



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

2014 anaw 4

## PART 8

### SOCIAL SERVICES FUNCTIONS

#### *Local authorities*

#### **143 Social services functions of local authorities**

- (1) For the purposes of this Act, the social services functions of a local authority are its functions under the enactments mentioned in the first column of the table in Schedule 2 to this Act (being the functions which are described in general terms in the second column of that Schedule).
- (2) The Welsh Ministers may by order—
  - (a) add entries to the table;
  - (b) remove entries from the table;
  - (c) amend entries in the table.

#### **Commencement Information**

**II** S. 143 in force at 6.4.2016 by [S.I. 2016/412](#), [art. 2](#) (with [art. 4](#), [Schs. 1, 2](#))

#### **144 Directors of social services**

- (1) A local authority must appoint an officer, to be known as the director of social services, for the purposes of its social services functions.

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- (2) 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.
- (3) The Welsh Ministers must specify the competencies for the purpose of subsection (2) in a code issued under section 145 or in regulations.
- (4) Two or more local authorities may, if they consider that the same person can efficiently discharge, for both or all of them, the functions of a director of social services, appoint one person as director of social services for both or all of those authorities.
- (5) A local authority which has appointed, or jointly appointed, a person under this section must secure the provision of adequate staff for the purposes of its social services functions in order to assist the director.

**Commencement Information**

**I2** S. 144 in force at 6.4.2016 by [S.I. 2016/412](#), [art. 2](#) (with [art. 4](#), [Schs. 1, 2](#))

**[<sup>F1</sup>144A Annual reports**

- (1) As soon as is reasonably practicable after the end of a financial year, a local authority must prepare and publish an annual report about the exercise of the social services functions of the authority in respect of that year.
- (2) The annual report must include—
  - (a) details of how the authority has exercised its social services functions during the financial year, including details of the extent to which the authority has—
    - (i) acted in accordance with requirements imposed on local authorities by a code issued under section 9 (codes to help achieve outcomes in relation to well-being),
    - (ii) acted in accordance with any relevant requirements contained in a code issued under section 145 (codes about the exercise of social services functions), and
    - (iii) had regard to any relevant guidelines in a code issued under section 145, and
  - (b) such other information as may be prescribed by regulations.
- (3) The details provided under subsection (2)(a)(ii) must state how the authority has satisfied any requirements contained in a code relating to assessing the needs of an individual in accordance with Part 3 and meeting needs under Part 4.
- (4) An annual report must be in such form as may be prescribed by regulations.
- (5) A local authority must send a copy of a published annual report to the Welsh Ministers.
- (6) In this section, “financial year” means the period of one year beginning on 1 April and ending on 31 March.

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### Textual Amendments

**F1** Ss. 144A-144C inserted (4.9.2017 for the insertion of s. 144A, 29.4.2019 for the insertion of s. 144C) by [Regulation and Inspection of Social Care \(Wales\) Act 2016 \(anaw 2\)](#), ss. **56(1)**, 188(1); S.I. 2017/846, art. 2(a); S.I. 2019/864, art. 2(3)(b)

## 144B Local market stability reports

- (1) A local authority must prepare and publish a local market stability report at such times as may be prescribed by regulations.
- (2) A local market stability report must include—
  - (a) an assessment of—
    - (i) the sufficiency of provision of care and support in the local authority area during such period as may be prescribed by regulations;
    - (ii) the extent to which regulated services were provided in the local authority area during that prescribed period by service providers to whom section 61 of the Regulation and Inspection of Social Care (Wales) Act 2016 (assessment by the Welsh Ministers of financial sustainability of service provider) applies;
    - (iii) any other matter relating to the provision of regulated services in the local authority area as may be prescribed by regulations;
    - (iv) the effect on the exercise of the local authority's social services functions of the commissioning by the authority of any services in connection with those functions during such period as may be prescribed by regulations;
  - (b) a report of any action taken by the local authority during the period prescribed under paragraph (a)(i) in pursuance of its duty under section 189(2) (temporary duty to meet needs in the case of a provider failure).
- (3) A local market stability report must be in such form as may be prescribed by regulations.
- (4) In preparing a local market stability report, a local authority must—
  - (a) take account of—
    - (i) the assessment it has most recently published under section 14 (needs assessments), and
    - (ii) the plan it has most recently published under section 14A following the assessment, and
  - (b) consult with each Local Health Board with which it carried out the assessment.
- (5) A local authority must send a copy of a published local market stability report to the Welsh Ministers.
- (6) Before making regulations under subsection (2)(a)(iii) the Welsh Ministers must consult any persons they think appropriate.
- (7) But the requirement to consult does not apply to regulations which—
  - (a) amend other regulations made under that subsection, and
  - (b) do not, in the opinion of the Welsh Ministers, effect any substantial change in the provision made by the regulations to be amended.

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(8) In this section—

- (a) “service provider” has the meaning given by section 3(1)(c) of the Regulation and Inspection of Social Care (Wales) Act 2016;
- (b) “regulated service” has the meaning given by section 2(1) of that Act.

#### Textual Amendments

- F1** Ss. 144A-144C inserted (4.9.2017 for the insertion of s. 144A, 29.4.2019 for the insertion of s. 144C) by [Regulation and Inspection of Social Care \(Wales\) Act 2016 \(anaw 2\)](#), **ss. 56(1), 188(1)**; [S.I. 2017/846](#), art. 2(a); [S.I. 2019/864](#), art. 2(3)(b)

### *General duty of the Welsh Ministers*

#### **144C General duty of the Welsh Ministers**

In exercising functions under this Part the Welsh Ministers must seek to promote and maintain high standards in the provision of local authority social services functions.]

### *Codes*

#### **145 Power to issue codes**

- (1) The Welsh Ministers may issue, and from time to time revise, one or more codes on the exercise of social services functions (“a code”).
- (2) A code may impose requirements, and may include guidelines setting out aims, objectives and other matters.
- (3) A local authority must, when exercising social services functions—
  - (a) act in accordance with any relevant requirements contained in a code (subject to section 147), and
  - (b) have regard to any relevant guidelines contained in it.
- (4) A code may specify that section 147 does not apply to a requirement contained in the code.
- (5) The Welsh Ministers must—
  - (a) publish each code for the time being in force on their website, and
  - (b) make available to the public codes that have been replaced or revoked (whether on their website or otherwise).

#### Commencement Information

- I3** S. 145 in force at 6.4.2016 by [S.I. 2016/412](#), **art. 2** (with [art. 4](#), [Schs. 1, 2](#))

#### **146 Issue, approval and revocation of codes**

- (1) Before issuing or revising a code under section 145, the Welsh Ministers must consult such persons as they think fit on a draft of the code (or revised code).

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- (2) If the Welsh Ministers wish to proceed with the draft (with or without modifications) they must lay a copy of the draft before the National Assembly for Wales.
- (3) If, before the end of the 40 day period, the National Assembly for Wales resolves not to approve the draft, the Welsh Ministers must not issue the code (or revised code) in the form of that draft.
- (4) If no such resolution is made before the end of that period—
  - (a) the Welsh Ministers must issue the code (or revised code) in the form of the draft, and
  - (b) the code (or revised code) comes into force on the date appointed by order of the Welsh Ministers.
- (5) The 40 day period—
  - (a) begins on the day on which the draft is laid before the National Assembly for Wales, and
  - (b) does not include any time during which the National Assembly for Wales is dissolved or is in recess for more than four days.
- (6) Subsection (3) does not prevent a new draft of a code (or revised code) from being laid before the National Assembly for Wales.
- (7) The Welsh Ministers may revoke a code (or revised code) issued under this section in a further code or by direction.
- (8) A direction under subsection (7) must be laid before the National Assembly for Wales.

#### Commencement Information

**I4** S. 146 in force at 6.4.2016 by [S.I. 2016/412](#), [art. 2](#) (with [art. 4](#), [Schs. 1, 2](#))

#### 147 Departure from requirements in codes

- (1) Where this section applies to a requirement in a code (see section 145(4)), a local authority may exercise social services functions in a way that does not comply with the requirement so far as—
  - (a) the authority considers there is good reason for it not to comply with the requirement in particular categories of cases or at all,
  - (b) it decides on an alternative policy for the exercise of its functions in respect of the subject matter of the requirement, and
  - (c) a policy statement issued by the authority in accordance with section 148 is in effect.
- (2) Where paragraphs (a) to (c) of subsection (1) apply, the authority—
  - (a) must follow the course set out in the policy statement, and
  - (b) is subject to the duty to comply with the requirement in the code only so far as the subject matter of the requirement is not displaced by the policy statement.
- (3) The duty to comply with a requirement in a code of practice or to follow the course set out in a policy statement does not apply to a local authority so far as it would be unreasonable for the authority to follow the code or policy statement in a particular case or category of case.

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**Commencement Information**

**I5** S. 147 in force at 6.4.2016 by [S.I. 2016/412](#), [art. 2](#) (with [art. 4](#), [Schs. 1, 2](#))

**148 Policy statements: requirements and ancillary powers**

- (1) A policy statement issued under section 147(1) must set out—
  - (a) how the local authority proposes that social services functions should be exercised differently from the requirement in the relevant code, and
  - (b) the authority's reasons for proposing that different course.
- (2) An authority that has issued a policy statement may—
  - (a) issue a revised policy statement;
  - (b) give notice revoking a policy statement.
- (3) A policy statement (or revised statement) must state—
  - (a) that it is issued under section 147(1), and
  - (b) the date on which it is to take effect.
- (4) An authority that issues a policy statement (or revised statement), or gives a notice under subsection (2)(b), must—
  - (a) arrange for the statement or notice to be published;
  - (b) send a copy of the statement or notice to the Welsh Ministers.

**Commencement Information**

**I6** S. 148 in force at 6.4.2016 by [S.I. 2016/412](#), [art. 2](#) (with [art. 4](#), [Schs. 1, 2](#))

**149 Directions to require compliance with codes of practice**

- (1) Subsection (2) applies if, in relation to a policy statement issued by a local authority, the Welsh Ministers consider that the authority's alternative policy for the exercise of functions (in whole or in part) is not likely to lead to the exercise of social services functions to an adequate standard.
- (2) The Welsh Ministers may direct the local authority to take any action which the Welsh Ministers consider appropriate for the purpose of securing the exercise of functions by the authority in accordance with the relevant requirement in the relevant code.

**Commencement Information**

**I7** S. 149 in force at 6.4.2016 by [S.I. 2016/412](#), [art. 2](#) (with [art. 4](#), [Schs. 1, 2](#))

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## *f*<sup>2</sup>Reviews

### Textual Amendments

- F2** Ss. 149A-149D and cross-heading inserted (29.4.2019) by [Regulation and Inspection of Social Care \(Wales\) Act 2016 \(anaw 2\)](#), **ss. 57(1)**, 188(1); S.I. 2019/864, art. 2(3)(c)

### **149A Reviews of studies and research**

- (1) The Welsh Ministers may review—
- studies and research undertaken by others in relation to the exercise of the social services functions of local authorities in Wales,
  - the methods used in such studies and research, and
  - the validity of conclusions drawn from such studies and research.
- (2) The Welsh Ministers must—
- prepare and publish a report of a review conducted under subsection (1), and
  - lay a copy of the report before the National Assembly for Wales.

### **149B Reviews of local authority social services functions**

- (1) The Welsh Ministers may review the way in which the social services functions of local authorities are exercised.
- (2) In particular, the Welsh Ministers may—
- review the overall exercise of local authority social services functions in Wales;
  - review the way in which the social services functions of a particular local authority are exercised;
  - review the exercise of a local authority social services function of a particular description (whether exercised by a single local authority or by two or more authorities working together);
  - review the exercise of a local authority social services function by a particular person or persons.
- (3) A reference in subsection (2) to the exercise by a local authority of local authority social services functions includes a reference to the commissioning of any services in connection with those functions.
- (4) The Welsh Ministers must—
- prepare and publish a report of a review conducted under subsection (1), and
  - lay a copy of the report before the National Assembly for Wales.
- (5) Regulations may make provision about ratings that may be given in relation to the exercise of a specified local authority social services function.
- (6) If regulations are made under subsection (5) in relation to the exercise of a local authority social services function, the Welsh Ministers must—
- in conducting a review of the exercise of that function give a rating in accordance with the regulations, and
  - include the rating in their report of the review.

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- (7) Before making regulations under subsection (5) the Welsh Ministers must consult any persons they think appropriate.
- (8) But the requirement to consult does not apply to regulations which—
  - (a) amend other regulations made under that subsection, and
  - (b) do not, in the opinion of the Welsh Ministers, effect any substantial change in the provision made by the regulations to be amended.

#### **149C Fees**

- (1) Regulations may make provision for a local authority to pay a fee in respect of a review under section 149B(1).
- (2) Regulations under subsection (1) may include provision—
  - (a) specifying the amount of any fee or permitting the Welsh Ministers to determine the amount of any fee (subject to any limits or other factors as may be specified in the regulations);
  - (b) specifying the time by which a fee is to be payable or specifying factors by which that time is to be determined by the Welsh Ministers.

#### **149D General considerations**

When conducting a review under section 149A or 149B, the Welsh Ministers must, in relation to the local authority social services functions under review, have regard to—

- (a) the availability and accessibility of the services;
- (b) the quality and effectiveness of the services;
- (c) the management of the services;
- (d) the economy and efficiency of their provision and their value for money;
- (e) the availability and quality of information provided to people in the local authority area about the services;
- (f) the duties imposed on local authorities by sections 5 (duty to promote well-being), 6 (other overarching duties) and 7 (duties relating to UN Principles and Convention) in so far as they are relevant to the services and the effectiveness of measures taken by a local authority to fulfil those duties;
- (g) the effectiveness of measures taken by a local authority to achieve the outcomes specified in a statement issued by the Welsh Ministers under section 8 (statement of outcomes relating to well-being) in so far as they are relevant to the services;
- (h) any performance measures and performance targets set out in a code issued under section 9 that they think are relevant;
- (i) any requirements or guidelines contained in a code issued under section 145 that they think are relevant;
- (j) the extent to which a local authority has involved people in the local authority area—
  - (i) in decisions about the way in which its social services functions are exercised, and
  - (ii) in reviewing the exercise of those functions.]



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### *Intervention by central government*

#### **150 Grounds for intervention**

For the purposes of this Part, the grounds for intervention in the exercise by a local authority of its social services functions are as follows—

GROUND 1 - the local authority has failed, or is likely to fail, to comply with a duty that is a social services function;

GROUND 2 - the local authority has acted, or is proposing to act, unreasonably in the exercise of a social services function;

GROUND 3 - the local authority is failing, or is likely to fail, to perform a social services function to an adequate standard.

#### **Commencement Information**

**18** S. 150 in force at 6.4.2016 by S.I. 2016/412, art. 2 (with art. 4, Schs. 1, 2)

#### **151 Warning notice**

(1) The Welsh Ministers may give a warning notice to a local authority if they are satisfied that one or more of grounds 1 to 3 exist in relation to the local authority.

(2) The Welsh Ministers must specify each of the following in the warning notice—

- (a) the grounds for intervention;
- (b) the reasons why they are satisfied that the grounds exist;
- (c) the action they require the local authority to take in order to deal with the grounds for intervention;
- (d) the period within which the action is to be taken by the local authority (“the compliance period”);
- (e) the action they are minded to take if the local authority fails to take the required action.

(3) Where the Welsh Ministers give a warning notice under subsection (1), they must—

- (a) within 21 days of the giving of the notice, lay a copy of the notice before the National Assembly for Wales, and
- (b) within 90 days of the giving of the notice, report to the National Assembly for Wales on the action taken by the local authority in response to the warning notice.

#### **Commencement Information**

**19** S. 151 in force at 6.4.2016 by S.I. 2016/412, art. 2 (with art. 4, Schs. 1, 2)

#### **152 Power of Welsh Ministers to intervene**

(1) The Welsh Ministers have the power to intervene under this Part in the exercise of social services functions by a local authority if subsection (2) or (3) applies.

(2) This subsection applies if—

- (a) the Welsh Ministers have given a warning notice, and

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- (b) the local authority has failed to comply, or secure compliance, with the notice to the Welsh Ministers' satisfaction within the compliance period.
- (3) This subsection applies if the Welsh Ministers are satisfied that one or more of grounds 1 to 3 exist in relation to the local authority and they have reason to believe that—
  - (a) there is a related risk to the health or safety of any person that calls for urgent intervention under this Part, or
  - (b) the local authority is unlikely to be able to comply, or secure compliance, with a warning notice.
- (4) The Welsh Ministers must, within 90 days of the date on which they begin to intervene in the exercise of a local authority's social services functions, report to the National Assembly for Wales on the steps taken pursuant to the intervention.
- (5) Where the Welsh Ministers have the power to intervene, they must keep the circumstances giving rise to the power under review.
- (6) If the Welsh Ministers conclude that the grounds for intervention have been dealt with to their satisfaction or that the exercise of their powers under this Part would not be appropriate for any other reason, they must notify the local authority of their conclusion in writing.
- (7) The Welsh Ministers' power to intervene continues in effect until they give notice under subsection (6).
- (8) Until such time as notice is given under subsection (6), the Welsh Ministers must, every 6 months from the date on which they begin to intervene in the exercise of a local authority's social services functions, report to the National Assembly for Wales on the steps being taken pursuant to the intervention.
- (9) Where the Welsh Ministers have the power to intervene, they are not limited to taking the action they said they were minded to take in a warning notice.

**Commencement Information**

**I10** S. 152 in force at 6.4.2016 by [S.I. 2016/412](#), [art. 2](#) (with [art. 4](#), [Schs. 1, 2](#))

**153 Power to require local authority to obtain advisory services**

- (1) This section applies if the Welsh Ministers have the power to intervene in the exercise of social services functions by a local authority.
- (2) The Welsh Ministers may direct the local authority to enter into a contract or other arrangement with a specified person, or a person falling within a specified class, for the provision to the authority of specified services of an advisory nature.
- (3) The direction may require the contract or other arrangement to contain specified terms and conditions.
- (4) In this section and section 154 “specified” means specified in a direction.

**Commencement Information**

**I11** S. 153 in force at 6.4.2016 by [S.I. 2016/412](#), [art. 2](#) (with [art. 4](#), [Schs. 1, 2](#))

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#### **154 Power to require performance of functions by other persons on behalf of authority**

- (1) This section applies if the Welsh Ministers have the power to intervene in the exercise of social services functions by a local authority.
- (2) The Welsh Ministers may give such a direction to the local authority or any of its officers as they think is appropriate for securing that the functions to which the grounds for intervention relate are performed on behalf of the authority by a person specified in the direction.
- (3) A direction under subsection (2) may require that any contract or other arrangement made by the authority with the specified person contains terms and conditions specified in the direction.
- (4) If a direction under subsection (2) is in force, the functions of the local authority to which it relates are to be treated for all purposes as being exercisable by the specified person.

##### **Commencement Information**

**I12** S. 154 in force at 6.4.2016 by S.I. 2016/412, art. 2 (with art. 4, Schs. 1, 2)

#### **155 Power to require performance of functions by Welsh Ministers or nominee**

- (1) This section applies if the Welsh Ministers have the power to intervene in the exercise of social services functions by a local authority.
- (2) The Welsh Ministers may direct that the functions to which the grounds for intervention relate are to be exercised by the Welsh Ministers or a person nominated by them.
- (3) If a direction is made under subsection (2), the local authority must comply with the instructions of the Welsh Ministers or their nominee in relation to the exercise of the functions.
- (4) If a direction under subsection (2) is in force, the functions of the local authority to which it relates are to be treated for all purposes as being exercisable by the Welsh Ministers or their nominee.

##### **Commencement Information**

**I13** S. 155 in force at 6.4.2016 by S.I. 2016/412, art. 2 (with art. 4, Schs. 1, 2)

#### **156 Power to direct exercise of other social services functions**

- (1) If the Welsh Ministers think it is expedient, a direction under section 154 or 155 may relate to the performance of social services functions in addition to the functions to which the grounds for intervention relate.
- (2) The Welsh Ministers may have regard (among other things) to financial considerations in deciding whether it is expedient that a direction should relate to social services functions other than the functions relating to the grounds for intervention.

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**Commencement Information**

**I14** S. 156 in force at 6.4.2016 by [S.I. 2016/412](#), **art. 2** (with **art. 4**, **Schs. 1, 2**)

**157 General power to give directions and take steps**

- (1) This section applies if the Welsh Ministers have the power to intervene in the exercise of social services functions by a local authority.
- (2) If the Welsh Ministers think it is appropriate in order to deal with the grounds for intervention, the Welsh Ministers may—
  - (a) direct the local authority or any of its officers, or
  - (b) take any other steps.

**Commencement Information**

**I15** S. 157 in force at 6.4.2016 by [S.I. 2016/412](#), **art. 2** (with **art. 4**, **Schs. 1, 2**)

**158 Intervention: duty to report**

Where the Welsh Ministers exercise their power of direction under section 153, 154, 155 or 157, they must—

- (a) within 21 days of the giving of the direction, lay a copy of the direction before the National Assembly for Wales, and
- (b) within 90 days of the giving of the direction, report to the National Assembly for Wales on the steps taken by the local authority to comply with the direction.

**Commencement Information**

**I16** S. 158 in force at 6.4.2016 by [S.I. 2016/412](#), **art. 2** (with **art. 4**, **Schs. 1, 2**)

**159 Directions**

- (1) A local authority, or an officer of an authority, subject to a direction or instruction under this Part must comply with it.
- (2) This includes a direction or an instruction to exercise a function that is contingent upon the opinion of the local authority or an officer of the authority.
- (3) A direction under this Part—
  - (a) must be in writing;
  - (b) may be varied or revoked by a later direction;
  - (c) is enforceable by mandatory order on application by, or on behalf of, the Welsh Ministers.

**Commencement Information**

**I17** S. 159 in force at 6.4.2016 by [S.I. 2016/412](#), **art. 2** (with **art. 4**, **Schs. 1, 2**)

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## 160 Duty to co-operate

- (1) A local authority must give the Welsh Ministers and any person mentioned in subsection (2) as much assistance in connection with the exercise of functions under or by virtue of this Part as they are reasonably able to give.
- (2) The persons are—
  - (a) any person authorised for the purposes of this section by the Welsh Ministers;
  - (b) any person acting under a direction under this Part;
  - (c) any person assisting—
    - (i) the Welsh Ministers, or
    - (ii) a person mentioned in paragraph (a) or (b).

### Commencement Information

**I18** S. 160 in force at 6.4.2016 by [S.I. 2016/412](#), [art. 2](#) (with [art. 4](#), [Schs. 1, 2](#))

### *[F3] Enforcement*

### Textual Amendments

**F3** Ss. 161-161C and cross-heading substituted for s. 161 (29.4.2019) by [Regulation and Inspection of Social Care \(Wales\) Act 2016 \(anaw 2\)](#), [ss. 57\(2\)](#), [188\(1\)](#); [S.I. 2019/864](#), [art. 2\(3\)\(c\)](#)

## 161 Powers of entry and inspection

- (1) A person falling within subsection (2) may authorise an inspector to enter and inspect premises falling within subsection (3).
- (2) The following persons fall within this subsection—
  - (a) the Welsh Ministers—
    - (i) where they consider it necessary or expedient for the purposes of a review conducted under section 149B(1), or
    - (ii) in pursuance of a direction under section 155;
  - (b) a person specified in a direction under section 153 or, where the direction specifies a class of persons, the person with whom the local authority enters into the contract or other arrangement required by the direction;
  - (c) a person specified in a direction under section 154;
  - (d) a person nominated in a direction under section 155.
- (3) The following premises fall within this subsection—
  - (a) premises owned or controlled by a local authority;
  - (b) premises—
    - (i) which are used, or proposed to be used, by any person in connection with the exercise of a local authority social services function, or
    - (ii) which the Welsh Ministers reasonably believe is being used, or may be used, for that purpose,

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but premises used wholly or mainly as a private dwelling do not fall within this subsection unless the occupier of the premises consents to the inspector entering and inspecting them.

- (4) “Premises” includes a vehicle.
- (5) The Welsh Ministers may by regulations make provision about the qualifications and other conditions to be met by an individual who may be an inspector.
- (6) When entering premises, an inspector must, if requested to do so by any person at the premises, produce a document showing the inspector's authorisation given under subsection (1).
- (7) The inspector may—
  - (a) examine the state and management of the premises and, if any persons are accommodated or receive care and support at the premises, examine the treatment of those persons;
  - (b) require the manager of the premises or any other person who appears to the inspector to hold or be accountable for documents or records kept at the premises to produce any documents or records (including medical and other personal records) that the inspector considers may be relevant to the exercise of functions under this Part by the person who authorised the inspector;
  - (c) inspect and take copies of any documents or records (including medical and other personal records) that the inspector considers may be relevant to the exercise of functions under this Part by the person who authorised the inspector;
  - (d) require any person to afford the inspector such facilities and assistance with respect to matters within the person's control as are necessary to enable the inspector to carry out the inspection;
  - (e) take such measurements and photographs and make such recordings as the inspector considers necessary for the purpose of carrying out the inspection;
  - (f) interview in private—
    - (i) the manager of the premises or any other person who appears to the inspector to be responsible for the premises;
    - (ii) any person working there;
    - (iii) any person accommodated or receiving care and support there who consents to be interviewed.
- (8) The powers in subsection (7)(b) to (d) include the power to—
  - (a) gain access to and check the operation of any computer and associated apparatus which the inspector has reasonable grounds to believe is (or has been) used in connection with the documents or records, and
  - (b) require documents or records to be produced in a form which is legible and portable.
- (9) Subsection (10) applies where—
  - (a) persons are accommodated or receiving care and support at the inspected premises,
  - (b) the inspector is a registered medical practitioner or registered nurse, and
  - (c) the inspector has reasonable grounds to believe that a person accommodated or receiving care and support at the premises is not receiving (or has not received) proper care and support.

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- (10) Where this subsection applies, the inspector may examine the person in private but only if the person gives consent to the examination.
- (11) For the purposes of subsections (7)(f) and (10), an interview or examination is to be treated as conducted in private despite the presence of a third party if—
  - (a) the person being interviewed or examined wants the third party to be present and the inspector does not object, or
  - (b) the inspector wants the third party to be present and the person being interviewed or examined consents.
- (12) Where an inspector conducts an interview or examination under this section, the inspector must, if requested to do so by—
  - (a) the person being interviewed or examined, or
  - (b) an individual accompanying that person,produce a document showing the inspector's authorisation given under subsection (1) and, in the case of an examination, a document showing that the inspector is a registered medical practitioner or registered nurse.
- (13) As soon as is reasonably practicable after an inspector has concluded an inspection under this section, the inspector must send a report of the inspection to the person who gave the authorisation under subsection (1).
- (14) That person must send a copy of the inspector's report—
  - (a) to the local authority being reviewed or subject to the direction, and
  - (b) if the person is not the Welsh Ministers, to the Welsh Ministers.
- (15) In this section and sections 161A, 161B and 161C, “inspector” means an individual authorised under subsection (1).

#### **161A Code of practice about inspections**

- (1) The Welsh Ministers must prepare and publish a code of practice about the manner in which inspections of premises under section 161 are to be carried out (including about the frequency of such inspections).
- (2) The Welsh Ministers may revise the code and must publish a revised code.
- (3) An inspector must have regard to the most recently published code when carrying out an inspection under section 161.

#### **161B Power to require information**

- (1) The Welsh Ministers may require a person falling within subsection (2) to provide them with—
  - (a) any documents, records (including medical or other personal records) or other information—
    - (i) which relate to the exercise of a social services function of a local authority, and
    - (ii) which the Welsh Ministers consider it necessary or expedient to have for the purposes of a review under section 149A or 149B;
  - (b) an explanation of the content of—

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- (i) any documents, records or other information provided under paragraph (a), or
  - (ii) any documents or records provided to an inspector conducting an inspection of premises under section 161 in connection with a review under section 149B.
- (2) The following persons fall within this subsection—
- (a) a local authority;
  - (b) a person providing a service in connection with the exercise of a local authority social services function;
  - (c) a Local Health Board;
  - (d) an NHS trust,
- but a Local Health Board or NHS trust cannot be required to provide an explanation of the content of any documents or records provided to an inspector conducting an inspection of premises under section 161.
- (3) A person is not required to provide documents, records or other information under subsection (1) if the person is prohibited from providing them by any enactment or other rule of law.
- (4) The power in subsection (1) includes power to require documents or records to be produced in a form which is legible and portable.

### **161C Offences**

- (1) It is an offence for a person—
- (a) to intentionally obstruct the carrying out of an inspection of premises under section 161 by an inspector, or
  - (b) to fail to comply with any requirement imposed on the person by an inspector carrying out such an inspection.
- (2) It is an offence for a person to fail to comply with a requirement imposed on the person by the Welsh Ministers under section 161B(1).
- (3) It is a defence for a person charged with an offence under subsection (1)(b) or (2) to show that the person had a reasonable excuse for not complying with the requirement.
- (4) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to a fine, or to imprisonment for a term not exceeding 6 months, or to both;
  - (b) on conviction on indictment, to a fine, or to imprisonment for a term not exceeding 2 years, or to both.
- (5) Sections 53 (offences by bodies corporate), 54 (offences by unincorporated bodies) and 55 (proceedings for offences) of the Regulation and Inspection of Social Care (Wales) Act 2016 apply to an offence under this section as they apply to offences under Part 1 of that Act.]



**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 1(9)(ba) inserted by [2016 anaw 2 Sch. 3 para. 30\(a\)\(i\)](#)
- s. 1(9)(ca) inserted by [2016 anaw 2 Sch. 3 para. 30\(a\)\(ii\)](#)
- s. 1(9)(da) substituted for word by [2016 anaw 2 Sch. 3 para. 30\(a\)\(iii\)](#)
- s. 83(2A)-(2D) inserted by [2018 anaw 2 s. 16\(2\)](#)
- s. 83(10) inserted by [2018 anaw 2 s. 16\(9\)](#)
- s. 163(4A) inserted by [2014 c. 23 s. 75\(10\)](#) (Effect inserting (4) not applied at s. 163 as it appears to relate to s. 194 in view of the title of the section as cited i.e. "ordinary residence". In s. 194 another (4), identically worded, is inserted on the same date by S.I. 2016/413, regs. 2(1), 316(a))
- s. 196(6)(ca) inserted by [2018 anaw 2 Sch. 1 para. 24\(4\)](#)