cohort of adults in the population with care and support needs, the support needs of carers and the needs of all children and young people. Duties are based on their current planning duties in respect of Children and Young People's Plans in section 26 of the Children Act 2004 and Health Social Care and Well-being Strategies in section 40 of the NHS (Wales) Act 2006, as amended. The resulting plan must be published as part of the local joint Health, Social Care and Well-being Strategy.</p>	

<sup>1</sup> Here, and subsequently, all numbered references are to the Bill as amended at Stage 2.



Regulations will set out the arrangements that local authorities and LHBs will be required to put into effect in their local need assessment of people with care and support needs including; their identification of the need, who should be consulted, frequency of assessments, and publication of information about care and support assessments and preventative services.

In complying with their duties under section 11, local authorities will need to have regard to the provision of preventative services and in particular to addressing requirements of section 12 of the Bill. These are aimed at preventing or delaying the development in the population of needs for care and support in areas that include minimising the effect on disabled people and reducing the need for care proceedings under Children Act 1989 and criminal proceedings against children.

### **WHAT THE REGULATION POWER CAN ACHIEVE**

The primary focus of the Bill is to establish a revised and coherent framework for social services that can achieve the changes needed to enable sustainability for the future. The planning assessment process is central to the ability to meet need for both individuals and population needs. Section 11 duties are also critical for effective implementation of the shift in focus and planning to include services for prevention and early intervention that are essential for sustainability of social services into the future.

Regulations under section 40 of the NHS (Wales) Act 2006 and under section 26 of the Children Act 2004 will require local authorities and LHBs to work together to plan and secure sufficient provision of services to meet the range of needs they identify. The process will require effective assessment of need in development within their local population, as well as for those individuals whose needs met the eligibility criteria. The local authority will then have the duty to meet assessed need and to promote the development of and access to the services required.

### **POLICY INTENTION OF THE REGULATIONS**

The policy intends to underpin delivery of care and support whilst giving greater attention to provision for prevention and early intervention through a detailed and comprehensive understanding of population characteristics and need. It requires local authorities and Local Health Boards better to understand the needs for care and support and prevention services in their local population.

The assessment duties are powerful and detailed, and require strong leadership from the local authority, that must drive the process overall, and are supported by duties to promote cooperation and integration in planning and delivery set out in sections 152-159. The social services department will have the frontline responsibility, making the leadership and enabling role of the Director of Social Services a central one.

Effective assessment and planning of provision will also require engagement across the departments of the local authority and health services, other relevant partners and third and independent sectors, the community, as well as with individuals themselves. The requirements for assessment, set out in the Codes of Practice, will include

arrangements for a structured involvement of individual service users in ways that enable effective contribution to both strategic and operational details. Assessment must take account of the need across the population for access to Welsh language services, responding to “*More than just words*” the strategic framework for provision in Health, Social Services and Social Care ( see <http://wales.gov.uk/topics/health/publications/health/guidance/words/?lang=en> ).

Preventative services are set out in section 12 that places a general duty on local authorities to:

- provide or arrange the provision of services to prevent, delay or reduce needs for care and support,
- promote the up-bringing of children within families,
- minimise the effect of disabilities on disabled people,
- contribute to the prevention of abuse and neglect,
- reduce needs for court proceedings,
- encourage children not to engage in criminal behaviour
- reduce the need for children to be placed in secure accommodation; and
- enable people to achieve as much independence as possible.

#### **WORK TO DATE**

Stage 1 interest centred primarily on the prevention definition and strength of health involvement.

Stakeholder interest focused substantially on these issues, the need to place equivalent duties on health to those on local authorities, and the possible financial burden for preventative service provision, that might fall primarily on local authorities.

The issues engaged considerable interest in wide ranging discussions at three consultation events held in March 2013.

#### **RELEVANT POLICY DOCUMENTS, MINISTERIAL STATEMENTS OR COMMITMENTS:**

Written Statement - Social Services and Well-being Bill: Prevention and Early Intervention

<http://wales.gov.uk/about/cabinet/cabinetstatements/2013/8232736/?lang=en>

Written Statement - Social Services and Well-being (Wales) Bill: Assessment & Eligibility

<http://wales.gov.uk/about/cabinet/cabinetstatements/2013/7651255/?lang=en>

Written Statement - Well-being and National Outcomes Framework for Social Services

<http://wales.gov.uk/about/cabinet/cabinetstatements/2012/wellbeingnationaloutcomesframework/?lang=en>

#### **OTHER CONSIDERATIONS:**

The arrangements for local needs assessments will build on legislation under the Children Act 2004 and NHS (Wales) Act 2006, and on the provisions of previous guidance:

Shared Planning for Better Outcomes, Welsh Assembly Government Circular 31/2007

<http://wales.gov.uk/topics/educationandskills/publications/guidance/sharedplanningforbetteroutcomes?lang=en>

Children and Young People's Planning Guidance 2011-14

<http://wales.gov.uk/topics/childrenyoungpeople/publications/cypplanning/?lang=en>

Tackling Child Poverty: Guidance and Regulations for Welsh Authorities

<http://wales.gov.uk/topics/childrenyoungpeople/publications/tacklingchildpoverty/?lang=en>

Health Social Care and Well-being Strategy Guidance 2011/12-2013/14

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

Shared Purpose - Shared Delivery

<http://wales.gov.uk/topics/improvingservices/publicationsevents/publications/sharedpurpose/?lang=en>

#### **INTERDEPENDENCIES AND LINKS TO OTHER POWERS/REGULATIONS:**

Section 12 preventative services for definitions and scope

Section 13 contributions of social enterprise and co-produced activity to implementation,

Section 14 IAA as provider of access to services and planning data on need and information on demand for provision

Section 26 Eligibility criteria as determinants of numbers for whom there are duties requiring access to care and support

Sections 152 and 153 in relation to the duties to cooperate that drive the process for joint planning and requirements on relevant partners to engage.

<b>REGULATIONS RELATING TO:</b>	Promoting social enterprises, co-operatives, user led services and the third sector
<b>BILL PART:</b>	2
<b>SECTION:</b>	13(3)
<b>DESCRIPTION OF THE POWER/REGULATION</b>	
<p>Section 13 of the Bill places a duty on local authorities to promote social enterprises, co-operatives, user led services and the third sector. This is therefore a function of local authorities. The regulations enable provision to be made to clarify the activities to be treated as activities carried out for the benefit of society; organisations to be treated as social enterprise etc; what constitutes a section of society.</p>	
<b>WHY THE REGULATION POWER IS REQUIRED</b>	
<p>To ensure that there is clarity about the activities that a local authority must promote. This enables clarity about what is included and what is not included.</p>	
<b>WHAT THE REGULATION POWER CAN ACHIEVE</b>	
<p>The overall purpose is to provide a lever whereby local authorities work with a wider range of providers on new service models; particularly in under-developed areas in social care.</p> <p>This regulation making power connects to the wider Bill by supporting the development of new models of service, early intervention and prevention, and promoting an approach which will enable a shift in the development, design and delivery of services. It is intended to promote the “how” this will be done. A key aspect is strengthening the voice and control of citizens in the new transformed arrangements.</p> <p>It is important to say that it is the intention to use the power to issue a Code of Practice set out in section 135 to provide further details of how this will work in practice and to enable the translation of the Bill intent into action on the ground. Section 136 sets out the making, approval and revocation of codes.</p>	
<b>POLICY INTENTION OF THE REGULATIONS</b>	
<p>To support the development of new models of service which are designed with and around people who need care and support and carers who need support. These new models of service are intended to deliver services which are based on a co-operative, co-productive model. The services are to be based on the well-being outcomes of people.</p>	
<b>WORK TO DATE</b>	
<p>Rapid review of social enterprise submitted to the Co-operatives and Mutuals Commission. Discussions with a range of stakeholders. Work commissioned from Cymorth, Wales Co-operative Centre, Social Firms Wales and Barod which is intended to: raise awareness and deepen understanding amongst local authority staff</p>	

in this area; to identify actions on the ground which will support local authorities to deliver on this regulation; to conduct a feasibility study on how a representative body for social value providers of care services will help realise the aim of the Bill; a specific piece of work with a user-led organisation to identify existing and potential models that enable service users to be involved in the design and running of care and support and preventative services. To exemplify how they can contribute to an approach based on co-production.

**RELEVANT POLICY DOCUMENTS, MINISTERIAL STATEMENTS OR COMMITMENTS:**

Rapid Review document submitted to the Commission for Co-operatives and Mutuals.

Statement by the Deputy Minister on Social Enterprise.

<http://wales.gov.uk/about/cabinet/cabinetstatements/2013/socservbilsocent/?lang=en>

**OTHER CONSIDERATIONS:**

The ability to issue a Code of Practice under section 135. This is in addition to regulations.

**INTERDEPENDENCIES AND LINKS TO OTHER POWERS/REGULATIONS:**

Links to section 11(1)(d) and (e) – assessment of needs for care and support....  
Where there is a need to assess in accordance with regulations ..... the range and level of services required to meet the care and support needs of people in the local authority's area and the range and level of services required to meet the purposes in 12(2) – preventative services.  
Section 12 of the Bill – preventative services.  
Section 135, 136 and Schedule 2.

<b>REGULATIONS RELATING TO:</b>	Assessment
<b>BILL PART:</b>	3
<b>SECTION:</b>	24
<b>DESCRIPTION OF THE POWER/REGULATION</b>	
<p>Section 24 enables regulations to be made about the carrying out of needs assessments under the Bill and describes what kind of requirements could be imposed. This could include requirements to involve with other people, in addition to those specified in sections 16, 18 and 21.</p> <p>Regulations can require assessments to be carried out in a particular way, which could include proportionate assessments in particular circumstances.</p> <p>The regulations could also:</p> <ul style="list-style-type: none"> <li>• set out who can carry out assessments;</li> <li>• set out the time limits within which assessments must be completed;</li> <li>• require the results of an assessment to be recorded in a particular way, to ensure consistency;</li> <li>• provide for a local authority to have regard to other considerations when carrying out an assessment;</li> <li>• provide for a power to provide information for the purpose of the assessment;</li> <li>• provide for the review of an assessment.</li> </ul>	
<b>WHY THE REGULATION POWER IS REQUIRED</b>	
<p>The Bill extends the right to an assessment to children, adults and carers who have, or appear to have, a need for care and support. This is major extension of rights to individuals and duties on local authorities in assessing an individual's needs. To ensure there is equity and clarity across Wales in people exercising their new rights, and in local authorities exercising consistent application of assessments, regulations will provide a coherent framework to:</p> <ul style="list-style-type: none"> <li>• ensure compliance through supporting the day to day operation of local authorities in the discharge of their duties;</li> <li>• support individuals and the courts in ensuring people's rights and local authorities' administrative procedures have been applied in line with the law and in a fair and consistent manner; and</li> <li>• support the work of the relevant inspectorates.</li> </ul> <p>Primary powers set out on the face of the Bill the main factors that assessment is based on: level of need for care and support, outcomes (and the extent to which other matters can contribute to an individual's outcomes), and ordinary place of residency.</p> <p>Together with primary powers, regulation powers are important to achieve the policy aim of improving well-being for those with needs for care and support. Regulations</p>	

provide a flexible framework to enable the detailed practice arrangements that local authorities must have for assessing the care and support needs of children, adults and carers. Differing emphases will be applied in each case. For example, for a child the focus is on their physical, intellectual, emotional and social development; their parents' capacity to care; and other circumstances affecting their well-being. With adults, the emphasis would be on the outcome that the adult wishes to achieve in their day-to-day life.

The regulations will need to reflect the differing characteristics, circumstances and policy objectives for each group that are central factors that may have an impact on the care and support needs of the individual. For example, the people to be involved or required to contribute to an assessment of a child and adult will be different – in the case of an adult; the involvement of the adult themselves, and anyone who cares and supports them will be important; for a child it might be the child's parent(s), a health visitor, a teacher, the Welsh family proceedings officer, or other professionals that interact with the child.

Assessments are not fixed in time and processes must be reviewed in line with evidence-based practice, demand, service patterns and people's expectations. The regulation powers enable the Welsh Ministers to respond to and reflect changes in policy, socio-economics and other circumstances over time.

#### **WHAT THE REGULATION POWER CAN ACHIEVE**

The main duties of local authorities in relation to carrying out needs assessments are set out on the face of the Bill. Section 24 enables the Welsh Ministers to make regulations which must make further provision about the carrying out of needs assessments. This is suitable for regulations as there will be a need to amend this detail over time in response to changes in social work practice and evidence.

#### **POLICY INTENTION OF THE REGULATIONS**

Section 24 places an express duty on the Welsh Ministers to bring forward regulations on the detailed arrangements that local authorities must follow when assessing the needs of an individual. The policy intent is that regulations will prescribe a set of core requirements for each group; child, adult and carer, along the lines of the requirements illustrated below:

- An individual's right to fully participate in the assessment and in their preferred language;
- Information to be provided to individual about their assessment, including advice about financial assessment and an individual's likely contribution to their care and support; and options for this to be managed/ commissioned by the local authority;
- The format and content of an assessment – this may involve a national template of core minimum information for both proportionate and comprehensive assessments;
- The recording of assessments;
- Areas of enquiry /factors that constitute well-being; e.g. health and care (including self care), daily activities, safety, relationships, child development (physical and emotional) and education, parenting capacity, home environment, accommodation etc

- Sharing of core information across health, social care and where relevant wider local government e.g. housing, education, schools;
- Requirement to obtain consent from those being assessed;
- Copies of assessment and core personal information must be provided to the person who has been assessed;
- Arrangements for people who lack capacity;
- Circumstances in which copies of the assessment is to be shared with others; for example carer, parent, court, school, probation officer, youth worker;
- Description of those who can undertake assessment and local assessments policies;
- Description of those who can make decision about assessment to determine if there is a need;
- The circumstances when a lead profession should be appointed to co-ordinate the individual's assessment e.g. complex needs involving a number of agencies and professionals contributing to the assessment;
- Publication of local arrangements about assessment;
- The timescale in which an assessment must be completed. The aim will be to ensure there is no drift in the assessment, but timelines need to be carefully considered so as to avoid any unintended consequences/ organisational gaming that result in poor practice - as suggested by a number of key reviews; and
- Other matters to be considered as part of assessment i.e. whether the individuals would benefit from information, advice, preventative and other services accessible in the community.

The above is not an exhaustive list. The prescription for each group; child, adult and carer will differ depending on circumstances. Regulations will be supported by a Code of Practice that local authorities also must comply with. The requirements for assessments will therefore be set by a combination of the regulations and a Code of Practice.

At the heart of the new system will be a person's right to exercise voice and control about the outcomes they wish to achieve. The Welsh Government strategy '*More Than Just Words*' will also be reflected in the Code of Practice and day to day operation of the new system.

#### **WORK TO DATE**

Comprehensive engagement with stakeholders has been undertaken on a number of levels on the outline framework that should underpin assessment and more widely on the role that assessment and eligibility has in identifying and supporting individual's needs within the new system. These include;

- Wider discussion at consultation events on the SSWB Bill involving over 700 delegates – (March 2012 and 2013)
- Dedicated workshops (2 days across three regions of Wales involving up to 200 stakeholders) over Autumn 2012 and early 2013 supported by the Social Services Improvement Agency (SSIA) – outcomes are reported in: Access to Care and Wellbeing in Wales
- Internal workshop across health and social care policy leads and



Inspectorates

[Care and Social Services Inspectorate (CSSIW) and Health Inspectorate Wales HIW] – spring / summer 2013

• Specific presentations on the new system where assessment is at its core to stakeholders of key representative bodies including: Carers Alliance, Wales Council for Voluntary Action (WCVA), Disability Wales, Children in Wales, Local Authority Heads of Children and Adult Services, Care Council for Wales, LHB Directors and Clinical Professional Leads, Boards of Occupational Therapists, Universities through the All-Wales Academic Social Care Research Collaboration.

### **Consultation on new guidance under existing Law**

• Task Group and Workshops on the new Integrated Assessment, Planning and Review Arrangements for People 65+ (September – October 2013). Arrangements have been developed under current legislation whilst using both the broader application of well-being and the key factors that will underpin assessment in line with Social Services and Wellbeing (Wales) Bill. This has enabled a detailed review of the current system and will provide a bridge in the transition of practice across health and social care towards the new system under the Bill. Local authorities and LHBs are required to implement the new guidance for 65+ from 2 December 2013 and to develop a common local template by 30 April 2014. The guide will inform the future regulation requirements for adult assessment.

This ongoing engagement with stakeholders has provided clarity and developed consensus on the future system and the significant role that assessment will hold in it.

This impact and quality of the engagement on the new system is reflected in the report by published in October 2013 by the Welsh Local Government Association (WLGA) and NHS Confederation - ***Transitional and longer-term implications of the Social Services & Well-being (Wales) Bill 2013***

### **RELEVANT POLICY DOCUMENTS, MINISTERIAL STATEMENTS OR COMMITMENTS:**

- Key Written Statement in July and November (2013) on Assessments and Eligibility.
- Detailed responses to HSCC on assessment and wider matters – published on the NAFW website – record of proceedings for stage 1 of the Bill.
- Government Amendments to assessment and eligibility
- Factsheets on Assessment and Eligibility

### **OTHER CONSIDERATIONS:**

None.

### **INTERDEPENDENCIES AND LINKS TO OTHER POWERS/REGULATIONS:**

Eligibility, care planning, review, and portability. [Sections 26, 45, 46 and 47 refer.]

<b>REGULATIONS RELATING TO:</b>	Eligibility
<b>BILL PART:</b>	4
<b>SECTION:</b>	26(3) to 26(5)
<b>DESCRIPTION OF THE POWER/REGULATION</b>	
<p>After conducting an assessment (for an adult child or carer (child and adult carer) under sections 16, 18 and 21) if the local authority determines the person has needs for care and support, section 26 as amended requires the local authority to determine if the person has needs that meets the <i>eligibility criteria</i>.</p> <p>Regulations under section 26(3) to section 26(5) will prescribe the national eligibility criteria that will apply to a child, adult and carer (child and adult carer)</p> <p>Where a local authority determines that a person's needs meet the prescribed eligibility criteria they have a duty under sections 28, 30 and 33 to 35 to meet the care and support needs of the individual.</p> <p>In circumstances where the person's eligible need is being met by a carer or in a case of a child a parent the local authority's duties under sections 28 and 30 no longer apply by virtue of section 28(6) and 30(5) in that local authority is satisfied that the individual's needs are being met (in part or in full) by the carer or parent. However, carers are also entitled in their own right to an assessment for support.</p> <p>However, in circumstances where the cared for person's needs are not being met by the carer or parent the provision in sections 28(6) and 30(5) no longer apply and the person's eligibility status is reinstated. However in all cases where a person is eligible, their need (and eligibility status) is regularly reviewed as part of the review and monitoring of the care and support plan.</p> <p>Section 26 also requires the local authority to consider if charges may be applied and to determine the amount of that charge in accordance with Part 5 and regulations made under sections 52 – 53.</p> <p>Regulations enable different circumstances to apply to different categories of people, and reflect the effect that their needs have on the individual. For example:</p> <ul style="list-style-type: none"> <li>• for a child; the need for a stable up bringing with the right level of parental care and support will be critical to their development.</li> <li>• for an adult; their priority is likely to be to maintain their independence and have day to day control over their life.</li> <li>• for a carer; their ability and willingness to care may be paramount.</li> </ul> <p>The assessment duties under sections 16, 18 and 21 require the local authority to take the above factors into account and to gather wider information on the individual's strengths, their needs, capacity, the support networks available to them, the outcomes they wish to achieve (and the extent to which other matters can contribute of an individuals outcomes), and their ordinary place of residency etc. These matters will inform the local authorities' decision making as to <i>eligible need</i> under section 26.</p>	

## **WHY THE REGULATION POWER IS REQUIRED**

Regulations will provide a coherent framework to support local authorities in discharging their duties to vulnerable people with high needs; and to support individuals and the courts in ensuring people's rights and local authorities' administrative procedures have been applied in line with the law and in a fair and consistent manner.

Together with primary powers (set out on the face of the Bill), regulation powers are important to achieve the policy aim of meeting the needs of those who are particularly vulnerable. Regulations provide a flexible framework to enable the Welsh Ministers to set from time to time the national eligibility criteria for those for whom the local authority will have no discretion on the decision as to whether to meet the need for care and support.

Differing emphases can be applied to different categories of need. The regulation requirements for each group will need to reflect the differing characteristics, circumstances and policy objectives that are central factors that may have an impact on the care and support needs of the individual. Eligible need and criteria should not be fixed in time and processes must be reviewed in line with practice, demand, service patterns, people's expectations and resources. The regulation powers enable the Welsh Ministers to respond to, and reflect changes in policy, social care practice and other circumstances over time.

Regulations will also enable the Welsh Ministers to respond to the impact of the new eligibility framework and the extent to which it meet policy aims and supports people within the new system, and to review as necessary.

## **WHAT THE REGULATION POWER CAN ACHIEVE**

Regulations are necessary to ensure that the local authorities meet their duties to meet the needs of particularly vulnerable people through the setting of a national eligibility framework. The power will ensure equity, transparency and consistency in local authorities' discharge of their duties to support people across Wales against a level of need and circumstances and ensure both continuity and the level of practice that a citizen can expect.

## **POLICY INTENTION OF THE REGULATIONS**

Regulations under section 26 will:

- prescribe the national eligibility criteria/ framework that will apply to a child, adult and carer under Part 4 that local authorities across Wales must meet
- For each category, regulations may prescribe the different needs and circumstances that the local authority must take in account. For example within the eligibility framework for adults, eligible need may be described differently depending on the person's needs and circumstances. Examples may include sub-criteria for
  - people seeking asylum,
  - people with significant sensory and/or physical needs or disabilities,
  - prisoners,

- people with secondary mental health care, or subject to a section 117 (Mental Health Act 1983) provision,
- children on the threshold of being accommodated by a local authority because of family dysfunction etc. or
- a combination of those needs

- describe eligible need by reference to the effect those needs have on the individual. For example would their condition continue to deteriorate without the provision of appropriate care and support?
- focus on the person's needs for care and support, the impact of those needs on their wellbeing, and the level of risk to the individuals if those needs are not met.
- make it clearer for people what their entitlements are; and introduce a level of consistency about the threshold to give people more confidence that if they want to move to another area in Wales, and their circumstance have not changed, then their eligibility for care and support will continue.
- set out the criteria for people who are to be 'passported' to be treated as eligible i.e. those whom the local authority must protect from abuse or neglect, or risk of abuse or neglect, and also in the case of children, protection from harm, or risk of harm
- prevent local authorities from tightening their eligibility criteria beyond that set out in the regulations.
- place on-going responsibilities on local authorities to look at wider support across the new care and wellbeing system to ensure that a greater number of people with needs are supported in a range of ways that can be accessed outside the eligibility criteria.

The above is illustrative of early thinking. Detailed work with stakeholders will start in January 2014 to shape and refine the differing categories and circumstances of persons with eligible needs. This will be subject to wider engagement in spring 2014 before the final public consultation on the regulations and Code of Practice in 2014/15.

The regulations on eligibility will be subject to the super affirmative procedure.

#### **WORK TO DATE**

Comprehensive engagement with stakeholders has been undertaken on a number of levels on the outline framework that should underpin assessment and more widely on the role that assessment and eligibility has in identifying and supporting individual's needs within the new system. These include;

- Wider discussion at consultation events on the SSWB Bill involving over 700 delegates – (March 2012 and 2013)
- Dedicated workshops (2 days across three regions of Wales involving up to 200 stakeholders) over Autumn 2012 and early 2013 supported by the Social Services Improvement Agency (SSIA) – outcomes are reported in: Access to Care and Wellbeing in Wales
- Internal workshop across health and social care policy leads and Inspectorates

[Care and Social Services Inspectorate (CSSIW) and Health Inspectorate Wales (HIW)] – spring / summer 2013

- Specific presentations on the new system where assessment is at its core to stakeholders of key representative bodies including; Carers Alliance, Wales Council for Voluntary Action (WCVA), Disability Wales, Children in Wales, Local Authority Head of Children and Adult Services, Care Council for Wales, LHB Directors and Clinical Professional Leads, Boards of Occupational Therapist, Universities through the All-Wales Academic Social Care Research Collaboration.

Consultation on new guidance under existing Law

- Task Group and Workshops on the new Integrated Assessment, Planning and Review Arrangements for People 65+ (September – October 2013). Arrangements have been developed under current legislation whilst using both the broader application of well-being and the key factors that will underpin assessment in line with Social Services and Wellbeing (Wales) Bill. This has enabled a detailed review of the current system and will provide a bridge in the transition of practice across health and social care towards the new system under the Bill. Local authorities and LHBs are required to implement the new guidance for 65+ from 2 December 2013 and to develop a common local template by 30 April 2014. The guide will inform the future regulation requirements for adult assessment.

This ongoing engagement with stakeholders has provided clarity and developed consensus on the future system and the significant role that the assessment and eligibility framework will hold in it.

This impact and quality of the engagement on the new system is reflected in the report by published in October 2013 by the Welsh Local Government Association (WLGA) and NHS Confederation - ***Transitional and longer-term implications of the Social Services & Well-being (Wales) Bill 2013***

**RELEVANT POLICY DOCUMENTS, MINISTERIAL STATEMENTS OR COMMITMENTS:**

- Key Written Statement in July and November (2013) on Assessments and Eligibility.
- Detailed responses to HSCC on eligibility and wider matters – published on the NAFW website – record of proceedings for stage 1 of the SSW Bill.
- Government Amendments to assessment and eligibility
- Factsheets on Assessment and Eligibility

**OTHER CONSIDERATIONS:**

None.

**INTERDEPENDENCIES AND LINKS TO OTHER POWERS/REGULATIONS:**

Assessment care planning, review, and portability. [ Sections 24, 45, 46 and 47 refer.]

<b>REGULATIONS RELATING TO:</b>	Meeting Needs: exceptions and restrictions: Exception for provision of health services
<b>BILL PART:</b>	4
<b>SECTION:</b>	38
<b>DESCRIPTION OF THE POWER/REGULATION</b>	
<p>This section sets out a number of exceptions in relation to the role of local authorities in the provision of health services.</p> <p>It states that a local authority <u>may not</u>:</p> <ul style="list-style-type: none"> <li>• Meet a person's needs for care and support (including a carer's needs for support) under sections 28-36.</li> <li>• Secure services or facilities for a person under section 12 (preventative services).</li> <li>• <b>unless</b> to do so would be incidental or ancillary to doing something else to meet the needs of, or secure preventative services for, that person.</li> </ul> <p>Regulations may be developed to specify:</p> <ul style="list-style-type: none"> <li>• The types of services or facilities (or circumstances in which services or facilities) which <u>may</u> be provided, and/ or the circumstances in which these may be provided.</li> <li>• The types of services or facilities which <u>may not</u> be provided.</li> <li>• What services or facilities would be treated as incidental or ancillary.</li> </ul> <p>This section also states that a local authority <u>may not</u>:</p> <ul style="list-style-type: none"> <li>• Meet a person's needs for care and support by providing or arranging provision of nursing care by a registered nurse.</li> <li>• Secure provision of nursing care by a registered nurse.</li> </ul> <p>A local authority <u>may</u>:</p> <p>Arrange for the provision of accommodation together with nursing care, if:</p> <ul style="list-style-type: none"> <li>• It has consent from the relevant Local Health Board, or</li> <li>• It is an urgent case and the arrangements are only temporary.</li> </ul> <p>Regulations require a local authority to:</p> <ul style="list-style-type: none"> <li>• Make arrangements for determining disputes with a Local Health Board or NHS Trust about whether or not a service is provided under the NHS Act or NHS (Wales) Act 2006.</li> <li>• Be involved, in the manner specified, in processes for assessing a person's needs for health care and determining how these needs may be met.</li> </ul>	
<b>WHY THE REGULATION POWER IS REQUIRED</b>	
To clarify the role of the local authority in relation to the provision of specific health services.	
<b>WHAT THE REGULATION POWER CAN ACHIEVE</b>	
The regulations can make explicit what type of services or facilities may, or may not, be provided by the local authority in relation to the provision of health services.	

The regulations can ensure there are arrangements for determining disputes with a Local Health Board or NHS Trust.

**POLICY INTENTION OF THE REGULATIONS**

The policy intention of the regulations is to clarify the role of the local authority in the provision of specific health services and to make explicit what type of services or facilities may, or may not, be provided by the local authority.

**WORK TO DATE**

Cross border work

**RELEVANT POLICY DOCUMENTS, MINISTERIAL STATEMENTS OR COMMITMENTS:**

None

**OTHER CONSIDERATIONS:**

None

**INTERDEPENDENCIES AND LINKS TO OTHER POWERS/REGULATIONS:**

None

<b>REGULATIONS RELATING TO:</b>	Restrictions on provision of payments
<b>BILL PART:</b>	4
<b>SECTION:</b>	40
<b>DESCRIPTION OF THE POWER/REGULATION</b>	
<p>Regulations under this section may provide for additional circumstances where payments can be provided by a local authority to meet a person's needs for care and support under sections 28 to 36 of the Bill or preventative services under section 12 of the Bill.</p>	
<b>WHY THE REGULATION POWER IS REQUIRED</b>	
<p>The power is required so that local authorities can make payments to meet an individual's needs for care and support, or for preventative services, when it is not reasonably practicable or possible to do this through the normal assessment and meeting needs arrangements envisaged under Parts 3 and 4 of the Bill. Without this power local authorities would not legally be able to make such payments unless there were a direct payment, a person's needs were urgent and those needs could not be met in any other way, or where such a payment was a consequence of a contractual commitment. Payments to meet needs could not be made in any other circumstances.</p>	
<b>WHAT THE REGULATION POWER CAN ACHIEVE</b>	
<p>The regulation power enables additional circumstances to be specified where it would be appropriate for a local authority to meet a person's needs for care and support, or for preventative services, through a payment rather than through alternative ways of meeting those needs. It therefore provides the ability to set out those additional circumstances in regulations to ensure that all possible scenarios are included.</p>	
<b>POLICY INTENTION OF THE REGULATIONS</b>	
<p>There will be circumstances where there is a need, or a preference, to meet a person's needs for care and support, or for preventative services, through a monetary payment to facilitate this rather than through other more traditional ways of meeting those needs. Such payments would typically be a direct payment to a person, or to someone on their behalf, to enable the care and support or preventative services to be provided. It would also, for example, be appropriate to make a payment where there were an urgent need for needs to be met that would not allow formal processes, such as a detailed needs assessment, to be undertaken, without endangering the well-being of a person. These and other obvious circumstances where it would be appropriate to make a payment to meet needs in this way are set out in section 40 of the Bill.</p> <p>However these circumstances are not, and are not intended to be, exhaustive and there may well be other circumstances not listed where it would equally be appropriate to make such payments. The regulation power therefore provides for this where it becomes clear that other circumstances have been identified and are appropriate, albeit that at present none have. As care and support and preventative services develop further, and the way in which needs are met and services provided change over time, this situation may well change so that other circumstances become appropriate.</p>	
<b>WORK TO DATE</b>	
None.	



<b>RELEVANT POLICY DOCUMENTS, MINISTERIAL STATEMENTS OR COMMITMENTS:</b>
None.
<b>OTHER CONSIDERATIONS:</b>
None.
<b>INTERDEPENDENCIES AND LINKS TO OTHER POWERS/REGULATIONS:</b>
None.

<b>REGULATIONS RELATING TO:</b>	Direct payments
<b>BILL PART:</b>	4
<b>SECTION:</b>	41(1)
<b>DESCRIPTION OF THE POWER/REGULATION</b>	
Regulations may require or allow a local authority to make payments to a person towards the cost of meeting an adult's needs for care and support under section 28 or 29 of the Bill, subject to certain conditions being met specified in section 40.	
<b>WHY THE REGULATION POWER IS REQUIRED</b>	
The power is required to enable local authorities to make a direct payment towards the cost of meeting an adult's need for care and support, as an alternative to the local authority arranging for those needs to be met directly, where that adult or a person acting on their behalf has requested this and the authority believes this is an appropriate way of meeting those needs. Without this power local authorities would not legally be able to make such direct payments.	
<b>WHAT THE REGULATION POWER CAN ACHIEVE</b>	
<p>Direct payments are an alternative way of meeting the needs of people who are eligible for care and support. Rather than the local authority providing or arranging for the care and support to be met directly, a direct payment to the value of the care and support required can be provided so as to enable this to be arranged by or on behalf of the person themselves. This gives the person greater choice and control over how exactly their needs are met and in what way.</p> <p>Under existing legislation a local authority must provide a direct payment if the person requests one and the authority is satisfied that making the payment is an appropriate way of meeting that person's care and support needs and that the person is capable of managing the payment (either on their own or with support). Where a person does not have the capacity to consent to a direct payment (i.e. where the person is mentally incapacitated for whatever reason), a direct payment may be made to a 'suitable person' acting in the person's best interests who can receive and manage the payment on the person's behalf.</p> <p>The regulation making power will enable direct payments to continue to be provided and allow the Welsh Ministers, via the regulations and code of practice, to set out how such arrangements should operate in future by specifying such things as:</p> <ul style="list-style-type: none"> <li>• the steps that local authorities should take to ensure that those with care and support needs are aware of the option of receiving a direct payment, what this entails and how this might benefit them;</li> <li>• the circumstances where it would be appropriate to provide a direct payment;</li> <li>• the support that should be provided to a person with care and support needs, both in making a decision as to whether to have a direct payment and in managing a payment where they have chosen to have one;</li> <li>• how the value of a direct payment should be calculated, the payment method of this and how the value should be revised if care and support needs change;</li> <li>• the period of time for which a direct payment should operate and what occurs should a person with care and support needs get into difficulty in managing their payment or decide at a subsequent date no longer to receive one.</li> </ul>	

<b>POLICY INTENTION OF THE REGULATIONS</b>
It is Welsh Government policy to provide greater choice and control to those who develop needs for care and support to give them a greater say over the way in which these needs are met. Given that one of the key ways in which this can be achieved is to provide them with a direct payment to arrange for that care and support themselves, the policy intent of the regulation is twofold. First, it is to maintain and improve the current operation of direct payments in Wales so that all those who currently benefit from these can continue to do so in the future. Second, it is to increase the take up of direct payments in Wales by ensuring that more individuals with care and support needs are aware of this option and what it would mean for them. This is so that a greater number of those with care and support needs can make an informed choice as to whether direct payments are right for them.
<b>WORK TO DATE</b>
The Welsh Government has been working with the Direct Payments Overview Group (which represents local authority, disability and carer organisation stakeholders) on a set of principles on the future provision of direct payments. These principles cover good practice areas of direct payments such as eligibility and choice, provision of information, support, reviews and outcomes, and the value and calculation of direct payments. The principles have been agreed by Welsh Ministers and will be used to inform the development of the regulations and code of practice on direct payments under the Bill.
<b>RELEVANT POLICY DOCUMENTS, MINISTERIAL STATEMENTS OR COMMITMENTS:</b>
The Deputy Minister for Social Services has given a commitment to work closely with the Direct Payments Overview Group in developing the regulations and code of practice on direct payments under the Bill with the aim of making it easier for people to understand direct payments and to access and use them should they wish, thereby increasing their take up.
<b>OTHER CONSIDERATIONS:</b>
None.
<b>INTERDEPENDENCIES AND LINKS TO OTHER POWERS/REGULATIONS:</b>
Regulations under Section 42(1) and 43(1) mirror this regulation in respect of direct payments to meet a child's needs (Section 42) and direct payments to meet a carer's needs (Section 43).

<b>REGULATIONS RELATING TO:</b>	Direct payments
<b>BILL PART:</b>	4
<b>SECTION:</b>	42(1)
<b>DESCRIPTION OF THE POWER/REGULATION</b>	
<p>The power provides for regulations to be made which may require or allow a local authority to make payments to a person towards the cost of meeting a child's needs for care and support under section 30, 31 and 32 of the Bill, subject to certain conditions being met specified in section 42.</p>	
<b>WHY THE REGULATION POWER IS REQUIRED</b>	
<p>The power is required to enable local authorities to make a direct payment to adults who have parental responsibility for a child to meet the cost of meeting that child's need for care and support, as an alternative to the local authority arranging for those needs to be met directly, where that adult has requested this and the authority believes this is an appropriate way of meeting those needs. Without this power local authorities would not legally be able to make such direct payments. It is also to enable local authorities to make such payments direct to certain categories of children who have needs for care and support should they wish to receive these.</p>	
<b>WHAT THE REGULATION POWER CAN ACHIEVE</b>	
<p>Direct payments are an alternative way of meeting the needs of people who are eligible for care and support. Rather than the local authority providing or arranging for the care and support to be met directly, a direct payment to the value of the care and support required can be provided to a person with parental responsibility for a child, or in the case of a 16 or 17 year old to them, so as to enable this care and support to be arranged by that person. This gives the person greater choice and control over how exactly these needs are met and in what way.</p> <p>Under existing legislation a local authority must provide a direct payment if a person with responsibility for a child with care and support needs, or a 16 and 17 year old with care and support needs, requests one and the authority is satisfied that making the payment is an appropriate way of meeting those needs and that the person, or the 16 and 17 year old, is capable of managing the payment (either on their own or with support). Where the individual needing care and support does not have the capacity to consent to a direct payment (i.e. where the individual is mentally incapacitated for whatever reason), a direct payment may be made to a 'suitable person' acting in the person's best interests who can receive and manage the payment on the person's behalf.</p> <p>The regulation making power will enable direct payments to continue to be provided and allow the Welsh Ministers, via the regulations and code of practice, to set out how such arrangements should operate in future by specifying such things as:</p> <ul style="list-style-type: none"> <li>• the steps that local authorities should take to ensure that those with parental responsibility for a child with care and support needs, or certain categories of children with care and support needs, are aware of the option of receiving a direct payment, what this entails and how this might benefit them;</li> <li>• the circumstances where it would be appropriate to provide a direct payment;</li> <li>• the support that should be provided, both in making a decision as to whether to</li> </ul>	

<p>have a direct payment and in managing a payment where they have chosen to have one;</p> <ul style="list-style-type: none"> <li>• how the value of a direct payment should be calculated, the payment method of this and how the value should be revised if care and support needs change;</li> <li>• the period of time for which a direct payment should operate and what occurs should a person get into difficulty in managing a payment or decide at a subsequent date no longer to receive one.</li> </ul>
<p><b>POLICY INTENTION OF THE REGULATIONS</b></p>
<p>It is Welsh Government policy to provide greater choice and control to those who develop needs for care and support to give them a greater say over the way in which these needs are met. This applies to the care and support needs of a child as much as those of an adult. Given that one of the key ways in which this can be achieved is to provide those with parental responsibility for a child with care and support needs, or certain categories of children with such needs, with a direct payment to arrange that care and support themselves, the policy intent of the regulation is twofold. First, it is to maintain and improve the current operation of direct payments in Wales so that all those children who currently benefit from these can continue to do so in the future. Second, it is to increase the take up of direct payments in Wales by ensuring that more individuals with care and support needs are aware of this option and what it would mean for them. This is so that a greater number of those with care and support needs can benefit from direct payments and make an informed choice, or in the case of a child have an informed choice made on their behalf, as to whether direct payments are right for them without any undue influence from their local authority.</p>
<p><b>WORK TO DATE</b></p>
<p>The Welsh Government has been working with the Direct Payments Overview Group (which represents local authority, disability and carer organisation stakeholders) on a set of principles on the future provision of direct payments. These principles cover good practice areas of direct payments such as eligibility and choice, provision of information, support, reviews and outcomes, and the value and calculation of direct payments. The principles have been agreed by Welsh Ministers and will be used to inform the development of the regulations and code of practice on direct payments under the Bill.</p>
<p><b>RELEVANT POLICY DOCUMENTS, MINISTERIAL STATEMENTS OR COMMITMENTS:</b></p>
<p>The Deputy Minister for Social Services has given a commitment to work closely with the Direct Payments Overview Group in developing the regulations and code of practice on direct payments under the Bill with the aim of making it easier for people to understand direct payments and to access and use them should they wish, thereby increasing their take up.</p>
<p><b>OTHER CONSIDERATIONS:</b></p>
<p>None.</p>
<p><b>INTERDEPENDENCIES AND LINKS TO OTHER POWERS/REGULATIONS:</b></p>
<p>Regulations under Section 41(1) and 43(1) mirror this regulation, in respect of direct payments to meet an adult's needs (Section 41) and direct payments to meet a carer's needs (Section 43).</p>

<b>REGULATIONS RELATING TO:</b>	Direct payments
<b>BILL PART:</b>	4
<b>SECTION AND SUB-SECTION:</b>	43(1)
<b>DESCRIPTION OF THE POWER/REGULATION</b>	
Regulations under this section may require or allow a local authority to make payments to a person towards the cost of meeting a carer's needs for care and support under section 33, 34 and 36 of the Bill, subject to certain conditions being met specified in section 43.	
<b>WHY THE REGULATION POWER IS REQUIRED</b>	
The power is required to enable local authorities to make a direct payment to a carer to meet their needs for care and support as an alternative to the local authority arranging for those needs to be met directly. This is where that carer has requested this and the authority believes this is an appropriate way of meeting those needs. Without this power local authorities would not legally be able to make such direct payments.	
<b>WHAT THE REGULATION POWER CAN ACHIEVE</b>	
<p>Direct payments are an alternative way of meeting the needs of people who are eligible for care and support. Rather than the local authority providing or arranging for the care and support need to be met directly, a direct payment to the value of the care and support required can be provided to a carer so as to enable their care and support to be arranged by them. This gives that carer greater choice and control over how exactly these needs are met and in what way.</p> <p>Under existing legislation a local authority must provide a direct payment if a carer who is an adult or a child aged 16 or 17 with care and support needs requests one and the authority is satisfied that making the payment is an appropriate way of meeting those needs and that the carer is capable of managing the payment (either on their own or with support).</p> <p>The regulation making power will enable direct payments to continue to be provided and allow the Welsh Ministers, via the regulations and code of practice, to set out how such arrangements should operate in future by specifying such things as:</p> <ul style="list-style-type: none"> <li>• the steps that local authorities should take to ensure that carers with care and support needs are aware of the option of receiving a direct payment, what this entails and how this might benefit them;</li> <li>• the circumstances where it would be appropriate to provide a direct payment;</li> <li>• the support that should be provided, both in making a decision as to whether to have a direct payment and in managing a payment where they have chosen to have one;</li> <li>• how the value of a direct payment should be calculated, the payment method of this and how the value should be revised if care and support needs change;</li> <li>• the period of time for which a direct payment should operate and what occurs should a person get into difficulty in managing a payment or decide at a subsequent date no longer to receive one.</li> </ul>	
<b>POLICY INTENTION OF THE REGULATIONS</b>	

It is Welsh Government policy to provide greater choice and control to those who develop needs for care and support to give them a greater say over the way in which these needs are met. This applies to the care and support needs of a carer as much as it does to those individuals who develop a need for care and support. Given one of the key ways in which this can be achieved is to provide carers with care and support needs with a direct payment to arrange that care and support themselves, the policy intent of the regulation is twofold. First, it is to maintain and improve the current operation of direct payments in Wales so that all those carers who currently benefit from these can continue to do so in the future. Second, it is to increase the take up of direct payments in Wales by ensuring that more individuals with care and support needs, including carers, are aware of this option and what it would mean for them. This is so that a greater number of those with care and support needs can benefit from direct payments and make an informed choice as to whether direct payments are right for them without any undue influence from their local authority.

**WORK TO DATE**

The Welsh Government has been working with the Direct Payments Overview Group (which represents local authority, disability and carer organisation stakeholders) on a set of principles on the future provision of direct payments. These principles cover good practice areas of direct payments such as eligibility and choice, provision of information, support, reviews and outcomes, and the value and calculation of direct payments. The principles have been agreed by Welsh Ministers and will be used to inform the development of the regulations and code of practice on direct payments under the Bill.

**RELEVANT POLICY DOCUMENTS, MINISTERIAL STATEMENTS OR COMMITMENTS:**

The Deputy Minister for Social Services has given a commitment to work closely with the Direct Payments Overview Group in developing the regulations and code of practice on direct payments under the Bill with the aim of making it easier for people to understand direct payments and to access and use them should they wish, thereby increasing their take up.

**OTHER CONSIDERATIONS:**

None

**INTERDEPENDENCIES AND LINKS TO OTHER POWERS/REGULATIONS:**

Regulations under Section 41(1) and 42 (1) mirror this regulation, in respect of direct payments to meet an adult's needs (Section 41) and direct payments to meet a child's needs (Section 42).

<b>REGULATIONS RELATING TO:</b>	Care and Support Plans and their Review
<b>BILL PART:</b>	4 and links to part 6
<b>SECTION AND SUB-SECTION:</b>	45(4), 46 ,(see 74 and 75)
<b>DESCRIPTION OF THE POWER/REGULATION</b>	
<p>Section 45 (4) allows regulations to be made to prescribe the matters which must be addressed in a care and support plan or a support plan. The framework established by the section allows the detail to be set out in regulations, and will permit greater flexibility as different provisions can be made for the different groups of people; children, adults, and carers of children or adults.</p> <p>Section 46 provides that regulations may be made specifying plans to be produced in a certain form; containing certain things; including arrangements for consulting with different people in the plan's preparation and review; specifying who prepares and reviews the plans; specifying to whom written copies of the plan are provided including to whom the plan can be given without the eligible person's consent and the circumstances in which the plans must be reviewed. Regulations may also specify that plans are to be prepared alongside and at the same time as plans required under other statutes.</p> <p>Links are made between sections 45 and 74 in relation to local authorities' duties to prepare care and support plans for children who meet the eligibility criteria and those passported because they are at risk or likely to be at risk (child protection cases) and duties to ensure the preparation of a care and support plan for a child who is looked after.</p> <p>Section 74 requires that where a child does not have a plan under section 45 the local authority must prepare, review and maintain the plan for Looked After Children (LAC).</p> <p>Related to this, regulations in section 74 must further provide for the content and review of the plans and that if other plans are being prepared for the child by other bodies,(for example a mental health care and treatment plan), for those plans to be included within the care and support plan. The local authority must also carry out a new assessment and revise the plan if it believes the circumstances of the child have changed in such a way as to affect the existing plan.</p> <p>Section 75 provides that regulations may be made specifying the form the plan should take, its content, the consultation with people who should contribute to the preparation and review of a plan, who should prepare the plan, who should receive written copies of the plan and the circumstances for reviewing the plan.</p> <p>In considering the full impact of local authorities' duties in respect of care plans and care and support plans, consideration must be given to clause 15 of the Department of Education's Children and Families Bill that will amend section 31A of the Children Act 1989 – plans the local authorities are required to prepare by order of a court in connection with a public law case.</p> <p>This provides that court plan under the section 31A of the Children Act 1989 can be discharged under sections 45 and 74 of the Bill.</p>	



For more information see legislative Consent Memorandum for Children and Families Bill approved by the National Assembly for Wales in April 2013.

[http://www.assemblywales.org/bus-home/research/bus-assembly-publications-monitoring-services/bus-lcm\\_monitor/bus-lcm\\_monitor-2014.htm?debug=211&debugimg=on&debugobj=243252&debugslotid=0#cmo-actions](http://www.assemblywales.org/bus-home/research/bus-assembly-publications-monitoring-services/bus-lcm_monitor/bus-lcm_monitor-2014.htm?debug=211&debugimg=on&debugobj=243252&debugslotid=0#cmo-actions)

#### **WHY THE REGULATION POWER IS REQUIRED**

The Bill requires that when a local authority has a duty to a child, carer or adult under sections 28, 30, 33 and 34 they must prepare a **care and support plan** or in the case of child/ adult carer – **a support plan**. These are people who will have an **eligible need** – meeting the relevant eligibility criteria set in regulations to be made under section 26 (3).

Local authorities also have a duty to prepare **care and support plans** for people who are ;

- in need of protection under section 26(1)(b),
- looked after and other accommodated children and young people in part 6 of the Bill

There are also duties placed on local authorities under Parts 4 and 5 of the Children Act 1989 concerning protection of children and care and supervision orders made by a family court

For looked after children there are overlapping duties under section 74 and 75 of the Bill and clause 6 of the Children and Families Bill as to the preparation, review and maintenance of care and support plans. This is in recognition of local authorities' corporate responsibility to LAC and the additional duties that will apply through directions of a court or other circumstances, to the care plans and review of LAC who in the main live away from home in foster care, kinship care, residential care or other placements.

For example section 90 of the Bill places duties on local authorities to appoint an independent reviewing officer (IRO) to lead in the review of a looked after child's case. These duties to appoint an IRO are not extended to non-LAC children who have a care and support plan. However, regulation powers under section 45 and the Code of Practice may provide for the appointment of key people to undertake the review of child's care and support plan and when this is so required.

The complexity and severity of an individual's needs will determine the scope and detail of the care and support plan, and the range of interventions and professionals who will contribute to the type of support and frequency of reviews. Care and support plans are informed by the assessment of the individual's needs, circumstances, and outcomes to be achieved, and the level of prescription in each group of care and support plans will differ.

The plan will also set out any charges that individual must contribute to their care and support and any direct payment arrangements.

Differing emphases will be applied in each case. For example, for a child the care and support plans will focus on their safety, physical, intellectual, emotional and social development; support to be provided to parents, short and long term stability of the child, and educational attainment. For an adult the plan will describe strategies to enable the adult to maintain day to day control over their lives and to enable independence.

Collectively the provisions listed above in respect of preparation and review of care and support plans for people (and support plans for carers) provide a coherent framework to support the day to day operation of local authorities in discharging their duties in the preparation of plans.

Together, regulation making powers and the provision for Code of Practice are important to achieve the policy aim of ensuring the individual has a ***single integrated plan***.

Regulations provide a flexible framework to enable the detailed practice arrangements that local authorities must make for the preparation of care and support plans (and support plans for carers) for children, adults and carers.

Like assessments, care and support plans are not fixed in time and processes must be reviewed in line with evidenced-based practice, demand, service patterns and people's expectations. The regulation powers enable the Welsh Ministers to respond to reflect changes in: socio-economic policy, practice and other circumstances over time.

#### **WHAT THE REGULATION POWER CAN ACHIEVE**

The main duties of local authorities in relation to the preparation of care and support plans are on the face of the Bill and linked statutes in circumstances where individuals have multiple and often complex needs.

Sections 45 and 46 enable the Welsh Ministers to make further provisions about the preparation and review of care and support plans. This is suitable for regulations as there will be a need to amend the detail in this area over time. Regulations will ensure that, where practical, professionals work jointly to provide integrated care and support in delivering the outcomes in the plan, and ensure there is regular review of the plans to ensure changing needs/ circumstances and outcomes are reflected and acted upon within the plans.

#### **POLICY INTENTION OF THE REGULATIONS**

Section 45 places an express duty on the Welsh Ministers to bring forward regulations on the detailed arrangements that local authorities must follow in the preparation and review of care and support plans for children and adults.

The policy intent is that regulations and Code of Practice will prescribe a set of core requirements for each group; child , adult and carer, as illustrated below:

- specify the form and minimum content for care and support plans for a child, adult (and in the case of carers the minimum to be included within a support plan for a child carer and adult carer) ;

- a requirement that the individual, and any others specified, must be fully involved / participate in and agree the action and outcomes in the plan;
- who is to have a copy of the plan;
- allocation of lead professional responsible for co-ordinating the completion and monitoring the plan;
- the responsibility, contribution and resources of each agency to the plan;
- the arrangements for review of plans including :
  - > who should be involved in reviews;
  - > timeline for reviews;
  - > people who may undertake and be involved in reviews;
  - > recording of reviews;
  - > who must be given copies of reviews;
  - > circumstances when a person can request a re-review.

The list is not exhaustive. The prescription for each group; child, adult and carer will differ depending on circumstances. Regulations will be supported by a Code of Practice that local authorities must comply with. The requirement for care and support plans and for the review of both care and support plans, and support plans in the case of carers, will be set by a combination of the regulations and Code of Practice

For detailed requirements for Looked After Children (LAC) care and support plans and the review of those plans and cases see regulation template for regulation making powers under sections 74, 75, 92 and 93.

#### **WORK TO DATE**

Comprehensive engagement with stakeholders has been undertaken on a number of levels on the outline framework that should underpin assessment and more widely on the role that assessment and eligibility has in identifying and supporting an individual's needs within the new system. These include;

- Wider discussion at consultation events on the SSWB Bill involving over 700 delegates – (March 2012 and 2013)
- Dedicated workshops (2 days across three regions of Wales involving up to 200 stakeholders) over Autumn 2012 and early 2013 supported by the Social Services Improvement Agency (SSIA) – outcomes are reported in: Access to Care and Wellbeing in Wales
- Internal workshop across health and social care policy leads and Inspectorates
- [Care and Social Services Inspectorate (CSSIW) and Health Inspectorate Wales (HIW)] – spring / summer 2013
- Specific presentations on the new system where assessment is at its core to stakeholders of key representative bodies including: Carers Alliance, Wales Council for Voluntary Action (WCVA), Disability Wales, Children in Wales, Local Authority Head of Children and Adult Services, Care Council for Wales, LHB Directors and Clinical Professional Leads, Boards of Occupational Therapist, Universities through the All-Wales Academic Social Care Research Collaboration

#### **Consultation on new guidance under existing Law**

- Task Group and Workshops on the new Integrated Assessment, Planning and

Review Arrangements for People 65+ (September – October 2013). Arrangements have been developed under current legislation whilst using both the broader application of well-being and the key factors that will underpin assessment in line with Social Services and Wellbeing (Wales) Bill. This has enabled a detailed review of the current system and will provide a bridge in the transition of practice across health and social care towards the new system under the Bill. Local authorities and LHBs are required to implement the new guidance for 65+ from 2 December 2013 and to develop a common local template by 30 April 2014. The guide will inform the future regulation requirements for adult assessment.

This ongoing engagement with stakeholders has provided clarity and developed consensus on the future system and the significant role that planning and continuity of care through portability will hold in it.

This impact and quality of the engagement on the new system for assessment, eligibility, care and support plans, review and portability of plans is reflected in the report by Welsh Local Government Association (WLGA) and the NHS Confederation Wellbeing under Social Services & Wellbeing: ***Transitional and longer-term implications of the Social Services and Well-Being (Wales) Bill 2013***

<http://www.wlga.gov.uk/publications-and-consultation-responses-ss/transitional-and-longer-term-implications>

**RELEVANT POLICY DOCUMENTS, MINISTERIAL STATEMENTS OR COMMITMENTS:**

- Key written Statement in July and November (2013) on Assessments and Eligibility.
- Detailed responses to HSCC on assessment and wider matters – published on the NAFW website – record of proceedings for stage 1 of the Bill.
- Legislative Consent Motion: Children and Families Bill - reported on by HSSC in March 2-13 and approved by the NAFW in April 2013.
- Published information factsheets on care and support plans and review of plans

<http://wales.gov.uk/topics/health/publications/socialcare/guidance1/factsheets/?lang=en>

**OTHR CONSIDERATIONS:**

None.

**INTERDEPENDENCIES AND LINKS TO OTHER POWERS/REGULATIONS:**

Eligibility, care planning, review, and portability [sections 26, 45, 46 and 47 refer]  
 Part 6 – Looked After Children and other accommodated children  
 Children and Families Bill – clause 6  
 Care Bill – clause 74 changes to Mental Health Act 1983 – after care services

<b>REGULATIONS RELATING TO:</b>	Care and Support – Portability
<b>BILL PART:</b>	4
<b>SECTION:</b>	47(5)
<b>DESCRIPTION OF THE POWER/REGULATION</b>	
<p>Section 47 provides for the portability of care and support and re-assessment for children and adults in relation to whom the local authority has a duty under sections 28 or 30 of the SSWB Bill. This section relates to children and adults who have <i>eligible needs</i> or are <i>passported</i> in order to protect them and the provision aims to assure a level of continuity of care for people with eligible need moving to live across local authority areas of Wales.</p> <p>In respect of carers, provision is made to ensure that information about a parent or carer is also subject of the notification between the sending and receiving authority so that carers can be considered for support alongside consideration of the eligible need of the child/ adult for whom they are caring.</p> <p>The provision aims to ensure that following notification by an eligible person of their intention to move to another local authority area there is good communication between the authorities. The provision is concerned with advanced notice about the care needs etc. This ensures the necessary preparations for the continued provision of care are made before the person(s) move to reside in another area.</p> <p>A regulation-making power is necessary to enable the detailed arrangements that the sending and receiving local authority must have in place to ensure continuity of care.</p>	
<b>WHY THE REGULATION POWER IS REQUIRED</b>	
<p>Section 47 provides that a local authority (the ‘sending authority’) must notify another local authority (within Wales) of an eligible person’s intention to move to that authority and provide it with a copy of the person’s care and support plan. If that person has a carer, a copy of his or her support plan should also be provided plus any other information the ‘receiving authority’ may deem relevant. Further, when the ‘receiving authority’ is satisfied that the person is moving to its area it must notify the ‘sending authority’ of this, provide the eligible person and their carer, if they have one, with appropriate information and review the care and support plan.</p> <p>On the day that the eligible person moves to the area, the ‘receiving authority’ must, if it hasn’t reviewed the ‘sending authority’s’ plan(s) or carried out new assessments, meet the care and support needs identified and set out in the eligible person’s plan that was prepared by the ‘sending authority’ and it must do so until it completes its own review and assessments along with any other steps that need to be taken.</p> <p>Regulations may make further provision with regard to the steps to be taken, the matters to which the ‘receiving authority’ must have regard and where the duties – i.e. in specified cases - - on portability are to be dis-applied.</p>	
<b>WHAT THE REGULATION POWER CAN ACHIEVE</b>	

The main duties of local authorities in relation to portability of care are on the face of the Bill at section 47. However regulations will provide flexibly to ensure changes can be made to the detailed operational arrangements, flowing from the Bill provisions, that local authorities must make in meeting the broad aims of section 47. Regulations will therefore be used to amend the details over time to reflect changing policy and evidence-based practice.

## **POLICY INTENTION OF THE REGULATIONS**

The regulations and Code of Practice will set out;

- the minimum level of information to be shared between the sending and receiving authorities
- the expectation on the receiving authority on how to ensure a level of continuity of care, relating to that set out in the care plan, until the receiving authority carries out a review and re-assessment of the person's care and support needs.
- timescales by which the information must be shared
- timescales by which the receiving authority must review / re-assess the care package as set out in the plan.

The prescription for each group; child or adult and their parent / carer and the level of information to be shared between each area will differ depending on circumstances. Regulations will be supported by a Code of Practice that local authorities must also comply with. The requirement for portability of care in order to achieve continuity of care for an eligible person will therefore be set by a combination of the regulations and the Code of Practice

It is important to note that portability will apply in the main to children and adults with eligible need under Part 4 of the Social Services and Well-being (Wales) Bill. In the main it will ensure adults are supported to live in the community – those who may be in receipt of domiciliary care, respite care, therapeutic interventions, family services, or disabled children and young people who may need housing adaptations, aids etc.

Local authorities' duties to adults placed in residential care will remain unchanged and unless there is a change in ordinary residency rules (under section 177) the local authority will remain responsible for the adult care, and for any request to move to another residential setting outside their area: for example when a person wishes to move to a residential home close to their family.

Similarly, for children under Part 6 (LAC and other accommodated children), the authority who initially had responsibility for the child i.e. the responsible corporate parent [see section 177 (6)] will continue to be responsible for their stability of care and support when they are placed with foster care, children homes or live with parents/ extended family who move to reside in another local authority area.

At the heart of the new system will be a person's right to exercise voice and control about the outcomes they wish to achieve. The Welsh Government strategy *More Than Just Words* will also be reflected in the Code of Practice and day to day operation of the new system

## **WORK TO DATE**

Comprehensive engagement with stakeholders has been undertaken on a number of levels on the outline framework that should underpin assessment and more widely on the role that assessment and eligibility has in identifying and supporting an individual's needs within the new system. These include;

- Wider discussion at consultation events on the SSWB Bill involving over 700 delegates – (March 2012 and 2013)
  - Dedicated workshops (2 days across three regions of Wales involving up to 200 stakeholders) over Autumn 2012 and early 2013 supported by the Social Services Improvement Agency (SSIA) – outcomes are reported in: ***Access to Care and Wellbeing in Wales***
- Internal workshop across health and social care policy leads and Inspectorates [Care and Social Services Inspectorate (CSSIW) and Health Inspectorate Wales (HIW)] – spring / summer 2013
- Specific presentations on the new system where assessment is at its core to stakeholders of key representative bodies including: Carers Alliance, Wales Council for Voluntary Action (WCVA), Disability Wales, Children in Wales, Local Authority Head of Children and Adult Services, Care Council for Wales, LHB Directors and Clinical Professional Leads, Boards of Occupational Therapists, Universities through the All-Wales Academic Social Care Collaboration.

#### **Consultation on new guidance under existing Law**

- Task Group and Workshops on the new ***Integrated Assessment, Planning and Review Arrangements for People 65+*** (September – October 2013). Arrangements have been developed under current legislation whilst using both the broader application of well-being and the key factors that will underpin assessment in line with Social Services and Wellbeing (Wales) Bill. This has enabled a detailed review of the current system and will provide a bridge in the transition of practice across health and social care towards the new system under the Bill. Local authorities and LHBs are required to implement the new guidance for 65+ from 2 December 2013 and to develop a common local template by 30 April 2014. The guide will inform the future regulation requirements for adult assessment.

This ongoing engagement with stakeholders has provided clarity and developed consensus on the future system and the significant role that planning and continuity of care will hold in it.

This impact and quality of the engagement on the new system is reflected in the report published in October 2013 by the Welsh Local Government Association (WLGA) and NHS Confederation - ***Transitional and longer-term implications of the Social Services & Well-Being (Wales) Bill 2013***

#### **RELEVANT POLICY DOCUMENTS, MINISTERIAL STATEMENTS OR COMMITMENTS:**

- Key written Statement in July and November (2013) on Assessments and Eligibility.
- Detailed responses to HSCC on assessment and wider matters – published on

<p>the National Assembly for Wales (NAfW) website – record of proceedings for stage 1 of the Social Services and Wellbeing (Wales) Bill.</p> <ul style="list-style-type: none"><li>• Information Factsheets on portability</li></ul>
<b>OTHER CONSIDERATIONS:</b>
None.
<b>INTERDEPENDENCIES AND LINKS TO OTHER POWERS/REGULATIONS:</b>
Assessment, eligibility, care planning and review. [Sections, 16, 18, 19, 24, 26, 45 and 46 refer].



<b>REGULATIONS RELATING TO:</b>	Meeting needs
<b>BILL PART:</b>	4
<b>SECTION :</b>	48(1)
<b>DESCRIPTION OF THE POWER/REGULATION</b>	
Regulations under this section may provide that where a local authority is to meet the needs of a person under section 28 to 31 and 33 to 36 of the Bill, by providing or arranging accommodation of a specified type, and the person expresses a preference for particular accommodation, the local authority must provide or arrange for that preferred accommodation.	
<b>WHY THE REGULATION POWER IS REQUIRED</b>	
The power is required to enable a person who is to receive accommodation to meet their needs, to express a preference for alternative accommodation of the same type. This would be subject to certain conditions being met. Without this power those receiving accommodation would not be able to exercise any choice over this.	
<b>WHAT THE REGULATION POWER CAN ACHIEVE</b>	
<p>The regulations may provide that:</p> <ul style="list-style-type: none"> <li>• where a local authority is to meet a person's needs by providing or arranging for the provision of accommodation of a specified type, and; the person concerned, or a person of a specified description, expresses a preference for particular accommodation of that type, and; specified conditions are met; the local authority must provide or arrange for the provision of the preferred accommodation. (For example a person being placed in a care home might express a preference to be placed in a different home of the same type to that which their local authority proposes; or they might express a preference for superior accommodation in the same home to that which their local authority plans to provide);</li> <li>• where this occurs, the person concerned, or a person of a specified description, may be required to pay some of all of the additional cost (if any) of the preferred accommodation in specified cases or circumstances (for example the cost of a placement in a care home a person expresses a preference for may cost more than that which a local authority would normally commission).</li> </ul>	
<b>POLICY INTENTION OF THE REGULATIONS</b>	
<p>It is Welsh Government policy to support a person's ability to make choices over the type of care and support they receive including any accommodation they receive. Consequently, where a local authority is responsible for placing a person into residential accommodation, that person should be able to exercise choice over this accommodation as long as any preferred accommodation is of the same type and, where it costs more, they are prepared to meet any difference in costs.</p> <p>As a result, under current legislation those placed in residential accommodation are able to exercise choice in these circumstances. It is our intention through the regulations to be made under the Bill to maintain this principle so as to ensure that people in this situation continue to have choice and control over the type of care and support they receive, including their accommodation.</p>	
<b>WORK TO DATE</b>	

none
<b>RELEVANT POLICY DOCUMENTS, MINISTERIAL STATEMENTS OR COMMITMENTS:</b>
None
<b>OTHERS CONSIDERATIONS:</b>
None
<b>INTERDEPENDENCIES AND LINKS TO OTHER POWERS/REGULATIONS:</b>
None

<b>REGULATIONS RELATING TO:</b>	Charging and financial assessment
<b>BILL PART:</b>	5
<b>SECTION:</b>	52 (1)
<b>DESCRIPTION OF THE POWER/REGULATION</b>	
Regulations under this section may make provision for the exercise by a local authority of the power to impose a charge under section 50 of the Bill. This is for providing or arranging the provision of care and support under sections 28 to 36 to meet a person's needs, or putting in place arrangements for meeting needs under sections 28(4)(b)(ii), 29, 31, 33(6), 33 (8), 34 (6) or 36.	
<b>WHY THE REGULATION POWER IS REQUIRED</b>	
The power is required to set out certain aspects of an authority's ability to impose a charge for providing, arranging, or putting in place arrangements, for care and support needs to be met. Without this power local authorities would be able to exercise the power to impose a charge in these circumstances unfettered, without any universal financial safeguards for those with low financial means who may be asked to meet such charges, consistently applied by all authorities in Wales.	
<b>WHAT THE REGULATION POWER CAN ACHIEVE</b>	
<p>The regulations can:</p> <ul style="list-style-type: none"> <li>• make provision about the amount of charge that may be imposed for care and support;</li> <li>• set a formula or method for determining those maximum amounts;</li> <li>• fix a charge for care and support of a specified type, or a combination of these, for a set period of time and the maximum amount that may be imposed in such circumstances, including setting a formula or method for determining that maximum amount;</li> <li>• make provision about the amount of charge that may be imposed for putting in place arrangements for needs to be met;</li> <li>• specify a maximum amount of a charge which may be imposed for putting in place such arrangements in specified circumstances or for persons of a particular type.</li> </ul>	
<b>POLICY INTENTION OF THE REGULATIONS</b>	
<p>It is Welsh Government policy that where a person is asked to pay a charge for the care and support they receive, or where they are charged by a local authority for putting in place arrangements to meet needs, their financial resources should be assessed in a consistent manner by local authorities to ensure equality of treatment . It is also Welsh Government policy that only those with adequate financial means should be expected to pay for care and support.</p> <p>As a result under the current charging legislation a maximum weekly amount has been set in regulations in relation to charging for non-residential social services provided, or arranged, by a local authority for an adult receiving these. This includes where the adult receives a Direct Payment to secure their own services. This provision protects those with low levels of financial means who are required to pay for their non-residential services, with this protection being applied consistently across all local authorities.</p> <p>It is our intention through the regulations to be made under the Bill to maintain a</p>	

weekly maximum charge in relation to charges for non-residential social services as part of our future policy on paying for residential and non-residential care. As part of the development of this policy, consideration will also be given to the other aspects of the regulation making powers under section 52(1) and whether it is appropriate to extend the regulations made to apply them. This will include, for example, whether a maximum charge should be set for specified care and support, or set for a specified period, or set for putting in place arrangements for needs to be met. This policy is being developed during 2014 with stakeholder representatives from local government, third sector and care recipients with the Welsh Ministers making final decisions in the autumn of 2014.

#### **WORK TO DATE**

The Social Care Charges (Wales) Measure 2010 gave Welsh Ministers the power to set a weekly maximum charge for people in receipt of non-residential social services. As a result regulations were made to introduce a weekly maximum charge of £50 for these services. The Welsh Government has provided additional funding to local authorities to reimburse them for the income foregone resulting from this.

Welsh Ministers plan to introduce reforms to paying for social care from April 2016. This is to make the arrangement for paying for care fairer and more sustainable in long term. Work has commenced on developing reforms for Wales that are tailored to our specific circumstances, such as a higher proportion of older people with greater care needs and lower levels of financial means. To help inform and shape reform proposals, a research study is being commissioned to gather and analyse core data on factors such as present charges collected, population make up and trends together with composition and trends on Welsh citizens' income and capital assets. This study is due to report over the next 6 to 9 months.

#### **RELEVANT POLICY DOCUMENTS, MINISTERIAL STATEMENTS OR COMMITMENTS:**

In her Written Statement to Assembly Members in March 2013, the Deputy Minister for Social Services announced her intention to reform paying for social care in Wales from April 2016. The timing of the introduction of this is in line with the timing of the implementation of the UK Government's reforms for England which will be based on the recommendations of the Dilnot Commission.

The Deputy Minister's Statement confirmed her intention to build reforms upon the maximum charge provision currently in place in Wales for charging for non-residential social services. She also confirmed that she would wish to consider, carefully, the detail of the UK Government's implementation plans and gain a fuller understanding of how its reform model will work, and the cost implications, before any final decisions are made over a way forward for Wales.

#### **OTHER CONSIDERATIONS:**

None.

#### **INTERDEPENDENCIES AND LINKS TO OTHER POWERS/REGULATIONS:**

Regulations under section 52(1) would link to regulations made under sections 53, 55(1), 56, 57(3), 58(2) which relate to the imposition of a charge or the determination of a charge.

<b>REGULATIONS RELATING TO:</b>	Charging and financial assessment
<b>BILL PART:</b>	5
<b>SECTION:</b>	53
<b>DESCRIPTION OF THE POWER/REGULATION</b>	
<p>Regulations under this section may make provision that disapplies a local authority's power to impose a charge under section 50 of the Bill. This is for providing or arranging the provision of care and support under sections 28 to 36 to meet a person's needs, or for putting in place arrangements for meeting needs under sections 28(4)(b)(ii), 29, 31, 33(6), 33(8), 34(6) or 36.</p>	
<b>WHY THE REGULATION POWER IS REQUIRED</b>	
<p>The power is required to disapply an authority's ability to impose a charge for providing, arranging, or putting in place arrangements, for care and support needs to be met. Without this power local authorities would be able to exercise the power to impose a charge in these circumstances unfettered and without a consistent approach to disapplication of charging across all authorities.</p>	
<b>WHAT THE REGULATION POWER CAN ACHIEVE</b>	
<p>The regulations can disapply the power to impose a charge where care and support is:</p> <ul style="list-style-type: none"> <li>• of a specified type;</li> <li>• provided or arranged in specified circumstances (for example, transport to a day centre where it is part of a person's assessed care and support needs);</li> <li>• provided to, or arranged for, persons of a specified description (for example a person who has contracted new-variant CJD);</li> <li>• provided or arranged for a specified period (for example, the first 6 weeks of homecare following a stay in hospital).</li> </ul>	
<b>POLICY INTENTION OF THE REGULATIONS</b>	
<p>It is Welsh Government policy that where a person is asked to pay a charge for the care and support they receive, or where they may receive a charge for putting in place arrangements to meet needs, their financial resources to meet such charges should be assessed and treated in a consistent manner by local authorities in their calculation of a person's ability to meet these charges. This is to ensure equality of treatment of those asked to meet a charge imposed. It is also Welsh Government policy that only those who have the financial means to meet a charge should be expected to do so and that there are certain circumstances where a charge should not be imposed.</p> <p>As a result under the current charging legislation, charging is disapplied in a number of cases. For example, those who have contracted new-variant CJD are not charged for the homecare and other non-residential social services they receive on the grounds that they have already suffered serious harm through no fault of their own. Equally, charging does not occur for transport to a day centre where this is part of a person's assessed care and support needs. This is to put older and disabled people in this position on a par with those who receive free transport through the Welsh Government's concessionary fares policy.</p>	

It is our intention through the regulations to be made under the Bill to maintain such policies as part of our future policy on paying for social care. This is to disapply charging where it is appropriate to financially protect people in particular circumstances or who receive particular care and support. As part of the development of this policy, consideration will be given to exactly what situations, persons and specified types of care and support charging should not be imposed. This policy is being developed during 2014 with stakeholder representatives from local government, third sector and care recipients with the Welsh Ministers making final decisions in the Autumn of 2014.

#### **WORK TO DATE**

The Social Care Charges (Wales) Measure 2010 gave Welsh Ministers the power to disapply local authorities' discretion to impose a charge for receipt of non-residential social services. As a result regulations were made to introduce a number of situations where charging could not take place.

Welsh Ministers plan to introduce reforms to paying for social care from April 2016. This is to make the arrangement for paying for care fairer and more sustainable in long term. Work has commenced on developing reforms for Wales that are tailored to our specific circumstances, such as a higher proportion of older people with greater care needs and lower levels of financial means. To help inform and shape reform proposals, a research study is being commissioned to gather and analyse core data on factors such as present charges collected, population make up and trends together with composition and trends on Welsh citizens' income and capital assets. This study is due to report over the next 6 to 9 months.

#### **RELEVANT POLICY DOCUMENTS, MINISTERIAL STATEMENTS OR COMMITMENTS:**

In her Written Statement to Assembly Members in March 2013, the Deputy Minister for Social Services announced her intention to reform paying for social care in Wales from April 2016. The timing of the introduction of this is in line with the timing of the implementation of the UK Government's reforms for England which will be based on the recommendations of the Dilnot Commission.

The Deputy Minister's Statement confirmed her intention to build reforms upon the maximum charge provision currently in place in Wales for charging for non-residential social services. She also confirmed that she would wish to consider, carefully, the detail of the UK Government's implementation plans and gain a fuller understanding of how its reform model will work, and the cost implications, before any final decisions are made over a way forward for Wales.

#### **OTHER CONSIDERATIONS:**

None

#### **INTERDEPENDENCIES AND LINKS TO OTHER POWERS/REGULATIONS:**

Regulations under section 53 would link to regulations made under sections 52(1), 55(1), 56, 57(3), 58(2) which relate to the imposition of a charge or the determination of a charge.

<b>REGULATIONS RELATING TO:</b>	Charging and financial assessment
<b>BILL PART:</b>	5
<b>SECTION:</b>	55(1)
<b>DESCRIPTION OF THE POWER/REGULATION</b>	
Regulations under this section may must make provision in connection with a local authority's duty to carry out a financial assessment under section 54 of the Bill where it thinks it would impose a charge under section 50 to meet a person's needs care and support..	
<b>WHY THE REGULATION POWER IS REQUIRED</b>	
The power is required to make provision for the treatment or non-treatment of amounts of a specified type as income or capital. It is also required to specify cases or circumstances where a person is to be treated as having financial resources which exceed a specified level and where a new financial assessment must or may be carried out. Without this power local authorities would be able to undertake a financial assessment unfettered, without any consistency of approach in these areas.	
<b>WHAT THE REGULATION POWER CAN ACHIEVE</b>	
<p>The regulations:</p> <ul style="list-style-type: none"> <li>• must make provision for calculating income (for example specifying particular types of pensions and benefits);</li> <li>• must make provision for calculating capital (for example specifying particular types of savings and investments);</li> <li>• may make provision for the treatment or non-treatment of amounts of a specified type as income or as capital (for example specifying which forms of income must be disregarded in a financial assessment);</li> <li>• may specify cases or circumstances in which a person is to be treated as having financial resources which exceed a specified level (for example where a person has not provided evidence and an assumption is made about their financial resources); and</li> <li>• may set out cases or circumstances in which a new financial assessment must or may be carried out.</li> </ul>	
<b>POLICY INTENTION OF THE REGULATIONS</b>	
<p>It is Welsh Government policy that where a person is asked to pay a charge for the care and support they receive, or where they may receive a charge for putting in place arrangements to meet needs, their financial resources to meet such charges should be assessed and treated in a consistent manner by local authorities in their calculation of a person's ability to meet these charges. This is to ensure equality of treatment of those asked to meet a charge imposed. It is also Welsh Government policy that only those who have the financial means to meet a charge should be expected to do so.</p> <p>As a result, under existing legislation, regulations and statutory guidance have been made which identify particular forms of financial resources a person receiving care and support may have, sets out whether these should regarded as income or capital and how each should be treated within a financial assessment.</p> <p>It is our intention through the regulations to be made under the Bill to maintain such</p>	

policies as part of our future policy on paying for social care. As part of the development of this policy, consideration will be given to exactly what forms of income and capital should be taken into account or disregarded within a financial assessment where a local authority is to impose a charge for care and support. This is to ensure equality and consistency of treatment of those who are subject to a financial assessment.

This policy is being developed during 2014 with stakeholder representatives from local government, third sector and care recipients with the Welsh Ministers making final decisions in the autumn of 2014.

#### **WORK TO DATE**

The National Assistance Act 1948 and the Social Care Charges (Wales) Measure 2010 gave Welsh Ministers the power to specify forms of income or capital and their treatment in a financial assessment. As a result regulations were made which set out a range of forms of income and capital and whether these should be taken into account, disregarded in full, or disregarded in part, in a financial assessment.

Welsh Ministers plan to introduce reforms to paying for social care from April 2016. This is to make the arrangement for paying for care fairer and more sustainable in long term. Work has commenced on developing reforms for Wales that are tailored to our specific circumstances, such as a higher proportion of older people with greater care needs and lower levels of financial means. To help inform and shape reform proposals, a research study is being commissioned to gather and analyse core data on factors such as present charges collected, population make up and trends together with composition and trends on Welsh citizens' income and capital assets. This study is due to report over the next 6 to 9 months.

#### **RELEVANT POLICY DOCUMENTS, MINISTERIAL STATEMENTS OR COMMITMENTS:**

In her Written Statement to Assembly Members in March 2013, the Deputy Minister for Social Services announced her intention to reform paying for social care in Wales from April 2016. The timing of the introduction of this is in line with the timing of the implementation of the UK Government's reforms for England which will be based on the recommendations of the Dilnot Commission.

The Deputy Minister's Statement confirmed her intention to build reforms upon the maximum charge provision currently in place in Wales for charging for non-residential social services. She also confirmed that she would wish to consider, carefully, the detail of the UK Government's implementation plans and gain a fuller understanding of how its reform model will work, and the cost implications, before any final decisions are made over a way forward for Wales.

#### **OTHER CONSIDERATIONS:**

None

#### **INTERDEPENDENCIES AND LINKS TO OTHER POWERS/REGULATIONS:**

Regulations under section 55 would link to regulations made under sections 52, 56, 57 and 58 relating to financial assessments and the determination of a person's ability to pay a charge.



<b>REGULATIONS RELATING TO:</b>	Charging and financial assessment
<b>BILL PART:</b>	5
<b>SECTION:</b>	56
<b>DESCRIPTION OF THE POWER/REGULATION</b>	
Regulations may make provision about circumstances in which a local authority is not required to exercise its duty under section 54 of the Bill to carry out a financial assessment of a person where it thinks it would impose a charge under section 50 to meet their needs for care and support.	
<b>WHY THE REGULATION POWER IS REQUIRED</b>	
The power is required to set out situations where it would not be appropriate for a local authority to undertake a financial assessment in such circumstances. Without this power local authorities would be under a duty to undertake a financial assessment in all circumstances where they propose to impose a charge under section 50 of the Bill.	
<b>WHAT THE REGULATION POWER CAN ACHIEVE</b>	
The regulations may: <ul style="list-style-type: none"> <li>• make provision about the circumstances in which a local authority is not required to exercise its duty under section 54 to carry out a financial assessment (for example where low level care and support is being provided for which a small fixed charge is made or where an urgent or unexpected need for care and support arises at short notice).</li> </ul>	
<b>POLICY INTENTION OF THE REGULATION</b>	
<p>It is Welsh Government policy that where a person is asked to pay a charge for the care and support they receive, or where they may receive a charge for putting in place arrangements to meet needs, their financial resources to meet such charges should be assessed and treated in a consistent manner by local authorities in their calculation of a person's ability to meet these charges. This is to ensure equality of treatment of those asked to meet a charge imposed. It is also Welsh Government policy that only those who have the financial means to meet a charge should be expected to do so. However, there are circumstances where it would not be appropriate to undertake a financial assessment as set out in the above examples.</p> <p>Under current legislation, regulations have been made which disapply the duty to undertake a financial assessment where it is appropriate to do so.</p> <p>It is our intention through the regulations to be made under the Bill to maintain such a policy as part of our future policy on paying for social care. As part of the development of this policy, consideration will be given to the circumstances in which the duty to undertake a financial assessment should be disapplied. This policy is being developed during 2014 with stakeholder representatives from local government, third sector and care recipients with the Welsh Ministers making final decisions in the autumn of 2014.</p>	
<b>WORK TO DATE</b>	
The National Assistance Act 1948 and the Social Care Charges (Wales) Measure 2010 gave Welsh Ministers the power to disapply the duty to undertake a financial	

assessment in certain circumstances. As a result regulations were made which set out particular circumstances where it would be appropriate to undertake a financial assessment.

Welsh Ministers plan to introduce reforms to paying for social care from April 2016. This is to make the arrangement for paying for care fairer and more sustainable in long term. Work has commenced on developing reforms for Wales that are tailored to our specific circumstances, such as a higher proportion of older people with greater care needs and lower levels of financial means. To help inform and shape reform proposals, a research study is being commissioned to gather and analyse core data on factors such as present charges collected, population make up and trends, together with composition and trends on Welsh citizens' income and capital assets. This study is due to report over the next 6 to 9 months.

**RELEVANT POLICY DOCUMENTS, MINISTERIAL STATEMENTS OR COMMITMENTS:**

In her Written Statement to Assembly Members in March 2013, the Deputy Minister for Social Services announced her intention to reform paying for social care in Wales from April 2016. The timing of the introduction of this is in line with the timing of the implementation of the UK Government's reforms for England which will be based on the recommendations of the Dilnot Commission.

The Deputy Minister's Statement confirmed her intention to build reforms upon the maximum charge provision currently in place in Wales for charging for non-residential social services. She also confirmed that she would wish to consider, carefully, the detail of the UK Government's implementation plans and gain a fuller understanding of how its reform model will work, and the cost implications, before any final decisions are made over a way forward for Wales.

**OTHER CONSIDERATIONS:**

None

**INTERDEPENDENCIES AND LINKS TO OTHER POWERS/REGULATIONS:**

Regulations under section 56 would link to regulations made under section 55 in connection with carrying out a financial assessment.

<b>REGULATIONS RELATING TO:</b>	Charging and financial assessment
<b>BILL PART:</b>	5
<b>SECTION AND SUB-SECTION:</b>	57(3)
<b>DESCRIPTION OF THE POWER/REGULATION</b>	
Regulations must make provisions about the making of determinations under section 57(1) of the Bill as to a person's ability to pay a charge imposed under section 50.	
<b>WHY THE REGULATION POWER IS REQUIRED</b>	
The power is required to set out certain requirements that an authority will have to take into account in the determination of a person's ability to pay a charge. Without this power local authorities would be able to make a determination as to a person's ability to pay the standard charge for their care and support unfettered, without any universal financial safeguards for those with low financial means who may be asked to meet such charges, consistently applied by all authorities in Wales.	
<b>WHAT THE REGULATION POWER CAN ACHIEVE</b>	
<p>The regulations:</p> <ul style="list-style-type: none"> <li>• must require a local authority to determine, in a case where the assessed person's financial resources exceed a specified level, that it would be reasonably practicable for that person to pay the standard charge (for example a capital limit in relation to residential care above which a resident would be liable for the full cost of their accommodation and care);</li> <li>• may require a local authority to determine that it would not be reasonably practicable for the assessed person to pay an amount for their care and support that would reduce their income or capital below specified levels (for example setting an amount of their income that a person must be left with after paying charge);</li> <li>• may specify different levels for income and for capital for different circumstances and for different descriptions of people (for example people receiving different forms of care and support where particular levels of income or capital would be appropriate);</li> <li>• make provision about cases or circumstances in which a determination must or may replace a determination with a new one (for example a person moving from receiving care and support in the community to receiving this in residential care); and</li> <li>• may make provision as to the date from which a determination is to have effect.</li> </ul>	
<b>POLICY INTENTION OF THE REGULATIONS</b>	
<p>It is Welsh Government policy that where a person is asked to pay a charge for the care and support they receive, or where they may receive a charge for putting in place arrangements to meet needs, their financial resources to meet such charges should be assessed and treated in a consistent manner by local authorities in their calculation of a person's ability to meet these charges. This is to ensure equality of treatment of those asked to meet a charge imposed. It is also Welsh Government policy that only those who have the financial means to meet a charge should be expected to do so.</p> <p>As a result, under existing legislation, regulations and statutory guidance have been made which identify particular levels of income and capital that a person receiving</p>	

care and support may have and how these should be treated in a determination of a person's ability to pay a charge for their care and support.

It is our intention through the regulations to be made under the Bill to maintain such policies as part of our future policy on paying for social care. As part of the development of this policy, consideration will be given to exactly what particular levels of income and capital would be appropriate to take account of in a determination of a person's ability to pay a charge. This is to ensure equality and consistency of treatment of those who are subject to consideration for a charge.

This policy is being developed during 2014 with stakeholder representatives from local government, third sector and care recipients with the Welsh Ministers making final decisions in the Autumn of 2014.

#### **WORK TO DATE**

The National Assistance Act 1948 and the Social Care Charges (Wales) Measure 2010 gave Welsh Ministers the power to specify levels of income or capital and their treatment in the determination of a charge. As a result regulations were made which set out a range of levels of income and capital and how these should be taken account of in a determination of a person's ability to pay a charge.

Welsh Ministers plan to introduce reforms to paying for social care from April 2016. This is to make the arrangement for paying for care fairer and more sustainable in the long term. Work has commenced on developing reforms for Wales that are tailored to our specific circumstances, such as a higher proportion of older people with greater care needs and lower levels of financial means. To help inform and shape reform proposals, a research study is being commissioned to gather and analyse core data on factors such as present charges collected, population make up and trends, together with composition and trends on Welsh citizens' income and capital assets. This study is due to report over the next 6 to 9 months.

#### **RELEVANT POLICY DOCUMENTS, MINISTERIAL STATEMENTS OR COMMITMENTS:**

In her Written Statement to Assembly Members in March 2013, the Deputy Minister for Social Services announced her intention to reform paying for social care in Wales from April 2016. The timing of the introduction of this is in line with the timing of the implementation of the UK Government's reforms for England which will be based on the recommendations of the Dilnot Commission.

The Deputy Minister's Statement confirmed her intention to build reforms upon the maximum charge provision currently in place in Wales for charging for non-residential social services. She also confirmed that she would wish to consider, carefully, the detail of the UK Government's implementation plans and gain a fuller understanding of how its reform model will work, and the cost implications, before any final decisions are made over a way forward for Wales.

#### **OTHER CONSIDERATIONS:**

None

#### **INTERDEPENDENCIES AND LINKS TO OTHER POWERS/REGULATIONS:**

Regulations under section 57(3) would link to regulations made under 58(2).

<b>REGULATIONS RELATING TO:</b>	Charging and financial assessment
<b>BILL PART:</b>	5
<b>SECTION:</b>	58(2)
<b>DESCRIPTION OF THE POWER/REGULATION</b>	
Regulations may make provision about circumstances where a local authority is not under a duty under section 58(1) to give effect to a determination made under section 57 of the Bill in imposing a charge under section 50.	
<b>WHY THE REGULATION POWER IS REQUIRED</b>	
The power is required to set out consistently applied circumstances where it would not be appropriate for a local authority to give effect to a determination being undertaken under section 58(1) of the Bill. This would be a determination undertaken under section 57 as to a person's ability to pay a charge imposed under section 50 to meet their care and support needs. Without this power local authorities would have to, on every occasion, give effect to a determination made under section 57, even where it would in the individual circumstances be inappropriate to do so.	
<b>WHAT THE REGULATION POWER CAN ACHIEVE</b>	
The regulations may: <ul style="list-style-type: none"> <li>• make provision about circumstances in which the duty under section 58(1) to give effect to a determination of a person's ability to pay a charge does not apply (for example, where an authority was unable to undertake a determination due to a person not providing necessary information; or where a person is receiving low level care and support for which a small fixed charge is made (such as meals) and a determination is not appropriate).</li> </ul>	
<b>POLICY INTENTION OF THE REGULATIONS</b>	
<p>It is Welsh Government policy that where a person is asked to pay a charge for the care and support they receive, or where they may receive a charge for putting in place arrangements to meet needs, their financial resources to meet such charges should be assessed and treated in a consistent manner by local authorities in their calculation of a person's ability to meet these charges. This is to ensure equality of treatment of those asked to meet a charge imposed. It is also Welsh Government policy that only those who have the financial means to meet a charge should be expected to do so. However, there are circumstances where it would not be appropriate to undertake a financial assessment and hence give effect to a determination to a person's ability to pay a charge.</p> <p>Under current legislation, regulations have been made which disapply, where it is appropriate to do so, the duty to give effect to a determination as to a person's ability to pay a charge as per the examples given above.</p> <p>It is our intention through the regulations to be made under the Bill to maintain such a policy as part of our future policy on paying for social care. As part of the development of this policy, consideration will be given to the circumstances in which it would be appropriate to disapply the duty to give effect to a determination as to a person's ability to pay a charge. This policy is being developed during 2014 with stakeholder representatives from local government, third sector and care recipients</p>	

with Welsh Ministers making final decisions in the Autumn of 2014.

**WORK TO DATE**

The National Assistance Act 1948 and the Social Care Charges (Wales) Measure 2010 gave Welsh Ministers the power to disapply the duty to give effect to a determination as to a person's ability to pay a charge. As a result regulations were made which set out particular circumstances where it would be appropriate to disapply this duty.

Welsh Ministers plan to introduce reforms to paying for social care from April 2016. This is to make the arrangement for paying for care fairer and more sustainable in the long term. Work has commenced on developing reforms for Wales that are tailored to our specific circumstances, such as a higher proportion of older people with greater care needs and lower levels of financial means. To help inform and shape reform proposals, a research study is being commissioned to gather and analyse core data on factors such as present charges collected, population make up and trends, together with composition and trends on Welsh citizens' income and capital assets. This study is due to report over the next 6 to 9 months.

**RELEVANT POLICY DOCUMENTS, MINISTERIAL STATEMENTS OR COMMITMENTS:**

In her Written Statement to Assembly Members in March 2013, the Deputy Minister for Social Services announced her intention to reform paying for social care in Wales from April 2016. The timing of the introduction of this is in line with the timing of the implementation of the UK Government's reforms for England which will be based on the recommendations of the Dilnot Commission.

The Deputy Minister's Statement confirmed her intention to build reforms upon the maximum charge provision currently in place in Wales for charging for non-residential social services. She also confirmed that she would wish to consider, carefully, the detail of the UK Government's implementation plans and gain a fuller understanding of how its reform model will work, and the cost implications, before any final decisions are made over a way forward for Wales.

**OTHER CONSIDERATIONS:**

None

**INTERDEPENDENCIES AND LINKS TO OTHER POWERS/ REGULATIONS:**

Regulations under section 58(2) would link to regulations made under section 57(3).

<b>REGULATIONS RELATING TO:</b>	Charging and financial assessment
<b>BILL PART:</b>	5
<b>SECTION:</b>	59 (1)
<b>DESCRIPTION OF THE POWER/REGULATION</b>	
Regulations must make provision for the review of charges imposed under section 50 of the Bill and determination of a person's ability to pay a charge made under section 57.	
<b>WHY THE REGULATION POWER IS REQUIRED</b>	
The power is required to put in place a review of the charging decisions process where an authority has imposed a charge for providing, arranging, or putting in place arrangements, for care and support. This would be consistently applied by all authorities in Wales. This process is to enable a person who has had a charge imposed on them to request a review of that charging decision. Without this power local authorities would be able to exercise the power to impose a charge in these circumstances unfettered, without any obligation to review the charge imposed where requested to do so.	
<b>WHAT THE REGULATION POWER CAN ACHIEVE</b>	
The regulations can make provision:	
<ul style="list-style-type: none"> <li>• about the person who may request a review and those who may request a review on their behalf (for example an advocate);</li> <li>• about the circumstances and manner in which a review may be requested (for example how a review request would be submitted and what information it would need to contain);</li> <li>• the period for which a request would be made;</li> <li>• the procedure to be followed and the steps to be taken by the local authority in undertaking a review;</li> <li>• the description of persons who may make a decision following a review (for example who in an authority would be authorised to determine a review); and</li> <li>• the effect of a review decision and how this impacts upon the person's charge or a charging decision made previously.</li> </ul>	
<b>POLICY INTENTION OF THE REGULATIONS</b>	
To ensure clear and consistent arrangements are in place to allow a person to challenge care and support charges imposed on them. Regulations will enable a review system to be put in place for all instances where a charge has been levied. This will ensure that a person who has been assessed as required to pay for care and support can have the charge reviewed should they consider it to be incorrect or inappropriate.	
It is Welsh Government policy that where a person is asked to pay a charge for the care and support they receive, or where they may receive a charge for putting in place arrangements to meet needs, they should have the ability to request that that charge or a decision leading to the determination of that charge be reviewed. Such a review process should be applied in a consistent manner by local authorities. This is to ensure equality of treatment of those asked to meet a charge imposed.	

As a result, under the present regulations made under the Social Care Charges (Wales) Measure 2010, a review process is in place for a charging decision made in relation to the provision of non-residential social services. It is our intention to maintain this provision under regulations to be made under the Bill and to extend this provision to all other instances where a charge is imposed. This is so that a person can have a charge imposed, or charging decision made leading to a charge imposed, reviewed by a local authority where it relates to the provision or arrangement of care and support under the Bill, or for putting in place arrangements for care and support.

**WORK TO DATE**

none

**RELEVANT POLICY DOCUMENTS, MINISTERIAL STATEMENTS OR COMMITMENTS:**

none

**OTHER CONSIDERATIONS:**

None

**INTERDEPENDENCIES AND LINKS TO OTHER POWERS/REGULATIONS:**

Regulations under section 59 (1) would link to regulations made under sections 52 (1), 53 (1), 55 (1), 56, 57 (3), 58 (2) which relation to the imposition of a charge or the determination of a charge.



<b>REGULATIONS RELATING TO:</b>	Charging and financial assessment
<b>BILL PART:</b>	5
<b>SECTION:</b>	60(1)
<b>DESCRIPTION OF THE POWER/REGULATION</b>	
Regulations can specify cases or circumstances in which, or conditions subject to which, a local authority may or must enter into a deferred payment agreement with an adult whose needs it is meeting under sections 28 to 36 of the Bill and who is required to pay a charge for this under section 50.	
<b>WHY THE REGULATION POWER IS REQUIRED</b>	
The power is required to enable a local authority to agree not to require an adult to pay a charge levied for care and support received, or for putting in place arrangements for care and support, until a specified time. This is to enable the person to pay that charge at a later time agreed with the authority by entering into a deferred payment agreement. Under such agreements a local authority would meet the cost of the person's charge in return for having a land charge placed on a property the person has an interest in. The authority would then recover the charges it meets at a later date against the value of that property. Without this power local authorities would have to collect charges levied immediately without the ability to agree to a delay in payment.	
<b>WHAT THE REGULATION POWER CAN ACHIEVE</b>	
<p>The regulations can:</p> <ul style="list-style-type: none"> <li>• specify cases and circumstances in which a local authority must or may enter into a deferred payment agreement with an adult;</li> <li>• may provide for interest to be applied to the charge levied and for this to be an obligation in the deferred payment agreement (i.e. the interest added to the agreement);</li> <li>• may provide for an amount relating to a local authority's administrative costs to be required, including interest required on these costs;</li> <li>• specify costs which are, or which are not, to be regarded as administrative costs; and</li> <li>• make provision as to the rights and obligations of each party where the person's interest in a property transfers to another property.</li> </ul> <p>The regulations must also make provision about the duration of the agreement and for its termination by either party including the method of such termination.</p>	
<b>POLICY INTENTION OF THE REGULATIONS</b>	
<p>It is Welsh Government policy that where a property is taken into account and a person is asked to pay a charge for the care and support they receive, or for putting in place arrangements to meet needs, they should not be required immediately to sell that property to meet this charge. They should have the ability to delay the sale of their property until a more appropriate time. Such an opportunity should be applied in a consistent manner by local authorities to ensure equality of treatment.</p> <p>As a result, under present regulations made under the National Assistance Act 1948 local authorities are required to operation a deferred payment scheme for those with an interest in a property and required to meet the costs of their residential accommodation and care. This provides an alternative means of meeting these</p>	

costs, allowing a person not to have to sell their property immediately.

It is our intention to maintain and strengthen this provision under regulations to be made under the Bill so as to enhance the operation of such agreements and allow them to be tailored to meet a person's circumstances. It is also to extend this provision to other instances where a charge is imposed. This is to enable a wider range of persons levied a charge the option of entering into an agreement should they wish to do so.

**WORK TO DATE**

none

**RELEVANT POLICY DOCUMENTS, MINISTERIAL STATEMENTS OR COMMITMENTS:**

none

**OTHER CONSIDERATIONS:**

None

**INTERDEPENDENCIES AND LINKS TO OTHER POWERS/REGULATIONS:**

None

<b>REGULATIONS RELATING TO:</b>	Charging and financial assessment
<b>BILL PART:</b>	5
<b>SECTION:</b>	61(1)
<b>DESCRIPTION OF THE POWER/REGULATION</b>	
Regulations may make provision about charges for services provided under section 12 of the Bill and assistance under section 14 of the Bill.	
<b>WHY THE REGULATION POWER IS REQUIRED</b>	
The regulation power is required to set out the circumstances where an authority can impose a charge to cover the cost incurred in providing or arranging a preventative service or for assistance it provides to access care and support. Without this power local authorities would not be able to recover such costs.	
<b>WHAT THE REGULATION POWER CAN ACHIEVE</b>	
The regulation power may make provision about:	
<ul style="list-style-type: none"> <li>• charges for preventative services a person receives under section 12 of the Bill (for example specifying particular forms of preventative services, whether charges should apply to these, and if so, how such charges should be calculated);</li> <li>• charges for assistance provided to a person in accessing care and support under section 14 of the Bill (for example specifying particular forms of assistance, whether charges apply to these, and if so, how such charges should be calculated).</li> </ul>	
<b>POLICY INTENTION OF THE REGULATIONS</b>	
<p>It is Welsh Government policy that where a local authority provides preventative services, such as to delay or reduce the need for care and support, it has the ability to recover all or part of the cost of providing or arranging this where appropriate. It is also our policy that where this occurs it is done in a consistent manner by local authorities and that only those who have the financial means are required to pay. The policy is that this principle should be extended to assistance in accessing care and support.</p> <p>The Social Care Charges (Wales) Measure 2010 gave local authorities the discretion to charge for non-residential social services including preventative services. It also gave Welsh Ministers the power by regulation to set out how such charging should occur. As a result regulations were made to do this.</p> <p>It is our policy intention, as part of the charging arrangements to be introduced under the Bill, to incorporate arrangements for instances where charging for preventative services or assistance in accessing care and support can take place and the detail of this.</p>	
<b>WORK TO DATE</b>	
none	
<b>RELEVANT POLICY DOCUMENTS, MINISTERIAL STATEMENTS OR COMMITMENTS:</b>	
The Deputy Minister for Social Services issued a Written Statement in November 2013 setting her intention for strengthening preventative services. She clarified that the Bill would place duties on local authorities to deliver preventative services and	

contained a range of other measures that would enable and require local authorities to lead the preventative agenda.

**OTHER CONSIDERATIONS:**

None

**INTERDEPENDENCIES AND LINKS TO OTHER POWERS/REGULATIONS:**

None

<b>REGULATIONS RELATING TO:</b>	Care and Support Plans
<b>BILL PART:</b>	Part 6
<b>SECTION:</b>	74 and 75
<b>DESCRIPTION OF THE POWER/REGULATION</b>	
<p>Section 74(4) – Regulations making provision about how care and support plans for looked after children are to be prepared, what a plan is to contain and the review of plans.</p> <p>Section 74 requires that where a local authority starts to look after a child under Part 6 and the child does not have a care and support plan prepared under section 45, the local authority must prepare and maintain a care and support plan and keep that plan under review.</p> <p>Regulations in section 74 must further provide for the content and review of the plans and that if other plans are being prepared for the child by other bodies, for those plans to be included within the care and support plan. The local authority must also carry out a new assessment and revise the plan if it believes the circumstances of the child have changed in such a way as to affect the existing plan.</p> <p>Section 75 provides that regulations may be made specifying the form the plan should take, its content, the consultation with people who should contribute to the preparation and review of a plan, who should prepare the plan, who should receive written copies of the plan and the circumstances for reviewing the plan.</p> <p>In considering the full impact of local authorities’ duties in respect of care plans and care and support plans, consideration must be given to clause 15 of the Department of Education’s Children and Families Bill that will amend section 31A of the Children Act 1989 – plans the local authorities are required to prepare by order of a court in connection to cases under section 31 of CA 1989. This provides that court plan under the CA 1989 can be discharged under section 45 and 74 of the SSW Bill.</p> <p>For more information see legislative Consent Memorandum for Children and Families Bill approved by the National Assembly for Wales in April 2013.</p> <p><a href="http://www.assemblywales.org/bus-home/research/bus-assembly-publications-monitoring-services/bus-lcm_monitor/bus-lcm_monitor-2014.htm?debug=211&amp;debugimg=on&amp;debugobj=243252&amp;debugslotid=0#cmo-actions">http://www.assemblywales.org/bus-home/research/bus-assembly-publications-monitoring-services/bus-lcm_monitor/bus-lcm_monitor-2014.htm?debug=211&amp;debugimg=on&amp;debugobj=243252&amp;debugslotid=0#cmo-actions</a></p>	
<b>WHY THE REGULATION POWER IS REQUIRED</b>	
<p>The power is required to set out the Welsh Ministers’ expectations of the matters that local authorities must take into account in supporting looked after children to achieve improved well-being outcomes.</p>	
<b>WHAT THE REGULATION POWER CAN ACHIEVE</b>	
<p>Improved well-being outcomes and life chances for looked after children.</p>	

## **POLICY INTENTION OF THE REGULATIONS**

Part 6 of the Bill includes regulation making powers relating to care and support plans; the review of plans and cases; and the placement of and visits to, children who are looked after by local authorities. This paper focusses on the local authority duties in respect of the preparation, content and review of care and support plans under sections 74 and 75 for looked after children in Part 6 of the Bill. However, each of the regulation making powers under Part 6 are inextricably linked to each other and will provide for a consistent and coherent approach to supporting looked after children and delivering their rights and entitlements as part of an effective corporate parent framework that empowers them to achieve improved well-being outcomes that enhance their life chances.

Section 74 and 75 place express duties on the Welsh Ministers to bring forward regulations on the detailed arrangements that local authorities must follow in the preparation of care and support plans, and sets out the framework for their review under sections 90 to 93.

The policy intent is that regulations and Code of Practice will prescribe a set of core requirements for looked after children as illustrated below:

- specify the form and minimum content for care and support plans for a child;
- require that the child, and other specified persons, must be fully involved / participate in the development of desired outcomes in the plan;
- stipulate who is to have a copy of the plan;
- provide for the allocation of a lead professional responsible for co-ordinating the completing and monitoring the plan;
- set out the responsibility, contribution and resources of each agency to the plan;
- set down the arrangements for review of plans including:
  - who should be involved in reviews;
  - matters which the review should include
  - timeline for reviews;
  - people who may undertake and be involved in reviews;
  - recording of reviews;
  - who must be given copies of reviews; and
  - circumstances when a person can request a re-review.

The list is not exhaustive. There is an imperative to ensure a consistency of approach with the core processes under Part 4 whilst recognising the specific circumstances and needs of looked after children, and reinforcing the corporate responsibilities owed to these children. Regulations will be supported by a Code of Practice that local authorities must comply with. The requirement for care and support plans and their review under sections 90 to 93 will be set by a combination of the regulations and the Code of Practice.

## **WORK TO DATE**

None.
<b>RELEVANT POLICY DOCUMENTS, MINISTERIAL STATEMENTS OR COMMITMENTS:</b>
Towards a stable life and a brighter future <a href="http://wales.gov.uk/topics/childrenyoungpeople/publications/towards/?lang=en">http://wales.gov.uk/topics/childrenyoungpeople/publications/towards/?lang=en</a>
<b>OTHER CONSIDERATIONS:</b>
None
<b>INTERDEPENDENCIES AND LINKS TO OTHER POWERS/REGULATIONS:</b>
Eligibility, care planning and review provisions under Part 4 The Placement of Children (Wales) Regulations 2007 SI 310 (W.27) The Review of Children's Cases (Wales) Regulations 2007 SI 307 (W.26)

<b>REGULATIONS RELATING TO:</b>	Looked after and accommodated children
<b>BILL PART:</b>	6
<b>SECTION:</b>	80
<b>DESCRIPTION OF THE POWER/REGULATION</b>	
Regulations under this section may make provisions about placements and settings other than parent, those with parental responsibility or those with a residence order.	
<b>WHY THE REGULATION POWER IS REQUIRED</b>	
This is a restatement of paragraph 12 B of Schedule 2 of the Children Act 1989 and places duties on local authorities to provide the most appropriate way to accommodate, safeguard and promote a child's welfare.	
<b>WHAT THE REGULATION POWER CAN ACHIEVE</b>	
Regulations may make provisions about children looked after by local authorities to make placements. Regulations under subsection (1) may, for example, make provision as to	
(a) the persons to be notified of any proposed arrangements;	
(b) the opportunities such persons are to have to make representations in relation to the arrangements proposed;	
(c) the persons to be notified of any proposed changes in the arrangements;	
(d) the records to be kept by local authorities;	
(e) the supervision by local authorities of any arrangements made.	
These provisions place duties on local authorities to provide the most appropriate way to accommodate, safeguard and promote a child's welfare. The provisions set out the arrangements to be made by local authorities in connection with the health and education of children placed with a relative, a foster parent, in a children's home or any other place deemed suitable by a local authority.	
<b>POLICY INTENTION OF THE REGULATION</b>	
Part 6 of the Bill includes regulation-making powers relating to care and support plans; the review of plans and cases; and the placement of and visits to children who are looked after by local authorities. Whilst this particular regulation-making power focusses on the placement of looked after children with local authority foster parents, each of this set of regulation making powers is inextricably linked to the others. Together, they will provide for a consistent and coherent approach to supporting looked after children. They will deliver children's rights and entitlements as part of an effective corporate parent framework; one that empowers looked after children to achieve improved well-being outcomes that enhance their life chances.	
<b>WORK TO DATE</b>	
None	
<b>RELEVANT POLICY DOCUMENTS, MINISTERIAL STATEMENTS OR COMMITMENTS:</b>	
Towards A Stable Life and A Brighter Future: <a href="http://wales.gov.uk/topics/childrenyoungpeople/publications/towards/?lang=en">http://wales.gov.uk/topics/childrenyoungpeople/publications/towards/?lang=en</a>	
<b>OTHER CONSIDERATIONS:</b>	
None	
<b>INTERDEPENDENCIES AND LINKS TO OTHER POWERS/ REGULATIONS:</b>	
Linked to Section 72 (6) (d) and 78. The Placement of Children (Wales) Regulations 2007, The Review of Children's Cases Regulations (Wales) 2007.	



<b>REGULATIONS RELATING TO:</b>	Looked after and accommodated children: placements out of area
<b>BILL PART:</b>	6
<b>SECTION AND SUB-SECTION:</b>	81
<b>DESCRIPTION OF THE POWER/REGULATION</b>	
Regulations provide for requirements that may be imposed for local authorities to follow when placing children outside the authority and ensuring the child's wellbeing in doing so.	
<b>WHY THE REGULATION POWER IS REQUIRED</b>	
This section restates paragraph 12c of Schedule 2 of the Children Act 1989. It is important that children remain within their own area wherever possible and appropriate as this allows for continuity of health care and education; and makes it easier for children to maintain contact with significant people in their lives. It is recognised that children placed away from home can be more vulnerable and susceptible to placement breakdown and interrupted schooling.	
<b>WHAT THE REGULATION POWER CAN ACHIEVE</b>	
<p>Regulations may make further provisions about children looked after by local authorities and impose requirements that a local authority must comply with</p> <ul style="list-style-type: none"> <li>(a) before a child looked after by it is provided with accommodation at a place outside the area of the authority, or</li> <li>(b) if the child's well-being requires the immediate provision of such accommodation, within such period of the accommodation being provided as may be specified.</li> </ul> <p>These provisions will stipulate that the responsible authority must not place a child outside the area in which they usually reside unless it is satisfied that there is no placement within the area that meets the child's needs or that a placement outside of area is more consistent with the child's welfare. An out of area placement may be appropriate for a child to meet a particular health or education need.</p>	
<b>POLICY INTENTION OF THE REGULATION</b>	
Part 6 of the Bill includes regulation making powers relating to care and support plan; the review of plans and cases; and the placement of and visits to children who are looked after by local authorities. Whilst this particular regulation making power focuses on the placement of looked after children, each set of regulations is inextricably linked to the others. Together they will provide for a consistent and coherent approach to supporting looked after children. They will deliver children's rights and entitlements as part of an effective corporate parent framework; one that empowers looked after children to achieve improved well-being outcomes that enhance their life chances.	
<b>WORK TO DATE</b>	
<b>Towards a Stable Life and a Brighter Future (2007)</b> - Guidance and accompanying regulations to strengthen:(i) the arrangements for the placement, health, education and well-being of looked after children; and (ii) the responsible commissioning arrangements for secondary health care for vulnerable children placed away from home	

<b>RELEVANT POLICY DOCUMENTS, MINISTERIAL STATEMENTS OR COMMITMENTS:</b>
Towards a Stable Life and a Brighter Future
<b>OTHER CONSIDERATIONS:</b>
<b>INTERDEPENDENCIES AND LINKS TO OTHER POWERS/REGULATIONS:</b>
Placement of Children Regulations 2007. Fostering Services (Wales) Regulations 2003

<b>REGULATIONS RELATING TO:</b>	Looked after and accommodated children: Placing a child with local authority foster parents
<b>BILL PART:</b>	6
<b>SECTION:</b>	83
<b>DESCRIPTION OF THE POWER/REGULATION</b>	
<p>Regulations about placing of looked after children with local authority foster carers, giving regard to the well being of children with foster parents, the arrangements made by local authorities in connection with health and education of such children, the records to be kept, the supervision and inspection of premises.</p>	
<b>WHY THE REGULATION POWER IS REQUIRED</b>	
<p>This section restates paragraph 12E of Schedule 2 to the Children Act 1989, with some minor modifications and updating of language and makes provision about children looked after by local authorities in relation to placements with local authority foster parents.</p>	
<b>WHAT THE REGULATION POWER CAN ACHIEVE</b>	
<p>The regulation-making power in this section does not extend the existing regulation-making power in Schedule 2 of the Children Act 1989. It removes the current power in paragraph 12F that permits regulations to make provision for ensuring that a child is only placed with an “approved” local authority foster parent. It also removes the power in 12G that regulations may make provision about the circumstances in which local authorities may arrange for another body to discharge on their behalf the duties that the regulations impose on them (which is now at Section 85 of this Bill).</p> <p>Section 83 enables regulations to make further provisions about children looked after by local authorities, in relation to placements with local authority foster parents. Such regulations may make provision</p> <ul style="list-style-type: none"> <li>(a) about the well-being of these children; about the arrangements to be made by local authorities concerning the health and education of these children;</li> <li>(b) about the records that local authorities must keep; to ensure that, where possible, the child is placed with a local authority foster parent who is of the same religious persuasion as the child, or that they give an undertaking that the child will be brought up in that religious persuasion;</li> <li>(c) for ensuring that these children, and the premises in which they are accommodated, will be supervised and inspected by the local authority and that the children will be removed from those premises if their well-being appears to require it.</li> </ul>	
<b>POLICY INTENTION OF THE REGULATIONS</b>	
<p>Part 6 of the Bill includes regulation-making powers relating to care and support plans; the review of plans and cases; and the placement of and visits to children who are looked after by local authorities. Whilst this particular regulation-making power focuses on the placement of looked after children with local authority foster parents,</p>	

each of this set of regulation making powers is inextricably linked to the others. Together, they will provide for a consistent and coherent approach to supporting looked after children. They will deliver children's rights and entitlements as part of an effective corporate parent framework; one that empowers looked after children to achieve improved well-being outcomes that enhance their life chances.

The Welsh Ministers intend to use the powers in section 83 to the same effect as the current regulation-making powers. No significant shift from the requirements of the current regulations (Fostering Services (Wales) Regulations) is envisaged.

**WORK TO DATE**

None

**RELEVANT POLICY DOCUMENTS, MINISTERIAL STATEMENTS OR COMMITMENTS:**

Inquiry into the Placement of Children into Care- Published Report and Welsh Government Response 2010,

[http://www.assemblywales.org/final\\_report-e-3.pdf](http://www.assemblywales.org/final_report-e-3.pdf)

<http://wales.gov.uk/topics/childrenyoungpeople/publications/childrenincareresponse/?lang=en>

Towards a Stable Life and a Brighter Future

<http://wales.gov.uk/topics/childrenyoungpeople/publications/towards/?lang=en>

**OTHER CONSIDERATIONS:**

None

**INTERDEPENDENCIES AND LINKS TO OTHER POWERS/REGULATIONS:**

Placement of Children (Wales) Regulations 2007,  
Fostering Services (Wales) Regulations 2003, National Minimum Standards for Foster Services

<b>REGULATIONS RELATING TO:</b>	Looked after and accommodated children: approval of local authority foster parents
<b>BILL PART:</b>	6
<b>SECTION:</b>	84
<b>DESCRIPTION OF THE POWER/REGULATION</b>	
<p>The regulation relates to the approval of foster parents by the local authority; under this power regulations may provide: that the child can not be placed with foster parents until the local authority has approved their appointment; for the setting up of an independent procedure for reviewing the approval of foster parents including establishing a panel convened by the Welsh Ministers; for the duties and powers such a panel may have; for the appointment of members to the panel and how they are paid, and for arrangements for monitoring reviews. Regulations may also provide for the Welsh Ministers to contract with another organisation to provide the independent review function.</p>	
<b>WHY THE REGULATION POWER IS REQUIRED</b>	
<p>This restates paragraph 12F of Schedule 2 to the Children Act 1989 in order to ensure the appropriate placement of children and the establishment of an appeals mechanism in relation to decisions about approval of foster carers/adopters.</p>	
<b>WHAT THE REGULATION POWER CAN ACHIEVE</b>	
<p>The regulation will ensure that local authority only place children with approved foster parents, and also provides a transparent appeals mechanism by which foster carers and adopters can appeal against a decision taken by a provider or agency to not approve them as a foster carer/adopter or change the terms of the approval.</p> <p>The power also provides the legal power for the Welsh Ministers to discharge their functions and set the principles by which the independent review function operates.</p>	
<b>POLICY INTENTION OF THE REGULATIONS</b>	
<p>Part 6 of the Bill includes regulation-making powers relating to care and support plans; the review of plans and cases; and the placement of and visits to children who are looked after by local authorities. Whilst this particular regulation-making power focusses on the approval of local authority foster parents, each of this set of regulation making powers is inextricably linked to the others.</p> <p>Together, they will provide for a consistent and coherent approach to supporting looked after children. They will deliver children's rights and entitlements as part of an effective corporate parent framework; one that empowers looked after children to achieve improved well-being outcomes that enhance their life chances.</p>	
<b>WORK TO DATE</b>	
<p>The Independent Review of Determinations (IRD) for Adoption and Fostering Regulations came into force 2010 which allowed foster carers to appeal against a decision taking by the fostering provider to not approve them or alter the terms of that approval. A similar process had been in place for adopters since 2005.</p>	
<b>RELEVANT POLICY DOCUMENTS, MINISTERIAL STATEMENTS OR</b>	

<b>COMMITMENTS:</b>
The Independent Review of Determinations for Adoption and Fostering (Wales) Regulations 2010
<b>OTHER CONSIDERATIONS:</b>
None
<b>INTERDEPENDENCIES AND LINKS TO OTHER POWERS/REGULATIONS:</b>
Links to section 78, Fostering Services (Wales) Regulations 2003, The Independent Review of Determinations for Adoption and Fostering (Wales) Regulations 2010

<b>REGULATIONS RELATING TO:</b>	Local authority duty to ensure visits to and contact with, looked after children and others.
<b>BILL PART:</b>	6
<b>SECTION:</b>	88
<b>DESCRIPTION OF THE POWER</b>	
<p>Section 88(4) – Regulations making provision about the matters the local authority must take into consideration in ensuring a representative visits certain groups of children.</p> <p>Section 88 requires that the local authority must ensure visits and contact between specified groups of children and a representative of the authority. Specified children include those whom the local authority looks after or used to look after and other children specified through regulations.</p> <p>The functions of, and matters to be considered by, the representative in exercising this duty are set out in regulations. That representative must arrange for the provision of advice, support and assistance, and regulations may further provide for the frequency of visits, the circumstances in which visits can take place and the functions of representatives.</p> <p>The local authority also must ensure that the representative it chooses has the appropriate skills and experience to perform the functions.</p>	
<b>WHY THE REGULATION POWER IS REQUIRED</b>	
<p>The regulation making power is required to set out the Welsh Ministers' expectations of the matters that local authorities must take into account when appointing a representative to visit specified children and for supporting them to achieve improved well-being outcomes.</p>	
<b>WHAT THE REGULATION POWER CAN ACHIEVE</b>	
<p>Improved well-being outcomes and life chances for children.</p>	
<b>POLICY INTENTION OF THE REGULATIONS</b>	
<p>Part 6 of the Bill includes regulation making powers relating to care and support plans; the review of plans and cases; and the placement of, and visits to, children who are looked after by local authorities. This paper focusses on the local authority duty to ensure visits to and contact with, looked after children and others under section 88. However, each of these regulation making powers are inextricably linked to each other and will provide for a consistent and coherent approach to supporting looked after children and delivering their rights and entitlements as part of an effective corporate parent framework that empowers them to achieve improved well-being outcomes that enhance their life chances.</p> <p>Section 12 of the Social Services and Well-being (Wales) Bill requires local authorities to arrange or arrange for the provision of a range and level of preventative services which it considers will reduce the need for criminal proceedings against</p>	

children; encourage children not to commit offences; and avoid the need for children to be placed in secure accommodation. In addition, preventative services share the generic outcome of contributing towards preventing or delaying the development of people's needs for care and support and for reducing the needs for care and support for people who have such needs.

Children who are detained or remanded to the secure estate are likely to experience a shortfall in their well-being outcomes by virtue of their detention and require support to re-integrate into the community and to prevent further episodes of offending.

The policy intent is that regulations and Code of Practice will prescribe a set of core requirements for the representative that will place duties on local authorities to support specified groups of children whilst in custody and to plan for their release. Aspects of the regulations may include specifying:

- the groups of children to be visited;
- the timing and frequency of visits;
- the conduct of the visits including the need to meet with children in private;
- the preparation of a report reflecting the child's wishes and feelings, the effectiveness of their safeguarding and well-being; the need to promote contact with the child's family; arrangements for the provision of advice and support and assistance
- the sharing of the report with the child and other specified individuals.

The list is not exhaustive. There is an imperative to ensure a consistency of approach with the core processes under Part 4 whilst recognising the specific circumstances and needs of looked after children, and reinforcing the corporate responsibilities owed to these children.

Regulations will be supported by a Code of Practice that local authorities must comply with. The requirement for care and support plans and review of both care and support plans, and support plans in the case of carers, will be set by a combination of the regulations and Code of Practice.

This work will reflect the Welsh Government Green Paper "*Proposals to improve services in Wales to better meet the needs of children and young people who are at risk of entering, or are already in, the Youth Justice System*".

#### **WORK TO DATE**

None.

#### **RELEVANT POLICY DOCUMENTS, MINISTERIAL STATEMENTS OR COMMITMENTS:**

<http://wales.gov.uk/topics/childrenyoungpeople/publications/childrenindetention/?lang=en>

#### **OTHER CONSIDERATIONS:**

None



**INTERDEPENDENCIES AND LINKS TO OTHER POWERS/REGULATIONS:**

Eligibility, care planning and review provisions under Part 4

Care planning, review and placements under Part 6

The Visits to Former Looked After Children in Detention (Wales) Regulations 2011

<b>REGULATIONS RELATING TO:</b>	Appointment and functions of independent reviewing officer; referred cases; review of cases and inquiries into representations.
<b>BILL PART:</b>	6
<b>SECTION:</b>	90, 91, 92 and 93
<b>DESCRIPTION OF THE POWER/REGULATION</b>	
<p>Section 90(4) – Regulations making provision to specify the category of person to be appointed as an independent reviewing officer.</p> <p>Sections 91(1)(b) and (d) and section 91(2) – Regulations making provision for the independent reviewing officer to participate in a review of a looked after child’s case and to perform specified functions in a specified manner.</p> <p>Section 92 – Regulations making provision for the extension of any functions of the Welsh family proceedings officers and the manner in which those functions must be exercised. Note this regulation making power is vested in the Lord Chancellor and may only be exercised with the consent of the Welsh Ministers but has been included to reflect the powers under section 91 for the IRO to refer a case to Welsh family proceedings officers.</p> <p>Section 93(1) and (2) – Regulations making provision for a looked after child’s case to be reviewed and to specify the range of issues to be considered as part of that review.</p>	
<b>WHY THE REGULATION POWER IS REQUIRED</b>	
<p>The regulation making power is required to set out the Welsh Ministers’ expectations of the matters that local authorities must take into account when appointing an independent reviewing officer to monitor the local authority’s care and support plan for a looked after child, including chairing the statutory review meetings of all looked after children.</p> <p>The key outcome of this function is to ensure that action to implement the agreed actions set out in the child’s care and support plan is carried out in a timely and appropriate manner.</p>	
<b>WHAT THE REGULATION POWER CAN ACHIEVE</b>	
Improved well-being outcomes and life chances for children.	
<b>POLICY INTENTION OF THE REGULATIONS</b>	
<p>Part 6 of the Bill includes regulation making powers relating to care and support plans; the review of plans and cases; and the placement of and visits to, children who are looked after by local authorities. This paper focusses on the local authority’s duty to appoint an IRO and the duties of that individual under sections 91, 92 and 93. However, each of these regulation making powers are inextricably linked to each other and will provide for a consistent and coherent approach to supporting looked after children and delivering their rights and entitlements as part of an effective</p>	

corporate parent framework that empowers them to achieve improved well-being outcomes that enhance their life chances.

The policy intent is that regulations and Code of Practice will prescribe a set of core requirements for the IRO to promote the well-being outcomes for looked after children by reviewing and challenging the local authority as the corporate parent to ensure looked after children are supported through the outcomes identified in their care and support plan under sections 74 and 75.

Section 90 requires that the local authority must, for the benefit of any child it looks after, appoint an independent reviewing officer (IRO) for each child's case.

Section 91 specifies the functions of IROs and provides for further functions to be specified in regulations. An IRO must monitor the work of the local authority in relation to the child; participate in any review of the child's case; ensure that the child's wishes and feelings are heard and perform any other function and in such a manner as required in regulations. If an IRO is not an employee of the local authority, the local authority must make every effort to co-operate with the IRO.

Key outcomes will include:

- promoting the voice of the child;
- ensuring that care and support plans for looked after children are based on a detailed and informed assessment, are up-to-date, effective and provide a real and genuine response to each child's needs;
- identifying any gaps in the assessment process or provision of service;
- making sure that the child understands how an advocate could help and his/her entitlement to one;
- offering a safeguard to prevent any 'drift' in care planning for looked after children and the delivery of services to them;
- monitoring the activity of the responsible authority as a corporate parent to ensure that care and support plans have given proper consideration and weight to the child's wishes and feelings and that, where appropriate, the child fully understands the implications of any changes made to his/her care plan.

Section 92 provides that the Lord Chancellor may make regulations to extend the functions of Welsh family proceedings officers but only with the consent of the Welsh Ministers. Under section 91 the IRO may also refer a child's case to a Welsh family proceedings officer (CAFCASS Cymru).

Section 93 provides that regulations may be made that require the review of a case of a looked after child. Aspects of the regulations may include:-

- the manner in which the review(s) must be undertaken;
- the frequency of the review(s);
- the persons whom the IRO must consult prior to the review and notified of the outcomes and actions;
- implementing decisions made as a result of the review and monitoring any

arrangements made.

The authority is also required to keep the plan required under section 31A of the Children Act 1989 under review and revise and make a new plan if required and consider with the child whether an application should be made to discharge the care order.

The authority is further required, if providing accommodation to the child, to prepare a care and support plan if none exists; to keep it under review and revise and make a new plan if required and consider if the accommodation meets with the requirements of this Part.

Regulations will be supported by a Code of Practice that local authorities must comply with. The requirement for the preparation and review of care and support plans will be set by a combination of the regulations and Code of Practice.

#### **WORK TO DATE**

None.

#### **RELEVANT POLICY DOCUMENTS, MINISTERIAL STATEMENTS OR COMMITMENTS:**

Towards a stable life and a brighter future  
<http://wales.gov.uk/topics/childrenyoungpeople/publications/towards/?lang=en>

#### **OTHER CONSIDERATIONS:**

None

#### **INTERDEPENDENCIES AND LINKS TO OTHER POWERS/REGULATIONS:**

Eligibility, care planning and review provisions under Part 4  
The Placement of Children (Wales) Regulations 2007  
The Review of Children's Cases (Wales) Regulations 2007

<b>REGULATIONS RELATING TO:</b>	Personal Advisors, Pathway Assessments and Plans
<b>BILL PART:</b>	6
<b>SECTION AND SUB-SECTION:</b>	97 and 98
<b>DESCRIPTION OF THE POWER/REGULATION</b>	
<p>Section 97(4) - Regulation making provision about the functions of a Personal Advisor for children and young people entitled to support under section 95.</p> <p>Section 98(7)(c) - regulation making provision to specify matters to be contained in the Pathway Plan of children and young people who are entitled to support under section 95 following the local authority's assessment under section 98 to determine what advice, assistance and support is required to meet that individuals' needs whilst they are being looked after and after they cease to be looked after.</p> <p>Section 98(8) and (9) - regulation making provision about the matters to be included in an assessment under section 98 of children and young people who are entitled to support under section 95.</p>	
<b>WHY THE REGULATION POWER IS REQUIRED</b>	
<p>The power is required to set out the Welsh Ministers' expectations of the functions of a Personal Advisor, and the matters to be contained within the assessment and Pathway Plan of children and young people entitled to support under section 95.</p>	
<b>WHAT THE REGULATION POWER CAN ACHIEVE</b>	
<p>Improved well-being outcomes and life chances for children.</p>	
<b>POLICY INTENTION OF THE REGULATIONS</b>	
<p>Part 6 of the Bill includes regulation making powers relating to care and support plans; the review of plans and cases; and the placement of and visits to, children who are looked after by local authorities. This paper focuses on the local authority's duties under section 97 and 98 to appoint a Personal Advisor, to assess the need for advice, assistance and support and to prepare a Pathway Plan for children and young persons who are entitled to support under section 95 as a result of them being, or having been, looked after children and others under Part 6 of the Bill. However, each of the regulation making powers under Part 6 are inextricably linked to each other and will provide for a consistent and coherent approach to supporting looked after children and delivering their rights and entitlements as part of an effective corporate parent framework that empowers them to achieve improved well-being outcomes that enhance their life chances.</p> <p>The policy intent is that regulations and the Code of Practice will prescribe a core set of functions to be undertaken by a personal advisor appointed under section 97. The purpose of a Personal Advisor is to support young persons falling within Categories 1 to 4. These functions will include: the provision of practical advice, support and where appropriate, assistance; participation in pathway plan reviews; liaison with the local authority regarding the implementation of the pathway plan; coordination of the</p>	

provision of services and taking reasonable steps to ensure that the services are made use of; staying informed about the young person's well-being and keeping records of contacts with the young person.

Section 98 requires that a Personal Advisor must carry out an assessment to determine what advice, support and assistance the young person needs whilst they are looked after **and** after they cease to be looked after. Such assessments must be recorded within a Pathway Plan specifying the advice, support and assistance to be provided to the young person and other matters including:

- the manner in which the assessment is undertaken, including matters to which the local authority must have regard;
- the persons responsible for undertaking an assessment;
- the timing of assessments;
- the recording of the results of the assessment;
- the date at which the young person will cease to be looked after; and
- the young person's post-18 living arrangements.

The list is not exhaustive. There is an imperative to ensure a consistency of approach with both the core processes under Part 4, and the care planning, and review arrangements under Part 6.

Regulations will be supported by a Code of Practice that local authorities must comply with. The requirement for the appointment and functions of a Personal Advisor and the assessment, preparation and maintenance of a Pathway Plan, will be set by a combination of the regulations and Code of Practice.

#### **WORK TO DATE**

None.

#### **RELEVANT POLICY DOCUMENTS, MINISTERIAL STATEMENTS OR COMMITMENTS:**

<http://wales.gov.uk/topics/childrenyoungpeople/publications/children-care-act-guidance/?lang=en>

<http://wales.gov.uk/about/cabinet/cabinetstatements/2013/fostercarers/?lang=en>

#### **OTHER CONSIDERATIONS:**

None

#### **INTERDEPENDENCIES AND LINKS TO OTHER POWERS/REGULATIONS:**

Assessment and Care and Support Plans under Part 4 of the Bill  
Care and Support Plans under Part 6 of the Bill

<b>REGULATIONS RELATING TO:</b>	Local authority duty to ensure visits to and contact with, looked after children and others.
<b>BILL PART:</b>	6
<b>SECTION AND SUB-SECTION:</b>	112
<b>DESCRIPTION OF THE POWER/REGULATION</b>	
<p>Section 112(4) – Regulations making provision about the matters the local authority must take into consideration in ensuring a representative visits certain groups of children about whom the local authority have been notified under sections 110 or 111 of the Social Services &amp; Well-being (Wales) Bill.</p> <p>Section 112 requires that the local authority must ensure visits and contact between specified groups of children and a representative of the authority. Specified children include those who have been accommodated by health authorities and local education authorities or in care home or independent hospitals for a consecutive period of three months.</p> <p>The functions of, and matters to be considered by, the representative in exercising this duty are set out in regulations including the provision of advice to the local authority on the performance of its duties under the Bill.</p> <p>Regulations may further provide for the frequency of visits, the circumstances in which visits can take place and the functions of representatives.</p>	
<b>WHY THE REGULATION POWER IS REQUIRED</b>	
<p>The regulation making power is required to set out the Welsh Ministers' expectations of the matters that local authorities must take into account when appointing a representative to visit specified children and for supporting them to achieve improved well-being outcomes.</p>	
<b>WHAT THE REGULATION POWER CAN ACHIEVE</b>	
<p>Improved well-being outcomes and life chances for children.</p>	
<b>POLICY INTENTION OF THE REGULATIONS</b>	
<p>Part 6 of the Bill includes regulation making powers relating to care and support plans; the review of plans and cases; and the placement of and visits to, children who are looked after by local authorities. This paper focuses on the local authority duty to ensure visits to and contact with, looked after children and others under section 112. However, each of these regulation making powers are inextricably linked to each other and will provide for a consistent and coherent approach to supporting looked after children and delivering their rights and entitlements as part of an effective corporate parent framework that empowers them to achieve improved well-being outcomes that enhance their life chances.</p> <p>The policy intent is that regulations and Code of Practice will prescribe a set of core requirements for the representative that will place duties on local authorities to support specified groups of children whilst accommodated by health authorities, local</p>	

education authorities in care homes or independent hospitals.

Aspects of the regulations may include:

- the timing and frequency of visits;
- the conduct of the visits including the need to meet with children in private;
- the preparation of a report reflecting the child's wishes and feelings, the effectiveness of their safeguarding and well-being; the need to promote contact with the child's family; arrangements for the provision of advice and support and assistance
- the sharing of the report with the child and other specified individuals.

The list is not exhaustive. There is an imperative to ensure a consistency of approach with the core processes under Part 4 whilst recognising the specific circumstances and needs of children falling within these provisions.

Regulations will be supported by a Code of Practice that local authorities must comply with. The requirement for the appointment and functions of a representative will be set by a combination of the regulations and Code of Practice.

**WORK TO DATE**

None.

**RELEVANT POLICY DOCUMENTS, MINISTERIAL STATEMENTS OR COMMITMENTS:**

<http://wales.gov.uk/topics/childrenyoungpeople/publications/visitsresidentialcare/?lang=en>

**OTHER CONSIDERATIONS:**

None

**INTERDEPENDENCIES AND LINKS TO OTHER POWERS/REGULATIONS:**

The Visits to Children in Long-term Residential Care (Wales) Regulations 2011



<b>REGULATIONS RELATING TO:</b>	Adult Protection and Support Orders
<b>BILL PART:</b>	7
<b>SECTION AND SUB-SECTION:</b>	117(9)
<b>DESCRIPTION OF THE POWER/REGULATION</b>	
Regulations under this section may define who a local authority can authorise to be an 'authorised officer' for the purposes of Adult Protection and Support Orders.	
<b>WHY THE REGULATION POWER IS REQUIRED</b>	
<p>Section 117 of the Bill provides for new Adult Protection and Support Orders. This provision will enable social services to apply to the courts for an order to enter a property to speak with someone they think could be at risk, without interference from others in the house who might obstruct access, to ascertain whether a person is making decisions freely.</p> <p>An 'authorised officer' is a person authorised by the local authority for the purposes of applying for and exercising adult protection and support orders. To ensure that only practitioners with sufficient skills and training carry out this role, for example, those with experience of dealing with neglect or domestic violence, regulations provide for the Welsh Ministers to set restrictions on who may become an 'authorised officer'.</p>	
<b>WHAT THE REGULATION POWER CAN ACHIEVE</b>	
Regulations may set restrictions on the types of persons or categories of persons who may become an 'authorised officer' in relation to exercising adult protection and support orders under section 117	
<b>POLICY INTENTION OF THE REGULATIONS</b>	
<p>There are complex human rights issues to be addressed with regard to Adult Protection and Support Orders – private life, family life and home. Any intervention must be appropriate and statutory guidance will provide the detail for the consistent and appropriate execution of orders.</p> <p>An 'authorised officer' will be required to be in the employment of a relevant partner, as defined in section 152. In keeping with the recommendations of the Safeguarding Advisory Panel, the Welsh Government intends to carry out a training programme for 'authorised officers' so that practitioners have specific and sufficient skills to carry out their role. Regulations will seek to reflect the skills needed to be an effective 'authorised officer'.</p>	
<b>WORK TO DATE</b>	
The Deputy Minister for Social Services, Gwenda Thomas AM, established the Safeguarding Advisory Panel in July 2013 to provide expert advice to the Welsh Government on strengthening safeguarding arrangements for adults and children in Wales. The panel undertook a detailed process of engagement with organisations and professional staff in the public, independent, private and third sectors. Alongside	

key strategic meetings, a series of workshops have been held and a national safeguarding event. The Panel's first report was submitted to the Deputy Minister in November 2013 and focused on the regulations and guidance which have to be produced as a result of the Social Services and Well-being (Wales) Bill, including in relation to regulations under section 117(9).

The Welsh Government has also established a Task and Finish group with colleagues in the UK Government to consider how Adult Protection and Support Orders will operate in practice. The work of this task and finish group is ongoing.

**RELEVANT POLICY DOCUMENTS, MINISTERIAL STATEMENTS OR COMMITMENTS:**

Safeguarding arrangements have received considerable scrutiny in recent years. The Welsh Safeguarding Forum was established by the Deputy Minister and reported in August 2011, and the Health, Wellbeing and Local Government Committee conducted an inquiry into the work of Local Safeguarding Children Boards, to which the Deputy Minister responded. The Protection of Vulnerable Adults Project Board was established in February 2008 by the Deputy Minister and considered how existing adult protection arrangements in Wales should be strengthened. The Board reported in February 2011.

The Deputy Minister has made a series of Written Statements on 7 November 2013, 18 October 2012 and 18 October 2011 in relation to her approach to strengthening safeguarding arrangements in Wales, including via the Social Services and Well-being Bill.

**OTHER CONSIDERATIONS:**

None.

**INTERDEPENDENCIES AND LINKS TO OTHER POWERS/REGULATIONS:**

Regulations under section 45 (care and support plan) must include provision about recording the conclusions of enquires made, or caused to be made, by a local authority when it suspects an adult in its area meets the definition of an adult at risk, as provided for at section 116(3). The Welsh Government intends that care and support plans include a comprehensive account of the findings and conclusions of that inquiry. If any actions have been identified as a result of that inquiry the care and support plan should be clear who has responsibility for ensuring these actions are carried out. Care and support plans may therefore be required to hold information in relation to adult protection and support orders exercised.

<b>REGULATIONS RELATING TO:</b>	The National Independent Safeguarding Board
<b>BILL PART:</b>	7
<b>SECTION:</b>	123
<b>DESCRIPTION OF THE POWER/REGULATION</b>	
Regulations providing for the constitution, membership and administration of the National Independent Safeguarding Board.	
<b>WHY THE REGULATION POWER IS REQUIRED</b>	
<p>Section 122 of the Bill provides for the establishment of a National Independent Safeguarding Board to ensure strategic leadership on a national level in Wales. The National Board's duties, as prescribed in the Bill, are to:</p> <ul style="list-style-type: none"> <li>• Provide support and advice to Safeguarding Boards to ensure they are effective;</li> <li>• Report on the adequacy and effectiveness of arrangements to safeguard children and adults in Wales; and</li> <li>• Make recommendations to the Welsh Ministers on how safeguarding arrangements could be improved.</li> </ul> <p>Regulations may make further detailed provision about the National Board.</p>	
<b>WHAT THE REGULATION POWER CAN ACHIEVE</b>	
<p>Regulations may, for example, make further provision about the:</p> <ul style="list-style-type: none"> <li>• constitution and membership of the National Board (including the how members are appointed or removed from the Board);</li> <li>• remuneration and allowances of members of the National Board;</li> <li>• proceedings of the National Board;</li> <li>• need for the National Board to consult stakeholders;</li> <li>• form, content and timing of the National Board's reports;</li> <li>• publication of the National Board's reports.</li> </ul>	
<b>POLICY INTENTION OF THE REGULATIONS</b>	
<p>In keeping with the key principle of the <i>people model</i> that runs throughout the Social Services and Well-being (Wales) Bill, the National Board will consider safeguarding arrangements in relation to both children and adults. In line with the recommendation of the Health and Social Care Committee Stage 1 scrutiny report and the recommendation of the Safeguarding Advisory Panel, established by the Deputy Minister for Social Services to consider the developing safeguarding arrangements, regulations will ensure that the National Board is able to take forward explicit work streams in relation to children and adults, separately where appropriate, to reflect the often different needs and circumstances based on age.</p> <p>Regulations and guidance in relation to the National Board and Safeguarding Boards will make clear the relationship between the Welsh Ministers, the National Board and</p>	

Safeguarding Boards in relation to what should be expected to happen in response to issues raised, as well as the relationship of the National Board with individual agencies.

In keeping with the recommendations of the Safeguarding Advisory Panel, regulations will also be clear on the role of the National Board to:

- Receive, collate and share information and best practice;
- Focus on early identification; and
- Encourage partnership working between Inspectorates and regulatory bodies alongside the National and Safeguarding Boards.

For the National Board to be effective it will need to consist of an expert membership with appointments based on skills and relevant experience rather than representational roles. The Safeguarding Advisory Panel has recommended that the National Board has five members plus a Chair, as well as regulated procedures relating to proceedings such as quoracy. The regulations will also require that members should be appointed by the public appointments process.

Regulations will require the National Board to ensure that the views of service users and practitioners are effectively incorporated in its work. This may include holding an annual public engagement event and regular meetings with the Chairs of Safeguarding Boards.

Section 122(3)(a) requires that the National Board produce an annual report to the Welsh Ministers. As recommended by the Safeguarding Advisory Panel, regulations will specify that reports must include:

- details of the work of the National Board during the year;
- how the National Board has engaged with service users and members of the public;
- an overview of safeguarding in Wales;
- improvements noted in the practice of Safeguarding Boards across Wales; and
- evidence of how the National Board has challenged practice and facilitated improvement of Safeguarding Boards and the safeguarding practices of relevant partners.

#### **WORK TO DATE**

The Deputy Minister for Social Services established the Safeguarding Advisory Panel in July 2013 to provide expert advice to the Welsh Government on strengthening safeguarding arrangements for adults and children in Wales. The panel undertook a detailed process of engagement with organisations and professional staff in the public, independent, private and third sectors. Alongside key strategic meetings, a series of workshops have been held and a national event. The Panel's first report was submitted to the Deputy Minister in November and focused on the regulations and guidance which have to be produced as a result of the Social Services and Well-being Bill, including in relation to regulations under s123.

#### **RELEVANT POLICY DOCUMENTS, MINISTERIAL STATEMENTS OR COMMITMENTS:**

Safeguarding arrangements, and the work of Local Safeguarding Children Boards, have received considerable scrutiny in recent years. The Welsh Safeguarding Forum was established by the Deputy Minister and reported in August 2011, and the Health, Wellbeing and Local Government Committee also conducted an inquiry into the work of Local Safeguarding Children Boards, to which the Deputy Minister responded. The Protection of Vulnerable Adults Project Board was established in February 2008 by the Deputy Minister for Social Services and considered how existing adult protection arrangements in Wales should be strengthened. The Board reported in February 2011.

The Deputy Minister has made a series of Written Statements on 7 November 2013, 18 October 2012 and 18 October 2011 in relation to her approach to strengthening safeguarding arrangements in Wales, including via the Social Services and Well-being Bill.

**OTHER CONSIDERATIONS:**

None.

**INTERDEPENDENCIES AND LINKS TO OTHER POWERS/REGULATIONS:**

Part 7 of the Bill includes a range of provisions that seek to strengthen safeguarding arrangements in Wales. Included among these provisions is a range of regulation making powers, notably in relation to the functions and membership of Safeguarding Adults and Children Boards, the details of which will have a direct implication on the work of the National Board.

<b>REGULATIONS RELATING TO:</b>	Safeguarding - Safeguarding Board Areas
<b>BILL PART:</b>	7
<b>SECTION:</b>	124(1)
<b>DESCRIPTION OF THE POWER/REGULATION</b>	
To establish those areas in Wales for which there are to be Safeguarding Boards, referred to as 'Safeguarding Board areas'.	
<b>WHY THE REGULATION POWER IS REQUIRED</b>	
<p>Section 124 provides for the establishment of Safeguarding Children and Adults Boards in particular areas. This is to enable multi agency safeguarding partnerships that were previously, and in some cases still are, operating in each local authority area such as Local Safeguarding Children Boards (under the Children Act 2004 and the accompanying statutory guidance <i>Working Together</i>) and Area Adult Protection Committees (under Social Services Act 1970 section 7 guidance <i>In Safe Hands</i>) to form new larger Safeguarding Children and Safeguarding Adults Boards for the purpose of cooperation.</p> <p>This is intended to ensure the most effective framework possible to support the high levels of collaboration and multi-agency working required to ensure effective safeguarding and protection.</p>	
<b>WHAT THE REGULATION POWER CAN ACHIEVE</b>	
The regulation power must specify the geographic areas to be covered by a Safeguarding Children and a Safeguarding Adults Board.	
<b>POLICY INTENTION OF THE REGULATIONS</b>	
The Deputy Minister for Social Services has said that Safeguarding Boards would be established based on the public service delivery footprint (6 areas) accepted by the Welsh Government Cabinet and the Partnership Council as being appropriate for the delivery of co-ordinated public services – these are North Wales, Gwent, Mid and West Wales, Cwm Taf, Cardiff and the Vale and Western Bay.	
<b>WORK TO DATE</b>	
The Deputy Minister for Social Services established the Safeguarding Advisory Panel in July 2013 to provide expert advice to the Welsh Government on strengthening safeguarding arrangements for adults and children in Wales. The panel undertook a detailed process of engagement with organisations and professional staff in the public, independent, private and third sectors. Alongside key strategic meetings, a series of workshops have been held and a national event. The Panel's first report was submitted to the Deputy Minister in November 2013 and focused on the regulations and guidance which have to be produced as a result of the Social Services and Well-being (Wales) Bill, including in relation to regulations under section 124.	

The Panel included discussion on Safeguarding Board areas within a workshop with stakeholders in September 2013. The need for consistency and stability to fit with the operational delivery of key services was considered important, alongside a need to future-proof arrangements to prevent future realignment of Safeguarding Boards or their members once they were established.

Following a Written Statement by the Deputy Minister encouraging progress on the new Safeguarding Board structure in October 2011, a number of Boards are already operating within the regional public service delivery footprint.

- Cwm Taf has a Safeguarding Adults and a Safeguarding Children Board.
- Western Bay has a Safeguarding Adults and a Safeguarding Children Board.
- North Wales Safeguarding Children Board is in place with ongoing discussions in relation to the arrangements across North Wales for the Safeguarding Adults Board.
- Mid and West Safeguarding Children Board is in place.
- The Gwent Safeguarding Adults Board and the South East Wales Safeguarding Children Board are in place
- Cardiff and Vale Safeguarding Children Board is in place.

#### **RELEVANT POLICY DOCUMENTS, MINISTERIAL STATEMENTS OR COMMITMENTS:**

Safeguarding arrangements, and the work of Local Safeguarding Children Boards, have received considerable scrutiny in recent years. The Welsh Safeguarding Forum was established by the Deputy Minister and reported in August 2011, and the Health, Wellbeing and Local Government Committee also conducted an inquiry into the work of Local Safeguarding Children Boards, to which the Deputy Minister responded. The Protection of Vulnerable Adults Project Board was established in February 2008 by the Deputy Minister for Social Services and considered how existing adult protection arrangements in Wales should be strengthened. The Board reported in February 2011.

The Safeguarding Children Forum report (2011) and the Simpson report (2011) recognised that partnership and collaboration would be more sustainable on a larger geographical footprint than that currently operated; suggesting that there was merit in reconfiguring the current structure of Local Safeguarding Children Boards to align with the current Local Health Board structures.

The Deputy Minister has made a series of Written Statements on 7 November 2013, 18 October 2012 and 18 October 2011 in relation to her approach to strengthening safeguarding arrangements in Wales, including via the Social Services and Well-being Bill.

The Ministerial Statement in October 2011 announced that the new Safeguarding (and Protection) Boards should match the proposed Public Service Delivery footprint of six, on the geographic areas of North Wales, Gwent, Mid and West Wales, Cwm Taf, Cardiff and the Vale and Western Bay. The collaborative footprint for public services was agreed by the Welsh Government Cabinet in July 2011 and was presented to the Partnership Council in the same month.

Safeguarding and Protection of People at Risk - the Deputy Minister's statement on 7 November 2013 reinforced these earlier messages - "this coherent, common footprint will enable and support joint working across local government, health and police services, reducing complexity and duplication."

The Safeguarding Advisory Panel report (November 2013) submitted to the Deputy Minister states *It is recommended that Safeguarding Board areas should be defined in such a way as to "future" proof them against frequent changes and so as to ensure their areas are compatible with the operational delivery of key services (Recommendation 25).*

**OTHER CONSIDERATIONS:**

Future-proofing the regulation against any change to the public service footprint.

Regulations are to be supported by statutory guidance.

**INTERDEPENDENCIES AND LINKS TO OTHER POWERS/REGULATIONS:**

A link to be aware of, rather than inter-dependency to, section 124(3) which states the Safeguarding Board area, once determined, will need to have a lead partner identified, who must then establish the Safeguarding Board for that area.



<b>REGULATIONS RELATING TO:</b>	Safeguarding - Safeguarding Board Lead Partner
<b>BILL PART:</b>	7
<b>SECTION:</b>	124(3)
<b>DESCRIPTION OF THE POWER/REGULATION</b>	
<p>Regulations under this section will enable Welsh Ministers to establish, after consultation with Safeguarding Board partners, the lead partner of a Safeguarding Adults and Safeguarding Children Board.</p>	
<b>WHY THE REGULATION POWER IS REQUIRED</b>	
<p>Section 124 provides for the establishment of Safeguarding Children and Adults Boards. The provisions set out the specific bodies that are required to be Safeguarding Board partners and require that, following consultation with Safeguarding Board partners, Welsh Ministers must by regulations specify a lead partner for Safeguarding Boards. Without these regulations it will not be possible to regulate the lead partner for Safeguarding Children and Safeguarding Adults Boards.</p>	
<b>WHAT THE REGULATION POWER CAN ACHIEVE</b>	
<p>The regulation will specify a lead partner for the Safeguarding Board area from one of the following agencies (listed under section 124(2)):</p> <ul style="list-style-type: none"> <li>• the local authority</li> <li>• the chief officer of police</li> <li>• a Local Health Board;</li> <li>• an NHS Trust; and</li> </ul> <p>a provider of probation services (where required to act as a Safeguarding Board partner by arrangements under section 3(2) of the Offender Management Act 2007).</p> <p>The functions of the Safeguarding Board at section 125 (3) state <i>A Safeguarding Board must seek to achieve its objective by co-ordinating and ensuring the effectiveness of what is done by each person or body represented on the Board.</i> This reflects a collective responsibility rather the lead partner being responsible solely for the Safeguarding Board. The regulations may need to clarify what is meant by lead partner alongside this collective objective.</p>	
<b>POLICY INTENTION OF THE REGULATIONS</b>	
<p>Regulations must specify a safeguarding board partner as the lead partner in relation to children for the area and also specify a safeguarding board partner as the lead partner for adults in the area.</p> <p>The regulation should indicate whether the lead partner is permanent or has a rotating tenure (and be subject to further consultation). Where the regulation indicates the lead partner is not permanent, parameters may be specified as to the length of tenure; as a minimum or maximum length. This would seek to ensure that the period is sufficiently long to ensure consistency of approach but not too long, so as to become unduly onerous on any one lead partner. Statutory guidance will ensure that there is a seamless handover between authorities at the end of each period of office.</p>	

Regulations may specify that the lead partner has the responsibility to chair the Safeguarding Board.

#### **WORK TO DATE**

The Deputy Minister for Social Services established the Safeguarding Advisory Panel in July 2013 to provide expert advice to the Welsh Government on strengthening safeguarding arrangements for adults and children in Wales. The panel undertook a detailed process of engagement with organisations and professional staff in the public, independent, private and third sectors. Alongside key strategic meetings, a series of workshops have been held and a national event. The Panel's first report was provided to the Deputy Minister in November and focused on the regulations and guidance which have to be produced as a result of the Social Services and Well-being Bill, including in relation to regulations under section 124(3).

The Panel's engagement between August and November 2013 included a workshop held on in September 2013, which considered lead partners. The workshop discussion demonstrated consensus for the lead partner to be a local authority, however participants were made aware that Welsh Government would consult the Safeguarding Board partners prior to regulation. Safeguarding Children: Working Together under the Children Act 2004 indicates each local authority should take lead responsibility for the establishment and effective working of Local Safeguarding Children Boards.

Engagement activity identified a lack of clarity in relation to understanding of the role of lead partner, who establishes the Safeguarding Board, and that of Safeguarding Board chair, and further examination and clarification is required.

#### **RELEVANT POLICY DOCUMENTS, MINISTERIAL STATEMENTS OR COMMITMENTS:**

Safeguarding arrangements, and the work of Local Safeguarding Children Boards, have received considerable scrutiny in recent years. The Welsh Safeguarding Forum was established by the Deputy Minister and reported in August 2011, and the Health, Wellbeing and Local Government Committee also conducted an inquiry into the work of Local Safeguarding Children Boards, to which the Deputy Minister responded. The Protection of Vulnerable Adults Project Board was established in February 2008 by the Deputy Minister for Social Services and considered how existing adult protection arrangements in Wales should be strengthened. The Board reported in February 2011.

The Deputy Minister has made a series of Written Statements on 7 November 2013, 18 October 2012 and 18 October 2011 in relation to her approach to strengthen safeguarding arrangements in Wales, including via the Social Services and Well-being Bill.

The Safeguarding Advisory Panel report includes within recommendation 26 a limitation of a three year duration for a lead partner, where the lead partner role is to be rotated.

In addition, Recommendation 27 advises that regulations specify and guidance includes working examples which:

- *Further clarifies the role of the Lead Partner*
- *Defines the role of local authorities which are members of the Safeguarding Boards but are not the Lead Partner*
- *Defines clearly the role and responsibilities towards the Safeguarding Boards of all statutory partners and other persons or bodies which are represented on the Boards*
- *Establishes the role of chair and vice chair for all Safeguarding Boards and sets out their relevant functions and responsibilities to the Safeguarding Board and to the National Board and*
- *Defines clear lines of accountability for all Safeguarding Board members so that both Board members and the public know to whom they are accountable.*

Matters of accountability within *Safeguarding Children: Working Together under the Children Act 2004* clarifies that Safeguarding Boards are accountable for their work to their main constituent agencies.

#### **OTHER CONSIDERATIONS:**

Regulations are to be supported by statutory guidance.

#### **INTERDEPENDENCIES AND LINKS TO OTHER POWERS/REGULATIONS:**

Links to sections 124(7) and (8) which highlight that regulations under subsection 6 (b) *may only specify a person or body as a safeguarding Board partner if that person or body exercises functions under an enactment in relation to children in wales or as the case may be adults in Wales*, therefore regulations relate to section 124(2) of section 124 and must list the partners as set out in section 124(2)(a) to (e).

Links to section 125(3) and 125(4)(a&b) -the Safeguarding Advisory Panel considered the mandatory duty under section 125 (3) of the Bill placed on the Boards *to co-ordinate and ensure the effectiveness of what is done by each person or body represented on the Board*. To fulfil that duty, the Safeguarding Advisory Panel agreed that regulations would be needed under section 125(4)(a) and (b) of the Bill. Regulations will need to provide a concise and clear definition of each member's responsibilities towards their Board. Further, those regulations will need to allow the Board, and on occasion the Lead Partner, through its representative, to ensure other members of the Board to fulfil their duties and responsibilities in relation to the Board.

Recommendation 30 advises that the Lead Partner should have the power to ensure that other Safeguarding Board members fulfil their duties and responsibilities to the Board

<b>REGULATIONS RELATING TO:</b>	Safeguarding – Safeguarding Board Partners
<b>BILL PART:</b>	7
<b>SECTION AND SUB-SECTION:</b>	124(6)(b)
<b>DESCRIPTION OF THE POWER/REGULATION</b>	
<p>The regulation provides for the addition of representatives of other persons or bodies as Safeguarding Board partners.</p>	
<b>WHY THE REGULATION POWER IS REQUIRED</b>	
<p>The power is required to ensure that, in addition to the statutory membership of Boards provided for in 124(2), representation on the Safeguarding Board comprises individuals and organisations that can make a contribution to the safeguarding and protection arrangements which are the responsibility of Safeguarding Boards within their area.</p>	
<b>WHAT THE REGULATION POWER CAN ACHIEVE</b>	
<p>The regulations can require partners, in addition to those set out in section 124(2), to provide a representative of their agency to participate in the work of the Safeguarding Board.</p> <p>The regulations could include other local organisations such as:</p> <ul style="list-style-type: none"> <li>• Faith groups</li> <li>• Independent and third sector providers</li> <li>• In areas where they have significant local activity the armed forces in relation to the families of service men, women and their children.</li> </ul> <p>The regulations can provide the basis for related arrangements which can be set out in following guidance to encompass agencies or organisations that cannot sit on the Board. For example, as regulators are part of the Welsh Government they are unable to formally be Board members, but need to be connected to the work of the Safeguarding Board and the Safeguarding Board Partners. This mirrors <i>Safeguarding Children: Working Together under the Children Act 2004</i> for Local Safeguarding Children Boards.</p>	
<b>POLICY INTENTION OF THE REGULATIONS</b>	
<p>To ensure that suitable organisations within the Safeguarding Board area can contribute to the work of the Boards.</p>	
<b>WORK TO DATE</b>	
<p>The Deputy Minister for Social Services, Gwenda Thomas AM, established the Safeguarding Advisory Panel in July 2013 to provide expert advice to the Welsh Government on strengthening safeguarding arrangements for adults and children in Wales. The Panel has undertaken a detailed process of engagement with</p>	

organisations and professional staff in the public, independent, private and third sectors. Alongside key strategic meetings, a series of workshops have been held and a national event. The Panel's first report was provided to the Deputy Minister in November and focused on the regulations and guidance which have to be produced as a result of the Social Services and Well-being (Wales) Bill, including in relation to regulations under s124(6)(b) regarding Safeguarding Board partners.

The Safeguarding Advisory Panel engagement included a workshop held on 26 September 2013 which considered additional partners which might be included by virtue of sec 124(6)(b) such as the Prison Service; the Fire Service. It is noted that discussions with UK Government are required in relation to non devolved agencies.

Discussion regarding Elected Members becoming part of Safeguarding Boards during the Safeguarding Advisory Panel engagement at the Social Services Policy Group and with a range of stakeholders, led to a view that elected members should not be discretionary members of Safeguarding Boards. The overarching desirability of having a consistent approach across all Safeguarding Board areas extends further in relation to Executive Board Members for local health boards, Probation and the Police Crime Commissioner who should not be eligible for membership of Safeguarding Boards as recommended by the Safeguarding Advisory Panel.

**RELEVANT POLICY DOCUMENTS, MINISTERIAL STATEMENTS OR COMMITMENTS:**

Safeguarding arrangements, and the work of Local Safeguarding Children Boards, have received considerable scrutiny in recent years. The Welsh Safeguarding Forum was established by the Deputy Minister and reported in August 2011, and the Health, Wellbeing and Local Government Committee also conducted an inquiry into the work of Local Safeguarding Children Boards, to which the Deputy Minister responded. The Protection of Vulnerable Adults Project Board was established in February 2008 by the Deputy Minister for Social Services and considered how existing adult protection arrangements in Wales should be strengthened. The Board reported in February 2011.

The Deputy Minister has made a series of Written Statements on 7 November 2013, 18 October 2012 and 18 October 2011 in relation to her approach to strengthening safeguarding arrangements in Wales, including via the Social Services and Well-being (Wales) Bill.

**OTHER CONSIDERATIONS:**

Regulations are to be supported by statutory guidance

**INTERDEPENDENCIES AND LINKS TO OTHER POWER/REGULATIONS:**

Potential link with section 124(9) and (10) which gives Boards the discretion to appoint members and 125 (4)(c) which provides for regulations which must specify when and how children and adults who are, or may be, affected by the exercise of a Safeguarding Board's functions must be given the opportunity to participate in the Board's work. The Rights of Children and Young Persons (Wales) Measure 2011, ensures that all regulations and guidance drafted recognises the rights of children. On

a practical level too, in relation to children there are already in place mechanisms such as school councils and junior Local Safeguarding Children Boards through which the voice of the child could be heard on a Safeguarding Board. There are no such Measures or structures to represent vulnerable adults.

Given the diversity of ages and needs of adults at risk, consideration needs to be given as to how they are to be given an effective voice on Safeguarding Adults Boards.

<b>REGULATIONS RELATING TO:</b>	Safeguarding – Safeguarding Boards Functions and Procedures.
<b>BILL PART:</b>	7
<b>SECTION AND SUB-SECTION:</b>	125 (4)
<b>DESCRIPTION OF THE POWER/REGULATION</b>	
To set out Safeguarding Board functions relating to its objectives, procedures to be followed and how Boards should ensure user involvement and participation in their work.	
<b>WHY THE REGULATION POWER IS REQUIRED</b>	
Section 124 provides for the establishment of Safeguarding Children and Adults Boards. The Welsh Ministers must make regulations to provide for the Safeguarding Board to have functions relating to its objectives. Regulations under this section (125) can ensure minimum standards and consistency across Wales in relation to Safeguarding Board structure, quality, user engagement and activity/outcomes.	
<b>WHAT THE REGULATION POWER CAN ACHIEVE</b>	
The regulations can set out the procedures the Safeguarding Board must follow in relation to its own business, how Boards should work with the National Independent Safeguarding Board (established under section 116) and other existing local partnerships to improve safeguarding arrangements, and set out standards that Safeguarding Boards must achieve to ensure that they are being effective. The regulations can also set out how users of services can participate in the work of Safeguarding Adults and Safeguarding Children Boards.	
<b>POLICY INTENTION OF THE REGULATIONS</b>	
<p>The regulations may make provision regarding the functions of Safeguarding Boards in relation to:</p> <ul style="list-style-type: none"> <li>• safeguarding and protection activities including child practice reviews and their equivalent in adult safeguarding, thematic reviews and investigations, and review of the efficacy of the measures taken by each person or body represented on the Board to coordinate what they do for the purposes of safeguarding and protection within the area of the Safeguarding Board (s125 (4)(a)).</li> <li>• Measuring performance.</li> <li>• Matters of compliance between Safeguarding Board members (s125 (4)(b)).</li> <li>• Development of procedures regarding safeguarding and protection and professional abuse and information sharing.</li> <li>• Review, delivery and evaluation of training.</li> <li>• Safer recruitment.</li> <li>• Education.</li> <li>• Raising awareness through the Board’s area of the need to safeguard adults and children, including the provision of information.</li> <li>• Engagement with users in relation to the work of Safeguarding Boards (s125</li> </ul>	

(4)(c).

- Public engagement.
- Engagement with the National Independent Safeguarding Board

#### **WORK TO DATE**

The Deputy Minister for Social Services, Gwenda Thomas AM, established the Safeguarding Advisory Panel in July 2013 to provide expert advice to the Welsh Government on strengthening safeguarding arrangements for adults and children in Wales. The panel undertook a detailed process of engagement with organisations and professional staff in the public, independent, private and third sectors. Alongside key strategic meetings, a series of workshops have been held and a national event. The Panel's first report was provided to the Deputy Minister in November and focused on the regulations and guidance which have to be produced as a result of the Social Services and Well-being Bill, including in relation to regulations under section 125 (4).

The Safeguarding Advisory Panel considered, during two workshops in September 2013, the way in which a Safeguarding Board would meet its overall objective through its functions. The balance between the core protection business of a Safeguarding Board and its wider safeguarding functions was discussed and a recommendation was made that a framework for the objectives of Safeguarding Adults Boards and Safeguarding Children Boards are laid down in regulations which focuses the work of these Boards on protection as their core business, with a graded approach whereby the Board's would gradually incorporate wider safeguarding functions into their responsibilities (Recommendation 35).

The Safeguarding Advisory Panel noted the need for procedures to be set out in regulations to address matters of compliance between members of the Safeguarding Boards (Recommendation 38).

#### **RELEVANT POLICY DOCUMENTS, MINISTERIAL STATEMENTS OR COMMITMENTS:**

Safeguarding arrangements, and the work of Local Safeguarding Children Boards, have received considerable scrutiny in recent years. The Welsh Safeguarding Forum was established by the Deputy Minister and reported by August 2011, and the Health, Wellbeing and Local Government Committee also conducted an inquiry into the work of Local Safeguarding Children Boards, to which the Deputy Minister responded. The Protection of Vulnerable Adults Project Board was established in February 2008 by the Deputy Minister for Social Services, Gwenda Thomas AM and considered how existing adult protection arrangements in Wales should be strengthened. The Board reported in February 2011.

The Deputy Minister has made a series of Written Statements on 7 November 2013, 18 October 2012 and 18 October 2011 in relation to her approach to strengthening safeguarding arrangements in Wales, including via the Social Services and Well-being (Wales) Bill.

#### **OTHER CONSIDERATIONS:**



Regulations are to be supported by statutory guidance

**INTERDEPENDENCIES AND LINKS TO OTHER REGULATIONS:**

Functions of Safeguarding Boards are referenced in many other sections of the Bill:

Section 126(1) requires that before the beginning of each financial year a Safeguarding Board must publish a plan (its annual plan) setting out its proposals for achieving its objectives in that year.

126(2) stipulates that no later than 31 July of each year, the Safeguarding Board must publish a report.

126(3) provides that regulations may make further provision about the making of plans and reports under this section (including provision about their form and content and how they are to be published)

129 (1) A Safeguarding Board must cooperate with the National Board, and must supply the National Board with any information it requests.

129 (2) regulations may make provision as to the functions of safeguarding board partners relating to the Safeguarding boards on which they are represented.

129 (3) a Safeguarding Board partner must, in exercising its functions relating to a Safeguarding Board, have regard to any guidance given by the welsh ministers.

129 (4) Each Safeguarding Board partner must take all reasonable steps to ensure that the Safeguarding Board on which it is represented operates effectively

127 (1) provides that the Safeguarding Board may ask for the supply of specified information.

<b>REGULATIONS RELATING TO:</b>	Safeguarding – Safeguarding Boards: annual plans and annual reports
<b>BILL PART:</b>	7
<b>SECTION AND SUB-SECTION:</b>	126(3)
<b>DESCRIPTION OF THE POWER/REGULATION</b>	
To provide for the detailed arrangements for the production of Safeguarding Children and Safeguarding Adults Boards' plans and reports under this section (including provision about their form and content and how they are to be published).	
<b>WHY THE REGULATION POWER IS REQUIRED</b>	
<p>Section 124 provides for the establishment of Safeguarding Children and Adults Boards. Regulations may ensure Safeguarding Boards' annual plans and annual reports include required content and demonstrate the Safeguarding Boards' effectiveness in protecting children and adults within the Safeguarding Board area.</p> <p>The purpose of the regulation power is to ensure that annual plans are a useful and practical tool for evaluation and accountability purposes and demonstrate how Safeguarding Boards account to National bodies, inspectorates and to the public.</p>	
<b>WHAT THE REGULATION POWER CAN ACHIEVE</b>	
The regulation will ensure Safeguarding Boards' annual plans and annual reports are published as directed and on a consistent basis across Wales.	
<b>POLICY INTENTION OF THE REGULATIONS</b>	
<p>The regulations should:</p> <ul style="list-style-type: none"> <li>• set out what is to be included in Safeguarding Boards' annual plans</li> <li>• prescribe that the annual plan to be set for three years and that progress against the actions, objectives and deliverables should be recorded in the annual report</li> <li>• set out what is to be included in Safeguarding Boards' annual reports</li> <li>• prescribe how and where annual plans and annual reports are published</li> <li>• require that objectives set within the annual plan are based on population data and identified trends/needs within the Safeguarding Board area.</li> </ul> <p>The Safeguarding Advisory Panel identified the following areas to be covered by the annual report:</p> <ul style="list-style-type: none"> <li>• Membership of the Board - explicit commitment of Board members</li> <li>• General safeguarding context</li> <li>• Evaluated engagement methods</li> <li>• Clarity of methods used inclusive of users views</li> <li>• Evaluation of the effectiveness of the Board - Has it made a difference and, if so, how? Have agencies fulfilled their responsibility?</li> </ul>	

- Priority of issues raised to achieve cooperation and success
- Analysis of local population data to identify strategic priorities and target improvement
- Financial matters and funding achievements
- Case analysis, child and adult practice reviews, resulting themes and changes Implemented
- Sources of learning, dissemination across the Board area
- Provision of training provided and undertaken by the Board
- Key outcomes - the Board, subgroups, task & finish groups
- UK, national and local issues - how they impact on service users in Board area
- Implementation of National Board guidance and advice
- Communication methods

### **WORK TO DATE**

The Deputy Minister for Social Services established the Safeguarding Advisory Panel in July 2013 to provide expert advice to the Welsh Government on strengthening safeguarding arrangements for adults and children in Wales. The panel undertook a detailed process of engagement with organisations and professional staff in the public, independent, private and third sectors. Alongside key strategic meetings, a series of workshops have been held and a national event. The Panel's first report was provided to the Deputy Minister in November and focused on the regulations and guidance which have to be produced as a result of the Social Services and Well-being Bill, including in relation to regulations under s126 (3).

The Safeguarding Advisory Panel facilitated a workshop on in September 2013 to consider the content of annual reports and annual plans and there was general consensus on the issues which plans and reports needed to cover, and this has been included in its report to the Deputy Minister. *The format of the Safeguarding Board annual plans and annual reports required should be prescribed by regulation to ensure consistency across Board areas and to enable effective national analysis and evaluation. One of the matters that must be included should be a report on any non-compliance by partners* (Recommendation 32).

*The annual report and the annual plan must reflect the collective outcome of the Safeguarding Board rather than individual agencies' activity, therefore it was agreed that it is essential that the report should be developed from contributions from all statutory partners. The report recommended that regulations note that all statutory partners must contribute to the Safeguarding Board's annual report and annual plan* (Recommendation 33).

### **RELEVANT POLICY DOCUMENTS, MINISTERIAL STATEMENTS OR COMMITMENTS:**

Safeguarding arrangements, and the work of Local Safeguarding Children Boards, have received considerable scrutiny in recent years. The Welsh Safeguarding Forum was established by the Deputy Minister and reported in August 2011, and the Health, Wellbeing and Local Government Committee also conducted an inquiry into the work of Local Safeguarding Children Boards, to which the Deputy Minister responded. The Protection of Vulnerable Adults Project Board was established in February 2008 by

the Deputy Minister for Social Services and considered how existing adult protection arrangements in Wales should be strengthened. The Board reported in February 2011.

The Deputy Minister has made a series of Written Statements on 7 November 2013, 18 October 2012 and 18 October 2011 in relation to her approach to strengthening safeguarding arrangements in Wales, including via the Social Services and Well-being Bill.

**OTHER CONSIDERATIONS:**

None

**INTERDEPENDENCIES AND LINKS TO OTHER POWERS/REGULATIONS:**

Section 125 functions and procedures of Safeguarding Boards one of which is to provide an annual plan and report.

Section 127 supply of information requested by Safeguarding Boards, which could include Safeguarding Board partners or others in order to develop the Board's annual plan or compile its annual report.

<b>REGULATIONS RELATING TO:</b>	Funding of Safeguarding Boards
<b>BILL PART:</b>	7
<b>SECTION AND SUB-SECTION:</b>	128(3)
<b>DESCRIPTION OF THE POWER/REGULATION</b>	
<p>This section provides for regulations to be made requiring payments to be made by a Safeguarding Board partner towards expenditure incurred by, or for purposes connected with, the Safeguarding Boards. Regulations may also provide for how the amount of those payments is to be determined (i.e. a funding model).</p>	
<b>WHY THE REGULATION POWER IS REQUIRED</b>	
<p>Current arrangements for the funding of Local Safeguarding Children Boards are problematic. Section 33 of the Children Act 2004 provides that:</p> <p><i>(1) Any person or body specified in subsection (3) may make payments towards expenditure incurred by, or for purposes connected with, a Local Safeguarding Children Board established under section 31—</i></p> <p style="padding-left: 40px;"><i>(a) by making the payments directly; or</i></p> <p style="padding-left: 40px;"><i>(b) by contributing to a fund out of which the payments may be made.</i></p> <p><i>(2) Any person or body specified in subsection (3) may provide staff, goods, services, accommodation or other resources for purposes connected with a Local Safeguarding Children Board established under section 31.</i></p> <p>In practice, the local authority has tended to provide the majority, if not all, of the funding. Evidence suggests that a lack of adequate funding and suitable “buy in” from partners limits their capability to fulfil their responsibilities although, currently, this is not a major safeguarding issue.</p>	
<b>WHAT THE REGULATION POWER CAN ACHIEVE</b>	
<p>The regulations can determine who should make payments to Safeguarding Boards, i.e. statutory partners, and can determine a formula which sets out the amount each partner should contribute.</p>	
<b>POLICY INTENTION OF THE REGULATIONS</b>	
<p>Stakeholders have expressed the view that leaving statutory partners with discretion on whether to contribute to the running costs of Safeguarding Boards is unacceptable as it does not provide a stable financial position from which Boards could hope to become effective. These views have been expressed mainly from local government and the third sector although the police have indicated that they would be more likely to contribute if there was a more consistent approach across Wales. Currently, research suggests that prior to the move to the new Safeguarding Board footprint, partners from the health sector and the police contribute to less than half of the Boards across Wales.</p> <p>Evidence suggests that once agencies are financially invested in the running of Boards, this will have a positive impact on their involvement in, and commitment to, the operation and activity of the Board.</p>	

The intention of this regulation is to reduce the burden of funding which currently falls to local authorities and ensure that all statutory partners make a contribution to the running costs of Safeguarding Boards and that their contributions are consistent across Wales.

#### **WORK TO DATE**

This issue was considered by the Welsh Safeguarding Forum, and the Health, Wellbeing and Local Government Committee in its examination of Local Safeguarding Children Boards in Wales. It was also addressed on the consultation document on the safeguarding Bill provisions and was discussed widely at both the consultation engagement events which were held in 2012 and the Bill engagement events that were held in April 2013.

The Safeguarding Advisory Panel has also considered this issue and has sought stakeholder views at a Task and Finish Group meeting. The Panel has recommended that a funding framework be developed and specified in regulations.

We are also in discussion with the UK Government on this issue, because of the potential impact on non-devolved bodies.

#### **RELEVANT POLICY DOCUMENTS, MINISTERIAL STATEMENTS OR COMMITMENTS:**

Safeguarding arrangements, and the work of Local Safeguarding Children Boards, have received considerable scrutiny in recent years. The Welsh Safeguarding Forum was established by the Deputy Minister and reported in August 2011, and the Health, Wellbeing and Local Government Committee also conducted an inquiry into the work of Local Safeguarding Children Boards, to which the Deputy Minister responded. The Protection of Vulnerable Adults Project Board was established in February 2008 by the Deputy Minister for Social Services and considered how existing adult protection arrangements in Wales should be strengthened. The Board reported in February 2011.

The Deputy Minister has made a series of Written Statements on 7 November 2013, 18 October 2012 and 18 October 2011 in relation to her approach to strengthening safeguarding arrangements in Wales, including via the Social Services and Well-being Bill.

The Deputy Minister affirmed her commitment to reducing the financial burden currently placed on local authorities in her evidence to the Health and Social Care Committee on 6 June 2013.

#### **OTHER CONSIDERATIONS:**

The Bill provides for the police and the Probation Service to be statutory members of Safeguarding Boards and the budgets for each police area are controlled by the Police and Crime Commissioners. The Welsh Government cannot legally impose duties on these organisations to contribute to the running costs of the Boards and

consideration needs to be given to how contributions could be sought.

**INTERDEPENDENCIES AND LINKS TO OTHER POWERS/REGULATIONS:**

Technically these regulations are not interdependent with other regulations however, it should be noted that, should boards not be funded effectively, it is likely to have a debilitating impact of their ability to meet the obligations being imposed on them by other regulations.

<b>REGULATIONS RELATING TO:</b>	Functions of Safeguarding Board partners
<b>BILL PART:</b>	7
<b>SECTION AND SUB-SECTION:</b>	129(2)
<b>DESCRIPTION OF THE POWER/REGULATION</b>	
<p>Section 129(2) allows regulations to be made that make provision as to the functions of Safeguarding Board partners relating to the Safeguarding Boards on which they are represented.</p>	
<b>WHY THE REGULATION POWER IS REQUIRED</b>	
<p>Section 124 and 125 provides for regulations to be made creating Safeguarding Children and Safeguarding Adults Boards, their functions and specifying the areas for which there are to be Boards and who should be members of Boards. Evidence suggests that, although most of the current Local Safeguarding Children Boards are working adequately, improvements need to be made to the relationships between statutory board members, particularly in the area of communication and information sharing.</p> <p>This regulation power is needed to outline the functions of each partner that will make up the statutory membership of the Board, in relation to the functions of Safeguarding Boards to ensure Board members understand the role they play; thus ensuring the boards are fit for purpose and operate effectively.</p>	
<b>WHAT THE REGULATION POWER CAN ACHIEVE</b>	
<p>This power can specify the role each Safeguarding Board partner will play to ensure the effectiveness of that Board, and the nature of their relationship with other Boards.</p>	
<b>POLICY INTENTION OF THE REGULATIONS</b>	
<p>The policy intent of this regulation is to ensure that statutory Safeguarding Board partners understand fully the role they play on the Boards and the functions they need to fulfil. It is intended that this will ensure full compliance and understanding between board partners and strengthen safeguarding arrangements for both adults and children.</p>	
<b>WORK TO DATE</b>	
<p>The functions relating to Safeguarding Boards were considered by the Welsh Safeguarding Forum in its 2011 report and in the consultation on the provisions of the Social Services and Well-being (Wales) Bill. This issue has been discussed at both the consultation engagement events which were held in 2012 and the Bill engagement events that were held in April 2013.</p> <p>The Safeguarding Advisory Panel has also considered this issue and has sought stakeholder views at a Task and Finish Group groups. The Panel has recommended that matters of compliance between members of the safeguarding boards be set out in regulations.</p>	



**RELEVANT POLICY DOCUMENTS, MINISTERIAL STATEMENTS OR COMMITMENTS:**

Safeguarding arrangements, and the work of Local Safeguarding Children Boards, have received considerable scrutiny in recent years. The Welsh Safeguarding Forum was established by the Deputy Minister and reported in August 2011, and the Health, Wellbeing and Local Government Committee also conducted an inquiry into the work of Local Safeguarding Children Boards, to which the Deputy Minister responded. The Protection of Vulnerable Adults Project Board was established in February 2008 by the Deputy Minister for Social Services and considered how existing adult protection arrangements in Wales should be strengthened. The Board reported in February 2011.

The Deputy Minister has made a series of Written Statements on 7 November 2013, 18 October 2012 and 18 October 2011 in relation to her approach to strengthening safeguarding arrangements in Wales, including via the Social Services and Well-being Bill.

The Deputy Minister has made no specific public comment on this specific regulation but has committed to ensuring that agencies work together effectively to safeguard those most at risk from harm.

**OTHER CONSIDERATIONS:**

The Bill provides for the police and the Probation Service to be statutory members of Safeguarding Boards and consideration will need to be given to the types of duties the National Assembly can impose on non-devolved organisations.

**INTERDEPENDENCIES AND LINKS TO OTHER POWERS/REGULATIONS:**

These regulations are interdependent on regulations being made under section 124(1), (3) and (6) and section 125(4).

<b>REGULATIONS RELATING TO:</b>	Mergers of Safeguarding Children and Safeguarding Adults Boards
<b>BILL PART:</b>	7
<b>SECTION:</b>	130
<b>DESCRIPTION OF THE POWER/REGULATION</b>	
Section 130 provides for the Welsh Ministers to make an order requiring Safeguarding Children and Safeguarding Adults Boards to merge in their area.	
<b>WHY THE REGULATION POWER IS REQUIRED</b>	
The Bill provides the statutory framework to deliver the Welsh Government's commitment to integrate social services to support people of all ages, thus promoting an equitable approach in the provision of services. Currently the Bill provides for the establishment of separate Safeguarding Boards for adults and children and, in keeping with the equitable framework outlined in the Bill, this power is required to enable Boards to merge in the future to create Safeguarding Boards for people.	
<b>WHAT THE REGULATION POWER CAN ACHIEVE</b>	
The power can by Order require Safeguarding Children and Safeguarding Adults Boards in each area to merge to form Safeguarding Children and Adults Boards.	
<b>POLICY INTENTION OF THE REGULATION</b>	
<p>The Welsh Government is committed to removing the notion that adults and children have competing needs and priorities based on age. The possible merger of Boards would reflect the people model inherent within the Bill, and will also reflect the arrangements that will exist at national level.</p> <p>Mergers will only happen when it can be demonstrated that to do so will improve safeguarding arrangements for everyone. There are no current plans to legislate.</p>	
<b>WORK TO DATE</b>	
The prospect of Safeguarding Boards covering both adults and children was raised by the Welsh Safeguarding Forum which reported in August 2011. Views were sought on the proposals as part of the consultation on provisions to be contained in the Social Services and Well-being (Wales) Bill. The matter was discussed at the consultation engagement events which were held in 2012 and the Bill engagement events that were held in April 2013. This provision has not formed part of the work of the Safeguarding Advisory Panel, established by Ministers to consider the development of regulations and guidance associated with the safeguarding provisions of the Bill.	
<b>RELEVANT POLICY DOCUMENTS, MINISTERIAL STATEMENTS OR COMMITMENTS:</b>	
Safeguarding arrangements, and the work of Local Safeguarding Children Boards, have received considerable scrutiny in recent years. The Welsh Safeguarding Forum was established by the Deputy Minister and reported in August 2011, and the Health, Wellbeing and Local Government Committee also conducted an inquiry into the work of Local Safeguarding Children Boards, to which the Deputy Minister responded. The	

Protection of Vulnerable Adults Project Board was established in February 2008 by the Deputy Minister for Social Services and considered how existing adult protection arrangements in Wales should be strengthened. The Board reported in February 2011.

The Deputy Minister has made a series of Written Statements on 7 November 2013, 18 October 2012 and 18 October 2011 in relation to her approach to strengthening safeguarding arrangements in Wales, including via the Social Services and Well-being Bill.

The Health and Social Care Committee's report at Stage 1 scrutiny recommended that the provision be removed. The Deputy Minister rejected the recommendation but agreed that, should the Welsh Government seek to legislate on this issue in the future, it will be subject to a super-affirmative procedure

**OTHER CONSIDERATIONS:**

None at the moment because there are no plans to legislate.

**INTERDEPENDENCIES AND LINKS TO OTHER POWERS/REGULATIONS:**

Technically, this is a stand-alone power which is not interdependent on other regulations. However, section 124 provides for regulations to be made creating Safeguarding Children and Safeguarding Adults Boards and this power cannot be exercised if Boards are not established.

<b>REGULATIONS RELATING TO:</b>	The role of Directors of Social Services
<b>BILL PART:</b>	8
<b>SECTION</b>	134 (3)
<b>DESCRIPTION OF THE POWER/REGULATION</b>	
The Welsh Ministers must specify the competencies for the role of the Director of Social Services	
<b>WHY THE REGULATION POWER IS REQUIRED</b>	
The Bill provides for a local authority to appoint an officer, to be known as the director of social services, for the purpose of its social services functions. Regulations (or a Code of Practice issued under section 135) are required to set out the key competencies for that role. The competencies are required to secure the delivery of the functions in Schedule 2.	
<b>WHAT THE REGULATION POWER CAN ACHIEVE</b>	
The regulation making power can specify the competencies for the purposes of Section 134(2) which says “A local authority may not appoint a person to be its director of social services unless it is satisfied that the person has demonstrated competencies specified by the Welsh Ministers.” These will need to be linked to the wider requirements of the Bill, particularly around voice and control and well-being. Given the new landscape that the Bill will put in place, there needs to be a focus on the role of the Director to achieve the social services functions set out in the Bill which include well-being, planning services for needs of the population, preventative services, information, advice and assistance, eligibility and assessment, safeguarding, collaboration and partnership, promoting social enterprise, integration between health and social care. The role of the Director is very much about leadership in the sector, ensuring that the duties set out in the Bill are fulfilled across the <b>whole</b> local authority. We see that the regulations can achieve clarity and transparency around competencies but we also see the need for a Code of Practice under section 135 – power to issue Codes. We see this Code of Practice as an update of the Statutory Guidance on the Role and Accountabilities of the Director of Social Services – which goes considerably wider than competencies.	
<b>POLICY INTENTION OF THE REGULATIONS</b>	
To identify the key areas where competencies are required. The Code of Practice will provide a framework for more detailed guidance which will focus on the role and status of the Director, the relationship with the wider local authority, with the NHS and the role of the DSS in relation to the overarching well-being duties.	
<b>WORK TO DATE</b>	
Review of extant guidance, review of arrangements across the UK, review of the CSSIW National Inspection in respect of the role of the statutory Director of Social Services, specifically commissioned rapid review including options and recommendations.	
<b>RELEVANT POLICY DOCUMENTS, MINISTERIAL STATEMENTS OR COMMITMENTS:</b>	
Statutory guidance on the role and accountabilities of the Director of Social Services. Statutory guidance.	
<a href="http://wales.gov.uk/topics/health/publications/socialcare/guidance1/3188997/?lang=en">http://wales.gov.uk/topics/health/publications/socialcare/guidance1/3188997/?lang=en</a>	

Rapid review.
<b>OTHER CONSIDERATIONS:</b>
None
<b>INTERDEPENDENCIES AND LINKS TO OTHER POWERS/REGULATIONS:</b>
The competencies of the Director of Social Services are key to delivering the functions of social services – Schedule 2.

<b>REGULATIONS RELATING TO:</b>	Partnership arrangements
<b>BILL PART:</b>	9
<b>SECTION:</b>	156 (1)
<b>DESCRIPTION OF THE POWER/REGULATION</b>	
<p>To enable specific partnership arrangements to be made between local authorities or with local health boards. The regulations can set out which local authority or local health boards take part in the partnership arrangements. They can also specify the form and responsibility, operation and management of partnership arrangements, including the appointment and establishment of individuals or teams and make provision for the sharing of information.</p> <p>To enable specific partnership arrangements to be made by:</p> <ul style="list-style-type: none"> <li>• Two or more local authorities.</li> <li>• One or more local authorities with one or more local health boards.</li> </ul> <p>Partnership arrangements are for carrying out:</p> <ul style="list-style-type: none"> <li>• Functions of a local authority which are specified in regulations as social service functions, or which have an effect on, or are affected by social service functions.</li> <li>• Functions specified in regulations of Local Health Boards or NHS Trusts.</li> </ul> <p>The regulations may make provision:</p> <ul style="list-style-type: none"> <li>• To specify the local authorities and local health boards to partake in the partnership arrangements.</li> <li>• About the form of partnership arrangements.</li> <li>• The responsibility, operation and management of partnership arrangements.</li> <li>• For local authorities and local health boards to carry out the function of partnership arrangements.</li> <li>• For the establishment of teams or appointment of people.</li> <li>• For the person or category of person for whom partnership arrangements are to benefit.</li> <li>• For the referral of people to services.</li> <li>• For sharing of information between local authorities, local health boards, teams and partnership boards.</li> </ul> <p>These partnership arrangements do not affect:</p> <ul style="list-style-type: none"> <li>• The liability of a local health board or local authority in relation to exercising their specific functions.</li> <li>• Any power of duty to recover charges in respect of services.</li> </ul> <p>This will encompass provisions for Integrated Family Support Services (IFSS)</p>	
<b>WHY THE REGULATION POWER IS REQUIRED</b>	
<p>Whilst legislation has been in place since the Health Act 1999, the formation of and nature of partnership working has been slow and variable across Wales. The regulation power goes beyond the existing power in section 36 of the NHS (Wales) Act 2006 and the Local Government Measure 2009 as there would be no need to evidence inadequate exercise of functions or lack of co-operation.</p>	

<p>The regulation power will drive the establishment of effective partnership arrangements to ensure improved services, care and support.</p>
<p><b>WHAT THE REGULATION POWER CAN ACHIEVE</b></p>
<p>The power aims to establish effective partnership working between local authorities and with local health boards to provide improved services, care and support, through more effective use of resources.</p> <p>The power can specify which local authorities and local health boards should be within the partnership. It can also specify the form, responsibility, operation and management of partnership arrangements.</p>
<p><b>POLICY INTENTION OF THE REGULATIONS</b></p>
<p>The policy intent is to ensure the establishment of effective partnership working to enable the provision of improved services to better meet demand and the needs of people across Wales.</p> <p>Effective partnership working can:</p> <ul style="list-style-type: none"> <li>• Improve outcomes for service users.</li> <li>• Improve access to services.</li> <li>• Avoid service fragmentation.</li> <li>• Improve the utilisation of resources, through multi-disciplinary team working.</li> <li>• Better manage demand for services.</li> </ul>
<p><b>WORK TO DATE</b></p>
<p>The Framework of Services for People with Complex Needs has been published and consulted upon. A conference on the implementation of the Framework will be held on the 10<sup>th</sup> December. There will be some preliminary discussion about partnership arrangements at this conference. The Framework will be redrafted following the consultation and the conference and will include proposals concerning partnership arrangements.</p> <p>Considerable work has been undertaken in the past with advice notes and templates for formal partnerships.</p>
<p><b>RELEVANT POLICY DOCUMENTS, MINISTERIAL STATEMENTS OR COMMITMENTS:</b></p>
<p>Framework of Services for Older People with Complex Needs  Making the Connections documents  Commissioning Framework Guidance and Good Practice.  Advice notes</p>
<p><b>OTHER CONSIDERATIONS:</b></p>
<p>Further discussion is required as to the contribution of partnerships to supporting the arrangements for assessment and care planning.</p>
<p><b>INTERDEPENDENCIES AND LINKS TO OTHER POWERS/REGULATIONS:</b></p>
<p>Link to regulations concerning 157, 158 and possibly assessment and care planning.</p>

<b>REGULATIONS RELATING TO:</b>	Resources for partnership arrangements
<b>BILL PART:</b>	9
<b>SECTION AND SUB-SECTION:</b>	157
<b>DESCRIPTION OF THE POWER/REGULATION</b>	
<p>The regulation focuses on a range of expenditure to support partnership arrangements.</p> <p>The local authority and local health board may:</p> <ul style="list-style-type: none"> <li>• Pay towards expenditure incurred in relation to partnership arrangements by making payments directly or contributing towards a pooled fund.</li> <li>• Provide staff, goods, services, accommodation or other resources in relation to partnership arrangements.</li> </ul> <p>Regulations may make further provision about the funding of partnership arrangements including:</p> <ul style="list-style-type: none"> <li>• Requiring a local authority or local health board to establish and maintain a pooled fund.</li> <li>• Determining the amount of contribution to a pooled fund.</li> <li>• Expenditure for posts.</li> <li>• Expenditure for services provided and administrative related costs.</li> </ul>	
<b>WHY THE REGULATION POWER IS REQUIRED</b>	
<p>The progress towards funding and pooled budgets to support partnership working has been slow and variable across Wales. The regulation power, along with other powers within the Bill, aims to accelerate the pace and scale of partnership working to improve the services, care and support provided.</p>	
<b>WHAT THE REGULATION POWER CAN ACHIEVE</b>	
<p>The power can require local authorities and local health boards to establish a pooled fund as part of their partnership arrangements. This supports improved ownership and greater transparency in relation to resources. This pooling of resources can enable a better response to meet the increasing demand on services by maximising the skills, knowledge and expertise of multi-disciplinary team working and to avoid duplication.</p>	
<b>POLICY INTENTION OF THE REGULATIONS</b>	
<p>The policy intent of the regulation is to ensure the most effective use of resources by local authorities and local health boards, by pooling their budgets for the provision of specific services in their local area.</p> <p>The purpose is to make more effective use of resources, including the establishment of joint multi-disciplinary teams and specific posts, to better meet the needs of people by providing more effective services, care and support.</p> <p>Pooling resources can support transparency and lead to improved information on the true costs of service provision. It can enable the partnership to allocate and utilise</p>	



resources to respond more effectively to need and service demand.

**WORK TO DATE**

Advice notes were developed previously on the development of formal partnerships and pooled budgets. There are also existing regulations which can be updated and applied to partnerships directed by Ministers.

**RELEVANT POLICY DOCUMENTS, MINISTERIAL STATEMENTS OR COMMITMENTS:**

Advice notes on formal partnerships and pooled budgets  
Existing regulations

**OTHER CONSIDERATIONS:**

Links to other legislation – Children Act 2004 – NHS Wales Act 2006

**INTERDEPENDENCIES AND LINKS TO OTHER POWERS/REGULATIONS:**

156 -159 (Partnership arrangements).

<b>REGULATIONS RELATING TO:</b>	Establishment and operation of Partnership Boards
<b>BILL PART:</b>	9
<b>SECTION:</b>	158 (1) & (2) Partnership Boards
<b>DESCRIPTION OF THE POWER/REGULATION</b>	
<p>The regulation focuses on the membership and operation of partnership boards, including objectives and functions, procedures, remuneration and allowances for members and the form, content, timing and publication of reports.</p> <p>Regulations may require a partnership board to be established by:</p> <ul style="list-style-type: none"> <li>• One or more local authorities.</li> <li>• One or more local health boards.</li> <li>• One or more local authorities and one or more local health boards.</li> </ul> <p>Regulations may make provision about:</p> <ul style="list-style-type: none"> <li>• Membership of partnership boards.</li> <li>• Remuneration and allowances.</li> <li>• Objectives and functions.</li> <li>• Procedures to be followed.</li> <li>• Form, content, timing and publication of reports.</li> </ul>	
<b>WHY THE REGULATION POWER IS REQUIRED</b>	
<p>Partnership boards are the vehicle through which partners can manage and oversee the progress and performance of the partnership. The aim of the regulation is to permit the establishment of partnership boards and ensure appropriate membership and appropriate governance arrangements of the partnership board.</p>	
<b>WHAT THE REGULATION POWER CAN ACHIEVE</b>	
<p>The regulation power aims to ensure the effective establishment and operation of a partnership board, to oversee the partnership arrangements within a specific area.</p>	
<b>POLICY INTENTION OF THE REGULATIONS</b>	
<p>Partnership boards play a vital role in the oversight and governance of partnership arrangements. With the move towards pooled budgets and resources it is even more important to ensure effective governance and accountability arrangements are in place.</p> <p>The scale of the governance arrangements should be proportionate to the level of investment in the partnership. Nevertheless, for the most part, it is common practice for partner organisations to establish partnership boards to oversee the arrangements.</p> <p>Such boards are usually comprised of a combination of elected members of the local authority, NHS non-executive directors, and members of the local health board together with senior local authority and NHS managers, the voluntary sector, user and carer representatives. <u>It must be pointed out that such a partnership does not have executive decision-making powers.</u> Accountability lies with the representatives from those organisations that carry the statutory responsibility for the service according to the level of delegation agreed locally, often working together in a management group.</p>	

This should not undermine the important contribution of partnership boards to the overall governance arrangements. They offer an opportunity to involve local stakeholders and to enhance local community and democratic accountability. Partnership boards have a strategic advisory function in relation to the service that the partnership has been established to provide. To ensure that accountability is transparent and to avoid role confusion, partnership agreements should include clear terms of reference for partnership boards and their relationship to designated executive officers and other related management groups. The terms of reference should also make clear whether elected members and non-executive directors have delegated decision-making authority from councils and local health boards to act on their behalf (see also Delegation and Decision Making below).

The establishment of such a board would in the first instance require a decision on how best to secure the operational interface necessary to manage the partnership arrangements. For example, a partnership board could be charged with –

- setting the strategic direction for joint working by partner bodies;
- committing partner bodies to working together to deliver common objectives;
- confirming budget decisions to support joint planning and funding;
- monitoring the effectiveness of joint planning and working arrangements at local and scheme/project levels.

The partnership board would also –

- receive and respond to guidance from the Welsh Government on joint planning and priorities;
- influence, within the overall remit of the board, the individual service plans of each partner authority;
- seek to secure improved performance by partners individually and collectively;
- keep under review operational objectives and outcomes;
- monitor the proper and efficient use of public money devoted to joint services; and
- ensure proper accountability for the resources committed to joint working.

Organisations will continue to be accountable for their functions that are part of the partnership arrangements. It is therefore crucial that from the outset they should be clear about the aims and outcomes that are intended to be achieved by the partnership.

<b>WORK TO DATE</b>
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Advice notes on partnership boards
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<b>RELEVANT POLICY DOCUMENTS, MINISTERIAL STATEMENTS OR COMMITMENTS:</b>
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Advice notes Guidance IFSS
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<b>OTHER CONSIDERATIONS:</b>
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None
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<b>INTERDEPENDENCIES AND LINKS TO OTHER POWERS/REGULATIONS:</b>
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155 - 159 (Partnership arrangements)/
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<b>REGULATIONS RELATING TO:</b>	Co-operation and partnership: Adoption Service Joint Arrangements
<b>BILL PART:</b>	9
<b>SECTION AND SUB-SECTION:</b>	160
<b>DESCRIPTION OF THE POWERS/REGULATION</b>	
Direction-making powers for the Welsh Ministers to direct local authorities to enter into joint arrangements in relation to their functions for the maintenance and operation of adoption services. It enables the Welsh Ministers to deliver on their policy ambitions in relation to a National Adoption Service (NAS), should local government action to deliver a NAS not prove fully effective.	
<b>WHY THE REGULATION POWER IS REQUIRED</b>	
The Welsh Government has committed to reform adoption services in Wales to promote adoption, increase the number of adopters and deliver high quality adoption support services in Wales. The Welsh Government has been working with local authorities and other partners to establish a National Adoption Service which will be owned and delivered by local government and its partners. The power will allow Welsh Minister to require local authorities to enter into joint arrangements should they not do so voluntarily.	
<b>WHAT THE DIRECTION POWER CAN ACHIEVE</b>	
<p>This direction power provides for joint working arrangements to be made in relation to adoption services. A new section (3A) will be inserted into section 3 of the Adoption and Children Act 2002 which will allow the Welsh Ministers to direct two or more local authorities to work together to provide specified adoption services. These services cover a wide range of functions relating to adoption and the provisions would enable the Welsh Ministers to:</p> <ul style="list-style-type: none"> <li>• Require two or more local authorities to work in partnership to provide some or all of the full range of adoption services that they are required to maintain under section 3(1) of the Adoption and Children Act 2002. These include: <ul style="list-style-type: none"> <li>○ services for children who may be adopted, their parents and guardians</li> <li>○ services for people who want to adopt a child</li> <li>○ services for adopted people, their parents, natural parents and former guardians</li> <li>○ and the requirement to operate arrangements for the adoption of children and the requirement to provide adoption support services.</li> </ul> </li> </ul> <p>The Welsh Ministers would be able to use the direction-making powers to specify joint working arrangements including, but not exclusively limited to, any of the following:</p> <ul style="list-style-type: none"> <li>• setting up and maintaining a pooled fund, into which the co-operating authorities would make payments and from which payments would be made to meet the costs of the jointly-provided service</li> <li>• the provision of staff, goods, services, accommodation or other resources</li> <li>• determining what contribution (financial or otherwise) the participant authorities are to make towards the costs of working together</li> <li>• arrangements for the participating local authorities to work in conjunction with registered adoption societies</li> <li>• taking responsibility for operating and managing the joint working</li> </ul>	

<p>arrangements</p> <ul style="list-style-type: none"> <li>• establishing and operating adoption panels, that make recommendations about <ul style="list-style-type: none"> <li>○ whether a child should be placed for adoption</li> <li>○ whether a prospective adopter is suitable to adopt a child</li> <li>○ whether a particular child should be placed for adoption with a particular prospective adopter</li> </ul> </li> <li>• resolving complaints about services provided under the joint working arrangements</li> <li>• determining disputes between the authorities participating in the joint working arrangements</li> </ul>
<p>Before making the directions the Welsh Ministers would be required to consult the local authorities that they intended to direct.</p>
<p><b>POLICY INTENTION OF THE DIRECTIONS</b></p>
<p>The direction-making power would give the Welsh Ministers a range of options as to how they chose to establish a National Adoption Service, should additional action be needed over and beyond local authorities' own plans to establish a NAS on a regional collaborative / nationally-led basis.</p> <p>The Welsh Government would wish to encourage local government to put in place its own plans for a NAS; and for this reason does not have immediate plans to use the direction-making powers. However, should local government plans falter, or require additional support from the Welsh Government to make them fully effective, the intention would be to deploy as many of these provisions as are required to establish the NAS in a timely and effective manner.</p>
<p><b>WORK TO DATE</b></p>
<p>The CYP Committee undertook an Inquiry into Adoption and took evidence from a range of stakeholders and Ministers. The Committee delivered its report and a series of recommendations for Welsh Government (November 2012). A multi-stakeholder Expert Advisory Group on Adoption was established to develop a National Adoption Service in Wales. ADSS and WLGA were tasked with developing a functional model for adoption services and this was discussed and agreed by the Expert Group (April 2013). WLGA, ADSS and third sector partners have been working on a business model for the new arrangements with implementation to take place at the earliest opportunity in 2014.</p>
<p><b>RELEVANT POLICY DOCUMENTS, MINISTERIAL STATEMENTS OR COMMITMENTS:</b></p>
<p>Sustainable Social Services – A Framework for Action; Programme for Government; Evidence provided to CYP Committee Inquiry into Adoption; Response to CYP Committee; Written statements – “Case for Change” (Dec 2012 and April 2013)</p>
<p><b>OTHER CONSIDERATIONS:</b></p>
<p>None</p>
<p><b>INTERDEPENDENCIES AND LINKS TO OTHER POWERS/REGULATIONS:</b></p>
<p>Adoption and Children Act 2002; Adoption Agencies (Wales) Regulations 2005</p>

<b>REGULATIONS RELATING TO:</b>	Ordinary Residence
<b>BILL PART:</b>	11
<b>SECTION AND SUB-SECTION:</b>	177
<b>DESCRIPTION OF THE POWER/REGULATION</b>	
<p>Section 177 sets out the rule of residency for a local authority's responsibility for a person who has care and support needs. It draws on provisions in section 24 of the National Assistance Act 1948 and section 105 of the Children Act 1989.</p> <p>It sets out the impact upon a person's ordinary residence status of a person moving in to the accommodation needed to meet the care and support needs, including accommodation provided under the NHS (Wales) Act 2006 i.e. a adult who would normally be accommodated in a care home as defined in Care Standards Act 2000, or a child accommodated under Part 6 of the Bill – i.e. a Looked After Child or other accommodated children.</p> <p>When any determination of the area of 'ordinary residence' of a child is undertaken, any period in which a child lives at a school or similar institution; according to a supervision order under the Children Act 1989; according to a youth rehabilitation order under Part 1 of the Criminal Justice and Immigration Act 2008; in accommodation provided by a local authority or a place specified in regulations, is to be disregarded.</p> <p>The effect is that, for children accommodated under Part 6, the local authority which first became responsible for the child remains the responsible corporate parent even in circumstances where the child is living out of the area in a residential care home, or school or with foster parents.</p> <p>Regulations under subsection (1) can specify the type or types of accommodation to which the "deeming" provisions of section 177 will apply. Where an adult is living in accommodation of a type specified in the regulations, they will be treated as being ordinarily resident in the area in which they were ordinarily resident immediately before they began to live in that accommodation. The effect of this provision is that where a local authority is responsible for meeting an adults needs for care and support and arranges for those needs to be met in accommodation of a specified type, the local authority will continue to be responsible for meeting the adult's needs, even if the accommodation is outside the local authority's area.</p> <p>Regulations under subsection (1) could, for example, have the effect that the "deeming" provisions in section 177 only apply where the adult is placed in a care home.</p> <p>Regulations under subsection (3) may make provision about whether an adult has a need for a particular type of accommodation. These regulations could set out how the local authority determines that an adult has needs for care and support which can be met only if the adult is living in accommodation of a specified type.</p> <p>Regulations under subsection (6)(e) may specify additional categories of accommodation, periods of residence in which must be disregarded when determining a child's ordinary residence status.</p>	

<b>WHY THE REGULATION POWER IS REQUIRED</b>
<p>Regulations under 177(1) are necessary to set out the types of accommodation that the local authority continues to be responsible for in the provisions of care and support for an adult even when the accommodation is out of the local authority area..</p> <p>Regulations under section 177(3) will provide a framework within which the local authority determines whether an adults needs can be met only if they are living in accommodation of a type specified in regulations under section 177(1)</p> <p>Regulations under section 177 (6)(e) will enable periods of residence in specified additional categories of accommodation, to be disregarded when determining a child's ordinary residence status.</p>
<b>WHAT THE REGULATION POWER CAN ACHIEVE</b>
<p>Regulations provide for future proofing of different accommodation types that may be provided</p>
<b>POLICY INTENTION OF THE REGULATIONS</b>
<p>Regulations will be made to prescribe Care Homes as defined under Care Standards Act 2002 to be of a specified type. This will ensure clarity regarding the responsible local authority for the continued provision of care and support to placements of adults outside their local authority area. It can extend to placements arranged by the local authority as well as to those that may be arranged directly by the citizen under a direct payment scheme.</p>
<b>WORK TO DATE</b>
<p><b>Work on cross-border ordinary residency provision:</b></p> <p>In collaboration with Department of Health and the devolved government of Scotland and Northern Ireland the Deputy Minister for Social Services has agreed a four nations cross-border solution for adult placements in residential and extended settings which clarifies:</p> <ul style="list-style-type: none"> <li>• the accountable local authority for the provision and funding of care (including where there have been breaks in care i.e. hospital stays),</li> <li>• ways to manage any disputes, and</li> <li>• local authorities' abilities to provide direct payments</li> </ul> <p>The Legislative Consent Motion (LCM) for the Care Bill that provided for cross border and other matters was considered by the HSSC, and approved by the National Assembly for Wales on November 26 2013.</p> <p>This will ensure that there is clarity about the responsibly of local authorities when adults are placed across the borders of the UK in care homes and other settings.</p> <p>For further information on the LCM see: <a href="http://www.assemblywales.org/bus-home/research/bus-assembly-publications-monitoring-services/bus-lcm_monitor/bus-lcm_monitor-2014.htm">http://www.assemblywales.org/bus-home/research/bus-assembly-publications-monitoring-services/bus-lcm_monitor/bus-lcm_monitor-2014.htm</a></p>
<b>RELEVANT POLICY DOCUMENTS, MINISTERIAL STATEMENTS OR COMMITMENTS:</b>
<p><b>Cross-border ordinary residency provision:</b></p>

Ministerial commitment to issue a written statement (early 2014) on the arrangements agreed with four UK national on cross border placements outside of Wales.

**OTHER CONSIDERATIONS:**

None.

**INTERDEPENDENCIES AND LINKS TO OTHER POWERS/REGULATIONS:**

Assessment, eligibility, care planning and review. [Sections, 16, 18, 21, 24, 26, 45 and 46 refer].



# **Social Services and Well-being (Wales) Act 2014**

# Introduction to the Act



- Social Services and Well-Being (Wales) Bill became an Act on 1<sup>st</sup> May 2014
- A new legal framework to bring together and modernise social services law
- Once in a generation opportunity to transform social services
- Takes effect from April 2016

# Making social services sustainable

## *The Act:*

- Addresses economic challenges
- Takes into account how the population is changing
- Gives people more control over their lives and their care and support

# What needs to change?

- We are not helping people early enough, or stopping problems arising: this means that when people finally do get care it is of a more intensive and costly sort
- Too much time, skills and resources go into over-elaborate assessment which does not help people with the things they are concerned about or achieve the outcomes they want for themselves

# A new approach



**The fundamental principles of our new system are about:**

**People** – putting an individual and their needs, at the centre of their care, and giving them a voice in, and control over reaching the outcomes that help them achieve well-being

**Well-being** – supporting people to achieve their own well-being and measuring the success of this care and support

**Earlier intervention** - increasing preventative services within the community to minimise the escalation of critical need

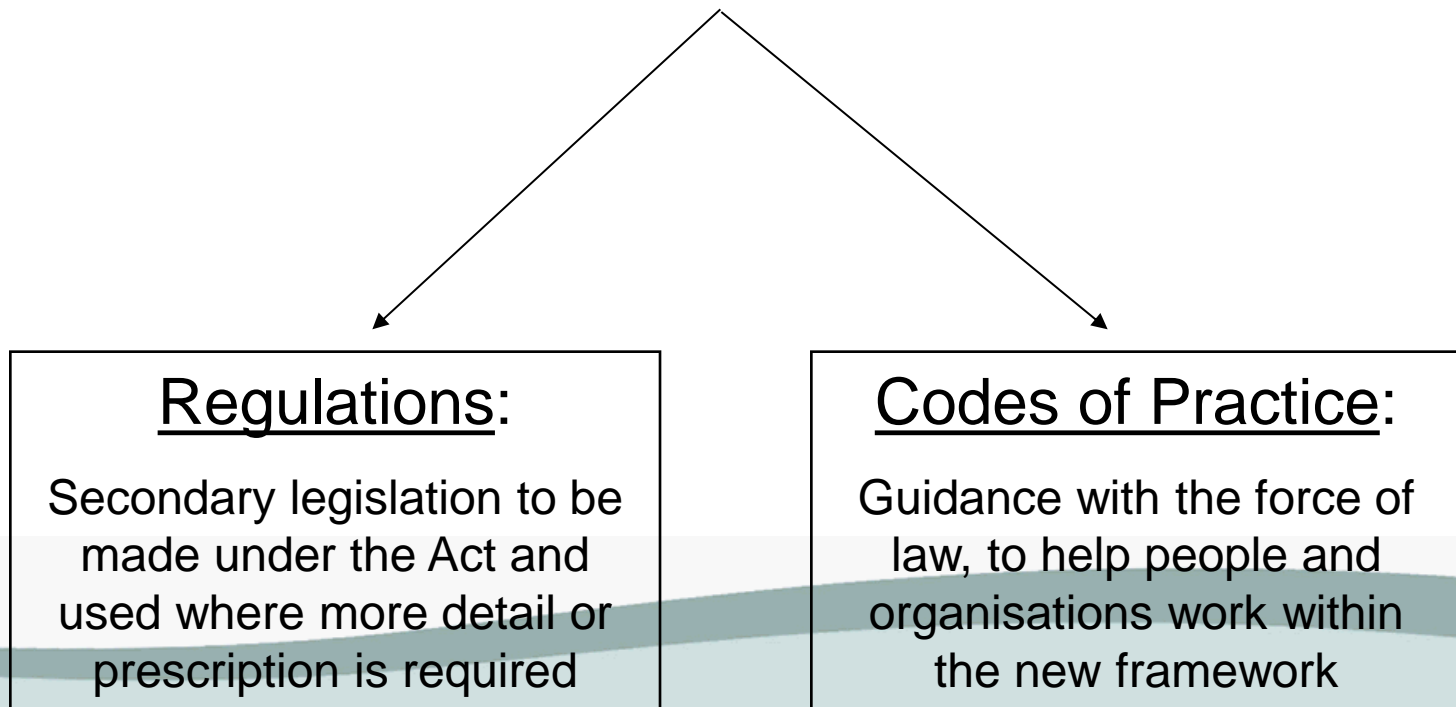
**Collaboration** – Strong partnership working between all agencies and organisations

# What is in the new legislative framework?



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

One law setting out powers and duties on local authorities and other bodies



# What is in the Act?



**The Act is made up of 11 main areas:**

- 1 – Introduction
- 2 – General Functions
- 3 – Assessing the Needs of Individuals
- 4 – Meeting Needs
- 5 – Charging and Financial Assessment
- 6 – Looked After and Accommodated Children
- 7 – Safeguarding
- 8 – Social Services Functions
- 9 – Co-operation and Partnership
- 10 – Complaints, Representations and Advocacy Services
- 11 – Miscellaneous and General

# What will be different?



- The individual gets the support they need in the way they want it
- A greater range of preventative services to keep people independent for longer
- LAs and LHBs work closely to better understand people's needs



# Achieving implementation on the ground



- Local authorities and their partners will ensure successful implementation of the new approach
- Welsh Government provided a *Delivering Transformation Grant* last year to help them do this. This grant is going out again this year
- This will be led across six regions by joint leadership arrangements which will follow those in place nationally
- Welsh Government will provide training resources and support to help the workforce adapt to the changes, and lead communication with the public

# The Timetable

**Formal  
consultation on two  
tranches of draft  
regulations and  
codes of practice  
From Nov 2014  
and Summer 2015**

**Regulations and  
codes to be made  
in the National  
Assembly  
From Summer 2015**

**Staff training  
2015 & 2016**

**Act “switch on”  
April 2016**

# Further Information

- Welsh Government

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

- National Assembly for Wales

<http://www.senedd.assemblywales.org/mgIssueHistoryHome.aspx?Ild=5664>

# What next?

- Comments and questions welcomed