Social Services and Well-being (Wales) Act 2014

2014 anaw 4

An Act of the National Assembly for Wales to reform social services law; to make provision about improving the well-being outcomes for people who need care and support and carers who need support; to make provision about co-operation and partnership by public authorities with a view to improving the well-being of people; to make provision about complaints relating to social care and palliative care; and for connected purposes. [1 May 2014]

Having been passed by the National Assembly for Wales and having received the assent of Her Majesty, it is enacted as follows:

Modifications etc. (not altering text)

C1 Act excluded (1.4.2015) by Care Act 2014 (c. 23), s. 127, **Sch. 1 para. 1(1)** (with Sch. 1 paras. 8, 14); S.I. 2015/993, art. 2(x)(i) (with transitional provisions in S.I. 2015/995); S.I. 2015/993, art. 2(x)(i) (with transitional provisions in S.I. 2015/995); S.I. 2015/993, art. 2(x)(i) (with transitional provisions in S.I. 2015/995)

C2 Act excluded (1.4.2015) by Care Act 2014 (c. 23), s. 127, **Sch. 1 para. 3(2)** (with Sch. 1 paras. 8, 14); S.I. 2015/993, art. 2(x)(i) (with transitional provisions in S.I. 2015/995); S.I. 2015/993, art. 2(x)(i) (with transitional provisions in S.I. 2015/995); S.I. 2015/993, art. 2(x)(i) (with transitional provisions in S.I. 2015/995)

C3 Act excluded (1.4.2015) by Care Act 2014 (c. 23), s. 127, **Sch. 1 para. 4(2)(b)** (with Sch. 1 paras. 8, 14); S.I. 2015/993, art. 2(x)(i) (with transitional provisions in S.I. 2015/995); S.I. 2015/993, art. 2(x)(i) (with transitional provisions in S.I. 2015/995); S.I. 2015/993, art. 2(x)(i) (with transitional provisions in S.I. 2015/995)

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PART 1

INTRODUCTION

Overview

1 Overview of this Act

(1) This Act has 11 Parts.

(2) This Part provides an overview of the whole Act and defines some key terms.

(3) Part 2 (general duties)—

(a) requires persons exercising functions under this Act to seek to promote the well-being of people who need care and support and carers who need support (section 5);

(b) imposes overarching duties on persons exercising functions under this Act in relation to persons who need or may need care and support, carers who need or may need support, or persons in respect of whom functions are exercisable under Part 6, so as to give effect to certain key principles (section 6);

(c) requires the Welsh Ministers to issue a statement specifying the well-being outcomes that are to be achieved for people who need care and support and carers who need support and to issue a code to help achieve those outcomes (sections 8 to 13);

(d) requires local authorities to assess the needs in their areas for care and support, support for carers and preventative services (section 14);

(e) requires local authorities to provide or arrange for the provision of preventative services (section 15);

(f) requires the promotion by local authorities of social enterprises, co-operatives, user led services and the third sector in the provision in their areas of care and support and support for carers (section 16);

(g) requires the provision by local authorities of a service providing information and advice relating to care and support and support for carers and assistance in accessing it (section 17);

(h) requires local authorities to establish and maintain registers of sight-impaired, hearing-impaired and other disabled people (section 18).

(4) Part 3 (assessing the needs of individuals) provides for—

(a) the circumstances in which a local authority must assess a person's needs for care and support or a carer's needs for support;

(b) how assessments are to be carried out.

(5) Part 4 (meeting needs) provides for—

(a) the circumstances in which needs for care and support or support for carers may or must be met by local authorities;

(b) how needs are to be met.

(6) Part 5 (charging and financial assessment) provides for—

(a) the circumstances in which local authorities may charge for providing or arranging care and support or support for carers;

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(b) the circumstances in which local authorities may charge for preventative services and the provision of assistance;

(c) how such charges are to be set, paid and enforced.

(7) Part 6 (looked after and accommodated children)—

(a) provides for the interpretation of references to a child or young person looked after by a local authority (section 74);

(b) requires local authorities—

(i) to secure sufficient accommodation in their areas for the children they look after (section 75), and

(ii) to accommodate children without parents or who are lost or abandoned or are under police protection, detention or on remand (sections 76 and 77);

(c) provides for the functions of local authorities in relation to the children they look after (sections 75 to 103, 124 and 125);

(d) provides for the circumstances in which local authorities may or must provide support for young people—

(i) leaving, or who have left, local authority care;

(ii) formerly accommodated in certain establishments;

(iii) formerly fostered;

(iv) with respect to whom special guardianship orders are or were in force;

(sections 104 to 118);

(e) provides for limits on the use of secure accommodation for children looked after by local authorities or local authorities in England or children of a description specified in regulations (section 119);

(f) requires the assessment by local authorities of children who are accommodated by health authorities or education authorities or in care homes or independent hospitals and the provision of visits and services to those children (sections 120 to 123);

(g) introduces Schedule 1 which makes provision about contributions towards the maintenance of children looked after by local authorities.

(8) Part 7 (safeguarding)—

(a) requires local authorities to investigate where they suspect that an adult with care and support needs is at risk of abuse or neglect (section 126);

(b) provides for adult protection and support orders to authorise entry to premises (if necessary by force) for the purpose of enabling an authorised officer of a local authority to assess whether an adult is at risk of abuse or neglect and, if so, what to do about it (section 127);

(c) requires local authorities and their relevant partners to report to the appropriate authority where they suspect that people may be at risk of abuse or neglect (sections 128 and 130);

(d) disapplies section 47 of the National Assistance Act 1948 (which enables local authorities to apply for a court order to remove people in need of care and attention from their homes to hospitals or other places) (section 129);

(e) establishes a National Independent Safeguarding Board to provide support and advice in order to ensure the effectiveness of Safeguarding Boards (sections 132 and 133);

(f) provides for Safeguarding Boards for adults and children and for the combination of such boards (sections 134 to 141).

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(9) Part 8 (social services functions)—

(a) introduces Schedule 2, which specifies the social services functions of local authorities (section 143);

(b) requires the appointment of directors of social services by local authorities and makes related provision (section 144);

(c) provides for codes about the exercise of social services functions to be made by the Welsh Ministers (sections 145 to 149);

(d) provides for intervention by the Welsh Ministers in the exercise of social services functions where a local authority is failing to exercise them properly (sections 150 to 161).

(10) Part 9 (co-operation and partnership)—

(a) requires local authorities to make arrangements to promote co-operation with their relevant partners and others in relation to adults with needs for care and support, carers and children (sections 162 and 163);

(b) imposes a duty on the relevant partners to co-operate with, and provide information to, the local authorities for the purpose of their social services functions (section 164);

(c) makes provision about promoting the integration of care and support with health services (section 165);

(d) provides for partnership arrangements between local authorities and Local Health Boards for the discharge of their functions (sections 166 to 169);

(e) empowers the Welsh Ministers to direct local authorities to enter into joint arrangements for the provision of an adoption service (section 170).

(11) Part 10 (complaints, representations and advocacy services) has three chapters.

(12) Chapter 1 provides for complaints and representations about social services provided or arranged by local authorities.

(13) Chapter 2 provides for complaints to the Public Services Ombudsman for Wales about private social care and palliative care.

(14) Chapter 3 provides for advocacy services to be made available to people with needs for care and support for purposes relating to their care and support.

(15) Part 11 (miscellaneous and general)—

(a) empowers the Welsh Ministers, local authorities and Local Health Boards to conduct research, and empowers the Welsh Ministers to require information, about matters connected with functions under the Act and other related matters (section 184);

(b) makes provision about how this Act applies to persons in prison, youth detention accommodation or bail accommodation etc (sections 185 to 188);

(c) makes provision about the steps to be taken by a local authority where an establishment or agency (within the meaning of the Care Standards Act 2000) becomes unable to meet needs in the authority's area because of business failure (sections 189 to 191);

(d) disapplies section 49 of the National Assistance Act 1948 (which allows a local authority to meet expenses incurred by any of its officers appointed by the Court of Protection as a deputy) (section 192);

(e) makes provision for the recovery of costs between local authorities in certain circumstances (section 193);

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(f) provides for the resolution of questions about the ordinary residence of a person for the purposes of this Act (section 194);

(g) contains the definitions that apply for the purposes of this Act generally and an index of defined expressions (section 197);

(h) contains other provisions which apply generally for the purposes of this Act.

(16) There are also provisions about social services in the Acts and Measures listed in Schedule 2.

Key terms

2 Meaning of "well-being"

(1) This section applies for the purpose of this Act.

(2) "Well-being", in relation to a person, means well-being in relation to any of the following—

(a) physical and mental health and emotional well-being;

(b) protection from abuse and neglect;

(c) education, training and recreation;

(d) domestic, family and personal relationships;

(e) contribution made to society;

(f) securing rights and entitlements;

(g) social and economic well-being;

(h) suitability of living accommodation.

(3) In relation to a child, "well-being" also includes—

(a) physical, intellectual, emotional, social and behavioural development;

(b) "welfare" as that word is interpreted for the purposes of the Children Act 1989.

(4) In relation to an adult, "well-being" also includes—

(a) control over day to day life;

(b) participation in work.

3 Meaning of "adult", "child", "carer"and "disabled"

(1) This section applies for the purposes of this Act.

(2) "Adult" means a person who is aged 18 or over.

(3) "Child" means a person who is aged under 18.

(4) "Carer" means a person who provides or intends to provide care for an adult or disabled child; but see subsections (7) and (8) and section 187(1).

(5) A person is "disabled" if the person has a disability for the purposes of the Equality Act 2010, subject to provision made under subsection (6).

(6) Regulations may provide that a person falling within a specified category is or is not to be treated as disabled for the purposes of this Act.

(7) A person is not a carer for the purposes of this Act if the person provides or intends to provide care—

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(a) under or by virtue of a contract, or
(b) as voluntary work.

(8) But a local authority may treat a person as a carer for the purposes of any of its functions under this Act if the authority considers that the relationship between the person providing or intending to provide care and the person for whom that care is, or is to be, provided is such that it would be appropriate for the former to be treated as a carer for the purposes of that function or those functions.

4 Meaning of "care and support"

Any reference to care and support in this Act is to be construed as a reference to—
(a) care;
(b) support;
(c) both care and support.

PART 2

GENERAL FUNCTIONS

Overarching duties

5 Well-being duty

A person exercising functions under this Act must seek to promote the well-being of—
(a) people who need care and support, and
(b) carers who need support.

Commencement Information
I1 S. 5 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

6 Other overarching duties: general

(1) A person exercising functions under this Act in relation to—
(a) an individual who has, or may have, needs for care and support,
(b) a carer who has, or may have, needs for support, or
(c) an individual in respect of whom functions are exercisable under Part 6 (looked after children etc),
must comply with the duties in subsection (2).

(2) The person must—
(a) in so far as is reasonably practicable, ascertain and have regard to the individual's views, wishes and feelings,
(b) have regard to the importance of promoting and respecting the dignity of the individual,
(c) have regard to the characteristics, culture and beliefs of the individual (including, for example, language), and

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(d) have regard to 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 limited for any reason.

(3) A person exercising functions under this Act in relation to an adult falling within subsection (1)(a), (b) or (c) must, in addition, have regard to—

(a) the importance of beginning with the presumption that the adult is best placed to judge the adult's well-being, and

(b) the importance of promoting the adult's independence where possible.

(4) A person exercising functions under this Act in relation to a child falling within subsection (1)(a), (b) or (c), in addition—

(a) must have regard to the importance of promoting the upbringing of the child by the child's family, in so far as doing so is consistent with promoting the well-being of the child, and

(b) where the child is under the age of 16, must ascertain and have regard to the views, wishes and feelings of the persons with parental responsibility for the child, in so far as doing so is—

(i) consistent with promoting the well-being of the child, and

(ii) reasonably practicable.

Modifications etc. (not altering text)

C4 S. 6(4)(b) applied by SI 2005/1313, reg. 46A(2) (as inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) and Care Planning, Placement and Case Review (Miscellaneous Amendments) (Wales) Regulations 2016 (S.I. 2016/216), regs. 1(2), **5(8)**)

Commencement Information

I2 S. 6 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

7 Other overarching duties: UN Principles and Convention

(1) A person exercising functions under this Act in relation to an adult falling within section 6(1)(a) or (b) must have due regard to the United Nations Principles for Older Persons adopted by the General Assembly of the United Nations on 16 December 1991.

(2) A person exercising functions under this Act in relation to a child falling within section 6(1)(a), (b) or (c) must have due regard to Part 1 of the United Nations Convention on the Rights of the Child adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 (“the Convention”).

(3) For the purposes of subsection (2), Part 1 of the Convention is to be treated as having effect—

(a) as set out for the time being in Part 1 of the Schedule to the Rights of Children and Young Persons (Wales) Measure 2011, but

(b) subject to any declaration or reservation as set out for the time being in Part 3 of that Schedule.

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(4) Subsection (2) does not apply to the Welsh Ministers (see, instead, the Rights of Children and Young Persons (Wales) Measure 2011).

Commencement Information
I3 S. 7 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

Well-being outcomes

8 Duty to issue a statement of the outcomes to be achieved

(1) The Welsh Ministers must issue a statement relating to the well-being of—
  (a) people in Wales who need care and support, and
  (b) carers in Wales who need support.

(2) The statement must be issued within 3 years beginning with the date on which this Act receives Royal Assent.

(3) The statement must specify the outcomes that are to be achieved, in terms of the well-being of the people mentioned in subsection (1), by means of—
  (a) care and support (or, in the case of carers, support) provided by local authorities under this Act, and
  (b) care and support (or, in the case of carers, support) provided by others which is of a kind that could be provided by local authorities under this Act.

(4) The statement must also specify measures by reference to which the achievement of those outcomes is to be assessed.

(5) The statement may specify different outcomes or measures for different categories of people who need care and support (or, in the case of carers, support).

(6) The Welsh Ministers must keep the statement under review and may revise the statement whenever they consider it appropriate to do so.

(7) Before issuing or revising the statement, the Welsh Ministers must consult such persons as they think fit.

(8) The Welsh Ministers must, on issuing or revising the statement—
  (a) lay a copy of the statement before the National Assembly for Wales, and
  (b) publish the statement on their website.

Commencement Information
I4 S. 8 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

9 Power to issue a code to help achieve the outcomes

(1) The Welsh Ministers must issue, and from time to time revise, a code to help achieve the outcomes specified in the statement under section 8.

(2) The code may—

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(a) give guidance to any person providing care and support (or, in the case of carers, support) of the kind described in section 8(3), and
(b) impose requirements on local authorities in relation to provision of that kind.

(3) The following are examples of the matters which may be set out in the code—
(a) standards ("quality standards") to be achieved in the provision of care and support (or, in the case of carers, support);
(b) measures ("performance measures") by reference to which performance in achieving those quality standards can be assessed;
(c) targets ("performance targets") to be met in relation to those performance measures;
(d) steps to be taken in relation to those standards, measures and targets.

(4) The code may specify—
(a) different quality standards for—
(i) different categories of care and support (or, in the case of carers, support);
(ii) different categories of people who need care and support (or, in the case of carers, support);
(b) different performance measures or performance targets for—
(i) different categories of care and support (or, in the case of carers, support);
(ii) different categories of persons who provide care and support (or, in the case of carers, support);
(c) different quality standards, performance measures or performance targets to apply at different times.

(5) The Welsh Ministers must—
(a) publish on their website the code which is for the time being in force, and
(b) make available to the public (whether on their website or otherwise) codes which are no longer in force.

Commencement Information
I5 S. 9 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

10 Local authorities and the code

(1) In exercising its functions under this Act, a local authority must—
(a) act in accordance with any relevant requirements imposed upon it by a code issued under section 9, and
(b) have regard to any relevant guidance contained in that code.

(2) Where performance measures or performance targets are specified in a code issued under section 9, they are to be treated (so far as they apply to the performance of local authorities in exercising their functions) as having been specified as performance indicators or performance standards respectively under section 8(1) of the Local Government (Wales) Measure 2009.

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Commencement Information

I6 S. 10 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

11 Issue, approval and revocation of the code

(1) Before issuing or revising a code under section 9, the Welsh Ministers must consult such persons as they think fit on a draft of the code (or revised code).

(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

I7 S. 11 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

12 Power to help local authorities to comply with the code's requirements

(1) The Welsh Ministers may do anything which they consider is likely to help a local authority to comply with requirements imposed by a code under section 9.

(2) The power under subsection (1) includes power—

(a) to enter into arrangements or agreements with any person;

(b) to co-operate with, or facilitate or co-ordinate the activities of, any person;

(c) to exercise on behalf of any person any functions of that person;

(d) to provide staff, goods, services or accommodation to any person.

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(3) Unless the Welsh Ministers are exercising the power under subsection (1) in response to a request made under subsection (4), they must, before exercising that power, consult—

(a) the local authority which they propose to assist by the exercise of the power, and

(b) those persons who appear to the Welsh Ministers to be key stakeholders affected by the exercise of the power.

(4) If a local authority asks them to do so, the Welsh Ministers must consider whether to exercise their power under subsection (1).

Commencement Information

I8 S. 12 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

13 Publication of information and reports

The Welsh Ministers may publish—

(a) information about the provision of care and support (or, in the case of carers, support) of the kind described in section 8(3), and

(b) reports on the progress made by local authorities and others towards the achievement of—

(i) the outcomes specified in a statement under section 8;

(ii) the quality standards and performance targets (if any) specified in a code under section 9.

Commencement Information

I9 S. 13 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

Local arrangements

14 Assessment of needs for care and support, support for carers and preventative services

(1) A local authority and each Local Health Board any part of whose area lies within the area of the local authority must, in accordance with regulations, jointly assess—

(a) the extent to which there are people in the local authority's area who need care and support;

(b) the extent to which there are carers in the local authority's area who need support;

(c) the extent to which there are people in the local authority's area whose needs for care and support (or, in the case of carers, support) are not being met (by the authority, the Board or otherwise);

(d) the range and level of services required to meet the care and support needs of people in the local authority's area (including the support needs of carers);

(e) the range and level of services required to achieve the purposes in section 15(2) (preventative services) in the local authority's area;

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(f) the actions required to provide the range and level of services identified in accordance with paragraphs (d) and (e) through the medium of Welsh.

(2) Regulations under subsection (1) may, for example, provide for the timing and review of assessments.

[F1](3) . . . . . .

[F1](4) . . . . . .

Textual Amendments

F1 S. 14(3)(4) repealed (1.4.2016) by Well-being of Future Generations (Wales) Act 2015 (anaw 2), s. 56(2), **Sch. 4 para. 33**; S.I. 2016/86, art. 3

Commencement Information

I10 S. 14 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

[[F2]14A Plans following assessments of needs under section 14

(1) In this section, " relevant body " means a local authority or Local Health Board which has carried out a joint assessment under section 14(1).

(2) Each relevant body must prepare and publish a plan setting out—

(a) the range and level of services the body proposes to provide, or arrange to be provided, in response to the assessment of needs under paragraphs (a) to (c) of section 14(1);

(b) in the case of a local authority, the range and level of services the authority proposes to provide, or arrange to be provided, in seeking to achieve the purposes in section 15(2) (preventative services);

(c) in the case of a Local Health Board, anything the Board proposes to do in connection with its duty under section 15(5) (Local Health Boards to have regard to the importance of preventative action when exercising functions);

(d) how the services set out in the plan are to be provided, including the actions the body proposes to take to provide, or arrange to provide, the services through the medium of Welsh;

(e) any other action the body proposes to take in response to the assessment under section 14(1);

(f) the details of anything the body proposes to do in response to the assessment jointly with another relevant body;

(g) the resources to be deployed in doing the things set out in the plan.

(3) A relevant body's plan may be published by including it within a local well-being plan published under section 39 or 44(5) of the Well-being of Future Generations (Wales) Act 2015 (the " 2015 Act ") by a public services board of which the body is a member.

(4) A local authority and a Local Health Board who have carried out a joint assessment together under section 14(1) may jointly prepare and publish a plan under subsection (2).

(5) Two or more local authorities may jointly prepare and publish a plan under subsection (2); but such a joint plan may be published by including it within a local

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well-being plan only if each local authority is a member of the public services board (see sections 47 and 49 of the 2015 Act (merging of public services boards)).

(6) A relevant body must submit to the Welsh Ministers—

(a) any part of a plan it has prepared under subsection (2) which relates to the health and well-being of carers;

(b) any other part of such a plan as may be specified by regulations.

(7) Regulations may make provision about plans prepared and published under subsection (2), including provision—

(a) specifying when a plan is to be published;

(b) about reviewing a plan;

(c) about consulting persons when preparing or reviewing a plan;

(d) about the monitoring and evaluation of services and other action set out in a plan.**]**

Textual Amendments

F2 S. 14A inserted (6.4.2016) by Well-being of Future Generations (Wales) Act 2015 (anaw 2), s. 56(2), **Sch. 4 para. 34**; S.I. 2016/86, art. 4

15 Preventative services

(1) A local authority must provide or arrange for the provision of a range and level of services which it considers will achieve the purposes in subsection (2) in its area.

(2) The purposes are—

(a) contributing towards preventing or delaying the development of people's needs for care and support;

(b) reducing the needs for care and support of people who have such needs;

(c) promoting the upbringing of children by their families, where that is consistent with the well-being of children;

(d) minimising the effect on disabled people of their disabilities;

(e) contributing towards preventing people from suffering abuse or neglect;

(f) reducing the need for—

(i) proceedings for care or supervision orders under the Children Act 1989,

(ii) criminal proceedings against children,

(iii) any family or other proceedings in relation to children which might lead to them being placed in local authority care, or

(iv) proceedings under the inherent jurisdiction of the High Court in relation to children;

(g) encouraging children not to commit criminal offences;

(h) avoiding the need for children to be placed in secure accommodation **[**[F3]within the meaning given in section 119 and in section 25 of the Children Act 1989**]**;

(i) enabling people to live their lives as independently as possible.

(3) The things that may be provided or arranged in discharging the duty under subsection (1) include, but are not limited to, care and support (or in the case of carers, support) of the kind that must or may be provided under sections 35 to 45.

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) A local authority must, in the exercise of its other functions, have regard to the importance of achieving the purposes in subsection (2) in its area.

(5) A Local Health Board must, in the exercise of its functions, have regard to the importance of achieving the purposes in subsection (2) in its area.

(6) In discharging its duty under subsection (1) a local authority—

(a) must identify the services already available in the authority's area which may help in achieving the purposes in subsection (2) and consider involving or making use of those services in discharging the duty;

(b) may take account of services which the authority considers might reasonably be provided or arranged by other persons in deciding what it should provide or arrange;

(c) must make the best use of the authority's resources and in particular avoid provision which might give rise to disproportionate expenditure.

(7) Provision is not to be considered as giving rise to disproportionate expenditure only because that provision is more expensive than comparable provision.

(8) Two or more local authorities may jointly discharge the duty under subsection (1) in relation to their combined area; where they do so—

(a) references in this section to a local authority are to be read as references to the authorities acting jointly, and

(b) references in this section to a local authority's area are to be read as references to the combined area.

(9) See sections 46 (exception for persons subject to immigration control), 47 (exception for provision of health services), 48 (exception for provision of housing etc) and 49 (restrictions on provision of payments) for an exception to the duty under subsection (1) and limitations on the manner in which the duty may be discharged.

Textual Amendments

F3 Words in s. 15(2)(h) inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **295**

Commencement Information

I11 S. 15 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

16 Promoting social enterprises, co-operatives, user led services and the third sector

(1) A local authority must promote—

(a) the development in its area of social enterprises to provide care and support and preventative services;

(b) the development in its area of co-operative organisations or arrangements to provide care and support and preventative services;

(c) the involvement of persons for whom care and support or preventative services are to be provided in the design and operation of that provision;

(d) the availability in its area of care and support and preventative services from third sector organisations (whether or not the organisations are social enterprises or co-operative organisations).

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) In this section—

"care and support" ("*gofal a chymorth*") includes support for carers;

"preventative services" ("*gwasanaethau ataliol*") means services the local authority considers would achieve any of the purposes in section 15(2);

"social enterprise" ("*menter gymdeithasol*") means an organisation whose activities are wholly or mainly activities which a person might reasonably consider to be activities carried on for the benefit of society ("its social objects"), and which—

(a) generates most of its income through business or trade,

(b) reinvests most of its profits in its social objects,

(c) is independent of any public authority, and

(d) is owned, controlled and managed in a way that is consistent with its social objects;

"society" ("*y gymdeithas*") includes a section of society;

"third sector organisation" ("*sefydliad trydydd sector*") means an organisation which a person might reasonably consider to exist wholly or mainly to provide benefits for society.

(3) For the purposes of this section, regulations may provide—

(a) that activities of a specified description are or are not to be treated as activities which a person might reasonably consider to be activities carried on for the benefit of society;

(b) that organisations or arrangements of a specified description are or are not to be treated as—

(i) social enterprises,

(ii) co-operative organisations or arrangements, or

(iii) third sector organisations;

(c) for what does, does not or may constitute a section of society.

Commencement Information

I12 S. 16 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

17 Provision of information, advice and assistance

(1) A local authority must secure the provision of a service for providing people with—

(a) information and advice relating to care and support, and

(b) assistance in accessing care and support.

(2) In subsection (1)(a), "information" includes, but is not limited to, financial information (including information about direct payments).

(3) The local authority must seek to ensure that the service—

(a) is sufficient to enable a person to make plans for meeting needs for care and support that might arise, and

(b) provides information, advice and assistance to a person in a manner which is accessible to that person.

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) The service must include, as a minimum, the publication of information and advice on the following matters—
  (a) the system provided for by this Act and how the system operates in the authority's area,
  (b) the types of care and support available in the authority's area,
  (c) how to access the care and support that is available, and
  (d) how to raise concerns about the well-being of a person who appears to have needs for care and support.

(5) A Local Health Board or an NHS Trust providing services in the area of a local authority must, for the purposes of this section, provide that local authority with information about the care and support it provides in the local authority's area.

(6) Two or more local authorities may jointly secure the provision of a service under this section for their combined area; and where they do so—
  (a) references in this section to a local authority are to be read as references to the authorities acting jointly, and
  (b) references in this section to a local authority's area are to be read as references to the combined area.

(7) In this section, “care and support” includes support for carers.

Commencement Information
I13 S. 17 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

18 Registers of sight-impaired, hearing-impaired and other disabled people

(1) A local authority must establish and maintain a register of the people ordinarily resident in the authority's area who—
  (a) are sight-impaired or severely sight-impaired,
  (b) are hearing-impaired or severely hearing-impaired, or
  (c) have sight and hearing impairments which, in combination, have a significant effect on their day to day lives.

(2) The register must identify, in respect of each person included in the register—
  (a) the paragraph in subsection (1) within which that person falls, and
  (b) the person's linguistic circumstances.

(3) Regulations may specify, for the purposes of subsection (1), categories of people who are, or are not, to be treated as falling within paragraph (a), (b) or (c) of that subsection.

(4) A local authority must establish and maintain a register of children to whom subsection (6) applies and who are within the local authority's area.

(5) A local authority may establish and maintain a register of adults to whom subsection (6) applies and who are ordinarily resident in the local authority's area.

(6) This subsection applies to a person who—
  (a) is disabled,

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(b) is not disabled but has a physical or mental impairment which gives rise, or which the authority considers may in the future give rise, to needs for care and support, or

(c) comes within any other category of persons the authority considers appropriate to include in a register of persons who have, or who the authority considers may in the future have, needs for care and support.

(7) A local authority—

(a) may categorise people included in a register under subsection (4) or (5) as it thinks fit, and

(b) must identify the linguistic circumstances of those people in the relevant register.

(8) The registers established and maintained under this section may be used in the exercise of the authority's functions; for example, for the purpose of—

(a) planning the provision by the authority of services to meet needs for care and support or support for carers, and

(b) monitoring changes over time in the number of people in the authority's area with needs for care and support and the types of needs they or their carers have.

(9) Nothing in this section requires a local authority to include any person in a register maintained under this section unless—

(a) the person has applied to be included in the register, or

(b) an application to be so included has been made on the person's behalf.

(10) Where a local authority includes a person in a register maintained under this section, the authority—

(a) must inform the person that he or she has been so included, and

(b) if a request is made by the person or on the person's behalf, must remove from the register any personal data (within the meaning of the Data Protection Act 1998) relating to that person.

Commencement Information

I14 S. 18 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

PART 3

ASSESSING THE NEEDS OF INDIVIDUALS

Assessing adults

19 Duty to assess the needs of an adult for care and support

(1) Where it appears to a local authority that an adult may have needs for care and support, the authority must assess—

(a) whether the adult does have needs for care and support, and

(b) if the adult does, what those needs are.

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) The duty under subsection (1) applies in relation to—
- (a) an adult who is ordinarily resident in the authority's area, and
- (b) any other adult who is within the authority's area.

(3) The duty under subsection (1) applies regardless of the local authority's view of—
- (a) the level of the adult's needs for care and support, or
- (b) the level of the adult's financial resources.

(4) In carrying out a needs assessment under this section, the local authority must—
- (a) seek to identify the outcomes that the adult wishes to achieve in day to day life,
- (b) assess whether, and if so, to what extent, the provision of—
  - (i) care and support,
  - (ii) preventative services, or
  - (iii) information, advice or assistance,

  could contribute to the achievement of those outcomes or otherwise meet needs identified by the assessment, and
- (c) assess whether, and if so, to what extent, other matters could contribute to the achievement of those outcomes or otherwise meet those needs.

(5) A local authority, in carrying out a needs assessment under this section, must involve—
- (a) the adult, and
- (b) where feasible, any carer that the adult has.

(6) The nature of the needs assessment required by this section is one that the local authority considers proportionate in the circumstances, subject to any requirement in regulations under section 30.

Commencement Information

I15 S. 19 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

20 Refusal of a needs assessment for an adult

(1) If an adult (or, where applicable, an authorised person) refuses a needs assessment under section 19, the duty under that section to assess the adult's needs does not apply.

(2) But a refusal under subsection (1) does not discharge a local authority from its duty under section 19 in the following cases—

CASE 1 - the local authority is satisfied, in the case of a refusal given by the adult, that—
- (a) the adult lacks capacity to decide whether to refuse to have the assessment, but
- (b) there is an authorised person to make the decision on the adult's behalf;

CASE 2 - the local authority is satisfied, in the case of a refusal given by the adult, that—
- (a) the adult lacks capacity to decide whether to refuse to have the assessment,
- (b) there is no authorised person to make the decision on the adult's behalf, and

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Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(c) having the assessment would be in the adult's best interests;

CASE 3 - the local authority suspects that the adult is experiencing or at risk of abuse or neglect.

(3) Where a local authority has been discharged from its duty under section 19 by a refusal under this section, the duty is re-engaged if—

(a) the adult (or, where applicable, an authorised person) subsequently asks for an assessment, or

(b) the local authority considers that the adult's needs or circumstances have changed,

(subject to any further refusal under this section).

(4) In this section "authorised person" means a person authorised under the Mental Capacity Act 2005 (whether in general or specific terms) to decide whether to refuse, or ask for, a needs assessment on the adult's behalf.

Commencement Information

I16 S. 20 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

Assessing children

21 Duty to assess the needs of a child for care and support

(1) Where it appears to a local authority that a child may need care and support in addition to, or instead of, the care and support provided by the child's family, the authority must assess—

(a) whether the child does need care and support of that kind, and

(b) if the child does, what those needs are.

(2) The duty under subsection (1) applies in relation to—

(a) a child who is ordinarily resident in the authority's area, and

(b) any other child who is within the authority's area.

(3) The duty under subsection (1) applies regardless of the local authority's view of—

(a) the level of the child's needs for care and support, or

(b) the level of the financial resources of the child or any person with parental responsibility for the child.

(4) In carrying out a needs assessment under this section, the local authority must—

(a) assess the developmental needs of the child,

(b) seek to identify the outcomes that—

(i) the child wishes to achieve, to the extent it considers appropriate having regard to the child's age and understanding,

(ii) the persons with parental responsibility for the child wish to achieve in relation to the child, to the extent it considers appropriate having regard to the need to promote the child's well-being, and

(iii) persons specified in regulations (if any) wish to achieve in relation to the child,

(c) assess whether, and if so, to what extent, the provision of—

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(i) care and support,
(ii) preventative services, or
(iii) information, advice or assistance,

could contribute to the achievement of those outcomes or otherwise meet needs identified by the assessment,

(d) assess whether, and if so, to what extent, other matters could contribute to the achievement of those outcomes or otherwise meet those needs, and

(e) take account of any other circumstances affecting the child's well-being.

(5) A local authority, in carrying out a needs assessment under this section, must involve—

(a) the child, and

(b) any person with parental responsibility for the child.

(6) The nature of the needs assessment required by this section is one that the local authority considers proportionate in the circumstances, subject to any requirement in regulations under section 30.

(7) For the purposes of subsection (1) a disabled child is presumed to need care and support in addition to, or instead of, the care and support provided by the child's family.

(8) This section does not apply to a child looked after by—

(a) a local authority,

(b) a local authority in England,

(c) a local authority in Scotland, or

(d) a Health and Social Care trust.

Commencement Information

I17 S. 21 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

22 Refusal of a needs assessment for a child aged 16 or 17

(1) If a child aged 16 or 17 (or, where applicable, an authorised person) refuses a needs assessment under section 21, the duty under that section to assess the child's needs does not apply.

(2) If a person with parental responsibility for a child aged 16 or 17 refuses a needs assessment for that child under section 21 in circumstances in which the local authority is satisfied that—

(a) the child lacks capacity to decide whether to refuse to have the assessment, and

(b) there is no authorised person to make the decision on the child's behalf,

the duty under that section to assess the child's needs does not apply.

(3) But a refusal under subsection (1) or (2) does not discharge a local authority from its duty under section 21 in the following cases—

CASE 1 - the local authority is satisfied, in the case of a refusal given by a child, that the child lacks capacity to decide whether to refuse to have the assessment;

CASE 2 - the local authority is satisfied, in the case of a refusal given by a person with parental responsibility for the child, that the person lacks capacity to decide whether to refuse the assessment;

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

CASE 3 - the local authority is satisfied, in the case of a refusal given by a person with parental responsibility for the child, that not having the assessment would not be in the child's best interests;

CASE 4 – the local authority suspects that the child is experiencing or at risk of abuse, neglect or other kinds of harm.

(4) Where a local authority has been discharged from its duty under section 21 by a refusal under this section, the duty is re-engaged if—

(a) the child (or, where applicable, an authorised person) subsequently asks for an assessment,

(b) a person with parental responsibility for the child subsequently asks for an assessment in the circumstances described in subsection (2), or

(c) the local authority considers that the child's needs or circumstances, or the needs or circumstances of a person with parental responsibility for the child, have changed,

(subject to any further refusal under this section).

(5) In this section "authorised person" means a person authorised under the Mental Capacity Act 2005 (whether in general or specific terms) to decide whether to refuse, or ask for, a needs assessment on the child's behalf.

Commencement Information

I18 S. 22 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

23 Refusal of a needs assessment for a child aged under 16

(1) If—

(a) a child aged under 16 refuses a needs assessment under section 21, and

(b) the local authority is satisfied that the child has sufficient understanding to make an informed decision about the refusal of the assessment,

the duty under that section to assess the child's needs does not apply.

(2) If a person with parental responsibility for a child aged under 16 refuses a needs assessment for that child under section 21, the duty under that section to assess the child's needs does not apply.

(3) But a refusal under subsection (1) or (2) does not discharge a local authority from its duty under section 21 in the following cases—

CASE 1 - the local authority is satisfied, in the case of a refusal given by a person with parental responsibility for the child, that the person lacks capacity to decide whether to refuse the assessment;

CASE 2 - the local authority is satisfied, in the case of a refusal given by a person with parental responsibility for the child, that the child—

(a) has sufficient understanding to make an informed decision about the refusal of the assessment, and

(b) does not agree with the refusal given by the person with parental responsibility for the child;

CASE 3 - the local authority is satisfied, in the case of a refusal given by a person with parental responsibility for the child, that not having the assessment would be inconsistent with the child's well-being;

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

CASE 4 – the local authority suspects that the child is experiencing or at risk of abuse, neglect or other kinds of harm.

(4) Where a local authority has been discharged from its duty under section 21 by a refusal under this section, the duty is re-engaged if—
- (a) the child subsequently asks for an assessment and the local authority is satisfied that the child has sufficient understanding to make an informed decision about having an assessment,
- (b) a person with parental responsibility for the child subsequently asks for an assessment, or
- (c) the local authority considers that the child's needs or circumstances, or the needs or circumstances of a person with parental responsibility for the child, have changed,

(subject to any further refusal under this section).

Commencement Information
I19 S. 23 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

Assessing carers

24 Duty to assess the needs of a carer for support

(1) Where it appears to a local authority that a carer may have needs for support, the authority must assess—
- (a) whether the carer does have needs for support (or is likely to do so in the future), and
- (b) if the carer does, what those needs are (or are likely to be in the future).

(2) The duty under subsection (1) applies in relation to a carer who is providing or intends to provide care for—
- (a) an adult or disabled child who is ordinarily resident in the authority's area, or
- (b) any other adult or disabled child who is within the authority's area.

(3) The duty under subsection (1) applies regardless of the authority's view of—
- (a) the level of the carer's needs for support, or
- (b) the level of the financial resources of the carer or the person for whom the carer provides or intends to provide care.

(4) In carrying out a needs assessment under this section, the local authority must—
- (a) assess the extent to which the carer is able, and will continue to be able, to provide care for the person for whom the carer provides or intends to provide care,
- (b) assess the extent to which the carer is willing, and will continue to be willing, to do so,
- (c) in the case of a carer who is an adult, seek to identify the outcomes that the carer wishes to achieve,
- (d) in the case of a carer who is a child, seek to identify the outcomes that—
  - (i) the carer wishes to achieve, to the extent it considers appropriate having regard to the carer's age and understanding,

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(ii) the persons with parental responsibility for the carer wish to achieve in relation to the carer, to the extent it considers appropriate having regard to the need to promote the carer's well-being, and

(iii) persons specified in regulations (if any) wish to achieve in relation to the carer,

(e) assess whether, and if so, to what extent, the provision of—

(i) support,

(ii) preventative services, or

(iii) information, advice or assistance,

could contribute to the achievement of those outcomes or otherwise meet needs identified by the assessment, and

(f) assess whether, and if so, to what extent, other matters could contribute to the achievement of those outcomes or otherwise meet those needs.

(5) A local authority, in carrying out a needs assessment under this section, must have regard to—

(a) whether the carer works or wishes to do so,

(b) whether the carer is participating in or wishes to participate in education, training or any leisure activity, and

(c) in the case of a carer who is a child—

(i) the developmental needs of the child, and

(ii) whether it is appropriate for the child to provide the care (or any care) in light of those needs.

(6) A local authority, in carrying out a needs assessment under this section, must involve—

(a) the carer, and

(b) where feasible, the person for whom the carer provides or intends to provide care.

(7) The nature of the needs assessment required by this section is one that the local authority considers proportionate in the circumstances, subject to any requirement in regulations under section 30.

Commencement Information

I20 S. 24 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

25 Refusal of a needs assessment for an adult carer

(1) If a carer who is an adult (or, where applicable, an authorised person) refuses a needs assessment under section 24, the duty under that section to assess the carer's needs does not apply.

(2) But a refusal under subsection (1) does not discharge a local authority from its duty under section 24 in the following cases—

CASE 1 - the local authority is satisfied, in the case of a refusal given by the carer, that—

(a) the carer lacks capacity to decide whether to refuse to have the assessment, but

(b) there is an authorised person to make the decision on the carer's behalf;

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

CASE 2 - the local authority is satisfied, in the case of a refusal given by the carer, that—

(a) the carer lacks capacity to decide whether to refuse to have the assessment,

(b) there is no authorised person to make the decision on the carer's behalf, and

(c) having the assessment would be in the carer's best interests.

(3) Where a local authority has been discharged from its duty under section 24 by a refusal under this section, the duty is re-engaged if—

(a) the carer (or, where applicable, an authorised person) subsequently asks for an assessment, or

(b) the local authority considers that the carer's needs or circumstances have changed,

(subject to any further refusal under this section).

(4) In this section "authorised person" means a person authorised under the Mental Capacity Act 2005 (whether in general or specific terms) to decide whether to refuse, or ask for, a needs assessment on the carer's behalf.

Commencement Information

I21 S. 25 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

26 Refusal of a needs assessment for a carer aged 16 or 17

(1) If a carer aged 16 or 17 (or, where applicable, an authorised person) refuses a needs assessment under section 24, the duty under that section to assess the carer's needs does not apply.

(2) If a person with parental responsibility for a carer aged 16 or 17 refuses a needs assessment for the carer under section 24 in circumstances in which the local authority is satisfied that—

(a) the carer lacks capacity to decide whether to refuse to have the assessment, and

(b) there is no authorised person to make the decision on the carer's behalf,

the duty under that section to assess the carer's needs does not apply.

(3) But a refusal under subsection (1) or (2) does not discharge a local authority from its duty under section 24 in the following cases—

CASE 1 - the local authority is satisfied, in the case of a refusal given by the carer, that the carer lacks capacity to decide whether to refuse to have the assessment;

CASE 2 - the local authority is satisfied, in the case of a refusal given by a person with parental responsibility for the carer, that the person lacks capacity to decide whether to refuse the assessment;

CASE 3 - the local authority is satisfied, in the case of a refusal given by a person with parental responsibility for the carer, that not having the assessment would not be in the carer's best interests.

(4) Where a local authority has been discharged from its duty under section 24 by a refusal under this section, the duty is re-engaged if—

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) the carer (or, where applicable, an authorised person) subsequently asks for an assessment,

(b) a person with parental responsibility for the carer subsequently asks for an assessment in the circumstances described in subsection (2), or

(c) the local authority considers that the carer's needs or circumstances, or the needs or circumstances of a person with parental responsibility for the carer, have changed,

(subject to any further refusal under this section).

(5) In this section "authorised person" means a person authorised under the Mental Capacity Act 2005 (whether in general or specific terms) to decide whether to refuse, or ask for, a needs assessment on the carer's behalf.

Commencement Information

I22 S. 26 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

27 Refusal of a needs assessment for a carer aged under 16

(1) If—

(a) a carer aged under 16 refuses a needs assessment under section 24, and

(b) the local authority is satisfied that the carer has sufficient understanding to make an informed decision about the refusal of the assessment,

the duty under that section to assess the carer's needs does not apply.

(2) If a person with parental responsibility for a carer aged under 16 refuses a needs assessment for the carer under section 24, the duty under that section to assess the carer's needs does not apply.

(3) But a refusal under subsection (1) or (2) does not discharge a local authority from its duty under section 24 in the following cases—

CASE 1 - the local authority is satisfied, in the case of a refusal given by a person with parental responsibility for the carer, that the person lacks capacity to decide whether to refuse the assessment;

CASE 2 - the local authority is satisfied, in the case of a refusal given by a person with parental responsibility for the carer, that the carer—

(a) has sufficient understanding to make an informed decision about the refusal of the assessment, and

(b) does not agree with the refusal given by the person with parental responsibility for the carer;

CASE 3 - the local authority is satisfied, in the case of a refusal given by a person with parental responsibility for the carer, that not having the assessment would be inconsistent with the carer's well-being.

(4) Where a local authority has been discharged from its duty under section 24 by a refusal under this section, the duty is re-engaged if—

(a) the carer subsequently asks for an assessment and the local authority is satisfied that the carer has sufficient understanding to make an informed decision about having an assessment,

(b) a person with parental responsibility for the carer subsequently asks for an assessment, or

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(c) the local authority considers that the carer's needs or circumstances, or the needs or circumstances of a person with parental responsibility for the carer, have changed,

(subject to any further refusal under this section).

Commencement Information

I23 S. 27 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

Supplementary

28 Combining needs assessments for a carer and a cared for person

(1) Where a person who appears to need care and support has a carer, a local authority may combine—

(a) the person's needs assessment under section 19 or 21, and

(b) the carer's needs assessment under section 24,

but this is subject to subsections (2) to (4).

(2) A local authority may not combine a needs assessment for an adult (whether under section 19 or 24) with a needs assessment for another person unless—

(a) the adult (or, where applicable, an authorised person) gives valid consent, or

(b) the requirement for valid consent may be dispensed with.

(3) A local authority may not combine a needs assessment for a child aged 16 or 17 (whether under section 21 or 24) with a needs assessment for another person unless—

(a) the child (or, where applicable, an authorised person) gives valid consent,

(b) a person with parental responsibility for the child gives valid consent in circumstances in which the local authority is satisfied that—

(i) the child lacks capacity to decide whether to consent to the combining of the needs assessments, and

(ii) there is no authorised person to make the decision on the child's behalf, or

(c) the requirement for valid consent may be dispensed with.

(4) A local authority may not combine a needs assessment for a child aged under 16 (whether under section 21 or 24) with a needs assessment for another person unless—

(a) the child or a person with parental responsibility for the child gives valid consent, or

(b) the requirement for valid consent may be dispensed with.

(5) Consent given under subsection (2), (3) or (4) is valid except in the following cases—

CASE 1 - the local authority is satisfied, in the case of consent given by an adult or a child aged 16 or 17, that the adult or child lacks capacity to consent to the combination of the needs assessments;

CASE 2 - the local authority is satisfied, in the case of consent given by a child aged under 16, that the child does not have sufficient understanding to make an informed decision about the combination of the needs assessments;

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Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

CASE 3 - the local authority is satisfied, in the case of consent given by a person with parental responsibility for a child aged under 16 in relation to the child's needs assessment, that the child—

(a) has sufficient understanding to make an informed decision about the combination of the needs assessments, and

(b) does not agree with the consent given by the person with parental responsibility.

(6) A local authority may dispense with the requirement for valid consent in the following cases—

CASE 1 - the local authority is satisfied, with regard to the needs assessment of an adult, that—

(a) there is no person who may give valid consent, and

(b) combining the needs assessments would be in the adult's best interests;

CASE 2 - the local authority is satisfied, with regard to the needs assessment of a child aged 16 or 17, that—

(a) the child lacks capacity to give valid consent,

(b) there is no authorised person who may give valid consent on the child's behalf, and

(c) combining the needs assessments would be in the child's best interests;

CASE 3 - the local authority is satisfied, with regard to the needs assessment of a child aged under 16, that—

(a) the child does not have sufficient understanding to make an informed decision about the combination of the needs assessments, and

(b) combining the needs assessments would be consistent with the child's well-being.

(7) In this section "authorised person" means a person authorised under the Mental Capacity Act 2005 (whether in general or specific terms) to decide whether to consent to the combination of the needs assessments on the adult or child's behalf.

Commencement Information

I24 S. 28 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

29 Combining needs assessments and other assessments

(1) Where a person who appears to need support as a carer also appears to have needs for care and support in his or her own right, a local authority may combine a needs assessment for that person under section 24 with a needs assessment for that person under section 19 or 21.

(2) A local authority may carry out a needs assessment for a person at the same time as it or another body carries out another assessment under any enactment in relation to that person.

(3) For the purposes of subsection (2)—

(a) the local authority may carry out the other assessment on behalf of or jointly with the other body, or

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) if the other body has already arranged for the other assessment to be carried out jointly with another person, the local authority may carry out the other assessment jointly with the other body and that other person.

Commencement Information
I25 S. 29 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

30 Regulations about assessment

(1) Regulations must make provision about carrying out needs assessments.

(2) Regulations under this section must make provision for the review of needs assessments, and may, for example, specify—
- (a) the persons who may request a review of an assessment (on their own behalf or on behalf of another person);
- (b) the circumstances in which a local authority—
  - (i) may refuse to comply with a request for a review of an assessment, and
  - (ii) may not refuse to do so.

(3) Regulations under this section may also, for example, provide for—
- (a) further persons whom a local authority must involve in carrying out an assessment under section 19, 21 or 24;
- (b) the way in which an assessment is to be carried out, by whom and when;
- (c) the recording of the results of an assessment;
- (d) the considerations to which a local authority is to have regard in carrying out an assessment;
- (e) powers to provide information for the purposes of assessment.

Commencement Information
I26 S. 30 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

31 Part 3: interpretation

In this Part—

"information, advice or assistance" ("*gwybodaeth, cyngor neu gynhorthwy*") means information, advice or assistance that may be provided by virtue of section 17;

"preventative services" ("*gwasanaethau ataliol*") means services that may be provided by virtue of section 15.

Commencement Information
I27 S. 31 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

PART 4

MEETING NEEDS

Deciding what to do following needs assessment

32 Determination of eligibility and consideration of what to do to meet needs

(1) Where a local authority is satisfied, on the basis of a needs assessment, that a person has needs for care and support or, if the person is a carer, needs for support, the authority must—

(a) determine whether any of the needs meet the eligibility criteria;

(b) if the needs do not meet the eligibility criteria, determine whether it is nevertheless necessary to meet the needs in order to protect the person from—

(i) abuse or neglect or a risk of abuse or neglect (if the person is an adult);

(ii) abuse or neglect or a risk of abuse or neglect, or other harm or a risk of such harm (if the person is a child);

(c) determine whether the needs call for the exercise of any function it has under this Act or Parts 4 or 5 of the Children Act 1989, in so far as the function is relevant to that person;

(d) consider whether the person would benefit from the provision of anything that may be provided by virtue of section 15 (preventative services) or 17 (information, advice and assistance) or anything else that may be available in the community.

(2) If a local authority determines that any needs must be met, or are to be met, under sections 35 to 45, 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 (see Part 5).

(3) Regulations must make provision about the discharge of the duty under subsection (1)(a).

(4) Needs meet the eligibility criteria if they—

(a) are of a description specified in regulations, or

(b) form part of a combination of needs of a description so specified.

(5) The regulations may, for example, describe needs by reference to—

(a) the effect that the needs have on the person concerned;

(b) the person's circumstances.

Commencement Information

I28 S. 32 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

33 Procedure for regulations under section 32

(1) Before making regulations under section 32(3) or (4), the Welsh Ministers must carry out the following steps.

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) The Welsh Ministers must consult—
- (a) such persons as appear to them likely to be affected by the regulations,
- (b) such organisations as appear to them to represent the interests of persons likely to be affected by the regulations, and
- (c) such other persons as they consider appropriate,

on the proposed draft regulations.

(3) The Welsh Ministers must—
- (a) allow those persons a period of at least 12 weeks to submit comments on the proposed draft regulations,
- (b) consider any comments submitted within that period, and
- (c) publish a summary of those comments.

(4) The Welsh Ministers must lay a draft of the regulations before the National Assembly for Wales.

(5) Draft regulations laid under subsection (4)—
- (a) must be accompanied by a statement of the Welsh Ministers giving details of any differences between the draft regulations consulted on under subsection (2) and the draft regulations laid under subsection (4), and
- (b) may not be approved by a resolution of the National Assembly for Wales in accordance with section 196(6) until after the expiry of the period of 60 days beginning with the day on which the draft regulations are laid.

Commencement Information

I29 S. 33 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

34 How to meet needs

(1) The following are examples of the ways in which a local authority may meet needs under sections 35 to 45—
- (a) by arranging for a person other than the authority to provide something;
- (b) by itself providing something;
- (c) by providing something, or by arranging for something to be provided, to a person other than the person with needs for care and support (or, in the case of a carer, support).

(2) The following are examples of what may be provided or arranged to meet needs under sections 35 to 45—
- (a) accommodation in a care home, children's home or 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;

Status: *Point in time view as at 02/04/2018.*
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(i) occupational therapy.

(3) Where a local authority is meeting a person's needs under sections 35 to 45 by providing or arranging care and support at the person's home, the local authority must satisfy itself that any visits to the person's home for that purpose are of sufficient length to provide the person with the care and support required to meet the needs in question.

(4) A code issued under section 145 must include guidelines as to the length of visits to a person's home for the purpose of providing care and support.

(5) See sections 47 (exception for provision of health services), 48 (exception for provision of housing etc) and 49 (restrictions on provision of payments) for limitations on what may be provided or arranged to meet needs for care and support and the way in which it may be provided or arranged.

Modifications etc. (not altering text)

C5 S. 34 applied (1.4.2015 for specified purposes, 6.4.2016 in so far as not already in force) by Care Act 2014 (c. 23), **ss. 52(3)**, 127(1); S.I. 2015/993, art. 2(p) (with transitional provisions in S.I. 2015/995); S.I. 2016/464, art. 2(b)

Commencement Information

I30 S. 34 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

Meeting care and support needs of adults

35 Duty to meet care and support needs of an adult

(1) A local authority must meet an adult's needs for care and support if it is satisfied that conditions 1, 2 and 3 are met (but see subsection (6)).

(2) Condition 1 is that the adult is—

(a) ordinarily resident in the local authority's area, or

(b) of no settled residence and within the authority's area.

(3) Condition 2 is that—

(a) the needs meet the eligibility criteria, or

(b) the local authority considers it necessary to meet the needs in order to protect the adult from abuse or neglect or a risk of abuse or neglect.

(4) Condition 3 is that—

(a) there is no charge for the care and support needed to meet those needs, or

(b) there is a charge for that care and support but—

(i) the local authority is satisfied on the basis of a financial assessment that the adult's financial resources are at or below the financial limit,

(ii) the local authority is satisfied on the basis of a financial assessment that the adult's financial resources are above the financial limit but the adult nonetheless asks the authority to meet his or her needs, or

(iii) the local authority is satisfied that the adult lacks capacity to arrange for the provision of care and support and there is no person authorised to make such arrangements under the Mental Capacity Act 2005 or otherwise in a position to do so on the adult's behalf.

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) For the meaning of "financial assessment" and "financial limit" see Part 5.

(6) The duty under subsection (1) does not apply to an adult's needs to the extent that the local authority is satisfied that those needs are being met by a carer.

Commencement Information
I31 S. 35 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

36 Power to meet care and support needs of adult

(1) A local authority may meet an adult's needs for care and support if the adult is—
  (a) within the local authority's area, or
  (b) ordinarily resident in the authority's area, but outside its area.

(2) If a local authority meets the needs of an adult who is ordinarily resident in the area of another local authority under subsection (1), it must notify the local authority in whose area the adult is ordinarily resident that it is doing so.

(3) A local authority has the power to meet needs under this section whether or not it has completed a needs assessment in accordance with Part 3 or a financial assessment in accordance with Part 5.

Commencement Information
I32 S. 36 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

Meeting care and support needs of children

37 Duty to meet care and support needs of a child

(1) A local authority must meet a child's needs for care and support if it is satisfied that conditions 1 and 2, and any conditions specified in regulations, are met (but see subsections (5) and (6)).

(2) Condition 1 is that the child is within the local authority's area.

(3) Condition 2 is that—
  (a) the needs meet the eligibility criteria, or
  (b) the local authority considers it necessary to meet the needs in order to protect the child from—
    (i) abuse or neglect or a risk of abuse or neglect, or
    (ii) other harm or a risk of such harm.

(4) If the local authority has been notified about a child under section 120(2)(a) **[**[F4]or under section 85(1) of the Children Act 1989 (children accommodated by health authorities and local education authorities)**]**, it must treat the child as being within its area for the purposes of this section.

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) The duty under subsection (1) does not apply to a child's needs to the extent that the local authority is satisfied that those needs are being met by the child's family or a carer.

(6) This section does not apply to a child who is looked after by—
- (a) a local authority,
- (b) a local authority in England,
- (c) a local authority in Scotland, or
- (d) a Health and Social Care trust.

Textual Amendments

F4 Words in s. 37(4) inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **296**

Commencement Information

I33 S. 37 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

38 Power to meet care and support needs of a child

(1) A local authority may meet a child's needs for care and support if the child is—
- (a) within the local authority's area, or
- (b) ordinarily resident in the authority's area, but outside its area,

(but see subsection (4)).

(2) If a local authority meets the needs of a child who is ordinarily resident in the area of another local authority under subsection (1), it must notify the local authority in whose area the child is ordinarily resident that it is doing so.

(3) A local authority has the power to meet needs under this section whether or not it has completed a needs assessment in accordance with Part 3 or a financial assessment in accordance with Part 5.

(4) This section does not apply to a child who is looked after by—
- (a) a local authority,
- (b) a local authority in England,
- (c) a local authority in Scotland, or
- (d) a Health and Social Care trust.

Commencement Information

I34 S. 38 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

39 Duty to maintain family contact

(1) This section applies to a child—
- (a) who is within the area of a local authority,
- (b) whom the local authority considers has needs for care and support in addition to the care and support provided by the child's family,

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(c) who is living apart from the child's family, and
(d) who is not looked after by the local authority.

(2) If the local authority considers it necessary in order to promote the well-being of the child, it must take such steps as are reasonably practicable to—
(a) enable the child to live with the child's family, or
(b) promote contact between the child and the child's family.

Commencement Information
I35 S. 39 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

Meeting support needs of a carer

40 Duty to meet support needs of an adult carer

(1) A local authority must meet the needs for support of a carer who is an adult if it is satisfied that conditions 1, 2 and 3, and any conditions specified in regulations, are met.

(2) Condition 1 is that the person cared for by the carer is—
(a) an adult who is—
(i) ordinarily resident in the local authority's area, or
(ii) of no settled residence and within the authority's area, or
(b) a disabled child who is within the authority's area.

(3) Condition 2 is that the carer's needs meet the eligibility criteria.

(4) Condition 3 is that—
(a) in so far as meeting the carer's needs involves the provision of support to the carer—
(i) there is not a charge under section 59 for meeting those needs, or
(ii) in so far as there is a charge, section 41(1) or (2) applies;
(b) in so far as meeting the carer's needs involves the provision of care and support to an adult cared for by the carer—
(i) there is not a charge under section 59 for meeting those needs and section 41(7), (8) or (9) applies, or
(ii) in so far as there is a charge, section 41(3) or (4) applies;
(c) in so far as meeting the carer's needs involves the provision of care and support to a disabled child aged 16 or 17 who is cared for by the carer—
(i) there is not a charge under section 59 for meeting those needs and section 41(7), (8) or (10) applies, or
(ii) in so far as there is a charge, section 41(5) or (6) applies;
(d) in so far as meeting the carer's needs involves the provision of care and support to a disabled child aged under 16 who is cared for by the carer—
(i) there is not a charge under section 59 for meeting those needs and section 41(12) or (13) applies, or
(ii) in so far as there is a charge, section 41(5) or (6) applies.

Status: *Point in time view as at 02/04/2018.*
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Commencement Information

I36 S. 40 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

41 Duty to meet support needs of an adult carer: supplementary

(1) This subsection applies if the local authority is satisfied on the basis of a financial assessment that the carer's financial resources are at or below the financial limit.

(2) This subsection applies if—

(a) the local authority is satisfied on the basis of a financial assessment that the carer's financial resources are above the financial limit, and

(b) the carer nonetheless asks the authority to meet the needs in question.

(3) This subsection applies if—

(a) the local authority is satisfied on the basis of a financial assessment that the financial resources of the adult cared for by the carer are at or below the financial limit, and

(b) subsection (7), (8) or (9) applies.

(4) This subsection applies if—

(a) the local authority is satisfied on the basis of a financial assessment that the financial resources of the adult cared for by the carer are above the financial limit, and

(b) subsection (7), (8) or (9) applies.

(5) This subsection applies if—

(a) in respect of an adult upon whom the local authority thinks it would impose a charge for the provision of care and support to the disabled child cared for by the carer, the local authority is satisfied on the basis of a financial assessment that it would not be reasonably practicable for the adult to pay any amount for the care and support, and

(b) either—

(i) subsection (7), (8) or (10) applies, in the case of a disabled child aged 16 or 17, or

(ii) subsection (12) or (13) applies, in the case of a disabled child aged under 16.

(6) This subsection applies if—

(a) in respect of an adult upon whom the local authority thinks it would impose a charge for the provision of care and support to the disabled child cared for by the carer, the local authority is satisfied on the basis of a financial assessment that it would be reasonably practicable for the adult—

(i) to pay the standard charge for the care and support, or

(ii) to pay any other amount for the care and support,

(b) the adult does not object to the provision of the care and support, and

(c) either—

(i) subsection (7), (8) or (10) applies, in the case of a disabled child aged 16 or 17, or

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Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(ii) subsection (12) or (13) applies, in the case of a disabled child aged under 16.

(7) This subsection applies if—

(a) the local authority is satisfied that the person cared for by the carer has capacity to decide whether to have the needs in question met by the provision of care and support to that person, and

(b) the person agrees to have those needs met in that way.

(8) This subsection applies if an authorised person agrees, on behalf of the person cared for by the carer, to have the needs in question met by the provision of care and support to that person.

(9) This subsection applies if—

(a) the local authority is satisfied that the adult cared for by the carer lacks capacity to decide whether to have the needs in question met by the provision of care and support to that adult,

(b) there is no authorised person to make the decision on the adult's behalf, and

(c) the local authority is satisfied that it is in the adult's best interests to have those needs met in that way.

(10) This subsection applies if—

(a) the local authority is satisfied that the disabled child cared for by the carer lacks capacity to decide whether to have the needs in question met by the provision of care and support to that child,

(b) there is no authorised person to make the decision on the child's behalf, and

(c) no objection has been made by a person with parental responsibility for the child to having those needs met in that way.

(11) The local authority may disregard an objection for the purposes of subsection (10)(c) if it is satisfied that it would not be in the disabled child's best interests.

(12) This subsection applies if—

(a) the local authority is satisfied that the disabled child cared for by the carer has sufficient understanding to make an informed decision about having the needs in question met by the provision of care and support to that child, and

(b) the child agrees to have those needs met in that way.

(13) This subsection applies if—

(a) the local authority is satisfied that the disabled child cared for by the carer does not have sufficient understanding to make an informed decision about having the needs in question met by the provision of care and support to that child, and

(b) no objection has been made by a person with parental responsibility for the child to having those needs met in that way.

(14) The local authority may disregard an objection for the purposes of subsection (13)(b) if it is satisfied that it would not be consistent with the disabled child's well-being.

(15) In this section—

"authorised person" ("*person awdurdodedig*") means a person authorised under the Mental Capacity Act 2005 (whether in general or specific terms)

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to decide on behalf of the person cared for by the carer whether to have the needs in question met by the provision of care and support to that person;

"standard charge" ("*ffi safonol*") has the meaning given by section 63(3).

(16) For the meaning of "financial assessment" and "financial limit" see Part 5.

Commencement Information

I37 S. 41 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

42 Duty to meet support needs of a child carer

(1) A local authority must meet the needs for support of a carer who is a child if it is satisfied that conditions 1, 2 and (where applicable) 3, and any conditions specified in regulations, are met.

(2) Condition 1 is that the person cared for by the carer is—

(a) an adult who is—

(i) ordinarily resident in the local authority's area, or

(ii) of no settled residence and within the authority's area, or

(b) a disabled child who is within the authority's area.

(3) Condition 2 is that the carer's needs meet the eligibility criteria.

(4) Condition 3 is that—

(a) in so far as meeting the carer's needs involves the provision of care and support to an adult cared for by the carer—

(i) there is not a charge under section 59 for meeting those needs and section **[**[F5]43(5)**]**, (6) or (7) applies, or

(ii) in so far as there is a charge, section **[**[F6]43(1)**]** or (2) applies;

(b) in so far as meeting the carer's needs involves the provision of care and support to a disabled child aged 16 or 17 who is cared for by the carer—

(i) there is not a charge under section 59 for meeting those needs and section **[**[F7]43(5)**]**, (6) or (8) applies, or

(ii) in so far as there is a charge, section **[**[F8]43(3)**]** or (4) applies;

(c) in so far as meeting the carer's needs involves the provision of care and support to a disabled child aged under 16 who is cared for by the carer—

(i) there is not a charge under section 59 for meeting those needs and section **[**[F9]43(10)**]** or (11) applies, or

(ii) in so far as there is a charge, section **[**[F10]43(3)**]** or (4) applies.

Textual Amendments

F5 Word in s. 42(4)(a)(i) substituted (6.4.2016) by Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2), s. 188(1), **Sch. 3 para. 62(a)**; S.I. 2016/467, art. 3

F6 Word in s. 42(4)(a)(ii) substituted (6.4.2016) by Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2), s. 188(1), **Sch. 3 para. 62(b)**; S.I. 2016/467, art. 3

F7 Word in s. 42(4)(b)(i) substituted (6.4.2016) by Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2), s. 188(1), **Sch. 3 para. 62(c)**; S.I. 2016/467, art. 3

F8 Word in s. 42(4)(b)(ii) substituted (6.4.2016) by Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2), s. 188(1), **Sch. 3 para. 62(d)**; S.I. 2016/467, art. 3

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F9 Word in s. 42(4)(c)(i) substituted (6.4.2016) by Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2), s. 188(1), **Sch. 3 para. 62(e)**; S.I. 2016/467, art. 3

F10 Word in s. 42(4)(c)(ii) substituted (6.4.2016) by Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2), s. 188(1), **Sch. 3 para. 62(f)**; S.I. 2016/467, art. 3

Commencement Information

I38 S. 42 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

43 Duty to meet support needs of a child carer: supplementary

(1) This subsection applies if—

(a) the local authority is satisfied on the basis of a financial assessment that the financial resources of the adult cared for by the carer are at or below the financial limit, and

(b) subsection (5), (6) or (7) applies.

(2) This subsection applies if—

(a) the local authority is satisfied on the basis of a financial assessment that the financial resources of the adult cared for by the carer are above the financial limit, and

(b) subsection (5), (6) or (7) applies.

(3) This subsection applies if—

(a) in respect of an adult upon whom the local authority thinks it would impose a charge for the provision of care and support to the disabled child cared for by the carer, the local authority is satisfied on the basis of a financial assessment that it would not be reasonably practicable for the adult to pay any amount for the care and support, and

(b) either—

(i) subsection (5), (6) or (8) applies, in the case of a disabled child aged 16 or 17, or

(ii) subsection (10) or (11) applies, in the case of a disabled child aged under 16.

(4) This subsection applies if—

(a) in respect of an adult upon whom the local authority thinks it would impose a charge for the provision of care and support to the disabled child cared for by the carer, the local authority is satisfied on the basis of a financial assessment that it would be reasonably practicable for the adult—

(i) to pay the standard charge for the care and support, or

(ii) to pay any other amount for the care and support,

(b) the adult does not object to the provision of the care and support, and

(c) either—

(i) subsection (5), (6) or (8) applies, in the case of a disabled child aged 16 or 17, or

(ii) subsection (10) or (11) applies, in the case of a disabled child aged under 16.

(5) This subsection applies if—

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(a) the local authority is satisfied that the person cared for by the carer has capacity to decide whether to have the needs in question met by the provision of care and support to that person, and

(b) the person agrees to have those needs met in that way.

(6) This subsection applies if an authorised person agrees, on behalf of the person cared for by the carer, to have the needs in question met by the provision of care and support to that person.

(7) This subsection applies if—

(a) the local authority is satisfied that the adult cared for by the carer lacks capacity to decide whether to have the needs in question met by the provision of care and support to that adult,

(b) there is no authorised person to make the decision on the adult's behalf, and

(c) the local authority is satisfied that it is in the adult's best interest to have those needs met in that way.

(8) This subsection applies if—

(a) the local authority is satisfied that the disabled child cared for by the carer lacks capacity to decide whether to have the needs in question met by the provision of care and support to that child,

(b) there is no authorised person to make the decision on the child's behalf, and

(c) no objection has been made by a person with parental responsibility for the child to having those needs met in that way.

(9) The local authority may disregard an objection for the purposes of subsection (8)(c) if it satisfied that it would not be in the disabled child's best interests.

(10) This subsection applies if—

(a) the local authority is satisfied that the disabled child cared for by the carer has sufficient understanding to make an informed decision about having the needs in question met by the provision of care and support to that child, and

(b) the child agrees to have those needs met in that way.

(11) This subsection applies if—

(a) the local authority is satisfied that the disabled child cared for by the carer does not have sufficient understanding to make an informed decision about having the needs in question met by the provision of care and support to that child, and

(b) no objection has been made by a person with parental responsibility for the child to having those needs met in that way.

(12) The local authority may disregard an objection for the purposes of subsection (11)(b) if it is satisfied that it would not be consistent with the disabled child's well-being.

(13) In this section—

"authorised person" ("*person awdurdodedig*") means a person authorised under the Mental Capacity Act 2005 (whether in general or specific terms) to decide on behalf of the person cared for by the carer whether to have the needs in question met by the provision of care and support to that person;

"standard charge" ("*ffi safonol*") has the meaning given by section 63(3).

(14) For the meaning of "financial assessment" and "financial limit" see Part 5.

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Commencement Information
I39 S. 43 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

44 Supplementary provision about the duties to meet carer's needs

(1) This section applies in relation to the duties under sections 40 and 42.

(2) Meeting some or all of a carer's needs for support may involve the provision of care and support to the person cared for by the carer, even where there would be no duty to meet the person's needs for that care and support under section 35 or 37.

(3) Where a local authority is required by section 40 or 42 to meet some or all of a carer's needs for support, but it does not prove feasible for it to do so by providing care and support to the person cared for by the carer, it must, so far as it is feasible to do so, identify some other way in which to do so.

Commencement Information
I40 S. 44 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

45 Power to meet support needs of a carer

(1) A local authority may meet a carer's needs for support if the person cared for by the carer is—
  (a) within the local authority's area, or
  (b) ordinarily resident in the authority's area, but outside its area.

(2) A local authority has the power to meet needs under this section whether or not it has completed a needs assessment in accordance with Part 3 or a financial assessment in accordance with Part 5.

Commencement Information
I41 S. 45 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

Meeting needs: exceptions and restrictions

46 Exception for persons subject to immigration control

(1) A local authority may not meet the needs for care and support of an adult to whom section 115 of the Immigration and Asylum Act 1999 ("the 1999 Act") (exclusion from benefits) applies and whose needs for care and support have arisen solely—
  (a) because the adult is destitute, or
  (b) because of the physical effects, or anticipated physical effects, of being destitute.

(2) For the purposes of subsection (1), section 95(2) to (7) of the 1999 Act applies but with the references in section 95(4) and (5) of that Act to the Secretary of State being read as references to the local authority in question.

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(3) But, until the commencement of section 44(6) of the Nationality, Immigration and Asylum Act 2002, subsection (2) is to have effect as if it read as follows—

"(2) For the purposes of subsection (1), section 95(3) and (5) to (8) of, and paragraph 2 of Schedule 8 to, the 1999 Act apply but with references in section 95(5) and (7) and that paragraph to the Secretary of State being read as references to the local authority in question."

(4) The reference in subsection (1) to meeting an adult's needs for care and support includes a reference to doing so in order to meet a carer's needs for support.

Modifications etc. (not altering text)

C6 Ss. 46-49 applied (1.4.2015 for specified purposes, 6.4.2016 in so far as not already in force) by Care Act 2014 (c. 23), **ss. 52(8)**, 127(1) (with s. 52(13)(14)); S.I. 2015/993, art. 2(p) (with transitional provisions in S.I. 2015/995); S.I. 2016/464, art. 2(b)

Commencement Information

I42 S. 46 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

47 Exception for provision of health services

(1) A local authority may not meet a person's needs for care and support (including a carer's needs for support) under sections 35 to 45 by providing or arranging for the provision of a service or facility which is required to be provided under a health enactment, unless doing so would be incidental or ancillary to doing something else to meet needs under those sections.

(2) A local authority may not secure services or facilities for a person under section 15 (preventative services) that are required to be provided under a health enactment, unless doing so would be incidental or ancillary to securing another service or facility for that person under that section.

(3) Regulations may specify—

(a) types of services or facilities which may, despite subsections (1) and (2), be provided or arranged by a local authority, or circumstances in which such services or facilities may be so provided or arranged;

(b) types of services or facilities which may not be provided or arranged by a local authority, or circumstances in which such services or facilities may not be so provided or arranged;

(c) services or facilities, or a method for determining services or facilities, the provision of which is, or is not, to be treated as incidental or ancillary for the purposes of subsection (1) or (2).

(4) A local authority may not meet a person's needs for care and support (including a carer's needs for support) under sections 35 to 45 by providing or arranging for the provision of nursing care by a registered nurse.

(5) A local authority may not secure the provision of nursing care by a registered nurse in discharging its duty under section 15.

(6) But a local authority may, despite subsections (1), (2), (4) and (5), arrange for the provision of accommodation together with nursing care by a registered nurse—

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(a) if the authority has obtained consent for it to arrange for the provision of the nursing care from—

(i) whichever Local Health Board regulations require, in the case of accommodation in Wales, Scotland or Northern Ireland, or

(ii) whichever English health body regulations require, in the case of accommodation in England, or

(b) in an urgent case and where the arrangements are temporary.

(7) In a case to which subsection (6)(b) applies, the local authority must seek to obtain the consent mentioned in subsection (6)(a) as soon as is feasible after the temporary arrangements are made.

(8) Regulations may require a local authority—

(a) to make arrangements in connection with the resolution of disputes between the authority and a health body about whether or not a service or facility is required to be provided under a health enactment;

(b) to be involved in the manner specified in processes for assessing a person's needs for health care and deciding how those needs should be met.

(9) Nothing in this section affects what a local authority may do under the National Health Service (Wales) Act 2006, including entering into arrangements under regulations made under section 33 of that Act (arrangements with NHS bodies).

(10) In this section—

an "English health body" ("*corff iechyd Seisnig*") means—

(a) a clinical commissioning group;

(b) the National Health Service Commissioning Board;

a "health body" ("*corff iechyd*") means—

(a) a Local Health Board;

(b) a clinical commissioning group;

(c) the National Health Service Commissioning Board;

(d) a Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978;

(e) a Special Health Board constituted under that section;

(f) a Health and Social Care trust;

a "health enactment" ("*deddfiad iechyd*") means—

(a) the National Health Service (Wales) Act 2006;

(b) the National Health Service Act 2006;

(c) the National Health Service (Scotland) Act 1978;

(d) the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14));

(e) the Health and Social Care (Reform) Act (Northern Ireland) 2009;

"nursing care" ("*gofal nyrsio*") means a service which involves either the provision of care or the planning, supervision or delegation of the provision of care, but does not include a service which, by its nature and in the circumstances in which it is to be provided, does not need to be provided by a registered nurse.

Modifications etc. (not altering text)

C6 Ss. 46-49 applied (1.4.2015 for specified purposes, 6.4.2016 in so far as not already in force) by Care Act 2014 (c. 23), **ss. 52(8)**, 127(1) (with s. 52(13)(14)); S.I. 2015/993, art. 2(p) (with transitional provisions in S.I. 2015/995); S.I. 2016/464, art. 2(b)

Commencement Information

I43 S. 47 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

48 Exception for provision of housing etc

A local authority may not meet an adult's needs for care and support (including a carer's needs for support) under sections 35 to 45 or discharge its duty under section 15 by doing anything which that authority or another local authority is required to do under—

(a) the **[**[F11]Housing (Wales) Act 2014**]**, or

(b) any other enactment specified in regulations.

Textual Amendments

F11 Words in s. 48(a) substituted (27.4.2015) by Housing (Wales) Act 2014 (anaw 7), s. 145(3), **Sch. 3 para. 22(2)**; S.I. 2015/1272, art. 2, Sch. para. 53; S.I. 2015/1272, art. 2, Sch. para. 53

Modifications etc. (not altering text)

C6 Ss. 46-49 applied (1.4.2015 for specified purposes, 6.4.2016 in so far as not already in force) by Care Act 2014 (c. 23), **ss. 52(8)**, 127(1) (with s. 52(13)(14)); S.I. 2015/993, art. 2(p) (with transitional provisions in S.I. 2015/995); S.I. 2016/464, art. 2(b)

Commencement Information

I44 S. 48 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

49 Restrictions on provision of payments

(1) A local authority may not provide payments to meet a person's needs for care and support or a carer's needs for support under sections 35 to 45 unless—

(a) the payments are direct payments (see sections 50 to 53),

(b) the authority considers—

(i) that the person's needs are urgent, and

(ii) that it would not be reasonably practicable to meet those needs in any other way,

(c) the payments are provided under or by virtue of a contract, or

(d) the payments are provided in circumstances specified in regulations.

(2) A local authority may not provide payments in the discharge of its duty under section 15(1) unless—

(a) the authority considers—

(i) that the payments would achieve one or more of the purposes mentioned in section 15(2), and

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(ii) that it would not be reasonably practicable to achieve that purpose or those purposes in any other way,

(b) the payments are provided under or by virtue of a contract which relates to the provision of services for the authority's area, or

(c) the payments are provided in circumstances specified in regulations.

Modifications etc. (not altering text)

C6 Ss. 46-49 applied (1.4.2015 for specified purposes, 6.4.2016 in so far as not already in force) by Care Act 2014 (c. 23), **ss. 52(8)**, 127(1) (with s. 52(13)(14)); S.I. 2015/993, art. 2(p) (with transitional provisions in S.I. 2015/995); S.I. 2016/464, art. 2(b)

Commencement Information

I45 S. 49 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

Direct payments

50 Direct payments to meet an adult's needs

(1) 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 35 or 36.

(2) But regulations under subsection (1) may not require or allow such payments to be made unless condition 1 or 2 is met.

(3) Condition 1 is that—

(a) the payments are to be made to the adult who has needs for care and support ("A"),

(b) A has, or the local authority believes that A has, capacity to consent to the making of the payments,

(c) the local authority is satisfied that—

(i) making the payments is an appropriate way of meeting A's needs, and

(ii) A is capable of managing the payments (either by himself or herself or with the support that is available to A), and

(d) A has consented to the making of the payments.

(4) Condition 2 is that—

(a) the adult who has needs for care and support ("A") does not have, or the local authority believes that A does not have, capacity to consent to the making of the payments,

(b) the payments are to be made to a person ("P") other than A,

(c) P is a suitable person,

(d) the local authority is satisfied that—

(i) making the payments is an appropriate way of meeting A's needs,

(ii) P is capable of managing the payments (either by himself or herself or with the support that is available to P), and

(iii) P will act in A's best interests in managing the payments, and

(e) the necessary consent has been obtained to make the payments to P.

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(5) For the purposes of subsection (4)(c), P is a "suitable person"—

(a) if P is authorised under the Mental Capacity Act 2005 (whether in general or specific terms) to make decisions about A's needs for care and support,

(b) where P is not authorised as mentioned in paragraph (a), if a person who is so authorised agrees with the local authority that P is suitable to receive payments towards the cost of meeting A's needs for care and support, or

(c) where P is not authorised as mentioned in paragraph (a) and there is no person who is so authorised, if the local authority considers that P is suitable to receive payments of that kind.

(6) For the purposes of subsection (4)(e), the "necessary consent" means—

(a) the consent of P, and

(b) where P is a suitable person by virtue of subsection (5)(b), the consent of a person authorised under the Mental Capacity Act 2005 (whether in general or specific terms) to make decisions about A's needs for care and support.

(7) A payment under this section is referred to in this Act as a "direct payment".

Commencement Information

I46 S. 50 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

51 Direct payments to meet a child's needs

(1) Regulations 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 37, 38 or 39.

(2) But regulations under subsection (1) may not require or allow payments to be made unless conditions 1 to 4 are met.

(3) Condition 1 is that the payments are to be made to a person ("P") who is—

(a) a person with parental responsibility for a child who has needs for care and support, or

(b) a child who has needs for care and support.

(4) Condition 2 is that—

(a) where P is an adult or a child aged 16 or 17, P has, or the local authority believes that P has, capacity to consent to the making of the payments;

(b) where P is a child aged under 16, the local authority is satisfied that P has sufficient understanding to make an informed decision about receiving direct payments.

(5) Condition 3 is that the local authority is satisfied that—

(a) making the payments is an appropriate way of meeting the child's needs,

(b) the well-being of the child will be safeguarded and promoted by the making of the payments, and

(c) P is capable of managing the payments (either by himself or herself or with the support that is available to P).

(6) Condition 4 is that P has consented to the making of the payments.

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(7) A payment under this section is referred to in this Act as a "direct payment".

Commencement Information
I47 S. 51 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

52 Direct payments to meet a carer's needs

(1) Regulations may require or allow a local authority to make payments to a person towards the cost of meeting a carer's needs for support under section 40, 42 or 45.

(2) But regulations under subsection (1) may not require or allow payments to be made unless conditions 1 to 4 are met.

(3) Condition 1 is that the payments are to be made to the carer who has needs for support ("C").

(4) Condition 2 is that—
- (a) where C is an adult or a child aged 16 or 17, C has, or the local authority believes that C has, capacity to consent to the making of the payments;
- (b) where C is a child aged under 16, the local authority is satisfied that C has sufficient understanding to make an informed decision about receiving direct payments.

(5) Condition 3 is that the local authority is satisfied that—
- (a) making the payments is an appropriate way of meeting C's needs, and
- (b) C is capable of managing the payments (either by himself or herself or with the support that is available to C).

(6) Condition 4 is that C has consented to the making of the payments.

(7) A payment under this section is referred to in this Act as a "direct payment".

Commencement Information
I48 S. 52 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

53 Direct payments: further provision

(1) Regulations under section 50, 51 or 52 may also make provision about the following matters (among other matters)—
- (a) the manner in which the amounts of the direct payments are to be determined;
- (b) the making of direct payments as gross payments or alternatively as net payments;
- (c) the determination of—
  - (i) the financial resources of specified persons, and
  - (ii) the amount (if any) that it would be reasonably practicable for those persons to pay by way of reimbursement (in the case of gross payments) or contribution (in the case of net payments);

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(d) matters to which a local authority may or must have regard when making a decision of a specified type about direct payments;

(e) conditions which a local authority may or must attach, and conditions which it must not attach, in relation to direct payments;

(f) steps which a local authority may or must take before, or after, making a decision of a specified type about direct payments;

(g) support which a local authority must provide or arrange for persons to whom it makes direct payments;

(h) cases or circumstances in which a local authority may act as an agent on behalf of a person to whom direct payments are made;

(i) conditions subject to which, and the extent to which, a local authority's duty or power to meet a person's needs for care and support or a carer's needs for support is displaced by the making of direct payments;

(j) cases or circumstances in which a local authority must not, or is allowed not to, make payments to a person or in relation to a person;

(k) cases or circumstances in which a person who no longer lacks, or who the local authority believes no longer lacks, capacity to consent to the making of direct payments must or may nonetheless be treated for the purposes of sections 50 to 52 as lacking capacity to do so;

(l) cases or circumstances in which a local authority making direct payments may or must review the making of those payments;

(m) cases or circumstances in which a local authority making direct payments may or must—

(i) terminate the making of those payments;

(ii) require the repayment of the whole or part of a direct payment;

(n) the recovery of any amount due to a local authority in connection with the making of direct payments.

(2) In subsection (1)(b) and (c)—

"gross payments" means direct payments—

(a) which are made at a rate that the local authority estimates to be equivalent to the reasonable cost of securing the provision of the care and support (or, in the case of carers, the support) in respect of which the payments are made, but

(b) which may be made subject to the condition that a person specified in regulations pays to the authority, by way of reimbursement, an amount or amounts determined under the regulations;

"net payments" means direct payments—

(a) which are made on the basis that a person specified in regulations will pay an amount or amounts determined under the regulations by way of contribution towards the cost of securing the provision of the care and support (or, in the case of carers, the support) in respect of which the payments are made, and

(b) which are accordingly made at a rate below the rate the local authority estimates to be equivalent to the reasonable cost of securing the provision of that care and support (or, in the case of carers, that support) so as to reflect the contribution to be made by that person.

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) Regulations under section 50, 51 or 52 may make provision in relation to direct payments which corresponds to the provision which is made by, or may be made under, sections 59 to 67 or section 73.

(4) For the purposes of subsection (3), provision corresponds to that which is made by or under sections 59 to 67 or section 73 if it makes, in relation to reimbursements or contributions, provision which is in the opinion of the Welsh Ministers equivalent in effect to the provision made by or under those sections in relation to charges for providing or arranging the provision of care and support (or, in the case of carers, support) to meet a person's needs.

(5) Regulations under section 50, 51 or 52 must require a local authority to take specified steps to enable relevant persons to make informed choices about the use of direct payments.

(6) In subsection (5) "relevant persons" means persons whose consent must be obtained to the making of direct payments under regulations made under section 50, 51 or 52.

(7) Regulations under section 51 must specify that where direct payments are made to a person who receives a benefit falling within a specified category, the payments—

(a) must be made at a rate that the local authority estimates to be equivalent to the reasonable cost of securing the provision of the care and support in respect of which the payments are made, and

(b) must not be made subject to any condition that requires a person to pay any amount to the authority by way of reimbursement.

(8) In subsection (7) "benefit" includes any allowance, payment, credit or loan.

(9) A person to whom a local authority makes a direct payment may, subject to regulations made under section 50, 51 or 52, use the payment to purchase care and support (or, in the case of a carer, support) from any person (including, among others, the authority which made the payment).

(10) A local authority may impose a reasonable charge for the provision of care and support (or, in the case of a carer, support) to meet needs in respect of which a direct payment has been made.

[[F12](11) The ways in which a local authority may discharge its duty under section 117 of the Mental Health Act 1983 include by making direct payments; and for that purpose Schedule A1 (which includes modifications of sections 50 and 51 and this section) has effect.**]**

Textual Amendments

F12 S. 53(11) inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **297(b)**

Commencement Information

I49 S. 53 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Plans

54 Care and support plans and support plans

(1) Where a local authority is required to meet the needs of a person under section 35 or 37, it must prepare and maintain a care and support plan in relation to that person.

(2) Where a local authority is required to meet the needs of a carer under section 40 or 42, it must prepare and maintain a support plan in relation to that carer.

(3) A local authority must keep under review the plans that it maintains under this section.

(4) Where a local authority is satisfied that the circumstances of the person to whom a plan relates have changed in a way that affects the plan, the authority must—
- (a) carry out such assessments as it considers appropriate, and
- (b) revise the plan.

(5) Regulations must make provision about—
- (a) how plans under this section are to be prepared;
- (b) what a plan is to contain;
- (c) the review and revision of plans.

(6) Regulations under subsection (5)(c) must specify, in particular—
- (a) the persons who may request a review of a plan (on their own behalf or on behalf of another person);
- (b) the circumstances in which a local authority—
  - (i) may refuse to comply with a request for a review of a plan, and
  - (ii) may not refuse to do so.

(7) When preparing, reviewing or revising a plan under this section, a local authority must involve—
- (a) in the case of a care and support plan relating to an adult, the adult and, where feasible, any carer that the adult has;
- (b) in the case of a care and support plan relating to a child, the child and any person with parental responsibility for the child;
- (c) in the case of a support plan relating to a carer, the carer and, where feasible, the person for whom the carer provides or intends to provide care.

(8) The local authority may—
- (a) prepare, review or revise a plan under this section at the same time as it or another body is preparing, reviewing or revising another document in the case of the person concerned, and
- (b) include the other document in the plan.

Commencement Information
I50 S. 54 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

55 Regulations about care and support plans and support plans

Regulations under section 54(5) may, for example—

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) require plans to be in a specified form;
(b) require plans to contain specified things;
(c) make provision about further persons whom a local authority must involve in the preparation, review or revision of plans;
(d) require plans to be prepared, reviewed or revised by specified persons;
(e) confer functions on persons specified in the regulations in connection with the preparation, review or revision of plans;
(f) specify persons to whom written copies of a plan must be provided (including, in specified cases, the provision of copies without the consent of the person to whom the plan relates);
(g) specify further circumstances in which plans must be reviewed.

Commencement Information
I51 S. 55 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

Supplementary

56 Portability of care and support

(1) Where a local authority ("the sending authority") is notified by or on behalf of a person in respect of whom it has a duty under section 35 or 37 to meet needs for care and support that the person is going to move to the area of another local authority ("the receiving authority"), and it is satisfied that the move is likely to happen, it must—
(a) notify the receiving authority that it is so satisfied, and
(b) provide the receiving authority with—
(i) a copy of the care and support plan prepared for the person, and
(ii) such other information relating to the person and, if the person has a carer, such other information relating to the carer as the receiving authority may request.

(2) Where the receiving authority is notified by or on behalf of a person in respect of whom the sending authority has a duty under section 35 or 37 to meet needs for care and support that the person is going to move to the receiving authority's area, and the receiving authority is satisfied that the move is likely to happen, it must—
(a) notify the sending authority that it is so satisfied,
(b) provide the person and, if the person has a carer, the carer with such information as it considers appropriate,
(c) if the person is a child, provide the persons with parental responsibility for the child with such information as it considers appropriate, and
(d) assess the person under section 19 (if the person is an adult) or 21 (if the person is a child), having regard in particular to any change in the person's needs for care and support arising from the move.

(3) If, on the day the person moves to its area, the receiving authority has yet to carry out the assessment required by subsection (2)(d), or has done so but has yet to carry out the other steps required by this Part or Part 5, it must meet the person's needs for care and support in accordance with the care and support plan prepared by the sending authority, in so far as that is reasonably practicable.

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) In carrying out the assessment required by subsection (2)(d), the receiving authority must have regard to the care and support plan provided under subsection (1)(b).

(5) The receiving authority is subject to the duty under subsection (3) until it has—
- (a) carried out the assessment required by subsection (2)(d), and
- (b) taken the other steps required under this Part or Part 5.

(6) Regulations may—
- (a) specify steps which a local authority must take to satisfy itself in respect of the matters mentioned in subsections (1) and (2);
- (b) specify matters to which a receiving authority must have regard in deciding how to comply with the duty under subsection (3);
- (c) specify cases in which the duties under subsection (1), (2) or (3) do not apply.

(7) A reference in this section to moving to an area is a reference to moving to that area with a view to becoming ordinarily resident there.

Commencement Information
I52 S. 56 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

57 Cases where a person expresses preference for particular accommodation

(1) Regulations may provide that where—
- (a) a local authority is going to meet needs under sections 35 to 38 or sections 40 to 45 by providing or arranging for the provision of accommodation of a specified type for a person,
- (b) the person concerned, or a person of a specified description, expresses a preference for particular accommodation of that type, and
- (c) specified conditions are met,

the local authority must provide or arrange for the provision of the preferred accommodation.

(2) The regulations may require the person concerned or a person of a specified description to pay some or all of the additional cost (if any) of the preferred accommodation in specified cases or circumstances.

(3) In subsection (2) "additional cost" means the difference between—
- (a) the cost of providing or arranging the provision of the preferred accommodation, and
- (b) the cost that the local authority would usually expect to incur in providing or arranging the provision of suitable accommodation of that type to meet the needs of the person concerned.

Commencement Information
I53 S. 57 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

58 Protecting property of persons being cared for away from home

(1) This section applies where—

(a) a person is having needs for care and support met under section 35, 36, 37 or 38 in a way that involves the provision of accommodation **[**[F13], is admitted to hospital**]** (or both), and

(b) it appears to a local authority that there is a danger of loss or damage to movable property of the person's in the authority's area because—

(i) the person is unable (whether permanently or temporarily) to protect or deal with the property, and

(ii) no suitable arrangements have been or are being made.

(2) The local authority must take reasonable steps to prevent or mitigate the loss or damage.

(3) For the purpose of discharging that duty, the local authority—

(a) may at all reasonable times and on reasonable notice enter any premises which the person was living in immediately before being provided with accommodation or admitted to hospital, and

(b) may take any other steps which it considers reasonably necessary for preventing or mitigating loss or damage.

(4) The local authority must ensure that the following requirements are satisfied before taking any steps under subsection (3)(a) or (b)—

CASE 1 - where the local authority is satisfied that the person is—

(a) an adult or a child aged 16 or 17 who has capacity to consent to the taking of the steps, or

(b) a child aged under 16 who has sufficient understanding to make an informed decision about whether to consent to the taking of the steps,

the local authority must obtain the person's consent to the taking of the steps;

CASE 2 - where the local authority is satisfied that the person is an adult who lacks capacity to consent to the taking of the steps—

(a) the local authority must obtain consent to the taking of the steps from a person authorised under the Mental Capacity Act 2005 (whether in general or specific terms) to give consent on the adult's behalf, if any person is so authorised, or

(b) if there is no person so authorised, the local authority must be satisfied that the taking of the steps would be in the adult's best interests;

CASE 3 - where the local authority is satisfied that the person is a child aged 16 or 17 who lacks capacity to consent to the taking of the steps—

(a) the local authority must obtain consent to the taking of the steps from a person authorised under the Mental Capacity Act 2005 (whether in general or specific terms) to give consent on the child's behalf, if any person is so authorised, or

(b) if there is no person so authorised, the local authority must obtain consent to the taking of the steps from a person with parental responsibility for the child;

CASE 4 - where the local authority is satisfied that the person is a child aged under 16 who does not have sufficient understanding to make an informed decision about whether to consent to the taking of the steps, the local authority

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must obtain consent to the taking of the steps from a person with parental responsibility for the child.

(5) The local authority must take reasonable steps to obtain any consent which may be needed under subsection (4).

(6) Where the local authority is unable to ensure that the requirements in subsection (4) are satisfied, the local authority's duty under subsection (2) ceases to apply.

(7) Where a local authority is proposing to exercise the power under subsection (3)(a) or (b), the officer it authorises to do so must, upon request, produce valid documentation setting out the authorisation to do so.

(8) A person who, without reasonable excuse, obstructs the exercise of the power under subsection (3)(a) or (b)—
   (a) commits an offence, and
   (b) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(9) A local authority may recover whatever reasonable expenses it incurs under this section in relation to an adult's movable property from that adult.

(10) An amount recoverable under subsection (9) is recoverable summarily as a civil debt (but this does not affect any other method of recovery).

Textual Amendments

F13 Words in s. 58(1)(a) substituted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **298**

Commencement Information

I54 S. 58 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

PART 5

CHARGING AND FINANCIAL ASSESSMENT

Charging for meeting needs

59 Power to impose charges

(1) A local authority may require a person to pay a charge to the authority for providing or arranging the provision of care and support or (in the case of a carer) support under sections 35 to 45 to meet a person's needs.

(2) A charge imposed under subsection (1) may cover only the cost that the local authority incurs in meeting the needs to which the charge applies.

(3) But where a local authority is meeting needs because section 35(4)(b)(ii), 36, 38, 41(2), (4) or (6)(a)(i), 43(2) or (4)(a)(i) or 45 applies, it may require a person to pay a charge to the authority (in addition to any charge imposed under subsection (1)) for putting in place the arrangements for meeting those needs.

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) A local authority's power to impose a charge under this section is subject to—
  (a) the provision made in regulations under section 61 or 62 (if any), and
  (b) its duties under sections 63, 66 and 67 (if applicable).

Commencement Information
I55 S. 59 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

60 Persons upon whom charges may be imposed

(1) This section describes the persons upon whom charges may be imposed under section 59.

(2) A charge for providing or arranging the provision of care and support to meet an adult's needs, or for putting in place the arrangements for that care and support, may be imposed on that adult.

(3) A charge for providing or arranging the provision of care and support to meet a child's needs, or for putting in place the arrangements for that care and support, may be imposed—
  (a) where the care and support is provided to a child, on an adult with parental responsibility for that child;
  (b) where the child's needs for care and support are being met by the provision of something to an adult, on that adult.

(4) A charge for providing or arranging the provision of support to meet a carer's needs, or for putting in place the arrangements for that support, may be imposed—
  (a) where the support is provided to a carer who is an adult, on that carer;
  (b) where the support is provided to a carer who is a child, on an adult with parental responsibility for that carer;

  but this is subject to subsection (5).

(5) Where a carer's needs for support are met by the provision of care and support to a person for whom the carer provides or intends to provide care, subsection (4) does not apply; a charge for providing or arranging the provision of that support, or for putting in place the arrangements for that support, may instead be imposed—
  (a) where the carer's needs for support are met by the provision of care and support to an adult, on that adult;
  (b) where the carer's needs for support are met by the provision of care and support to a child, on an adult with parental responsibility for that child.

Commencement Information
I56 S. 60 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

61 Regulations about the exercise of a power to impose a charge

(1) Regulations may make provision for and in connection with the exercise of a power to impose a charge under section 59.

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) The regulations may (among other things) make provision about the amount of the charge which may be imposed under section 59(1); and the regulations may (in reliance on section 196(2)) do so, for example, by—

(a) specifying a maximum amount which may be imposed for care and support or (in the case of carers) support of a specified type or for a specified combination of such things, or a formula or method for determining that maximum amount;

(b) requiring a local authority to fix a charge for care and support or (in the case of carers) support of a specified type or for a specified combination of such things by reference to a specified period of time;

(c) specifying, in the case of a charge referred to in paragraph (b), a maximum amount which may be imposed, or a formula or method for determining that maximum amount.

(3) The regulations may also (among other things) make provision about the amount of the charge which may be imposed under section 59(3); and the regulations may (in reliance on section 196(2)) do so, for example, by specifying a maximum amount which may be imposed for putting arrangements in place—

(a) in specified circumstances, or

(b) for persons of a specified description.

Commencement Information

I57 S. 61 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

62 Regulations disapplying a power to impose a charge

Regulations may disapply a local authority's power to impose a charge under section 59(1) or (3) (and so may require a local authority to meet needs under sections 35 to 45 free of charge); the regulations may (in reliance on section 196(2) require a local authority to do so where, for example, the care and support, or (in the case of carers) the support—

(a) is of a specified type;

(b) is provided or arranged in specified circumstances;

(c) is provided to, or arranged for, persons of a specified description;

(d) is provided or arranged for a specified period only.

Commencement Information

I58 S. 62 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

63 Duty to carry out a financial assessment

(1) This section applies in relation to a person on whom a local authority thinks it would impose a charge under section 59, were it to meet a person's needs for care and support or a carer's needs for support.

(2) The local authority must assess the level of the person's financial resources in order to determine whether it would be reasonably practicable for the person to pay the standard charge (but this is subject to section 65).

Status: *Point in time view as at 02/04/2018.*
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(3) In this Part "standard charge" means the amount that a local authority would charge under section 59 if no determination were made under section 66 as to a person's ability to pay that amount.

(4) An assessment under this section is referred to in this Act as a "financial assessment".

Commencement Information
I59 S. 63 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

64 Regulations about financial assessments

(1) Regulations must make provision for and in connection with carrying out financial assessments.

(2) The regulations must make provision for—
- (a) calculating income;
- (b) calculating capital.

(3) The regulations may also make provision for the following matters (among other matters)—
- (a) the treatment, or non-treatment, of amounts of a specified type as income or as capital;
- (b) cases or circumstances in which a person is to be treated as having financial resources which exceed a specified level (which may include, for example, cases in which the person being assessed has failed to provide to a local authority, upon request, information or documents in the person's possession or under the person's control);
- (c) cases or circumstances in which a new financial assessment must or may be carried out.

Commencement Information
I60 S. 64 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

65 Regulations disapplying the duty to carry out a financial assessment

Regulations may make provision about circumstances in which a local authority is not required (despite section 63) to carry out a financial assessment.

Commencement Information
I61 S. 65 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

66 Determination as to a person's ability to pay a charge

(1) Where a local authority has carried out a financial assessment—
- (a) the authority must determine, in light of the assessment, whether it would be reasonably practicable for the assessed person to pay the standard charge for

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the care and support or (in the case of carers) the support in respect of which a charge would be imposed on that person, and

(b) if the authority determines that it would not be reasonably practicable for the assessed person to pay the standard charge, the authority must determine the amount (if any) that it would be reasonably practicable for that person to pay for that care and support or that support.

(2) In this section "the assessed person" means the person whose financial resources have been assessed under section 63.

(3) Regulations must make provision about the making of determinations under subsection (1).

(4) The regulations must require a local authority to determine, in a case where the assessed person's financial resources (whether income, capital, or a combination of both) exceed a specified level, that it would be reasonably practicable for that person to pay the standard charge.

(5) The level specified for the purposes of subsection (4) is referred to in this Act as "the financial limit".

(6) The regulations may require a local authority to determine that it would not be reasonably practicable for the assessed person to pay any amount for the care and support or (in the case of carers) the support that would reduce the person's income or capital below specified levels; and the regulations may, (in reliance on section 196(2)) specify different levels—

(a) for income and for capital,

(b) for different circumstances, and

(c) for different descriptions of persons.

(7) The regulations may also (among other things) make provision about cases or circumstances in which a local authority must or may replace a determination with a new determination.

(8) A determination under subsection (1) has effect from a date that the local authority considers reasonable (which may be a date before that on which the determination was made); but this is subject to any provision made in regulations under subsection (9).

(9) Regulations may make provision as to the date from which a determination under subsection (1) is to have effect (and may include provision for a determination to have effect from a date before that on which it was made).

(10) Where a determination replaces an existing determination, the existing determination continues to have effect until the new determination has effect.

(11) For the purposes of subsection (10), a determination replaces an existing determination if it relates to the same person and the same care and support or (in the case of carers) support.

Commencement Information

I62 S. 66 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

67 Duty to give effect of determination as to ability to pay a charge

(1) A local authority must give effect to a determination under section 66 in imposing charges under section 59.

(2) But regulations may make provision about circumstances in which the duty under subsection (1) does not apply.

Commencement Information

I63 S. 67 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

68 Deferred payment agreements

(1) Regulations may specify cases or circumstances in which, or conditions subject to which, a local authority may or must enter into a deferred payment agreement with a person who is required (or is going to be required) to pay a charge under section 59.

(2) A deferred payment agreement is an agreement under which—

(a) the local authority agrees not to require payment of the person's required amount until the time specified in or determined in accordance with the regulations, and

(b) the person agrees to give the local authority a charge over the person's interest in his or her home to secure payment of the person's required amount.

(3) The person's required amount is so much of the charge that the person is required (or is going to be required) to pay under section 59 as is specified in or determined in accordance with the regulations.

(4) The regulations may require or permit the local authority to charge—

(a) interest on the person's required amount;

(b) such amount relating to the local authority's administrative costs as is specified in or determined in accordance with the regulations;

(c) interest on an amount charged under paragraph (b).

(5) The regulations may provide for interest referred to in subsection (4)(a) to be charged by means of an obligation in the deferred payment agreement and to be treated in the same way as the person's required amount.

(6) The regulations may—

(a) specify costs which are, or which are not, to be regarded as administrative costs for the purposes of subsection (4)(b);

(b) provide for an amount referred to in subsection (4)(b) or for interest referred to in subsection (4)(c) to be charged by means of an obligation in the deferred payment agreement and to be treated in the same way as the person's required amount.

(7) The local authority may not charge interest under regulations made under subsection (4) at a rate that exceeds the rate specified in or determined in accordance with the regulations.

(8) The regulations must make provision about the duration of the agreement and for its termination by either party; the regulations must, among other things, enable the person to terminate it and the charge to which it gives effect by—

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) giving the local authority notice, and

(b) paying the authority the full amount for which the person is liable with respect to the person's required amount and any amount charged under regulations made by virtue of subsection (4).

(9) The regulations may make provision as to the rights and obligations of the local authority and the person where the person disposes of the interest to which the agreement relates and acquires an interest in another property in Wales or England; the regulations may, for example, make provision—

(a) for the local authority not to require payment of the amounts referred to in subsection (8)(b) until a time specified in or determined in accordance with the regulations, and

(b) for the person to give the local authority a charge over his or her interest in the other property.

(10) A reference to a person's home is a reference to the property which the person occupies as his or her only or main residence; and a reference to a person's interest in a property is a reference to the person's legal or beneficial interest in that property.

(11) Regulations may apply this section, with or without modifications, for the purpose of enabling a person to agree to give a charge over the person's interest in a property in Wales or England which he or she used to occupy as his or her only or main residence.

Commencement Information

I64 S. 68 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

Charging for preventative services and assistance

69 Charging for preventative services and assistance

(1) Regulations may make provision about charges for—

(a) services provided under section 15;

(b) assistance provided under section 17.

(2) But the regulations may not make provision—

(a) which enables a charge to be imposed for services or assistance in respect of which a charge has been imposed under section 59,

(b) which enables a charge to cover anything other than the cost incurred in providing the services or assistance to which the charge relates, or

(c) which enables a charge to be imposed on a child.

Commencement Information

I65 S. 69 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Enforcement of debts

70 Recovery of charges, interest etc

(1) Any amount due to a local authority under this Part is recoverable by the authority as a debt due to it.

(2) But subsection (1) does not apply in a case where a deferred payment agreement could be entered into, in accordance with regulations under section 68, unless—
- (a) the local authority has sought to enter into such an agreement with the person from whom the amount is due, and
- (b) that person has refused.

(3) An amount recoverable by a local authority under subsection (1) is recoverable summarily as a civil debt (but this does not affect any other method of recovery).

(4) An amount is recoverable under this section within six years of the date on which the amount becomes due to the local authority.

(5) Where a person mentioned in subsection (6) misrepresents or fails to disclose (whether fraudulently or otherwise) to a local authority any material fact in connection with the provisions of this Part, the following amounts are due to the authority from that person—
- (a) any expenditure incurred by the authority as a result of the misrepresentation or failure, and
- (b) any amount recoverable under this section which the authority has not recovered as a result of the misrepresentation or failure.

(6) The persons are—
- (a) an adult—
  - (i) who appears to the local authority to have needs for care and support or (in the case of a carer) support under Part 3, and
  - (ii) who has capacity to understand whether a fact may be material in connection with the provisions of this Part;
- (b) an adult—
  - (i) to whom something is provided in order to meet another person's needs for care and support or (in the case of a carer) support under Part 3, and
  - (ii) who has capacity to understand whether a fact may be material in connection with the provisions of this Part;
- (c) an adult of a description specified in regulations in relation to care and support or (in the case of a carer) support which appears to the local authority to be needed by—
  - (i) a child, or
  - (ii) an adult who does not have capacity to understand whether a fact may be material in connection with the provisions of this Part.

(7) The reasonable costs incurred by a local authority in recovering or seeking to recover an amount due to it under this Part are recoverable by the authority as a debt due to it; and subsection (3) applies to the recovery of those costs as if they were amounts to which subsection (1) applies.

(8) Regulations may—

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(a) make provision for determining the date on which an amount becomes due to a local authority for the purposes of this section;

(b) specify cases or circumstances in which an amount due to a local authority under this Part is not recoverable by it under this section;

(c) specify cases or circumstances in which a local authority may charge interest on an amount (including any costs recoverable by the authority under subsection (7)) due to it under this Part;

(d) where interest is chargeable, provide that it—

(i) must be charged at a rate that exceeds the rate specified in or determined in accordance with the regulations;

(ii) may not be charged at a rate that exceeds the rate specified in or determined in accordance with the regulations.

Commencement Information

I66 S. 70 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

71 Creation of a charge over an interest in land

(1) Where a person—

(a) fails to pay to a local authority an amount that is recoverable by the authority under this Part, and

(b) has a legal or beneficial interest in land in Wales or England,

the local authority may create a charge in its favour over the person's interest in the land to secure payment of that amount.

(2) Where the person has interests in more than one parcel of land, the local authority may create the charge over whichever one of those interests it chooses.

(3) The charge may be in respect of any amount that is recoverable by the local authority under this Part; but this is subject to subsection (4).

(4) Where the charge is created over the interest of an equitable joint tenant in land, the amount of the charge must not exceed the value of the interest that the person would have in the land if the joint tenancy were severed (but the creation of the charge does not sever the joint tenancy).

(5) On the death of an equitable joint tenant in land whose interest in the land is subject to a charge under this section, the following persons' interests in land become subject to a charge—

(a) if there are surviving joint tenants, their interests in the land;

(b) if the land vests in one person, or one person is entitled to have it vested in himself or herself, that person's interest in the land.

(6) The amount of the charge created under subsection (5) must not exceed the amount of the charge to which the interest of the deceased joint tenant was subject.

(7) A charge under this section must be created by a declaration in writing made by the local authority.

(8) A charge under this section, other than a charge over the interest of an equitable joint tenant in land—

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(a) in the case of unregistered land, is a Class B land charge within the meaning of section 2 of the Land Charges Act 1972;

(b) in the case of registered land, is a registrable charge taking effect as a charge by way of legal mortgage.

(9) Where an amount is charged over a person's interest in land under this section, interest is chargeable upon that amount from the day on which the person mentioned in subsection (1) dies.

(10) The rate of interest chargeable under subsection (9) is—

(a) a rate specified in or determined in accordance with regulations, or

(b) if no regulations are made, a rate determined by the local authority.

Commencement Information

I67 S. 71 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

72 Transfer of assets to avoid charges

(1) This section applies in a case where the needs of a person ("P") have been or are being met by a local authority under sections 35 to 42 or section 45 and where—

(a) a person ("the transferor") (who may be P but need not be so) has transferred an asset to another person (a "transferee"),

(b) the transfer was undertaken with the intention of avoiding charges for having P's needs met, and

(c) either the consideration for the transfer was less than the value of the asset or there was no consideration for the transfer.

(2) The transferee is liable to pay to the local authority an amount equal to the difference between—

(a) the amount the authority would have charged the transferor were it not for the transfer of the asset, and

(b) the amount it did in fact charge the transferor.

(3) But the transferee is not liable to pay to the authority an amount which exceeds the benefit accruing to the transferee from the transfer.

(4) Where an asset has been transferred to more than one transferee, the liability of each transferee is in proportion to the benefit accruing to that transferee from the transfer.

(5) In this section "asset" means anything which may be taken into account for the purposes of a financial assessment.

(6) The value of an asset (other than cash) is the amount which would have been realised if it had been sold on the open market by a willing seller at the time of the transfer, with a deduction for—

(a) the amount of any encumbrance on the asset, and

(b) a reasonable amount in respect of the expenses of the sale.

(7) Regulations may specify cases or circumstances in which liability under subsection (2) does not arise.

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Commencement Information
I68 S. 72 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

Reviews

73 Reviews relating to charging

(1) Regulations must make provision for and in connection with the review of—
- (a) charges imposed under section 59,
- (b) determinations made under section 66, and
- (c) decisions relating to the liability of a transferee to pay an amount to a local authority under section 72.

(2) The regulations may (among other things) make provision about—
- (a) the persons who may request a review (on their own behalf or on behalf of another person);
- (b) the circumstances and the manner in which a review may be requested;
- (c) the period within which a request must be made;
- (d) the procedure to be followed, and the steps to be taken, in connection with a review;
- (e) the description of persons who may make a decision following the review;
- (f) the effect of a decision of that kind.

Commencement Information
I69 S. 73 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

PART 6

LOOKED AFTER AND ACCOMMODATED CHILDREN

Interpretation

74 Child or young person looked after by a local authority

(1) In this Act, a reference to a child who is looked after by a local authority is a reference to a child who is—
- (a) in its care, or
- (b) provided with accommodation by the authority in the exercise of any functions which are social services functions, apart from functions under section 15, Part 4, or section 109, 114 or 115.

(2) In subsection (1), “accommodation” means accommodation which is provided for a continuous period of more than 24 hours.

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(3) In this Part, a reference to a young person being looked after by a local authority is a reference to a young person being looked after by the authority while he or she is or was a child.

Commencement Information
I70 S. 74 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

Accommodation duties

75 General duty of local authority to secure sufficient accommodation for looked after children

(1) A local authority must take steps that secure, so far as reasonably practicable, that the local authority is able to provide the children mentioned in subsection (2) with accommodation that—
- (a) is within the authority's area, and
- (b) meets the needs of those children.

(2) The children referred to in subsection (1) are those—
- (a) that the local authority is looking after,
- (b) in respect of whom the authority is unable to make arrangements under section 81(2), and
- (c) whose circumstances are such that it would be consistent with their well-being for them to be provided with accommodation that is in the authority's area.

(3) In discharging its duty under subsection (1), the local authority must have regard to the benefit of having—
- (a) a number of accommodation providers in its area that is, in the authority's opinion, sufficient to discharge its duty, and
- (b) a range of accommodation in its area capable of meeting different needs that is, in its opinion, sufficient to discharge its duty.

(4) In this section "accommodation providers" means—
- (a) local authority foster parents, and
- (b) children's homes.

Commencement Information
I71 S. 75 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

76 Accommodation for children without parents or who are lost or abandoned etc

(1) A local authority must provide accommodation for any child within its area who appears to the authority to require accommodation as a result of—
- (a) there being no person who has parental responsibility for the child,
- (b) the child being lost or having been abandoned, or

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(c) the person who has been caring for the child being prevented (whether or not permanently, and for whatever reason) from providing the child with suitable accommodation or care.

(2) Where a local authority provides accommodation under subsection (1) for a child who is ordinarily resident in the area of another local authority, that other local authority may take over the provision of accommodation for the child within—

(a) three months of being notified in writing that the child is being provided with accommodation, or

(b) such other longer period as may be specified.

[[F14](2A) Where a local authority in England provides accommodation under section 20(1) of the Children Act 1989 (provision of accommodation for children: general) for a child who is ordinarily resident in the area of a local authority in Wales, that local authority in Wales may take over the provision of accommodation for the child within—

(a) three months of being notified in writing that the child is being provided with accommodation, or

(b) such other longer period as may be specified.**]**

(3) A local authority must provide accommodation for any child within its area who has reached the age of 16 and whose well-being the authority considers is likely to be seriously prejudiced if it does not provide the child with accommodation.

(4) A local authority may not provide accommodation under this section for any child if any person objects who—

(a) has parental responsibility for the child, and

(b) is willing and able to—

(i) provide accommodation for the child, or

(ii) arrange for accommodation to be provided for the child.

(5) Any person who has parental responsibility for a child may at any time remove the child from accommodation provided by or on behalf of a local authority under this section.

(6) Subsections (4) and (5) do not apply while any person—

(a) in whose favour a **[**[F15]child arrangements order**]** is in force with respect to the child,

(b) who is a special guardian of the child, or

(c) who has care of the child by virtue of an order made in the exercise of the High Court's inherent jurisdiction with respect to children,

agrees to the child being looked after in accommodation provided by or on behalf of the local authority.

(7) Where there is more than one such person as is mentioned in subsection (6), all of them must agree.

(8) Subsections (4) and (5) do not apply where a child who has reached the age of 16 agrees to being provided with accommodation under this section.

Textual Amendments

F14 S. 76(2A) inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **299**

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F15 Words in s. 76 substituted (1.12.2017) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2017 (S.I. 2017/1025), regs. 1(2), **4(2)**

Commencement Information

I72 S. 76 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

77 Accommodation for children in police protection or detention or on remand etc

(1) A local authority must make provision for the reception and accommodation of children who are removed or kept away from home under Part 5 of the Children Act 1989.

(2) A local authority must receive, and provide accommodation for, children—

(a) in police protection whom it is requested to receive under section 46(3)(f) of the Children Act 1989;

(b) whom it is requested to receive under section 38(6) of the Police and Criminal Evidence Act 1984;

(c) with respect to whom it is the designated authority and who are—

(i) remanded to accommodation provided by or on behalf of a local authority by virtue of paragraph 4 of Schedule 1 or paragraph 6 of Schedule 8 to the Powers of Criminal Courts (Sentencing) Act 2000 (breach etc of referral orders and reparation orders);

(ii) remanded to accommodation provided by or on behalf of a local authority by virtue of paragraph 21 of Schedule 2 to the Criminal Justice and Immigration Act 2008 (breach etc of youth rehabilitation orders);

(iii) remanded to accommodation provided by or on behalf of a local authority by virtue of paragraph 10 of the Schedule to the Street Offences Act 1959 (breach of orders under section 1(2A) of that Act);

(iv) the subject of a youth rehabilitation order imposing a local authority residence requirement or a youth rehabilitation order with fostering.

(3) In subsection (2), the following terms have the same meanings as in Part 1 of the Criminal Justice and Immigration Act 2008 (see section 7 of that Act)—

"local authority residence requirement";

"youth rehabilitation order";

"youth rehabilitation order with fostering".

(4) Subsection (5) applies where—

(a) a child has been—

(i) removed under Part 5 of the Children Act 1989, or

(ii) detained under section 38 of the Police and Criminal Evidence Act 1984, and

(b) the child is not being provided with accommodation—

(i) by a local authority **[**[F16]or local authority in England**]**, or

(ii) in a hospital vested in the Welsh Ministers, an NHS Trust, an NHS Foundation Trust or the Secretary of State, or otherwise made available pursuant to arrangements made by a Local Health Board, an NHS Trust, an NHS Foundation Trust, the Welsh Ministers, the

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Secretary of State, the National Health Service Commissioning Board or a clinical commissioning group.

(5) Any reasonable expenses of accommodating the child are recoverable from the local authority **[**[F17]or local authority in England**]** in whose area the child is ordinarily resident.

Textual Amendments

F16 Words in s. 77(4)(b)(i) inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **300(a)**

F17 Words in s. 77(5) inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **300(b)**

Commencement Information

I73 S. 77 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

Duties of local authorities in relation to looked after children

78 Principal duty of a local authority in relation to looked after children

(1) A local authority looking after any child must—

(a) safeguard and promote the child's well-being, and

(b) make such use of services available for children cared for by their own parents as appears to the authority reasonable in the child's case.

(2) The duty of a local authority under subsection (1)(a) to safeguard and promote the well-being of a child looked after by it includes, for example—

(a) a duty to promote the child's educational achievement;

(b) a duty—

(i) to assess from time to time whether the child has care and support needs which meet the eligibility criteria set under section 32, and

(ii) if the child has needs which meet the eligibility criteria, to at least meet those needs.

(3) Before making any decision with respect to a child whom it is looking after, or proposing to look after, a local authority must (in addition to the matters set out in sections 6(2) and (4) and 7(2) (other overarching duties)) have regard to—

(a) the views, wishes and feelings of any person whose views, wishes and feelings the authority considers to be relevant;

(b) the child's religious persuasion, racial origin and cultural and linguistic background.

(4) If it appears to a local authority that it is necessary, for the purpose of protecting members of the public from serious injury, to exercise its powers with respect to a child whom it is looking after in a manner which may not be consistent with its duties under this section or section 6, it may do so.

Status: *Point in time view as at 02/04/2018.*
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Commencement Information
I74 S. 78 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

79 Provision of accommodation for children in care

When a child is in the care of a local authority, the authority must provide the child with accommodation.

Commencement Information
I75 S. 79 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

80 Maintenance of looked after children

A local authority must maintain a child it is looking after in other respects apart from the provision of accommodation.

Commencement Information
I76 S. 80 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

81 Ways in which looked after children are to be accommodated and maintained

(1) This section applies where a local authority is looking after a child ("C").

(2) The local authority must make arrangements for C to live with a person who falls within subsection (3), but this is subject to subsections (4) and (11).

(3) A person ("P") falls within this subsection if—
- (a) P is a parent of C,
- (b) P is not a parent of C but has parental responsibility for C, or
- (c) in a case where C is in the care of the local authority and there was a **[**[F18]child arrangements order**]** in force with respect to C immediately before the care order was made, P was a person in whose favour the **[**[F18]child arrangements order**]** was made.

(4) Subsection (2) does not require the local authority to make arrangements of the kind mentioned in that subsection if doing so—
- (a) would not be consistent with C's well-being, or
- (b) would not be reasonably practicable.

(5) If the local authority is unable to make arrangements under subsection (2), it must place C in the placement that is, in its opinion, the most appropriate placement available (but this is subject to subsection (11)).

(6) In subsection (5) "placement" means—
- (a) placement with an individual who is a relative, friend or other person connected with C and who is also a local authority foster parent,

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(b) placement with a local authority foster parent who does not fall within paragraph (a),

(c) placement in a children's home, or

(d) subject to section 82, placement in accordance with other arrangements that comply with any regulations made for the purposes of this section.

(7) In determining the most appropriate placement for C under subsection (5), the local authority must, subject to the other provisions of this Part (in particular, to its duties under section 78)—

(a) give preference to a placement falling within paragraph (a) of subsection (6) over placements falling within the other paragraphs of that subsection,

(b) comply, so far as is reasonably practicable in all the circumstances of C's case, with the requirements of subsection (8), and

(c) comply with subsection (9) unless it is not reasonably practicable to do so.

(8) The local authority must ensure that the placement is such that—

(a) it allows C to live near C's home;

(b) it does not disrupt C's education or training;

(c) if C has a sibling for whom the local authority is also providing accommodation, it enables C and the sibling to live together;

(d) if C is disabled, the accommodation provided is suitable to C's particular needs.

(9) The placement must be such that C is provided with accommodation within the local authority's area.

(10) Subsection (11) applies where—

(a) the local authority is satisfied that C ought to be placed for adoption and proposes to place C for adoption with a particular prospective adopter ("A"),

(b) an adoption agency has determined that A is suitable to adopt a child, and

(c) the local authority is not authorised to place C for adoption.

(11) The local authority must place C with A, unless in its opinion it would be more appropriate—

(a) to make arrangements for C to live with a person falling within subsection (3), or

(b) to place C in a placement of a description mentioned in subsection (6).

(12) For the purposes of subsection (10)—

(a) "adoption agency" has the meaning given by section 2 of the Adoption and Children Act 2002;

(b) a local authority is authorised to place C for adoption only if it has been authorised to do so under—

(i) section 19 of that Act (placing children with parental consent), or

(ii) a placement order made under section 21 of that Act.

(13) The local authority may determine—

(a) the terms of any arrangements it makes under subsection (2) in relation to C (including terms as to payment), and

(b) the terms on which it places C with a local authority foster parent under subsection (5) or with a prospective adopter under subsection (11) (including

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terms as to payment but subject to any order made under section 49 of the Children Act 2004).

Textual Amendments

F18 Words in s. 81 substituted (1.12.2017) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2017 (S.I. 2017/1025), regs. 1(2), **4(2)**

Modifications etc. (not altering text)

C7 S. 81 excluded by S.I. 2012/2813, reg. 2A(a) (as inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) (Secondary Legislation) Regulations 2016 (S.I. 2016/211), reg. 1(2), **Sch. 3 para. 131**)

Commencement Information

I77 S. 81 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

82 Review of child's case before making alternative arrangements for accommodation

(1) Where a local authority is providing accommodation for a child ("C") other than in accordance with arrangements falling within section 81(6)(d), it must not make such arrangements for C unless it has decided to do so in consequence of a review of C's case carried out in accordance with regulations made under section 102 (review of cases and inquiries into representations).

(2) But subsection (1) does not prevent a local authority making arrangements for C under section 81(6)(d) if it is satisfied that in order to safeguard C's well-being it is necessary—

(a) to make such arrangements, and

(b) to do so as a matter of urgency.

Modifications etc. (not altering text)

C8 S. 82 excluded by S.I. 2012/2813, reg. 2A(b) (as inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) (Secondary Legislation) Regulations 2016 (S.I. 2016/211), reg. 1(2), **Sch. 3 para. 131**)

Commencement Information

I78 S. 82 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

83 Care and support plans

(1) Where a child becomes looked after by a local authority, any care and support plan prepared under section 54 in relation to that child must be—

(a) reviewed, and

(b) maintained under this section.

(2) Where a child who does not have a care and support plan under section 54 becomes looked after by a local authority, the local authority must prepare and maintain a care and support plan in relation to that child.

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) A local authority must keep under review the plans that it maintains under this section.

(4) Where a local authority is satisfied that the circumstances of the child to whom a plan relates have changed in a way that affects the plan, the authority must—
- (a) carry out such assessments as it considers appropriate, and
- (b) revise the plan.

(5) Regulations must make provision about—
- (a) how plans under this section are to be prepared;
- (b) what a plan is to contain;
- (c) the review and revision of plans.

(6) Regulations under subsection (5)(c) must specify, in particular—
- (a) the persons who may request a review of a plan (on their own behalf or on behalf of another person);
- (b) the circumstances in which a local authority—
  - (i) may refuse to comply with a request for a review of a plan, and
  - (ii) may not refuse to do so.

(7) When preparing, reviewing or revising a plan under this section, a local authority must involve the child to whom the plan relates and any person with parental responsibility for the child.

(8) The local authority may—
- (a) prepare, review or revise a plan under this section at the same time as it or another body is preparing, reviewing or revising another document in the case of the child concerned, and
- (b) include the other document in the plan.

(9) Any part of a plan maintained under this section which meets the requirements imposed by or under section 31A of the Children Act 1989 may be treated for the purposes of that Act as a plan prepared under section 31A of that Act.

Commencement Information

I79 S. 83 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

84 Regulations about care and support plans

Regulations under section 83 may, for example—
- (a) require plans to be in a specified form;
- (b) require plans to contain specified things;
- (c) make provision about further persons whom a local authority must involve in the preparation, review or revision of plans;
- (d) require plans to be prepared, reviewed or revised by specified persons;
- (e) confer functions on persons specified in the regulations in connection with the review or revision of plans;
- (f) specify persons to whom written copies of a plan must be provided (including, in specified cases, the provision of copies without the consent of the person to whom the plan relates);

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(g) specify further circumstances in which plans must be reviewed.

Commencement Information

I80 S. 84 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

85 Contributions towards maintenance of looked after children

Schedule 1 makes provision about contributions towards the maintenance of children looked after by local authorities.

Commencement Information

I81 S. 85 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

[[F20]86 [F19]... Homes provided, equipped and maintained by Welsh Ministers or Secretary of State

Where a local authority places a child it is looking after in a [F19]... home provided, equipped and maintained by the Welsh Ministers or the Secretary of State under section 82(5) of the Children Act 1989, it must do so on such terms and conditions as the Welsh Ministers or the Secretary of State (as the case may be) may from time to time determine.**]**

Textual Amendments

F19 Word in s. 86 and its heading omitted (2.4.2018) by virtue of The Regulation and Inspection of Social Care (Wales) Act 2016 (Consequential Amendments) Regulations 2018 (S.I. 2018/195), **regs. 2(1)**, 52

F20 S. 86 substituted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **301**

Commencement Information

I82 S. 86 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

Regulations about looked after children

87 Regulations about looked after children

Regulations may make further provision about children looked after by local authorities.

Commencement Information

I83 S. 87 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

88 Regulations about conditions under which a child in care is allowed to live with a parent etc

Regulations under section 87 may, for example, impose requirements on a local authority as to—

(a) the making of any decision to allow a child in its care to live with any person falling within section 81(3) (including requirements as to those who must be consulted before the decision is made and those who must be notified when it has been made);

(b) the supervision or medical examination of the child concerned;

(c) the removal of the child, in such circumstances as may be specified in regulations, from the care of the person with whom the child has been allowed to live;

(d) the records to be kept by the local authority.

Commencement Information

I84 S. 88 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

89 Regulations about placements of a kind mentioned in section 81(6)(d)

(1) Regulations under section 87 may, for example, make provision as to placements of the kind mentioned in section 81(6)(d).

(2) 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.

Commencement Information

I85 S. 89 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

90 Regulations about placements out of area

Regulations under section 87 may, for example, impose requirements that a local authority must comply with—

(a) before a child looked after by it is provided with accommodation at a place outside the area of the authority, or

(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.

Commencement Information

I86 S. 90 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

91 Regulations about the avoidance of disruption in education

(1) Regulations under section 87 may, for example, impose requirements that a local authority must comply with before making any decision concerning a child's placement if he or she is in the fourth key stage.

(2) A child is "in the fourth key stage" if the child is a pupil in the fourth key stage for the purposes of Part 7 of the Education 2002 (see section 103 of that Act).

Commencement Information
I87 S. 91 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

92 Regulations about the placing of children with local authority foster parents and prospective adopters

(1) Regulations under section 87 may, for example, make provision—
- (a) with regard to the well-being of children placed with local authority foster parents or prospective adopters;
- (b) as to the arrangements to be made by local authorities in connection with the health and education of such children;
- (c) as to the records to be kept by local authorities;
- (d) for securing that where possible the local authority foster parent or prospective adopter with whom a child is to be placed—
  - (i) is of the same religious persuasion as the child, or
  - (ii) gives an undertaking that the child will be brought up in that religious persuasion;
- (e) for securing that children placed with local authority foster parents or prospective adopters, and the premises in which they are accommodated, will be supervised and inspected by a local authority and that the children will be removed from those premises if their well-being appears to require it.

(2) In this section "prospective adopter" means a person with whom a child is placed under section 81(11).

Commencement Information
I88 S. 92 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

93 Regulations providing for approval of local authority foster parents

(1) Regulations under section 87 may, for example, make provision—
- (a) for securing that a child is not placed with a local authority foster parent unless that person is for the time being approved as a local authority foster parent by such local authority **[**[F21]or other persons**]** as may be specified;
- (b) establishing a procedure under which any person in respect of whom a qualifying determination has been made may apply to the Welsh Ministers for a review of that determination by a panel constituted by the Welsh Ministers.

(2) A determination is a qualifying determination if—

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) it relates to the issue of whether a person should be approved, or should continue to be approved, as a local authority foster parent, and
(b) it is of a specified description.

(3) Regulations made under subsection (1)(b) may include provision as to—
(a) the duties and powers of a panel;
(b) the administration and procedures of a panel;
(c) the appointment of members of a panel (including the number, or any limit on the number, of members who may be appointed and any conditions for their appointment);
(d) the payment of fees to members of a panel;
(e) the duties of any person in connection with a review conducted under the regulations;
(f) the monitoring of any such reviews.

(4) Regulations made by virtue of subsection (3)(e) may impose a duty to pay to the Welsh Ministers such amount as the Welsh Ministers may determine; but such a duty may not be imposed upon a person who has applied for a review of a qualifying determination.

(5) The Welsh Ministers must secure that, taking one financial year with another, the aggregate of the amounts which become payable to them under regulations made by virtue of subsection (4) does not exceed the cost to them of performing their independent review functions.

(6) The Welsh Ministers may make an arrangement with an organisation under which independent review functions are performed by the organisation on their behalf.

(7) If the Welsh Ministers make such an arrangement with an organisation, the organisation must perform their functions under the arrangement in accordance with any general or specific direction given by the Welsh Ministers.

(8) The arrangement may include provision for payments to be made to the organisation by the Welsh Ministers.

(9) Payments made by the Welsh Ministers in accordance with such provision are to be taken into account in determining (for the purpose of subsection (5)) the cost to the Welsh Ministers of performing their independent review functions.

(10) A direction under subsection (7)—
(a) must be in writing;
(b) may be varied or revoked by a later direction.

(11) In this section—

"financial year" ("*blwyddyn ariannol*") means a period of twelve months ending with 31 March;

"independent review function" ("*swyddogaeth adolygu annibynnol*") means a function conferred or imposed on the Welsh Ministers by regulations made by virtue of subsection (1)(b);

"organisation" ("*sefydliad*") includes the Secretary of State, a public body and a private or voluntary organisation.

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F21 Words in s. 93(1)(a) inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **302**

Commencement Information

I89 S. 93 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

94 Regulations about agency arrangements

Regulations under section 87 may, for example, make provision as to the circumstances in which a local authority may make arrangements for duties imposed on it by the regulations to be discharged on its behalf.

Commencement Information

I90 S. 94 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

[F22 Regulation of local authority functions relating to looked after and accommodated children

Textual Amendments

F22 Ss. 94A, 94B and cross-heading inserted (2.4.2018) by Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2), **ss. 58**, 188(1); S.I. 2017/1326, art. 2(3)(f)

94A Regulation of the exercise of local authority functions relating to looked after and accommodated children

(1) Regulations may make provision about the exercise by local authorities of functions conferred on them by—

(a) section 81 (ways in which looked after children are to be accommodated and maintained), or

(b) regulations made under section 87 (regulations about looked after children) making provision such as is mentioned in section 92(1), 93 or 94.

(2) Regulations under subsection (1) may, for example, include provision—

(a) as to the persons who are fit to work for local authorities in connection with the exercise of those functions,

(b) as to the fitness of premises to be used by local authorities in exercising those functions,

(c) as to the management and control of the exercise of those functions,

(d) as to the number of persons, or persons of a particular type, working for local authorities in connection with the exercise of those functions,

(e) as to the management and training of such persons, and

(f) as to the fees or expenses which may be paid to persons assisting local authorities in making decisions in the exercise of those functions.

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) Regulations under subsection (2)(a) may, in particular, make provision specifying that a person is not fit to work for a local authority in such position as may be specified if the person is not registered in, or in a particular part of, the register kept under section 80 of the Regulation and Inspection of Social Care (Wales) Act 2016 (registration of social care workers).

94B Offence of contravening regulations under section 94A

(1) Regulations may provide that it is an offence for a person to contravene or fail to comply with a specified provision of regulations made under section 94A.

(2) A person guilty of an offence under regulations made under subsection (1) 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.

(3) 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 regulations made under subsection (1) as they apply to offences under Part 1 of that Act.**]**

Contact and visits

95 Promotion and maintenance of contact between child and family

(1) Where a child is being looked after by a local authority, the authority must, unless it is not reasonably practicable or consistent with the child's well-being, promote contact between the child and—
- (a) the child's parents,
- (b) any person who is not a parent of the child but who has parental responsibility for the child, and
- (c) any relative, friend or other person connected with the child.

(2) Where a child is being looked after by a local authority, the authority must take such steps as are reasonably practicable to secure that the following persons are kept informed of where the child is being accommodated—
- (a) the child's parents;
- (b) any person who is not a parent of the child but who has parental responsibility for the child.

(3) Every person mentioned in subsection (2)(a) or (b) must secure that the authority is kept informed of his or her address.

(4) Where a local authority ("the receiving authority") takes over the provision of accommodation for a child **[**[F23]from a local authority or a local authority in England under section 76 ("the transferring authority")**]**—
- (a) the receiving authority must (where reasonably practicable) inform—
  - (i) the child's parents, and
  - (ii) any person who is not a parent of the child but who has parental responsibility for the child,

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) subsection (2) applies to the transferring authority, as well as to the receiving authority, until at least one of the persons mentioned in paragraph (a) or (b) of that subsection has been informed of the change, and

(c) subsection (3) does not require any person to inform the receiving authority of his or her address until that person has been informed under paragraph (a).

(5) Nothing in this section requires a local authority to inform a person of the whereabouts of a child, other than a child aged under 16 who is being accommodated under section 76, if the authority has reasonable cause to believe that informing the person would prejudice the child's well-being.

(6) Any person who fails, without reasonable excuse, to comply with subsection (3) is guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

Textual Amendments

F23 Words in s. 95(4) substituted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **303**

Modifications etc. (not altering text)

C9 S. 95 excluded by SI 2005/1313, reg. 46A(2) (as excluded (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) and Care Planning, Placement and Case Review (Miscellaneous Amendments) (Wales) Regulations 2016 (S.I. 2016/216), regs. 1(2), **5(8)**)

Commencement Information

I91 S. 95 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

96 Family visits to or by children: expenses

(1) This paragraph applies where—

(a) a child is being looked after by a local authority, and

(b) the conditions mentioned in subsection (4) are satisfied.

(2) The authority may make payments in respect of travelling, subsistence or other expenses incurred by the following persons in visiting the child—

(a) a parent of the child,

(b) any person who is not a parent of the child but who has parental responsibility for the child, or

(c) any relative, friend or other person connected with the child.

(3) The authority may make payments to the child, or to any person on the child's behalf, in respect of travelling, subsistence or other expenses incurred by or on behalf of the child in visiting the persons mentioned in paragraphs (a) to (c) of subsection (2).

(4) The conditions are that—

(a) it appears to the authority that the visit in question could not otherwise be made without undue financial hardship, and

(b) the circumstances warrant the making of the payments.

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information

I92 S. 96 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

97 Duty of local authority to ensure visits to, and contact with, looked after children and other children

(1) This section applies to—

(a) a child looked after by a local authority;

(b) a child who was looked after by a local authority but who has ceased to be looked after by the authority as a result of circumstances specified in regulations;

(c) a child who falls within a category specified in regulations.

(2) Regulations specifying a category for the purpose of subsection (1)(c) must also specify the local authority which must discharge the duties imposed by or under this section in relation to a child who falls within the specified category.

(3) The local authority must—

(a) ensure that a child to whom this section applies is visited by a representative of the authority ("a representative");

(b) arrange for appropriate advice and other support to be available to a child to whom this section applies.

(4) The duties imposed by subsection (3)—

(a) are to be discharged in accordance with any regulations made for the purposes of this section;

(b) are subject to any requirement imposed by or under an enactment applicable to the place in which the child to whom this section applies is accommodated.

(5) Regulations under this section may, for the purposes of subsection (4)(a), make provision about—

(a) the frequency of visits;

(b) circumstances in which a child to whom this section applies must be visited by a representative;

(c) the functions of a representative.

(6) In choosing a representative, a local authority must satisfy itself that the person chosen has the necessary skills and experience to perform the functions of a representative.

Commencement Information

I93 S. 97 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

98 Independent visitors for looked after children

(1) A local authority looking after a child must appoint an independent person to be the child's visitor if—

(a) the child falls within a category specified in regulations, or

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) in any other case, it appears to the authority that it would be in the child's interests to do so.

(2) A person appointed under this section must visit, befriend and advise the child.

(3) A person appointed under this section is entitled to recover from the appointing authority any reasonable expenses incurred by that person for the purposes of that person's functions under this section.

(4) A person's appointment as a visitor in pursuance of this section comes to an end if—
(a) the child ceases to be looked after by the local authority,
(b) the person resigns the appointment by giving notice in writing to the appointing authority, or
(c) the authority gives the person notice in writing that it has terminated the appointment.

(5) The ending of such an appointment does not affect any duty under this section to make a further appointment.

(6) Where a local authority proposes to appoint a visitor for a child under this section, the appointment must not be made if—
(a) the child objects to it, and
(b) the authority is satisfied that the child has sufficient understanding to make an informed objection.

(7) Where a visitor has been appointed for a child under this section, the local authority must terminate the appointment if—
(a) the child objects to its continuing, and
(b) the authority is satisfied that the child has sufficient understanding to make an informed objection.

(8) If the local authority gives effect to a child's objection under subsection (6) or (7) and the objection is to having anyone as the child's visitor, the authority does not have to propose to appoint another person under subsection (1) until the objection is withdrawn.

(9) Regulations may provide for the circumstances in which a person is to be regarded for the purposes of this section as being independent of the appointing local authority.

Commencement Information
I94 S. 98 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

Review of cases

99 Appointment of independent reviewing officer

(1) If a local authority is looking after a child, it must appoint an individual as the independent reviewing officer for that child's case.

(2) The initial appointment under subsection (1) must be made before the child's case is first reviewed in accordance with regulations made under section 102.

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) If a vacancy arises in respect of a child's case, the local authority must make another appointment under subsection (1) as soon as is practicable.

(4) An appointee must fall within a category of persons specified in regulations.

Commencement Information
I95 S. 99 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

100 Functions of the independent reviewing officer

(1) The independent reviewing officer must—
- (a) monitor the performance by the local authority of its functions in relation to the child's case;
- (b) participate, in accordance with regulations, in any review of the child's case;
- (c) ensure that any ascertained wishes and feelings of the child concerning the case are given due consideration by the local authority;
- (d) perform any other function specified in regulations.

(2) An independent reviewing officer's functions must be performed—
- (a) in such manner as may be specified in regulations, and
- (b) having regard to such guidance as that authority may issue in relation to the discharge of those functions.

(3) If the independent reviewing officer considers it appropriate to do so, the child's case may be referred by that officer to a Welsh family proceedings officer.

(4) If the independent reviewing officer is not an officer of the local authority, it is the duty of the authority—
- (a) to co-operate with that individual, and
- (b) to take such reasonable steps as that individual may require to enable that individual's functions under this section to be performed satisfactorily.

Commencement Information
I96 S. 100 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

101 Referred cases

(1) In relation to children whose cases are referred to Welsh family proceedings officers under section 100(3), the Lord Chancellor may by regulations—
- (a) extend any functions of the Welsh family proceedings officers in respect of family proceedings (within the meaning of section 12 of the Criminal Justice and Court Services Act 2000) to other proceedings;
- (b) require any functions of the Welsh family proceedings officers to be performed in the manner specified by the regulations.

(2) The power to make regulations under this section is exercisable only with the consent of the Welsh Ministers.

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information

I97 S. 101 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

102 Review of cases and inquiries into representations

(1) Regulations may require the case of each child who is being looked after by a local authority to be reviewed in accordance with the provisions of the regulations.

(2) The regulations may, among other things, make provision—

(a) as to the manner in which each case is to be reviewed;

(b) as to the considerations to which the local authority is to have regard in reviewing each case;

(c) as to the time when each case is first to be reviewed and the frequency of subsequent reviews;

(d) requiring the authority, before conducting any review, to seek the views of—

(i) the child,

(ii) the child's parents,

(iii) any person who is not a parent of the child but who has parental responsibility for the child, and

(iv) any other person whose views the authority considers to be relevant,

including, in particular, the views of those persons in relation to any particular matter which is to be considered in the course of the review;

(e) requiring the authority, in the case of a child who is in its care—

(i) to keep the plan under section 31A of the Children Act 1989 (care orders: care plans) for the child under review and, if it is of the opinion that some change is required, to revise the plan or make a new plan accordingly, and

(ii) to consider whether an application should be made to discharge the care order;

(f) requiring the authority, in the case of a child in accommodation provided by or on behalf of the authority—

(i) if there is no plan for the future care of the child, to prepare one,

(ii) if there is such a plan for the child, to keep it under review and, if it is of the opinion that some change is required, to revise the plan or make a new plan accordingly, and

(iii) to consider whether the accommodation accords with the requirements of this Part;

(g) requiring the authority to inform the child, so far as is reasonably practicable, of any steps the child may take under this Act or the Children Act 1989;

(h) requiring the authority to make arrangements, including arrangements with other bodies which provide services and which it considers appropriate, to implement any decision which it proposes to make in the course, or as a result, of the review;

(i) requiring the authority to notify details of the result of the review and of any decision taken by it in consequence of the review to—

(i) the child,

(ii) the child's parents,

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(iii) any person who is not a parent of the child but who has parental responsibility for the child, and

(iv) any other person whom it thinks ought to be notified;

(j) requiring the authority to monitor the arrangements which it has made with a view to ensuring that it complies with the regulations.

Commencement Information

I98 S. 102 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

Leaving care, accommodation and fostering

103 Befriending, advising and assisting looked after children

A local authority looking after a child must advise, assist and befriend the child with a view to promoting the child's well-being when it has ceased to look after the child.

Commencement Information

I99 S. 103 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

104 Young people entitled to support under sections 105 to 115

(1) The categories of young person defined in subsection (2) are entitled to support in accordance with sections 105 to 115.

(2) In this Act—

"category 1 young person" means a child who—

(a) is aged 16 or 17,

(b) is being looked after by a local authority, and

(c) has been looked after by a local authority or a local authority in England for a specified period, or periods amounting in all to a specified period, which began after the child reached a specified age and ended after the child reached the age of 16;

"category 2 young person" means a child who—

(a) is aged 16 or 17,

(b) is not being looked after by a local authority or a local authority in England, and

(c) immediately before ceasing to be looked after, was a category 1 young person;

"category 3 young person" means a person aged 18 or over who—

(a) has been a category 2 young person (and would continue to be so if he or she were under the age of 18), or

(b) was being looked after by a local authority when he or she reached the age of 18 and, immediately before ceasing to be looked after, was a category 1 young person;

"category 4 young person" means a person who—

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(a) is a category 3 young person towards whom the duties under sections 105, 106, 107(3) and (10) and 110 have ceased to apply (see section 111),
(b) has informed the responsible local authority that he or she is pursuing, or wishes to pursue, a programme of education or training, and
(c) has not reached the age of 25 or any lower age specified;

"category 5 young person" means a person—
(a) who has reached the age of 16 but has not yet reached the age of 21,
(b) with respect to whom a special guardianship order is in force (or, if the young person has reached the age of 18, was in force when he or she reached that age), and
(c) who was, immediately before the making of that order, looked after by a local authority;

"category 6 young person" means a person, other than a category 5 young person, who—
(a) at any time after reaching the age of 16 but while still a child was, but is no longer, looked after, accommodated or fostered,
(b) if so accommodated or fostered, is now within Wales, and
(c) has not yet reached the age of 21.

(3) In the definition of "category 6 young person", "looked after, accommodated or fostered" means—
(a) looked after by a local authority (without subsequently being looked after by a local authority in England),
(b) accommodated by or on behalf of a voluntary organisation,
(c) accommodated in a private children's home,
(d) accommodated for a consecutive period of at least three months—
(i) by or on behalf of a Local Health Board or Special Health Authority,
(ii) by or on behalf of a clinical commissioning group or the National Health Service Commissioning Board,
(iii) by or on behalf of a local authority in the exercise of education functions,
(iv) by or on behalf of a local authority in England in the exercise of education functions,
(v) in any care home or independent hospital, or
(vi) in any accommodation provided by or on behalf of an NHS Trust or by or on behalf of an NHS Foundation Trust, or
(e) privately fostered (within the meaning of section 66 of the Children Act 1989).

(4) Subsection (3)(d) applies even if the period of three months mentioned there began before the child reached the age of 16.

(5) In this Act "responsible local authority" means—
(a) in relation to a category 1 young person, the local authority which looks after the child;
(b) in relation to a category 2, category 3 or category 4 young person, the local authority which last looked after that person;
(c) in relation to category 5 young person, a local authority determined in accordance with regulations;

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(d) in relation to a category 6 young person falling within that category by virtue of paragraph (a) of subsection (3), the local authority which last looked after that person;

(e) in relation to a category 6 young person falling within that category by virtue of any other paragraph of that subsection, the local authority within whose area the person is.

(6) Regulations may, for the purposes of any of the powers or duties under sections 105 to 115—

(a) specify additional categories of persons;

(b) specify categories of persons who are not to be treated as falling within a category of young person mentioned in subsection (1);

(c) make provision for determining which local authority is to be the responsible local authority for the purpose of a category specified under paragraph (a).

Commencement Information

I100 S. 104 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

105 Keeping in touch

(1) The responsible local authority for a category 2 or category 3 young person must take reasonable steps to keep in touch with that person, whether the person is within its area or not.

(2) If the responsible local authority for a category 2 or category 3 young person has lost touch with that person it must—

(a) consider how to re-establish contact, and

(b) take reasonable steps to do so.

(3) In the case of a category 2 young person, the responsible local authority must discharge its duty under subsection (2) without delay and continue to take reasonable steps to re-establish contact until it succeeds.

(4) In the case of a category 3 young person, the duties under subsections (1) and (2) are subject to section 111.

(5) The responsible local authority for a category 6 young person falling within that category by virtue of section 104(3)(a) must take reasonable steps to contact the young person at such times as it thinks appropriate with a view to discharging its functions under section 115.

Modifications etc. (not altering text)

C10 Ss. 105-116 excluded by 2002 c. 41, Sch. 3 para. 1(1)(o) (as inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **199(4)**)

Commencement Information

I101 S. 105 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

106 Personal advisers

(1) The responsible local authority for a person mentioned in subsection (2) must arrange for that person to have a personal adviser.

(2) The persons are—
- (a) a category 1 young person;
- (b) a category 2 young person;
- (c) a category 3 young person;
- (d) a category 4 young person.

(3) The duty under subsection (1)—
- (a) in the case of a category 3 young person, is subject to section 111;
- (b) in the case of a category 4 young person, is subject to section 113.

(4) Personal advisers appointed under or by virtue of this Part are to have such functions as may be specified in regulations.

Modifications etc. (not altering text)

C10 Ss. 105-116 excluded by 2002 c. 41, Sch. 3 para. 1(1)(o) (as inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **199(4)**)

Commencement Information

I102 S. 106 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

107 Pathway assessments and plans: general

(1) The responsible local authority for a category 1 young person must carry out an assessment of the young person's needs with a view to determining what advice and other support it would be appropriate for it to provide to the young person under this Part—
- (a) while it is still looking after the young person, and
- (b) after it ceases to look after the young person.

(2) The responsible local authority for a category 2 or category 3 young person who does not already have a pathway plan must carry out an assessment of the young person's needs with a view to determining what advice and other support it would be appropriate for it to provide to the young person under this Part.

(3) After conducting an assessment under subsection (1) or (2), the local authority must prepare a pathway plan and maintain it for as long as the young person falls within category 1, 2 or 3 (but see subsection (12)).

(4) The responsible local authority for a category 4 young person must carry out an assessment of the young person's needs with a view to determining what advice and other support (if any) it would be appropriate for it to provide to the young person under this Part.

(5) In conducting an assessment under subsection (4), the local authority may take into account any duty that it may have to make a payment to the young person under section 112(2).

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Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(6) After conducting an assessment under subsection (4), the local authority must prepare a pathway plan.

(7) A pathway plan is a plan setting out—

(a) in the case of a plan for a category 1 young person—

(i) the advice and other support which the local authority intends to provide for the young person under this Part, both while it is looking after the young person and later, and

(ii) when it might cease to look after the young person;

(b) in the case of a plan for a category 2, category 3 or category 4 young person, the advice and other support which the local authority intends to provide for the young person under this Part;

(c) such other matters (if any) as may be specified in regulations.

(8) Regulations may make provision as to assessments for the purposes of this section.

(9) The regulations may, for example, make provision about—

(a) the persons who are to be consulted in relation to an assessment;

(b) the way in which an assessment is to be carried out, by whom and when;

(c) the recording of the results of an assessment;

(d) the considerations to which the local authority are to have regard in carrying out an assessment.

(10) The local authority must keep the pathway plan under regular review (but see subsections (12) and (13)).

(11) The local authority may carry out an assessment or review under this section at the same time as any other assessment or review of the young person's needs.

(12) In the case of a category 3 young person, the duties under subsections (3) and (10) are subject to section 111.

(13) In the case of a category 4 young person, the duty under subsection (10) is subject to section 113.

Modifications etc. (not altering text)

C10 Ss. 105-116 excluded by 2002 c. 41, Sch. 3 para. 1(1)(o) (as inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **199(4)**)

Commencement Information

I103 S. 107 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

108 Pathway assessments and plans: post-18 living arrangements

(1) The responsible local authority for a category 1 young person who has been placed with a local authority foster parent must comply with subsection (2) when—

(a) carrying out an assessment in relation to the young person under section 107(1),

(b) preparing and maintaining a pathway plan for the young person under section 107(3), or

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(c) reviewing the young person's pathway plan under section 107(10).

(2) The responsible local authority must ascertain whether the young person and his or her local authority foster parent wish to make a post-18 living arrangement.

(3) A "post-18 living arrangement" is an arrangement under which—

(a) a category 3 young person—

(i) who is under the age of 21, and

(ii) who was being looked after by a local authority when he or she reached the age of 18 and, immediately before ceasing to be looked after, was a category 1 young person, and

(b) a person (a "former foster parent") who was the young person's local authority foster parent immediately before he or she ceased to be looked after,

continue to live together after the young person has ceased to be looked after.

(4) Where the young person and his or her local authority foster parent wish to make a post-18 living arrangement, the responsible local authority must provide advice and other support in order to facilitate the arrangement.

(5) Subsection (4) does not apply if the responsible local authority considers that the making of a post-18 living arrangement between the young person and his or her local authority foster parent would not be consistent with the young person's well-being.

(6) Regulations may make provision about—

(a) the persons to whom information about post-18 living arrangements must be provided;

(b) the manner in which that information must be provided.

Modifications etc. (not altering text)

C10 Ss. 105-116 excluded by 2002 c. 41, Sch. 3 para. 1(1)(o) (as inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **199(4)**)

Commencement Information

I104 S. 108 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

109 Support for category 2 young people

(1) The responsible local authority for a category 2 young person must safeguard and promote that person's well-being and, unless it is satisfied that the person's well-being does not require it, support the person by—

(a) maintaining the person,

(b) providing the person with, or maintaining the person in, suitable accommodation, and

(c) providing support of such other descriptions as may be specified in regulations.

(2) Support under subsection (1) may be in kind or in cash.

(3) Regulations may make provision about the meaning of "suitable accommodation" and in particular about the suitability of landlords or other providers of accommodation.

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Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) Section 78(3) applies in relation to any decision by a local authority for the purposes of this section as it applies in relation to the decisions referred to in that section.

Modifications etc. (not altering text)

C10 Ss. 105-116 excluded by 2002 c. 41, Sch. 3 para. 1(1)(o) (as inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **199(4)**)

Commencement Information

I105 S. 109 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

110 Support for category 3 young people

(1) The responsible local authority for a category 3 young person must support that young person by—

(a) contributing, to the extent that the young person's well-being requires it, to expenses incurred by the young person in living near the place where he or she is, or will be, employed or seeking employment;

(b) contributing, to the extent that the young person's well-being and educational or training needs require it, to expenses incurred by the young person in living near the place where he or she is, or will be, receiving education or training;

(c) making a grant to the young person, to the extent that the young person's well-being and educational or training needs require it, to enable him or her to meet expenses connected with his or her education or training;

(d) doing anything else it considers appropriate, to the extent that the young person's well-being requires it.

(2) The responsible local authority for a category 3 young person who has a post-18 living arrangement must, in addition—

(a) monitor the arrangement, and

(b) if the authority considers that the arrangement is consistent with the young person's well-being, provide advice and other support to the young person and the former foster parent with a view to maintaining the arrangement.

(3) In subsection (2) “post-18 living arrangement” has the meaning given by section 108 and “former foster parent” has the same meaning as in that definition.

(4) The support given under subsection (1)(d) and (2)(b) may be in kind or in cash.

(5) Where support is provided to a former foster parent under subsection (2)(b), the support must include financial support.

(6) The responsible local authority for a category 3 young person who pursues higher education in accordance with his or her pathway plan must pay the relevant amount to that young person.

(7) The duty under subsection (6) is in addition to the responsible local authority's duty under subsection (1).

(8) Subsection (9) applies where the responsible local authority for a category 3 young person is satisfied that the young person—

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(a) is in full-time further or higher education,

(b) is being given support under subsection (1)(b) or (c) or has received a payment under subsection (6), and

(c) needs accommodation during a vacation because term-time accommodation is not available.

(9) The responsible authority must—

(a) provide the young person with suitable accommodation during the vacation, or

(b) pay the young person enough to secure such accommodation.

(10) The duties under this section are subject to section 111.

Modifications etc. (not altering text)

C10 Ss. 105-116 excluded by 2002 c. 41, Sch. 3 para. 1(1)(o) (as inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **199(4)**)

Commencement Information

I106 S. 110 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

111 Cessation of duties in relation to category 3 young people

(1) A responsible local authority's duties towards a category 3 young person cease when the young person reaches the age of 21, except in the circumstances set out in subsection (2).

(2) Where the category 3 young person's pathway plan sets out a programme of education or training which extends beyond the date on which he or she reaches the age of 21—

(a) the duties under section 110(1)(b) and (c), (6) and (9) continue until the young person ceases to pursue that programme, and

(b) the duties under sections 105, 106 and 107(3) and (10) continue concurrently with those duties and cease at the same time.

(3) For the purposes of subsection (2)(a), the responsible local authority must disregard any interruption in the young person's pursuance of a programme of education or training if it is satisfied that the young person will resume the programme as soon as is reasonably practicable.

Modifications etc. (not altering text)

C10 Ss. 105-116 excluded by 2002 c. 41, Sch. 3 para. 1(1)(o) (as inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **199(4)**)

Commencement Information

I107 S. 111 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

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Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

112 Support for category 4 young people

(1) The responsible local authority for a category 4 young person must support that young person, to the extent that his or her educational or training needs require it, by—

(a) contributing to expenses incurred by the young person in living near the place where he or she is, or will be, receiving education or training;

(b) making a grant to the young person to enable him or her to meet expenses connected with his or her education or training.

(2) The responsible local authority for a category 4 young person who pursues higher education in accordance with his or her pathway plan must pay the relevant amount to that young person.

(3) The duty under subsection (2) is in addition to the responsible local authority's duty under subsection (1).

(4) Where the responsible local authority for a category 4 young person is satisfied that the young person is in full-time further or higher education and needs accommodation during a vacation because term-time accommodation is not available, it must—

(a) provide the young person with suitable accommodation during the vacation, or

(b) pay the young person enough to secure such accommodation.

(5) The responsible local authority for a category 4 young person may take its duty under subsection (2) into account in assessing the young person's need under section 107(4) and in discharging its duties under subsections (1) and (4).

(6) The duties under this section are subject to section 113.

Modifications etc. (not altering text)

C10 Ss. 105-116 excluded by 2002 c. 41, Sch. 3 para. 1(1)(o) (as inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **199(4)**)

Commencement Information

I108 S. 112 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

113 Cessation of duties in relation to category 4 young people

(1) A responsible local authority's duties towards a category 4 young person cease when the young person ceases to pursue a programme of education or training in accordance with his or her pathway plan.

(2) For the purposes of subsection (1), the responsible local authority may disregard any interruption in the young person's pursuance of a programme of education or training if it is satisfied that the young person will resume the programme as soon as is reasonably practicable.

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Modifications etc. (not altering text)

C10 Ss. 105-116 excluded by 2002 c. 41, Sch. 3 para. 1(1)(o) (as inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **199(4)**)

Commencement Information

I109 S. 113 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

114 Support for category 5 young people and former category 5 young people

(1) The responsible local authority for a category 5 young person must consider whether the conditions in subsection (2) are satisfied in relation to the young person.

(2) The conditions are that—

(a) the young person needs support of a kind which it can give under this section, and

(b) the local authority is satisfied that the person by whom the young person was being looked after does not have the necessary facilities for advising or befriending him or her.

(3) If the conditions are satisfied the local authority must advise and befriend the young person and may give that person support in the manner described in subsection (4).

(4) The support may be given—

(a) in kind;

(b) by contributing to expenses incurred by the young person in living near the place where he or she is, or will be, employed or seeking employment;

(c) by contributing to expenses incurred by the young person in living near the place where he or she is, or will be, receiving education or training;

(d) by making a grant to the young person to enable him or her to meet expenses connected with his or her education or training;

(e) by providing accommodation, if support may not be given in respect of the accommodation under paragraphs (b) to (d);

(f) in cash.

(5) A local authority may also give support in the manner described in paragraphs (c) and (d) of subsection (4) to a young person who—

(a) is under the age of 25, and

(b) would be a category 5 young person if he or she were under the age of 21.

(6) Where a local authority is giving support in the manner described in subsection (4) (c) or (d) it may disregard any interruption in the young person's pursuance of a programme of education or training if it is satisfied that the young person will resume the programme as soon as is reasonably practicable.

(7) Where a local authority is satisfied that a young person for whom it may provide support under subsection (4) or (5) is in full-time further or higher education and needs accommodation during a vacation because term-time accommodation is not available, it must—

(a) provide the person with suitable accommodation during the vacation, or

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(b) pay the person enough to secure such accommodation.

Modifications etc. (not altering text)

C10 Ss. 105-116 excluded by 2002 c. 41, Sch. 3 para. 1(1)(o) (as inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **199(4)**)

Commencement Information

I110 S. 114 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

115 Support for category 6 young people and former category 6 young people

(1) The responsible local authority for a category 6 young person must consider whether the conditions in subsection (2) are satisfied in relation to the young person.

(2) The conditions are that—

(a) the young person needs support of a kind which the local authority can give under this section, and

(b) where the young person is a category 6 young person by virtue of section 104(3)(b) to (e), the local authority is satisfied that the person by whom the young person was being looked after, accommodated or fostered (within the meaning of that subsection) does not have the necessary facilities for advising or befriending him or her.

(3) If the conditions are satisfied—

(a) the local authority must advise and befriend the young person, if that person is a category 6 young person by virtue of section 104(3)(a) or (b), and

(b) in any other case, the local authority may advise and befriend the young person.

(4) Where as a result of this section, a local authority is under a duty, or is empowered, to advise and befriend a young person, it may give that person support in the manner described in subsection (5).

(5) The support may be given—

(a) in kind;

(b) where the young person is a category 6 young person by virtue of section 104(3)(a)—

(i) by contributing to expenses incurred by the young person in living near the place where he or she is, or will be, employed or seeking employment;

(ii) by contributing to expenses incurred by the young person in living near the place where he or she is, or will be, receiving education or training;

(iii) by making a grant to the young person to enable him or her to meet expenses connected with his or her education or training;

(c) by providing accommodation, if support may not be given in respect of the accommodation under paragraph (b);

(d) in cash.

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(6) A local authority may also give support in the manner described in subsection (5)(b)(ii) and (iii) to a young person who—
  (a) is under the age of 25, and
  (b) if he or she were under the age of 21, would be a category 6 young person by virtue of section 104(3)(a).

(7) Where a local authority is giving support in the manner described in subsection (5)(b)(ii) or (iii) it may disregard any interruption in the young person's pursuance of a programme of education or training if it is satisfied that the young person will resume the programme as soon as is reasonably practicable.

(8) Where a local authority is satisfied that a young person for whom it may provide support under subsection (4) or (6) is in full-time further or higher education and needs accommodation during a vacation because term-time accommodation is not available, it must—
  (a) provide the person with suitable accommodation during the vacation, or
  (b) pay the person enough to secure such accommodation.

Modifications etc. (not altering text)

C10 Ss. 105-116 excluded by 2002 c. 41, Sch. 3 para. 1(1)(o) (as inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **199(4)**)

Commencement Information

I111 S. 115 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

116 Supplementary provision about support for young persons in further or higher education

(1) Regulations may, for the purposes of sections 110(6) and 112(2)—
  (a) specify the relevant amount;
  (b) specify the meaning of "higher education";
  (c) make provision as to the payment of the relevant amount;
  (d) make provision as to the circumstances in which the relevant amount (or any part of it) may be recovered by a local authority from a young person to whom a payment has been made under those provisions.

(2) Regulations may make provision for the meaning of "full-time" ("*llawnamser*"), "further education" ("*addysg bellach*"), "higher education" ("*addysg uwch*") and "vacation" ("*gwyliau*") for the purposes of sections 110(8), 112(4), 114(7) and 115(8).

Modifications etc. (not altering text)

C10 Ss. 105-116 excluded by 2002 c. 41, Sch. 3 para. 1(1)(o) (as inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **199(4)**)

Commencement Information

I112 S. 116 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

117 Charging for provision under sections 109 to 115

(1) A local authority may impose a charge for support (other than advice) under sections 109 to 115.

(2) A charge imposed under subsection (1)—
- (a) may only cover the cost that the local authority incurs in meeting the needs to which the charge applies;
- (b) may be imposed—
  - (i) on the young person who receives the support, if that person has reached the age of 18;
  - (ii) on a person with parental responsibility for the young person who receives the support, if the young person is under 18 years of age.

(3) A person is not liable to pay a charge under this section during any period when the person is in receipt of a benefit which falls within a category specified in regulations.

(4) In subsection (3) "benefit" includes any allowance, payment, credit or loan.

(5) The power to make regulations under section 61 or 62 applies to charges under this section in relation to support as it applies to charges under section 59 in relation to care and support.

(6) Regulations may apply any provision made in or under sections 63 to 68 or sections 70 to 73 to charging under this section with or without specified modifications.

Commencement Information
I113 S. 117 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

118 Information

(1) Where it appears to a local authority that a young person—
- (a) with whom it is under a duty to keep in touch under section 105,
- (b) whom it has been advising and befriending under section 114 or 115, or
- (c) to whom it has been giving other support under section 114 or 115,

proposes to live, or is living, in the area of another local authority or a local authority in England, it must inform that other authority.

(2) Where a child who is accommodated in Wales—
- (a) by a voluntary organisation or in a private children's home,
- (b) by or on behalf of any Local Health Board or Special Health Authority,
- (c) by or on behalf of a clinical commissioning group or the National Health Service Commissioning Board,
- (d) by or on behalf of local authority in the exercise of education functions,
- (e) by or on behalf of a local authority in England in the exercise of education functions,
- (f) in any care home or independent hospital, or
- (g) in any accommodation provided by or on behalf of an NHS Trust or by or on behalf of an NHS Foundation Trust,

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ceases to be so accommodated after reaching the age of 16, the person by whom or on whose behalf the child was accommodated or who carries on or manages the home or hospital (as the case may be) must inform the local authority or local authority in England within whose area the child proposes to live.

(3) Subsection (2) only applies by virtue of paragraphs (b) to (g), if the accommodation has been provided for a consecutive period of at least three months.

(4) In a case where a child was accommodated by or on behalf of a local authority, or a local authority in England, in the exercise of education functions, subsection (2) applies only if the authority which accommodated the child is different from the authority within whose area the child proposes to live.

Commencement Information
I114 S. 118 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

Secure accommodation

119 Use of accommodation for restricting liberty

(1) Subject to the following provisions of this section, a child who is being looked after by a local authority or a local authority in England may not be placed, and if placed, may not be kept, in accommodation in Wales provided for the purpose of restricting liberty ("secure accommodation") unless it appears—
- (a) that the child—
  - (i) has a history of absconding and is likely to abscond from any other description of accommodation, and
  - (ii) is likely to suffer significant harm if the child absconds, or
- (b) that if the child is kept in any other description of accommodation, he or she is likely to injure himself or herself or other persons.

(2) The Welsh Ministers may by regulations—
- (a) specify a maximum period—
  - (i) beyond which a child may not be kept in secure accommodation in Wales without the authority of the court, and
  - (ii) for which the court may authorise a child to be kept in secure accommodation in Wales;
- (b) empower the court from time to time to authorise a child to be kept in secure accommodation in Wales for such further period as the regulations may specify;
- (c) provide that applications to the court under this section be made only by a local authority **[**[F24]or a local authority in England**]**.

(3) It is the duty of a court hearing an application under this section to determine whether any relevant criteria for keeping a child in secure accommodation are satisfied in the child's case.

(4) If a court determines that any such criteria are satisfied, it must make an order authorising the child to be kept in secure accommodation and specifying the maximum period for which the child may be so kept.

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) On any adjournment of the hearing of an application under this section, a court may make an interim order permitting the child to be kept during the period of the adjournment in secure accommodation.

(6) No court is to exercise the powers conferred by this section in respect of a child who is not legally represented in that court unless, having been informed of his or her right to apply for **[**[F25]the provision of representation under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012**]** and having had the opportunity to do so, the child refused or failed to apply.

(7) The Welsh Ministers may by regulations provide that—

(a) this section is or is not to apply to any description of children specified in the regulations;

(b) this section has effect in relation to children of a description specified in the regulations subject to modifications specified in the regulations;

(c) other provisions specified in the regulations are to have effect for the purpose of determining whether a child of a description specified in the regulations may be placed or kept in secure accommodation in Wales.

(8) The giving of an authorisation under this section does not prejudice any power of any court in England and Wales to give directions relating to the child to whom the authorisation relates.

(9) The giving of an authorisation under this section does not prejudice the effect of any direction given by a court in Scotland relating to a child to whom the authorisation relates, in so far as the direction has effect in the law of England and Wales.

(10) This section is subject to section 76(5).

[[F26](11) An order made under this section in relation to a child, if it would otherwise still be in force, ceases to have effect when the child reaches the age of 18.**]**

Textual Amendments

F24 Words in s. 119(2)(c) inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **304(a)**

F25 Words in s. 119(6) substituted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **304(b)**

F26 S. 119(11) inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **304(c)**

Modifications etc. (not altering text)

C11 S. 119 excluded (6.4.2016) by The Children (Secure Accommodation) (Wales) Regulations 2015 (S.I. 2015/1988), regs. 1(2), **14**

C12 S. 119 modified (6.4.2016) by The Children (Secure Accommodation) (Wales) Regulations 2015 (S.I. 2015/1988), regs. 1(2), **15**

C13 S. 119 applied (with modifications) (6.4.2016) by The Children (Secure Accommodation) (Wales) Regulations 2015 (S.I. 2015/1988), **regs. 1(2)**, 16 (as amended (2.4.2018) by S.I. 2018/391, **regs. 1(4)**, 2)

Commencement Information

I115 S. 119 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Children accommodated in certain establishments

120 Assessment of children accommodated by health authorities and education authorities

(1) Subsection (2) applies where a child is provided with accommodation in Wales by a Local Health Board, an NHS Trust or a local authority in the exercise of education functions ("the accommodating authority")—

(a) for a consecutive period of at least 3 months, or

(b) with the intention, on the part of that authority, of accommodating the child for such a period.

(2) The accommodating authority must notify the appropriate officer of the responsible authority—

(a) that it is accommodating the child, and

(b) when it ceases to accommodate the child.

(3) In this section, "the responsible authority" means—

(a) the local authority or local authority in England appearing to the accommodating authority to be the authority within whose area the child was ordinarily resident immediately before being accommodated, or

(b) where it appears to the accommodating authority that a child was not ordinarily resident within the area of any local authority or local authority in England, the local authority within whose area the accommodation is situated.

(4) In this section and in sections 121 and 122 "the appropriate officer" means—

(a) in relation to a local authority, its director of social services, and

(b) in relation to a local authority in England, its director of children's services.

(5) Where the appropriate officer of a local authority has been notified under this section **[**[F27], or under section 85 of the Children Act 1989 (assessment of children accommodated by health authorities and education authorities)**]**, the authority must—

(a) assess the child under section 21, and

(b) consider the extent to which (if at all) it should exercise any of its other functions under this Act, or any of its functions under the Children Act 1989, with respect to the child.

(6) The duty under subsection (5)(a) does not apply in relation to a child looked after by—

(a) a local authority,

(b) a local authority in England,

(c) a local authority in Scotland, or

(d) a Health and Social Care trust.

Textual Amendments

F27 Words in s. 120(5) inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **305**

Commencement Information

I116 S. 120 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

121 Assessment of children accommodated in care homes or independent hospitals

(1) Subsection (2) applies where a child is provided with accommodation in Wales in any care home or independent hospital—

(a) for a consecutive period of at least three months, or

(b) with the intention, on the part of the person taking the decision to accommodate the child, of accommodating the child for such period.

(2) The person carrying on the establishment in question must notify the appropriate officer of the local authority within whose area the establishment is carried on—

(a) that it is accommodating the child, and

(b) when it ceases to accommodate the child.

(3) Where the appropriate officer of a local authority has been notified under this section, the authority must—

(a) assess the child under section 21, and

(b) consider the extent to which (if at all) it should exercise any of its other functions under this Act, or any of its functions under the Children Act 1989, with respect to the child.

(4) The duty under subsection (3)(a) does not apply in relation to a child looked after by—

(a) a local authority,

(b) a local authority in England,

(c) a local authority in Scotland, or

(d) a Health and Social Care trust.

(5) If a person carrying on a care home or independent hospital fails, without reasonable excuse, to comply with this section, the person is guilty of an offence.

(6) A person authorised by a local authority may enter a care home or independent hospital within the authority's area for the purpose of establishing whether the requirements of this section have been complied with.

(7) A person exercising the power of entry must, upon request, produce some duly authenticated document showing authority to do so.

(8) A person who intentionally obstructs a person exercising the power of entry is guilty of an offence.

(9) A person committing an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Commencement Information

I117 S. 121 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

122 Visitors for children notified to a local authority [F28]...

(1) This section applies if the appropriate officer of a local authority—

(a) has been notified with respect to a child under section 120(2)(a) or 121(2)(a), **[**[F29]or under section 85(1) of the Children Act 1989 (children accommodated by health authorities and local education authorities),**]** and

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(b) has not been notified with respect to that child under section 120(2)(b) or section 121(2)(b) **[**[F30], or under section 85(2) of the Children Act 1989**]**.

(2) The local authority must, in accordance with regulations made under this section, make arrangements for the child to be visited by a representative of the authority ("a representative").

(3) It is the duty of a representative to provide advice and assistance to the local authority on the performance of its duties under this Act in relation to the child.

(4) Regulations under this section may make provision about—

(a) the frequency of visits under visiting arrangements;

(b) circumstances in which visiting arrangements must require a child to be visited;

(c) additional functions of a representative.

(5) In choosing a representative a local authority must satisfy itself that the person chosen has the necessary skills and experience to perform the functions of a representative.

(6) In this section "visiting arrangements" means arrangements made under subsection (2).

Textual Amendments

F28 Words in heading omitted (6.4.2016) by virtue of The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **306(c)**

F29 Words in s. 122(1)(a) inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **306(a)**

F30 Words in s. 122(1)(b) inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **306(b)**

Commencement Information

I118 S. 122 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

123 Services for children notified to a local authority [F31]...

(1) A local authority must provide such services as it considers appropriate for children in respect of whom it receives notification under section 120 or 121 **[**[F32], or under section 85 of the Children Act 1989 (children accommodated by health authorities and local education authorities)**]**.

(2) The services provided under this section must be provided with a view to promoting contact between each child in respect of whom the local authority receives notification and the child's family.

(3) The services may include anything the authority may provide or arrange under Part 4.

(4) Nothing in this section affects the duty imposed by section 39.

Textual Amendments

F31 Words in heading omitted (6.4.2016) by virtue of The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **307(b)**

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

F32 Words in s. 123(1) inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **307(a)**

Commencement Information

I119 S. 123 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

Moving looked after children to live outside the jurisdiction

124 Arrangements to assist children to live outside England and Wales

(1) A local authority may only arrange for, or assist in arranging for, a child in its care to live outside England and Wales with the approval of the court.

(2) A local authority may, with the approval of every person who has parental responsibility for the child arrange for, or assist in arranging for, any other child looked after by it to live outside England and Wales.

(3) The court must not give its approval under subsection (1) unless it is satisfied that—
- (a) living outside England and Wales would be in the child's best interests,
- (b) suitable arrangements have been, or will be, made for the child's reception and well-being in the country in which he or she will live,
- (c) the child has consented to living in that country, and
- (d) every person who has parental responsibility for the child has consented to the child living in that country.

(4) Where the court is satisfied that the child does not have sufficient understanding to give or withhold consent, it may disregard subsection (3)(c) and give its approval if the child is to live in the country concerned with a parent, guardian, special guardian, or other suitable person.

(5) Where a person whose consent is required by subsection (3)(d) fails to give consent, the court may dispense with that person's consent if it is satisfied that—
- (a) the person cannot be found or lacks capacity to give consent, or
- (b) the well-being of the child requires the consent to be dispensed with.

(6) Section 85 of the Adoption and Children Act 2002 (which imposes restrictions on taking children out of the United Kingdom) does not apply in the case of a child who is to live outside England and Wales with the approval of the court given under this section.

(7) Where a court decides to give its approval under this section, it may order that its decision is not to have effect during the appeal period.

(8) In subsection (7) "the appeal period" means—
- (a) where an appeal is made against the decision, the period between the making of the decision and the determination of the appeal, and
- (b) otherwise, the period during which an appeal may be made against the decision.

(9) This section does not apply **[**[F33]—
- (a) to a local authority placing a child in secure accommodation in Scotland under section 25 of the Children Act 1989, or
- (b)**]** to a local authority placing a child for adoption with prospective adopters.

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F33 Words in s. 124(9) inserted (27.4.2017) by Children and Social Work Act 2017 (c. 16), s. 70(1)(a), **Sch. 1 para. 13**

Commencement Information

I120 S. 124 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

Death of a looked after child

125 Death of children being looked after by local authorities

(1) If a child who is being looked after by a local authority dies, the authority—

(a) must notify the Welsh Ministers,

(b) must, so far as is reasonably practicable, notify the child's parents and every person who is not a parent of the child but who has parental responsibility for the child,

(c) may, with the consent (so far as it is reasonably practicable to obtain it) of every person who has parental responsibility for the child, arrange for the child's body to be buried or cremated, and

(d) may, if the conditions mentioned in subsection (2) are satisfied, make payments to any person who has parental responsibility for the child, or any relative, friend or other person connected with the child, in respect of travelling, subsistence or other expenses incurred by that person in attending the child's funeral.

(2) The conditions are that—

(a) it appears to the authority that the person concerned could not otherwise attend the child's funeral without undue financial hardship, and

(b) that the circumstances warrant the making of the payments.

(3) Subsection (1) does not authorise cremation where it does not accord with the practice of the child's religious persuasion.

(4) Where a local authority has exercised its power under subsection (1)(c) with respect to a child who was under 16 when the child died, it may recover from any parent of the child any expenses incurred by it.

(5) Any amounts so recoverable are, without prejudice to any other method of recovery, recoverable summarily as a civil debt.

(6) Nothing in this section affects any enactment regulating or authorising the burial, cremation or anatomical examination of the body of the deceased person.

Commencement Information

I121 S. 125 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[F34 Jurisdiction and procedure

Textual Amendments

F34 Ss. 125A-125D and cross-heading inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **308**

125A. Jurisdiction of courts

For the purposes of this Part "court" ("*llys*") means the High Court or a family court.

125B. Rules of court

(1) An authority having power to make rules of court may make such provision for giving effect to—

(a) this Part, or

(b) the provisions of any statutory instrument made under this Part,

as it appears to that authority to be necessary or expedient.

(2) Section 93 of the Children Act 1989 (rules of court) applies to rules made in accordance with this section as it applies to rules made in accordance with that section.

The rules may, in particular, make provision—

(a) with respect to the procedure to be followed in any relevant proceedings (including the manner in which any application is to be made or other proceedings commenced);

(b) as to the persons entitled to participate in any relevant proceedings, whether as parties to the proceedings or by being given the opportunity to make representations to the court;

(c) for children to be separately represented in relevant proceedings;

(d) with respect to the documents and information to be furnished, and notices to be given, in connection with any relevant proceedings;

(e) with respect to preliminary hearings;

(f) enabling the court, in such circumstance as may be prescribed, to proceed on any application even though the respondent has not been given notice of the proceedings.

(3) In subsection (2)—

"notice of proceedings" ("*hysbysiad o achos*") means a summons or such other notice of proceedings as is required; and "given" ("*rhoi*") in relation to a summons, means "served" ("*cyflwyno*");

"prescribed" ("*a ragnodir*") means prescribed by the rules; and

"relevant proceedings" ("*achos perthnasol*") means any application made, or proceedings brought, under any of the provisions mentioned in paragraphs (a) to (c) of subsection (1) and any part of such proceedings.

(4) This section and any other power in this Act to make rules of court are not to be taken as in any way limiting any other power of the authority in question to make rules of court.

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) When making any rules under this section an authority will be subject to the same requirement as to consultation (if any) as apply when the authority make rules under its general rule making power.

125C. Privacy for children involved in proceedings under this Part

Section 97 of the Children Act 1989 (privacy for children involved in certain proceedings) applies in relation to children involved in any proceedings under this Part as it applies in relation to children involved in any proceedings under that Act.

125D.

(1) A person must not publish to the public at large or any section of the public any material which is intended, or likely, to identify—

(a) any child which is being involved in any proceedings before the High Court or the family court in which any power under this Act may be exercised by the court with respect to any child; or

(b) an address or school as being that of a child involved in any such proceedings.

(2) In any proceedings for an offence under this section it is a defence for the accused to prove that he or she did not know, and had no reason to suspect, that the published material was intended, or likely, to identify the child.

(3) The court or the Lord Chancellor may, if satisfied that the welfare of the child requires it and, in the case of the Lord Chancellor, if the Lord Chief Justice agrees, by order dispense the requirements of subsection (1) to such extent as may be specified in the order.

(4) For the purposes of this section—

"material" ("*deunydd*") includes any picture or representation; and

"publish" ("*cyhoeddi*") includes—

(a) include in a programme service (within the meaning of the Broadcasting Act 1990);

(b) cause material to be published.

(5) Any person who contravenes this section is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

(6) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his or her functions under subsection (3).**]**

PART 7

SAFEGUARDING

Adults at risk

126 Adults at risk

(1) An "adult at risk", for the purposes of this Part, is an adult who—

(a) is experiencing or is at risk of abuse or neglect,

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) has needs for care and support (whether or not the authority is meeting any of those needs), and

(c) as a result of those needs is unable to protect himself or herself against the abuse or neglect or the risk of it.

(2) If a local authority has reasonable cause to suspect that a person within its area (whether or not ordinarily resident there) is an adult at risk, it must—

(a) make (or cause to be made) whatever enquiries it thinks necessary to enable it to decide whether any action should be taken (whether under this Act or otherwise) and, if so, what and by whom, and

(b) decide whether any such action should be taken.

(3) Regulations made under section 54(5) (care and support plans) must include provision about recording in a care and support plan the conclusions of enquiries made under this section.

Commencement Information

I122 S. 126 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

127 Adult protection and support orders

(1) An authorised officer may apply to a justice of the peace for an order ("an adult protection and support order") in relation to a person living in any premises within a local authority's area.

(2) The purposes of an adult protection and support order are—

(a) 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,

(b) to enable the authorised officer to ascertain whether that person is making decisions freely, and

(c) to enable the authorised officer properly to assess whether the person is an adult at risk and to make a decision as required by section 126(2) on what, if any, action should be taken.

(3) When an adult protection and support order is in force the authorised officer, a constable and any other specified person accompanying the officer in accordance with the order, may enter the premises specified in the order for the purposes set out in subsection (2).

(4) The justice of the peace may make an adult protection and support order if satisfied that—

(a) the authorised officer has reasonable cause to suspect that a person is an adult at risk,

(b) it is necessary for the authorised officer to gain access to the person in order properly to assess whether the person is an adult at risk and to make a decision as required by section 126(2) on what, if any, action should be taken,

(c) making an order is necessary in order to fulfil the purposes set out in subsection (2), and

(d) exercising the power of entry conferred by the order will not result in the person being at greater risk of abuse or neglect.

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) An adult protection and support order must—
- (a) specify the premises to which it relates;
- (b) provide that the authorised officer may be accompanied by a constable;
- (c) specify the period for which the order is to be in force.

(6) Other conditions may be attached to an adult protection and support order, for example—
- (a) specifying restrictions on the time at which the power of entry conferred by the order may be exercised;
- (b) providing for the authorised officer to be accompanied by another specified person;
- (c) requiring notice of the order to be given to the occupier of the premises and to the person suspected of being an adult at risk.

(7) A constable accompanying the authorised officer may use reasonable force if necessary in order to fulfil the purposes of an adult protection and support order set out in subsection (2).

(8) On entering the premises in accordance with an adult protection and support order the authorised officer must—
- (a) state the object of the visit,
- (b) produce evidence of the authorisation to enter the premises, and
- (c) provide an explanation to the occupier of the premises of how to complain about how the power of entry has been exercised.

(9) In this section "an authorised officer" means a person authorised by a local authority for the purposes of this section, but regulations may set restrictions on the persons or categories of persons who may be authorised.

Commencement Information
I123 S. 127 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

128 Duty to report adults at risk

(1) If a relevant partner of a local authority has reasonable cause to suspect that a person is an adult at risk and appears to be within the authority's area, it must inform the local authority of that fact.

(2) If the person that the relevant partner has reasonable cause to suspect is an adult at risk appears to be within the area of a local authority other than one of which it is a relevant partner, it must inform that other local authority.

(3) If a local authority has reasonable cause to suspect that a person within its area at any time is an adult at risk and is living or proposing to live in the area of another local authority (or a local authority in England), it must inform that other authority.

(4) For the purpose of this section a relevant partner of a local authority is a person who is a relevant partner of the authority for the purposes of section 162.

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information
I124 S. 128 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

129 Abolition of local authority's power to remove persons in need of care and attention

Section 47 of the National Assistance Act 1948 (which enables local authorities to apply for a court order to remove persons in need of care and attention from home to hospitals or other places) ceases to apply to persons in Wales.

Commencement Information
I125 S. 129 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

Children at risk

130 Duty to report children at risk

(1) If a relevant partner of a local authority has reasonable cause to suspect that a child is a child at risk and appears to be within the authority's area, it must inform the local authority of that fact.

(2) If the child that the relevant partner has reasonable cause to suspect is a child at risk appears to be within the area of a local authority other than one of which it is a relevant partner, it must inform that other local authority.

(3) If a local authority has reasonable cause to suspect that a child within its area at any time is a child at risk and is living or proposing to live within the area of another local authority (or a local authority in England), it must inform that other authority.

(4) In this section, “a child at risk” is a child who—
- (a) is experiencing or is at risk of abuse, neglect or other kinds of harm, and
- (b) has needs for care and support (whether or not the authority is meeting any of those needs).

(5) For the purposes of this section a relevant partner of a local authority is—
- (a) a person who is a relevant partner of the local authority for the purposes of section 162;
- (b) a youth offending team for an area any part of which falls within the area of the authority.

(6) For provision about a local authority's duty to investigate children at risk, see section 47 of the Children Act 1989.

Commencement Information
I126 S. 130 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Guidance

131 Guidance about adults at risk and children at risk

(1) The following must, in exercising their functions under sections 126 to 128 and 130, have regard to any guidance given to them for the purpose by the Welsh Ministers—

(a) a local authority;

(b) a person who is an authorised officer for the purposes of section 127;

(c) a constable or other specified person accompanying an authorised officer in accordance with an adult protection and support order made under section 127;

(d) a person who is a relevant partner for the purposes of section 128 or 130.

(2) The Welsh Ministers must consult the Secretary of State before giving guidance under subsection (1).

Commencement Information

I127 S. 131 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

National Independent Safeguarding Board

132 The National Independent Safeguarding Board

(1) There is to be a board called the National Independent Safeguarding Board (referred to in this Part as "the National Board").

(2) The National Board's duties are—

(a) to provide support and advice to Safeguarding Boards with a view to ensuring that they are effective,

(b) to report on the adequacy and effectiveness of arrangements to safeguard children and adults in Wales, and

(c) to make recommendations to the Welsh Ministers as to how those arrangements could be improved.

(3) The National Board—

(a) must make an annual report to the Welsh Ministers,

(b) must make such other reports to the Welsh Ministers as they require, and

(c) may make such other reports as it thinks fit.

Commencement Information

I128 S. 132 in force at 21.10.2015 by S.I. 2015/1744, **art. 2(a)**

133 Regulations about the National Board

(1) Regulations may make further provision about the National Board.

(2) Regulations under this section may, for example, provide for—

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) the constitution and membership of the National Board (including provision about terms of appointment, disqualification, resignation, suspension or removal of members);
(b) the remuneration and allowances to be paid to members;
(c) the proceedings of the National Board;
(d) the National Board to consult with those who may be affected by arrangements to safeguard adults and children in Wales;
(e) the form, content and timing of the National Board's reports;
(f) the publication of the National Board's reports.

(3) Regulations under this section may not provide for a Minister of the Crown to be a member of the National Board.

Commencement Information
I129 S. 133 in force at 21.10.2015 by S.I. 2015/1744, **art. 2(b)**

Safeguarding Children Boards and Safeguarding Adults Boards

134 Safeguarding Children Boards and Safeguarding Adults Boards

(1) Regulations must set out those areas in Wales for which there are to be Safeguarding Boards ("Safeguarding Board areas").

(2) Each of the following is a Safeguarding Board partner in relation to a Safeguarding Board area—
(a) the local authority for an area, any part of which falls within the Safeguarding Board area;
(b) the chief officer of police for a police area, any part of which falls within the Safeguarding Board area;
(c) a Local Health Board for an area, any part of which falls within the Safeguarding Board area;
(d) an **[**[F35]NHS Trust**]** providing services in the Safeguarding Board area;
(e) the Secretary of State to the extent that the Secretary of State is discharging functions under sections 2 and 3 of the Offender Management Act 2007 in relation to Wales;
(f) any provider of probation services that is required by arrangements under section 3(2) of the Offender Management Act 2007 to act as a Safeguarding Board partner in relation to the Safeguarding Board area.

(3) After consulting the Safeguarding Board partners for an area, the Welsh Ministers must by regulations specify—
(a) a Safeguarding Board partner as the lead partner in relation to children for the area, and
(b) a Safeguarding Board partner as the lead partner in relation to adults for the area.

(4) The lead partner in relation to children must establish a Safeguarding Children Board for its Safeguarding Board area.

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) The lead partner in relation to adults must establish a Safeguarding Adults Board for its Safeguarding Board area.

(6) A Safeguarding Board must include—

(a) a representative of each Safeguarding Board partner mentioned in subsection (2) in relation to the Safeguarding Board area, and

(b) a representative of any other person or body specified in regulations as a Safeguarding Board partner in relation to the Safeguarding Board area.

(7) 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.

(8) Regulations under subsection (6)(b) may not specify a Minister of the **[**[F36]Crown,**]** the governor of a prison or secure training centre (or, in the case of a contracted out prison or secure training centre, its director) **[**[F37]or the principal of a secure college**]** as a Safeguarding Board partner unless the Secretary of State consents.

(9) A Safeguarding Board may include representatives of such other persons or bodies, being persons or bodies mentioned in subsection (10), as the Board considers should be represented on it.

(10) Those persons or bodies are persons and bodies of any nature who or which exercise functions or are engaged in activities relating to children or adults (as the case may be) in the Safeguarding Board area in question.

(11) In this section—

(a) a reference to a prison includes a young offender institution;

(b) a reference to a contracted out secure training centre has the meaning given by section 15 of the Criminal Justice and Public Order Act 1994;

(c) a reference to a contracted out prison has the meaning given by section 84(4) of the Criminal Justice Act 1991.

Textual Amendments

F35 Words in s. 134(2)(d) substituted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **309**

F36 Word in s. 134(8) substituted (20.3.2015) by Criminal Justice and Courts Act 2015 (c. 2), s. 95(1), **Sch. 9 para. 32(2)(a)**; S.I. 2015/778, art. 2(1)(c); S.I. 2015/778, art. 2(1)(c); S.I. 2015/778, art. 2(1)(c)

F37 Words in s. 134(8) inserted (20.3.2015) by Criminal Justice and Courts Act 2015 (c. 2), s. 95(1), **Sch. 9 para. 32(2)(b)**; S.I. 2015/778, art. 2(1)(c); S.I. 2015/778, art. 2(1)(c); S.I. 2015/778, art. 2(1)(c)

Commencement Information

I130 S. 134 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

135 Functions and procedures of Safeguarding Boards

(1) The objectives of a Safeguarding Children Board are—

(a) to protect children within its area who are experiencing, or are at risk of, abuse, neglect or other kinds of harm, and

(b) to prevent children within its area from becoming at risk of abuse, neglect or other kinds of harm.

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) The objectives of a Safeguarding Adults Board are—
- (a) to protect adults within its area who—
  - (i) have needs for care and support (whether or not a local authority is meeting any of those needs), and
  - (ii) are experiencing, or are at risk of, abuse or neglect, and
- (b) to prevent those adults within its area mentioned in paragraph (a)(i) from becoming at risk of abuse or neglect.

(3) A Safeguarding Board must seek to achieve its objectives by co-ordinating and ensuring the effectiveness of what is done by each person or body represented on the Board.

(4) Regulations must—
- (a) provide for a Safeguarding Board to have functions relating to its objectives (including, for example, functions of review or investigation);
- (b) make provision as to the procedures to be followed by a Safeguarding Board;
- (c) specify when and how children or 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.

(5) A Safeguarding Board may cooperate with another one or more Safeguarding Boards.

(6) A Safeguarding Board may act jointly with another one or more Safeguarding Boards in relation to their combined areas and if they do so—
- (a) references in this Part to a Safeguarding Board are to be read as references to the Boards acting jointly, and
- (b) references in this Part to a Safeguarding Board area are to be read as references to the combined area.

(7) The Safeguarding Children Board and the Safeguarding Adults Board for an area may form a joint board for the area, and if they do so—
- (a) the joint board is to have the objectives in both subsections (1) and (2), and
- (b) references in this Part to a Safeguarding Board are to be read as references to the joint board.

Commencement Information
I131 S. 135 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

136 Safeguarding Boards: annual plans and reports

(1) 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.

(2) No later than 31 July of each year, a Safeguarding Board must publish a report on—
- (a) how it has exercised its functions in the preceding financial year, and
- (b) the extent to which it implemented the proposals in its annual plan for the preceding financial year.

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) 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).

(4) In this section "financial year" means the twelve months ending with 31 March.

Commencement Information

I132 S. 136 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

137 Supply of information requested by Safeguarding Boards

(1) A Safeguarding Board may, for the purpose of enabling or assisting the Board to perform its functions, ask a qualifying person or body to supply specified information to which subsection (2) or (3) applies to—

(a) the Board, or

(b) a person or body specified by the Board.

(2) This subsection applies to information relating to—

(a) the qualifying person or body to whom or to which the request is made,

(b) a function or activity of that qualifying person or body, or

(c) a person in respect of whom a function is exercisable, or an activity is engaged in, by that qualifying person or body.

(3) This subsection applies to information which—

(a) has been supplied to the qualifying person or body in compliance with another request under this section, or

(b) is derived from information so supplied.

(4) The qualifying person or body to whom or to which a request is made under subsection (1) must comply with the request unless the person or body considers that doing so would—

(a) be incompatible with the duties of the person or body, or

(b) otherwise have an adverse effect on the exercise of the functions of the person or body.

(5) A qualifying person or body who decides not to comply with a request under subsection (1) must give the Safeguarding Board which made the request written reasons for the decision.

(6) Information supplied under this section may only be used by the Board or other person or body to whom or to which it is supplied for the purpose mentioned in subsection (1).

(7) In this section—

"qualifying person or body" ("*person neu gorff cymhwysol*") means a person or body whose functions or activities are considered by the Board to be such that the person or body is likely to have information relevant to the exercise of a function of the Board;

"specified" ("*penodedig" and "a bennir*") means specified in a request made under subsection (1).

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information
I133 S. 137 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

138 Funding of Safeguarding Boards

(1) A Safeguarding Board partner may make payments towards expenditure incurred by, or for purposes connected with, the Safeguarding Board on which it is represented—
  (a) by making the payments directly, or
  (b) by contributing to a fund out of which the payments may be made.

(2) A Safeguarding Board partner may provide staff, goods, services, accommodation or other resources for purposes connected with the Safeguarding Board on which it is represented.

(3) Regulations may—
  (a) require payments to be made by a Safeguarding Board partner towards expenditure incurred by, or for purposes connected with, the Safeguarding Board on which it is represented, and
  (b) provide for how the amount of those payments is to be determined in respect of a specified period.

(4) The Welsh Ministers must consult the Secretary of State before making regulations under subsection (3) which require payments to be made by a Safeguarding Board partner mentioned in section 134(2)(b), (e) or (f).

Commencement Information
I134 S. 138 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

139 Safeguarding Boards: supplementary

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

(2) Regulations may make provision as to the functions of Safeguarding Board partners relating to the Safeguarding Boards on which they are represented.

(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.

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

Commencement Information
I135 S. 139 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

140 Combined Safeguarding Boards

(1) The Welsh Ministers may by order provide that in each Safeguarding Board area, the Safeguarding Children Board and the Safeguarding Adults Board are to combine so as to form a single Safeguarding Board for the area ("a Safeguarding Children and Adult Board").

(2) An order under this section may—
- (a) amend any provision of this Part as a consequence of there being a single Safeguarding Children and Adult Board for each Safeguarding Board area, and
- (b) make other consequential provision including amendments of any other enactment (whenever passed or made).

Commencement Information
I136 S. 140 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

141 Procedure for orders under section 140

(1) Before making an order under section 140, the Welsh Ministers must consult—
- (a) each Safeguarding Board partner for the Safeguarding Board area to which the proposed order relates,
- (b) the Secretary of State, and
- (c) such other persons as the Welsh Ministers consider appropriate,

on the proposed draft order.

(2) The Welsh Ministers must—
- (a) allow those persons a period of at least 12 weeks to submit comments on the proposed draft order,
- (b) consider any comments submitted within that period, and
- (c) publish a summary of those comments.

(3) If, following that consultation, the Welsh Ministers wish to proceed with the making of an order under section 140, they must lay a draft order before the National Assembly for Wales.

(4) A draft order laid under subsection (3)—
- (a) must be accompanied by a statement of the Welsh Ministers giving details of any differences between the draft order consulted on under subsection (1) and the draft order laid under subsection (3), and
- (b) may not be approved by a resolution of the National Assembly for Wales in accordance with section 196(6) until after the expiry of the period of 60 days beginning with the day on which the draft order is laid.

Commencement Information
I137 S. 141 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

142 Interpretation of Part 7

In this Part—

"National Board" ("*Bwrdd Cenedlaethol*") means the National Independent Safeguarding Board referred to in section 132;

"Safeguarding Board" ("*Bwrdd Diogelu*") means a Safeguarding Children Board or a Safeguarding Adult Board established under section 134 (and references to a Safeguarding Board's area are to the Safeguarding Board area for which it is established);

"Safeguarding Board area" ("*ardal Bwrdd Diogelu*") means an area set out in regulations under section 134(1);

"Safeguarding Board partner" ("*partner Bwrdd Diogelu*") means a person or body mentioned in section 134(2) or in regulations made under section 134(6)(b) (and references to a Safeguarding Board partner's area are to the Safeguarding Board area in relation to which it is a Safeguarding Board partner).

Commencement Information
I138 S. 142 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

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
I139 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.

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(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

I140 S. 144 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

[F38 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.

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F38 Ss. 144A-144C and cross-heading inserted (4.9.2017 for the insertion of s. 144A) by Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2), **ss. 56(1)**, 188(1); S.I. 2017/846, art. 2(a)

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.

(8) In this section—

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(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

F38 Ss. 144A-144C and cross-heading inserted (4.9.2017 for the insertion of s. 144A) by Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2), **ss. 56(1)**, 188(1); S.I. 2017/846, art. 2(a)

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

I141 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).

(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.

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(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
I142 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.

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information
I143 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
I144 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
I145 S. 149 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

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—

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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

I146 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

I147 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

(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—

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Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(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

I148 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

I149 S. 153 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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
I150 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
I151 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.

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information
I152 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
I153 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
I154 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
I155 S. 159 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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
I156 S. 160 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

161 Powers of entry and inspection

(1) A person falling within subsection (2) has at all reasonable times—
- (a) a right of entry to the premises of the local authority in question;
- (b) a right to inspect, and take copies of, any records or other documents kept by the authority, and any other documents containing information relating to the authority, which the person considers relevant to the exercise of his or her functions under or by virtue of this Part.

(2) The following persons fall within this subsection—
- (a) 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;
- (b) a person specified in a direction under section 154;
- (c) the Welsh Ministers in pursuance of a direction under section 155;
- (d) a person nominated by a direction under section 155.

(3) In exercising the right under subsection (1)(b) to inspect records or other documents, a person ("P")—
- (a) is entitled to have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records or other documents in question, and
- (b) may require the following persons to provide any assistance P may reasonably require (including, among other things, the making of information available for inspection or copying in a legible form)—
  - (i) the person by whom or on whose behalf the computer is or has been so used;
  - (ii) any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material.

(4) Any reference in this section to a person falling within subsection (2) includes a reference to any person assisting that person.

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) In this section "document" and "records" each include information recorded in any form.

Commencement Information
I157 S. 161 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

PART 9

CO-OPERATION AND PARTNERSHIP

Co-operation

162 Arrangements to promote co-operation: adults with needs for care and support and carers

(1) A local authority must make arrangements to promote co-operation between—
- (a) the local authority,
- (b) each of the authority's relevant partners in the exercise of—
  - (i) their functions relating to adults with needs for care and support or to adults who are carers, and
  - (ii) their other functions the exercise of which is relevant to the functions referred to in sub-paragraph (i), and
- (c) such other persons or bodies as the authority considers appropriate, being persons or bodies of any nature who or which exercise functions or are engaged in activities in relation to—
  - (i) adults within the authority's area with needs for care and support, or
  - (ii) adults within the authority's area who are carers.

(2) A local authority must also make arrangements to promote co-operation between the officers of the authority who exercise its functions.

(3) The arrangements under subsections (1) and (2) are to be made with a view to—
- (a) improving the well-being of—
  - (i) adults within the authority's area with needs for care and support, and
  - (ii) adults within the authority's area who are carers;
- (b) improving the quality of care and support for adults, and of support for adults who are carers, provided in the authority's area (including the outcomes that are achieved from such provision);
- (c) protecting adults with needs for care and support who are experiencing, or are at risk of, abuse or neglect.

(4) For the purposes of this section each of the following is a relevant partner of a local authority—
- (a) the local policing body and the chief officer of police for a police area any part of which falls within the area of the local authority;
- (b) any other local authority with which the authority agrees that it would be appropriate to co-operate under this section;

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(c) the Secretary of State to the extent that the Secretary of State is discharging functions under sections 2 and 3 of the Offender Management Act 2007 in relation to Wales;

(d) any provider of probation services that is required by arrangements under section 3(2) of the Offender Management Act 2007 to act as a relevant partner of the authority;

(e) a Local Health Board for an area any part of which falls within the area of the authority;

(f) an **[**[F39]NHS Trust**]** providing services in the area of the authority;

(g) the Welsh Ministers to the extent that they are discharging functions under Part 2 of the Learning and Skills Act 2000;

(h) such a person, or a person of such description, as regulations may specify.

(5) Regulations under subsection (4)(h) may not specify a Minister of the Crown or the governor of a prison (or, in the case of a contracted out prison, its director) unless the Secretary of State consents.

(6) The relevant partners of a local authority must co-operate with the authority in the making of arrangements under this section.

(7) A local authority and any of its relevant partners may for the purposes of arrangements under this section—

(a) provide staff, goods, services, accommodation or other resources;

(b) establish and maintain a pooled fund;

(c) share information with each other.

(8) For the purposes of subsection (7) a pooled fund is a fund—

(a) which is made up of contributions by the authority and the relevant partner or partners concerned, and

(b) out of which payments may be made towards expenditure incurred in the discharge of functions of the authority and functions of the relevant partner or partners.

(9) A local authority and each of its relevant partners must, in exercising their functions under this section, have regard to any guidance given to them for the purpose by the Welsh Ministers.

(10) The Welsh Ministers must consult the Secretary of State before giving guidance under subsection (9).

(11) In this section—

(a) a reference to a prison includes a young offender institution;

(b) a reference to a contracted out prison has the meaning given by section 84(4) of the Criminal Justice Act 1991.

Textual Amendments

F39 Words in s. 162(4)(f) substituted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **310**

Commencement Information

I158 S. 162 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

163 Arrangements to promote co-operation: children

(1) Section 25 of the Children Act 2004 (co-operation to improve well-being: Wales) is amended as follows.

(2) After subsection (1) insert—

"(1A) Each local authority in Wales must also make arrangements to promote co-operation between officers of the authority who exercise its functions."

(3) For subsection (2) substitute—

"(2) The arrangements under subsections (1) and (1A) are to be made with a view to—

(a) improving the well-being of children within the authority's area, in particular those with needs for care and support;

(b) improving the quality of care and support for children provided in the authority's area (including the outcomes that are achieved from such provision);

(c) protecting children who are experiencing, or are at risk of, abuse, neglect or other kinds of harm (within the meaning of the Children Act 1989)."

(4) In subsection (4)—

(a) after paragraph (a) insert—

"(aa) any other local authority in Wales with which the authority agrees that it would be appropriate to co-operate under this section;";

(b) in paragraph (f) for "Assembly" substitute " Welsh Ministers " and for "it is" substitute " they are ";

(c) after paragraph (f) insert—

"(g) such a person, or a person of such description, as regulations made by the Welsh Ministers may specify."

(5) After subsection (4) insert—

"(4A) Regulations under subsection (4)(g) may not specify a Minister of the Crown or the governor of a prison or secure training centre (or, in the case of a contracted out prison or secure training centre, its director) unless the Secretary of State consents."

(6) In subsections (8) and (9) for "Assembly" substitute " Welsh Ministers ".

(7) After subsection (10) insert—

"(11) In this section—

"care and support" means—

(a) care;

(b) support;

(c) both care and support;

"well-being" means well-being in relation to any of the following—

(a) physical and mental health and emotional well-being;

(b) protection from abuse and neglect;

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Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(c) education, training and recreation;
(d) domestic, family and personal relationships;
(e) contribution made to society;
(f) securing rights and entitlements;
(g) social and economic well-being;
(h) suitability of living accommodation;
(i) physical, intellectual, emotional, social and behavioural development;

and it includes "welfare" as that word is interpreted for the purposes of the Children Act 1989."

(8) In consequence of the amendment made by subsection (4)(b), in section 66 of the Children Act 2004 (regulations and orders), in subsection (7), after "section" insert " 25 or ".

Commencement Information
I159 S. 163 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

164 Duty to co-operate and provide information in the exercise of social services functions

(1) If a local authority requests the co-operation of a person mentioned in subsection (4) in the exercise of any of its social services functions, the person must comply with the request unless the person considers that doing so would—
(a) be incompatible with the person's own duties, or
(b) otherwise have an adverse effect on the exercise of the person's functions.

(2) If a local authority requests that a person mentioned in subsection (4) provides it with information it requires for the purpose of the exercise of any of its social services functions, the person must comply with the request unless the person considers that doing so would—
(a) be incompatible with the person's own duties, or
(b) otherwise have an adverse effect on the exercise of the person's functions.

(3) A person who decides not to comply with a request under subsection (1) or (2) must give the local authority which made the request written reasons for the decision.

(4) The persons are—
(a) a relevant partner of the local authority making the request;
(b) a local authority, a Local Health Board or an **[**[F40]NHS Trust**]** which is not a relevant partner of the local authority making the request;
(c) a youth offending team for an area any part of which falls within the area of the local authority making the request.

(5) A local authority and each of those persons mentioned in subsection (4) must in exercising their functions under this section have regard to any guidance given to them for the purpose by the Welsh Ministers.

(6) The Welsh Ministers must consult the Secretary of State before giving guidance under subsection (5).

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(7) For the purpose of this section a relevant partner of a local authority is a person who is a relevant partner of the authority for the purposes of section 162.

Textual Amendments

F40 Words in s. 164(4)(b) substituted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **311**

Commencement Information

I160 S. 164 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

[F41 164A Duty of other persons to co-operate and provide information

(1) If a local authority requests the co-operation of a person mentioned in subsection (4) in the exercise of its functions mentioned in subsection (5), the person must comply with the request unless the person considers that doing so would—
  (a) be incompatible with the person's own duties, or
  (b) otherwise have an adverse effect on the exercise of the person's functions.

(2) If a local authority requests that a person mentioned in subsection (4) provides it with information it requires for the purpose of the exercise of any of its functions mentioned in subsection (5), the person must comply with the request unless the person considers that doing so would—
  (a) be incompatible with the person's own duties, or
  (b) otherwise have an adverse effect on the exercise of the person's functions.

(3) A person who decides not to comply with a request under subsection (1) or (2) must give the local authority which made the request written reasons for the decision.

(4) The persons are—
  (a) a local authority in England;
  (b) a local housing authority in England;
  (c) the National Health Service Commissioning Board;
  (d) any clinical commissioning group, Special Health Authority, NHS Foundation Trust, or NHS trust in England established under section 25 of the National Health Service Act 2006;
  (e) any other persons—
    (i) as regulations may specify, or
    (ii) of a description as regulations may specify.

(5) The functions are—
  (a) the local authority's functions under section 14F of the Children Act 1989 (special guardianship support services);
  (b) any of the local authority's functions in relation to safeguarding and promoting the well-being of children and young persons, in particular those with needs for care and support, and their families and others;
  (c) any of the local authority's functions in relation to looked-after and accommodated children;
  (d) any of the local authority's functions in relation to young persons entitled to support under sections 105 to 115.

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(6) Regulations under subsection (4)(e) may not specify the following persons without consent of the Secretary of State—

(a) a Minister of the Crown, or

(b) the governor of a prison or secure training centre (or in the case of a contracted out prison or secure training centre, its director).

(7) In this section "local housing authority" ("*awdurdod tai lleol*") means a local housing authority within the meaning of the Housing Act 1985.**]**

Textual Amendments

F41 S. 164A inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **312**

165 Promoting integration of care and support with health services etc

(1) A local authority must exercise its social services functions with a view to ensuring the integration of care and support provision with health provision and health-related provision where it considers that this would—

(a) promote the well-being of—

(i) children within the authority's area,

(ii) adults within the authority's area with needs for care and support, or

(iii) carers within the authority's area with needs for support,

(b) contribute to the prevention or delay of the development by children or adults within its area of needs for care and support or the development by carers within its area of needs for support, or

(c) improve the quality of care and support for children and adults, and of support for carers, provided in its area (including the outcomes that are achieved from such provision).

(2) "Care and support provision" means—

(a) provision to meet the needs of children and adults for care and support, and

(b) provision to meet carers' needs for support.

(3) "Health provision" means provision of health services as part of the health service.

(4) "Health-related provision" means provision of services which may have an effect on the health of individuals but which are not—

(a) health services provided as part of the health service, or

(b) services provided in the exercise of social services functions.

(5) The "health service" means the health service continued under section 1(1) of the National Health Service (Wales) Act 2006.

Commencement Information

I161 S. 165 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Partnership arrangements

166 Partnership arrangements

(1) Regulations may require specified partnership arrangements to be made by—
- (a) two or more local authorities, or
- (b) one or more local authorities and one or more Local Health Boards.

(2) Partnership arrangements are arrangements for carrying out—
- (a) functions of a local authority specified in regulations which—
  - (i) are social services functions, or
  - (ii) in the opinion of the Welsh Ministers, have an effect on, or are affected by, a local authority's social services functions, or
- (b) functions specified in regulations of—
  - (i) a Local Health Board, or
  - (ii) an **[**[F42]NHS Trust**]**.

(3) Regulations under subsection (1) must make provision—
- (a) specifying the local authorities and Local Health Boards that are to take part in partnership arrangements;
- (b) about the form that partnership arrangements are to take;
- (c) about the responsibility for, and the operation and management of, partnership arrangements;
- (d) for sharing information between the following—
  - (i) local authorities;
  - (ii) Local Health Boards;
  - (iii) any teams or persons carrying out partnership arrangements in accordance with regulations made by virtue of subsection (4)(b);
  - (iv) any partnership boards established under regulations under section 168.

(4) Regulations under subsection (1) may make provision—
- (a) for a local authority or a Local Health Board to carry out any of the functions specified for the purposes of subsection (2) for the purposes of partnership arrangements;
- (b) for the establishment of teams or for the appointment of persons to carry out partnership arrangements and for assigning to those teams or persons any of the functions specified for the purposes of subsection (2);
- (c) specifying the persons or categories of persons for whose benefit partnership arrangements are to be carried out;
- (d) for the referral of persons to services provided in accordance with partnership arrangements.

(5) The provision that may be made under subsection (3)(c) includes, for example, provision—
- (a) requiring partnership arrangements to be carried out under the direction of a partnership board established under regulations under section 168;
- (b) about the review of cases referred in accordance with partnership arrangements;

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(c) about complaints and disputes about the exercise of functions in accordance with partnership arrangements;
(d) about the provision of information about partnership arrangements;
(e) about accounts and audit in respect of functions carried out in accordance with partnership arrangements.

(6) Partnership arrangements made under regulations under this section do not affect—
(a) the liability of a Local Health Board for the exercise of any of its functions,
(b) the liability of a local authority for the exercise of any of its functions, or
(c) any power or duty to recover charges in respect of services provided in the exercise of any local authority functions.

Textual Amendments

F42 Words in s. 166(2)(b)(ii) substituted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **313**

Commencement Information

I162 S. 166 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

167 Resources for partnership arrangements

(1) A local authority and a Local Health Board may pay towards the expenditure incurred for the purpose of, or in connection with, partnership arrangements made under regulations under section 166—
(a) by making payments directly, or
(b) by contributing to a pooled fund.

(2) A local authority and a Local Health Board may provide staff, goods, services, accommodation or other resources for the purpose of, or in connection with, partnership arrangements.

(3) Regulations may make further provision about the funding of partnership arrangements, including (among other things) provision—
(a) requiring a local authority or a Local Health Board to establish and maintain a pooled fund;
(b) for determining the amount of contributions to be made by a local authority or a Local Health Board to a pooled fund;
(c) about expenditure for posts or categories of post established for the purpose of, or in connection with, partnership arrangements;
(d) about expenditure for services provided in accordance with partnership arrangements;
(e) about expenditure for the administration of partnership arrangements;
(f) about expenditure for any other purpose connected to partnership arrangements.

(4) In this section “a pooled fund” means a fund established and maintained by a local authority or a Local Health Board, out of which the payments may be made towards the expenditure incurred for the purpose of, or in connection with, partnership arrangements.

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information
I163 S. 167 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

168 Partnership boards

(1) Regulations may require a partnership board in respect of partnership arrangements made under regulations under section 166 to be established by—
- (a) one or more local authorities,
- (b) one or more Local Health Boards, or
- (c) one or more local authorities and one or more Local Health Boards.

(2) Regulations may make provision about—
- (a) the membership of partnership boards;
- (b) the payment of remuneration and allowances to members of partnership boards;
- (c) the objectives and functions of partnership boards;
- (d) the procedures to be followed by partnership boards;
- (e) the making of reports by partnership boards and their form, content, timing and publication.

Commencement Information
I164 S. 168 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

169 Guidance about partnership arrangements

(1) The Welsh Ministers must issue, and from time to time revise, guidance about partnership arrangements made under regulations under section 166.

(2) In exercising functions conferred on them under or by virtue of sections 166 to 168, the following must have regard to that guidance and to any outcomes specified in a statement issued under section 8—
- (a) a local authority;
- (b) a Local Health Board;
- (c) a team or person carrying out partnership arrangements in accordance with regulations made by virtue of section 166(4)(b);
- (d) a partnership board established under regulations under section 168.

Commencement Information
I165 S. 169 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

Adoption

170 Adoption service: joint arrangements

Insert after section 3 of the Adoption and Children Act 2002—

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

"3A Wales – joint arrangements

(1) The Welsh Ministers may direct two or more local authorities in Wales to enter into specified arrangements with each other in relation to the provision of specified services maintained under section 3(1).

(2) Before giving a direction under this section the Welsh Ministers must consult the local authorities to which it is to be given.

(3) Specified arrangements may include (among other things) arrangements—

- (a) as to the establishment and maintenance of a pooled fund;
- (b) as to the provision of staff, goods, services, accommodation or other resources;
- (c) for determining the amount of payment or other contribution to be made towards relevant expenditure by the authorities which are parties to the arrangements;
- (d) for working in conjunction with registered adoption societies;
- (e) as to the responsibility for, and the operation and management of, the arrangements;
- (f) as to the establishment and operation of a panel to make recommendations as to—
  - (i) whether a child should be placed for adoption;
  - (ii) whether a prospective adopter is suitable to adopt a child;
  - (iii) whether a particular child should be placed for adoption with a particular prospective adopter;
- (g) for resolving complaints about services provided in accordance with the specified arrangements;
- (h) as to the determination of disputes between the authorities which are parties to the arrangements.

(4) Where the Welsh Ministers exercise their power of direction under subsection (1) they must within 21 days of the giving of the direction—

- (a) report to the National Assembly for Wales that the power has been exercised, and
- (b) lay a copy of the direction before the National Assembly for Wales.

(5) In this section—

"a pooled fund" is a fund made up of contributions by two or more local authorities out of which payments may be made towards relevant expenditure;

"relevant expenditure" is expenditure incurred in connection with the provision of services provided in accordance with the specified arrangements;

"specified" means specified in a direction under this section."

Commencement Information

I166 S. 170 in force at 1.11.2014 by S.I. 2014/2718, **art. 2(a)**

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

PART 10

COMPLAINTS, REPRESENTATIONS AND ADVOCACY SERVICES

CHAPTER 1

COMPLAINTS AND REPRESENTATIONS ABOUT SOCIAL SERVICES

171 Complaints about social services

(1) Regulations may make provision about the consideration of complaints relating to—
- (a) the discharge by a local authority of its social services functions;
- (b) the provision of services by another person pursuant to arrangements made by a local authority in the discharge of those functions;
- (c) the provision of services by a local authority or another person in pursuance of arrangements made by the authority under section 33 of the National Health Service (Wales) Act 2006 or section 75 of the National Health Service Act 2006 in relation to the functions of an NHS body (within the meaning of the relevant section) so far as exercisable in relation to Wales.

(2) The regulations may provide for a complaint to be considered by one or more of the following—
- (a) the local authority in respect of whose functions the complaint is made;
- (b) an independent panel established under the regulations;
- (c) any other person or body other than a Minister of the Crown.

(3) The regulations may provide for a complaint or any matter raised by the complaint—
- (a) to be referred to the Public Services Ombudsman for Wales ("the Ombudsman") for the Ombudsman to consider whether to investigate the complaint or matter under the Public Services Ombudsman (Wales) Act 2005 (and to be treated by the Ombudsman as a complaint duly referred under section 2(3) of that Act);
- (b) to be referred to any other person or body for that person or body to consider whether to take any action otherwise than under the regulations.

(4) But the regulations may not make provision about complaints capable of being considered as representations under section 174 or 176.

Commencement Information
I167 S. 171 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

172 Complaints about social services: supplementary

(1) The following are further examples of the provision which may be made in regulations under section 171.

(2) The regulations may make provision about—
- (a) the persons who may make a complaint;
- (b) the complaints which may, or may not, be made;

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(c) the persons to whom complaints may be made;
(d) complaints which need not be considered;
(e) the period within which complaints must be made;
(f) the procedure to be followed in making and considering a complaint;
(g) matters which are excluded from consideration;
(h) the making of a report or recommendations about a complaint;
(i) the action to be taken as a result of a complaint.

(3) The regulations may—
(a) require a person about whom, or a body about which, a complaint is made to make a payment in relation to the consideration of the complaint under the regulations,
(b) require a payment of that kind—
(i) to be made to a person or body specified in the regulations, and
(ii) to be of an amount specified in, or calculated or determined under, the regulations, and
(c) require an independent panel to review the amount chargeable under paragraph (a) in a particular case and, if the panel thinks fit, to substitute a lesser amount.

(4) The regulations may require a person who, or a body which, considers complaints under the regulations to give publicity to the procedures to be followed under the regulations.

(5) The regulations may also—
(a) provide for different parts or aspects of a complaint to be treated differently;
(b) require the production of information or documents to enable a complaint to be properly considered;
(c) authorise the disclosure of information or documents relevant to a complaint to a person who, or a body which, is considering a complaint under the regulations or to whom a complaint has been referred (despite any rule of common law that would otherwise prohibit or restrict the disclosure).

(6) The regulations may make provision about complaints which raise both matters falling to be considered under the regulations and matters falling to be considered under other statutory complaints procedures; including (among other things) provision to—
(a) enable a complaint of that kind to be made under the regulations, and
(b) secure that matters falling to be considered under other statutory complaints procedures are treated as if they had been raised in a complaint made under the appropriate procedures.

(7) In subsection (6) "statutory complaints procedures" means procedures established by or under an enactment within the legislative competence of the National Assembly for Wales.

Commencement Information
I168 S. 172 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

173 Assistance for complainants

(1) Regulations may require local authorities to—

(a) make arrangements to provide assistance (by way of representation or otherwise) to persons who make, or intend to make, a complaint under regulations made under section 171, and

(b) give publicity to the arrangements for the provision of that assistance.

(2) The regulations may, for example, make provision about—

(a) the persons to whom assistance must be provided;

(b) the kind of assistance that must be provided to those persons;

(c) the persons by whom that assistance may be provided;

(d) the stage or stages in the consideration of a complaint in relation to which that assistance must be provided;

(e) the kind of publicity that must be given to the arrangements for the provision of that assistance.

Commencement Information

I169 S. 173 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

174 Representations relating to certain children etc

(1) A local authority must establish a procedure for considering—

(a) representations (including complaints) made to the authority by a person to whom subsection (3) applies about its discharge of a qualifying function in relation to a child who is being looked after by it, or who is not being looked after by it but may have needs for care and support;

(b) representations (including complaints) made to the authority by a person to whom subsection (4) applies about its discharge of functions under section 14F of the Children Act 1989 (special guardianship support services) which have been specified in regulations;

(c) representations (including complaints) made to the authority by a person to whom subsection (5) applies about its discharge of functions under the Adoption and Children Act 2002 which have been specified in regulations.

(2) The following are qualifying functions for the purposes of subsection (1)(a)—

(a) functions exercisable in relation to a child under Parts 3 to 6 (other than functions which are exercisable in relation to the child as a carer);

(b) functions exercisable in relation to a child under Part 7;

(c) functions under Part 4 or Part 5 of the Children Act 1989 which have been specified in regulations.

(3) This subsection (relating to representations about the discharge of qualifying functions) applies to—

(a) the child who is being looked after by the local authority, or who is not being looked after by it but may have needs for care and support;

(b) a parent of the child;

(c) a person who is not a parent of the child but who has parental responsibility for the child;

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(d) a local authority foster parent with whom the child is placed under section 81(5);

(e) a prospective adopter with whom the child is placed under section 81(11);

(f) any other person whom the local authority considers has a sufficient interest in the child's welfare to warrant his or her representations being considered by the authority.

(4) This subsection (relating to representations about the discharge of specified functions under section 14F of the Children Act 1989) applies to—

(a) a child in relation to whom a special guardianship order is in force;

(b) a special guardian or a parent of the child;

(c) a person who has applied for an assessment under section 14F(3) or (4) of the Children Act 1989;

(d) any other person whom the local authority considers has a sufficient interest in the welfare of the child to warrant his or her representations being considered by the authority.

(5) This subsection (relating to representations about the discharge of specified functions under the Adoption and Children Act 2002) applies to—

(a) a person mentioned in section 3(1) of the Adoption and Children Act 2002 (persons for whose needs provision is made by the Adoption Service) and any other person to whom arrangements for the provision of adoption services (within the meaning of that Act) extend;

(b) any other person whom the authority considers has sufficient interest in a child who is or may be adopted to warrant his or her representations being considered by it.

(6) A local authority must ensure (subject to subsection (8)) that the procedure which it establishes for the purposes of this section secures that at least one person who is not a member or officer of the local authority takes part in—

(a) the consideration of any representation to which this section applies, and

(b) any discussions which are held by the authority about the action to be taken, as a result of that consideration, in relation to the person to whom the representation relates.

(7) Regulations may make further provision about the procedure which must be established for the purposes of this section.

(8) The regulations may provide (among other things) that subsection (6) does not apply in relation to a consideration or discussion which takes place for the purpose of resolving informally the matters raised in a representation.

(9) A local authority must give publicity to the procedure which it establishes for the purposes of this section.

Commencement Information

I170 S. 174 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

175 Representations relating to certain children etc: further provision

(1) A local authority, in considering representations to which section 174 applies, must comply with requirements imposed by or under subsections (6) to (8) of that section.

(2) Regulations may require local authorities to monitor the steps they have taken to ensure that they comply with those requirements.

(3) Regulations may impose time limits on the making of representations to which section 174 applies.

(4) Where a representation has been considered under a procedure established for the purposes of section 174, the local authority must—
- (a) have regard to the findings of the persons who considered the representation, and
- (b) take such steps as are reasonably practicable to notify (in writing) the persons mentioned in subsection (5) of the authority's decision and its reasons for taking that decision and of any action which it has taken or proposes to take.

(5) The persons are—
- (a) the person who made the representation,
- (b) the person to whom the representation relates (if different), and
- (c) any other person who appears to the authority likely to be affected.

(6) Where the person mentioned in subsection (5)(b) or (c) is a child, the duty under subsection (4)(b) applies only where the local authority considers that the child has sufficient understanding.

Commencement Information
I171 S. 175 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

176 Representations relating to former looked after children etc

(1) A local authority must establish a procedure for considering representations (including complaints) made to it by persons to whom subsection (2) applies about the discharge of its functions under Parts 3 to 7 in relation to those persons.

(2) This subsection applies to—
- (a) category 2 young persons;
- (b) category 3 young persons;
- (c) category 4 young persons;
- (d) category 5 young persons;
- (e) category 6 young persons;
- (f) persons under the age of 25 who, if they were under the age of 21, would be—
  - (i) category 5 young persons, or
  - (ii) category 6 young persons falling within that category by virtue of section 104(3)(a).

(3) Regulations may impose—
- (a) requirements in relation to the procedure that must be established;
- (b) time limits on the making of representations to which the procedure applies.

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) A local authority must—

(a) give publicity to the procedure which it establishes for the purposes of this section;

(b) comply with any requirements imposed under subsection (3)(a) in considering representations to which this section applies.

(5) In this section "category 2 young person", "category 3 young person", "category 4 young person", "category 5 young person" and "category 6 young person" have the meanings given by section 104.

Commencement Information

I172 S. 176 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

177 Further consideration of representations

(1) Regulations may make provision for the further consideration of representations (including complaints) which fall within section 174 or 176.

(2) The regulations may, for example, make provision—

(a) for the further consideration of a representation by an independent panel established under the regulations;

(b) about the procedure to be followed on the further consideration of a representation;

(c) for the making of recommendations about the action to be taken as a result of the further consideration of a representation;

(d) about the making of reports about the further consideration of a representation;

(e) about the action to be taken by the local authority concerned as a result of the further consideration of a representation;

(f) for a representation to be referred back to the local authority concerned for reconsideration by the authority.

(3) The regulations may—

(a) require the making of a payment, in relation to the further consideration of a representation, by a local authority in respect of whose functions the representation is made;

(b) require the payment—

(i) to be made to a person or body specified in the regulations, and

(ii) to be of an amount specified in, or calculated or determined under, the regulations;

(c) require an independent panel to review the amount chargeable under paragraph (a) in a particular case and, if the panel thinks fit, to substitute a lesser amount;

(d) provide for different parts or aspects of a representation to be treated differently;

(e) require the production of information or documents to enable a representation to be properly considered;

(f) authorise the disclosure of information or documents relevant to a representation to a person who, or a body which, is further considering a

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

representation under the regulations (despite any rule of common law that would otherwise prohibit or restrict the disclosure).

(4) The regulations may also provide for a representation or any matter raised by a representation—

(a) to be referred to the Public Services Ombudsman for Wales ("the Ombudsman") for the Ombudsman to consider whether to investigate the representation or matter under the Public Services Ombudsman (Wales) Act 2005 (and to be treated by the Ombudsman as a complaint duly referred under section 2(3) of that Act);

(b) to be referred to any other person or body for that person or body to consider whether to take any action otherwise than under the regulations.

Commencement Information

I173 S. 177 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

178 Assistance for persons making representations

(1) A local authority must make arrangements for the provision of assistance to—

(a) children who make or intend to make representations which fall within section 174, and

(b) persons who make or intend to make representations which fall within section 176.

(2) The duty under subsection (1) includes a duty to make arrangements for the provision of assistance where those representations are further considered under section 177.

(3) The assistance provided under the arrangements must include assistance by way of representation.

(4) Regulations must make further provision in relation to the arrangements.

(5) The regulations—

(a) must require the arrangements to secure that specified persons or categories of persons do not provide assistance, and

(b) may impose other requirements in relation to the arrangements.

(6) Regulations may require local authorities to monitor the steps they have taken to ensure that they comply with requirements imposed by or under this section.

(7) A local authority must give publicity to its arrangements for the provision of assistance under this section.

Commencement Information

I174 S. 178 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

CHAPTER 2

COMPLAINTS ABOUT PRIVATE SOCIAL CARE AND PALLIATIVE CARE

179 Investigation of complaints about privately arranged or funded social care and palliative care

Schedule 3 (which inserts new Parts 2A and 2B into the Public Services Ombudsman (Wales) Act 2005 to give the Public Services Ombudsman for Wales powers to investigate complaints about certain kinds of social care and palliative care and makes consequential amendments) has effect.

Commencement Information
I175 S. 179 in force at 1.11.2014 by S.I. 2014/2718, **art. 2(b)**

180 Independent advocacy services for complaints about privately arranged or funded palliative care

(1) Section 187 of the National Health Service (Wales) Act 2006 (independent advocacy services) is amended as follows.

(2) In subsection (2)—

(a) in paragraph (a) for "or independent provider" substitute " , independent provider or independent palliative care provider ",

(b) in paragraph (c) omit the words "or the Public Services Ombudsman for Wales", and

(c) after paragraph (c) insert—

"(ca) a complaint to the Public Services Ombudsman for Wales which relates to a health service body or independent palliative care provider,".

(3) In subsection (3) insert in the appropriate place—

""independent palliative care provider" means a person who is an independent palliative care provider (within the meaning given by section 34T of the Public Services Ombudsman (Wales) Act 2005),".

Commencement Information
I176 S. 180 in force at 1.11.2014 by S.I. 2014/2718, **art. 2(c)**

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

CHAPTER 3

ADVOCACY SERVICES

181 Provision of advocacy services

(1) Regulations may require a local authority to arrange for advocacy services to be made available to people with needs for care and support (whether or not those needs are being met by a local authority); this is subject to section 182.

(2) "Advocacy services" are services which provide assistance (by way of representation or otherwise) to persons for purposes relating to their care and support.

(3) The regulations may specify—

(a) the persons, or description of persons, to whom advocacy services are to be made available;

(b) the circumstances in which advocacy services are to be made available;

(c) the persons, or description of persons, by whom advocacy services may, or may not, be provided.

(4) The regulations must require a local authority to give publicity to its arrangements for making advocacy services available.

Commencement Information

I177 S. 181 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

182 Provision of advocacy services: restrictions

(1) Regulations under section 181 may not require advocacy services to be made available to a person—

(a) for the purpose of making a complaint in respect of which a local authority is required to make arrangements for the provision of assistance to the person by virtue of regulations under section 173;

(b) for the purpose of making representations in respect of which a local authority is required to make arrangements for the provision of assistance to the person under section 178;

(c) for purposes in respect of which the Welsh Ministers are required to make arrangements to enable an independent mental health advocate to be available under section 130E of the Mental Health Act 1983;

(d) for purposes in respect of which a local authority is required to make arrangements for the provision of independent advocacy services under section 332BB of the Education Act 1996 or paragraph 6D of Schedule 17 to the Equality Act 2010;

(e) for purposes in respect of which the Welsh Ministers are required to make arrangements to enable an independent mental capacity advocate to be available under section 35 of the Mental Capacity Act 2005;

(f) for the purpose of making a complaint in respect of which the Welsh Ministers are required to arrange for the provision of independent advocacy services under section 187 of the National Health Service (Wales) Act 2006.

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) Where—

(a) advocacy services are being provided for a person under section 15, 17, 35, 36, 37 or 38, and

(b) regulations under section 181 would (apart from this subsection) impose a requirement upon a local authority to make advocacy services available to that person in respect of the same matters,

that requirement does not apply.

Commencement Information

I178 S. 182 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

[F43]183 Publicising advocacy services in care homes

. . . . . .

Textual Amendments

F43 S. 183 repealed (2.4.2018) by Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2), s. 188(1), **Sch. 3 para. 31**; S.I. 2017/1326, art. 2(3)(h), Sch. (with art. 6)

PART 11

MISCELLANEOUS AND GENERAL

Miscellaneous

184 Research and provision of information

(1) The Welsh Ministers may conduct, commission, or assist in the conduct of, research into any matter connected with—

(a) their functions under this Act,

(b) the functions mentioned in subsection (12),

(c) the functions of Local Health Boards under this Act, or

(d) the functions of Safeguarding Boards.

(2) A local authority may conduct, commission, or assist in the conduct of, research into any matter connected with—

(a) any of its functions that are mentioned in subsection (12), or

(b) the functions of Safeguarding Boards.

(3) A Local Health Board may conduct, commission, or assist in the conduct of, research into any matter connected with its functions under this Act.

(4) The Welsh Ministers may require a local authority to provide them with information in connection with—

(a) the performance by the authority of any of its functions that are mentioned in subsection (12), and

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(b) the persons in relation to whom the authority has exercised those functions.

(5) The Welsh Ministers may require a Local Health Board to provide them with information in connection with—

(a) the performance of its functions under this Act, and

(b) the persons in relation to whom it has exercised those functions.

(6) The Welsh Ministers may require the lead partner of a Safeguarding Board to provide them with information in connection with the performance by that Board of its functions.

(7) The Welsh Ministers may require a voluntary organisation to provide them with information in connection with adults accommodated by the organisation or on its behalf.

(8) A requirement under subsection (4), (5), (6) or (7) must be complied with by providing the information in such form and at such time as the Welsh Ministers may require.

(9) Information required to be provided under subsection (4) may include information relating to and identifying individual children, but only if that information is needed to inform—

(a) the review and development of policy and practice relating to the well-being of children, or

(b) the conduct of research relating to the well-being of children.

(10) The Welsh Ministers must in each year lay before the National Assembly for Wales a summary of the information provided to them under subsections (4), (5), (6) and (7), but the summary must not include information that identifies an individual child or allows an individual child to be identified.

(11) In this section—

"the lead partner of a Safeguarding Board" ("*partner arweiniol Bwrdd Diogelu*") is the Safeguarding Board partner specified as the lead partner in regulations under section 134, and

"Safeguarding Board" ("*Bwrdd Diogelu*") means a Safeguarding Children Board or a Safeguarding Adults Board established under section 134.

(12) The functions referred to in subsections (1), (2) and (4) are—

(a) any function of a local authority under this Act;

(b) any function of a local authority as a local mental health partner under the Mental Health (Wales) Measure 2010.

Commencement Information

I179 S. 184 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

185 Adults in prison, youth detention accommodation or bail accommodation etc

(1) In its application to an adult who is detained in prison or youth detention accommodation in Wales, this Act has effect as if references to being ordinarily resident in an area were references to being detained in prison or youth detention accommodation in that area.

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(2) In its application to an adult who is residing in approved premises in Wales, this Act has effect as if references to being ordinarily resident in an area were references to being resident in approved premises in that area.

(3) In its application to an adult who is residing in any other premises in Wales because a requirement to do so has been imposed on the adult as a condition of the grant of bail in criminal proceedings, this Act has effect as if references to being ordinarily resident in an area were references to being resident in premises in that area for that reason.

(4) The provisions set out in subsection (5) do not apply in the case of an adult who is—
- (a) detained in prison or youth detention accommodation, or
- (b) residing in approved premises.

(5) The provisions are—
- (a) section 110 (support for category 3 young people);
- (b) section 112 (support for category 4 young people);
- (c) section 114 (support for category 5 young people and former category 5 young people);
- (d) section 115 (support for category 6 young people and former category 6 young people).

(6) Section 127 (adult protection and support orders) does not apply in the case of an adult who is detained in prison or youth detention accommodation.

(7) See also section 187 for further modifications of this Act's provisions in relation to—
- (a) adults who are detained in prison or in youth detention accommodation, and
- (b) adults who are residing in approved premises.

Commencement Information
I180 S. 185 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

186 Children in youth detention accommodation, prison or bail accommodation etc

(1) In subsection (2), a "relevant child" means a child who, having been convicted of an offence—
- (a) is detained in youth detention accommodation or in prison,
- (b) is residing in approved premises, or
- (c) is residing in any other premises because a requirement to do so has been imposed on the child as a condition of the grant of bail in criminal proceedings.

(2) Where a relevant child, immediately before being convicted of an offence—
- (a) has needs for care and support that are being met by a local authority under Part 4,
- (b) is looked after by a local authority by virtue of being provided with accommodation by the authority, or
- (c) is ordinarily resident in the area of a local authority, but does not come within paragraph (a) or (b),

the child is to be treated for the purposes of this Act as being within that local authority's area while he or she is a relevant child (and is not to be treated as being ordinarily resident or within any other local authority's area).

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) The provisions set out in subsection (4) do not apply in relation to a child who, having been convicted of an offence—

(a) is detained in youth detention accommodation or in prison, or

(b) is residing in approved premises.

(4) The provisions are—

(a) section 79 (provision of accommodation for children in care);

(b) section 80 (maintenance of looked after children);

(c) section 81 (ways in which looked after children are to be accommodated and maintained);

(d) section 82 (review of child's case before making alternative arrangements for accommodation);

(e) section 109 (support for category 2 young people);

(f) section 114 (support for category 5 young people and former category 5 young people);

(g) section 115 (support for category 6 young people and former category 6 young people);

(h) paragraph 1 of Schedule 1 (liability to contribute towards maintenance of looked after children).

(5) Section 119 (use of accommodation for restricting liberty) does not apply in relation to—

(a) a child who, having been convicted of an offence—

(i) is detained in youth detention accommodation or in prison, or

(ii) is residing in approved premises, or

(b) a child who is remanded to youth detention accommodation under section 91 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

(6) The provisions set out in subsection (7) do not apply in relation to a child who—

(a) having been convicted of an offence—

(i) is detained in youth detention accommodation or in prison, or

(ii) is residing in approved premises, and

(b) immediately before being convicted, was provided with accommodation by a local authority in England under section 20 of the Children Act 1989.

(7) The provisions are—

(a) section 21 (duty to assess the needs of a child for care and support);

(b) section 37 (duty to meet care and support needs of a child);

(c) section 38 (power to meet care and support needs of a child).

(8) See also section 187 for further modifications of this Act's provisions in relation to—

(a) children who are detained in youth detention accommodation or in prison, and

(b) children who are residing in approved premises.

Commencement Information

I181 S. 186 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

Status: *Point in time view as at 02/04/2018.*
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187 Persons in prison, youth detention accommodation or bail accommodation etc

(1) A person is not a carer for the purposes of this Act if the person—
- (a) is detained in prison or youth detention accommodation, or
- (b) having been convicted of an offence, is residing in approved premises.

(2) Regulations under section 50 or 51 (direct payments) may not require or allow payments to be made towards the cost of meeting a person's needs for care and support if that person, having been convicted of an offence, is—
- (a) detained in prison or in youth detention accommodation, or
- (b) residing in approved premises.

(3) The power under section 57 (preference for particular accommodation) may not be exercised in the case of a person who is—
- (a) detained in prison or in youth detention accommodation, or
- (b) residing in approved premises,

except for the purpose of making provision with respect to accommodation for the person on the person's release from prison or youth detention accommodation (including temporary release), or on the person's ceasing to reside in the approved premises.

(4) Section 58 (protecting property of persons being cared for away from home) does not apply in the case of a person who is—
- (a) detained in prison or in youth detention accommodation, or
- (b) residing in approved premises.

Commencement Information
I182 S. 187 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

188 Interpretation of sections 185 to 187

(1) In sections 185 to 187—

"approved premises" ("*mangre a gymeradwywyd*") has the meaning given by section 13 of the Offender Management Act 2007;

"bail in criminal proceedings" ("*mechnïaeth mewn achos troseddol*") has the meaning given by section 1 of the Bail Act 1976;

"prison" ("*carchar*") has the same meaning as in the Prison Act 1952 (see section 53(1) of that Act);

"youth detention accommodation" ("*llety cadw ieuenctid*") means—
- (a) **[**[F44]a secure accommodation service (within the meaning of Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016);**]**
- (b) a secure training centre;
- (ba) **[**[F45]a secure college**]**
- (c) a young offender institution;
- (d) accommodation provided, equipped and maintained by the Welsh Ministers under section 82(5) of the Children Act 1989 for the purpose of restricting the liberty of children;
- (e) accommodation, or accommodation of a description, for the time being specified by order under section 107(1)(e) of the Powers of Criminal

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Courts (Sentencing) Act 2000 (youth detention accommodation for purposes of detention and training orders).

(2) For the purposes of sections 185 to 187—

(a) a person who is temporarily absent from prison or youth detention accommodation is to be treated as detained in prison or youth detention accommodation for the period of absence;

(b) a person who is temporarily absent from approved premises is to be treated as residing in approved premises for the period of absence;

(c) a person who is temporarily absent from other premises in which the person is required to reside as a condition of the grant of bail in criminal proceedings is to be treated as residing in the premises for the period of absence.

Textual Amendments

F44 Words in s. 188(1) substituted (2.4.2018) by Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2), s. 188(1), **Sch. 3 para. 32**; S.I. 2017/1326, art. 2(3)(h), Sch. (with art. 6)

F45 Words in s. 188(1) inserted (20.3.2015) by Criminal Justice and Courts Act 2015 (c. 2), s. 95(1), **Sch. 9 para. 32(4)**; S.I. 2015/778, art. 2(1)(c); S.I. 2015/778, art. 2(1)(c); S.I. 2015/778, art. 2(1)(c)

Commencement Information

I183 S. 188 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

189 Provider failure: temporary duty on local authority

[[F46](1) This section applies where a service provider becomes unable to provide a regulated service because of business failure.**]**

(2) A local authority must for so long as it considers necessary (and in so far as it is not already required to do so) meet—

(a) those of an adult's needs for care and support, and

(b) those of a relevant carer's needs for support,

which were, immediately before the **[**[F47]service provider became unable to provide the regulated service, being met in the authority's area by the service provider**]** (but this is subject to section 190).

(3) A local authority is required to meet needs under subsection (2) regardless of—

(a) whether the relevant person is ordinarily resident in its area;

(b) whether the authority has carried out a needs assessment or a financial assessment;

(c) whether the authority would otherwise have a duty to meet those needs under this Act.

(4) A local authority may impose a charge for meeting needs under subsection (2) (except in so far as those needs are met by the provision of information or advice).

(5) A charge under subsection (4)—

(a) may be imposed only in respect of needs which were not, immediately before the **[**[F48]service provider became unable to provide the regulated service**]**, being met—

Status: *Point in time view as at 02/04/2018.*
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(i) under arrangements made by a local authority discharging its duty under section 35 or 40, or exercising its power under section 36 or 45, or

(ii) by the provision of accommodation or services all or part of the cost of which was paid for by direct payments made by virtue of section 50 or 52;

(b) may cover only the cost that the local authority incurs in meeting those needs.

(6) Sections 60 to 67, 70, 71 and 73 apply to charging under subsection (4) as they apply to charging under section 59, and accordingly a local authority's power to impose a charge under that subsection is subject to—

(a) the provision made in regulations under section 61 or 62 (if any), and

(b) the authority's duties under sections 63, 66 and 67 (if applicable).

(7) If the relevant person is not ordinarily resident in the area of the local authority which is required to meet needs under subsection (2), the authority—

(a) must, in meeting needs under that subsection which were being met under arrangements made by another local authority discharging its duty under section 35 or 40 or exercising its power under section 36 or 45, co-operate with that authority;

(b) must, in meeting needs under that subsection which were being met under arrangements all or part of the cost of which was paid for by another local authority by means of direct payments made by virtue of section 50 or 52, co-operate with that authority;

(c) may recover from the other local authority mentioned in paragraph (a) or (b) the cost it incurs in meeting those of the adult's needs or the relevant carer's needs referred to in the paragraph in question.

(8) Any dispute between local authorities about the application of this section is to be determined under section 195 as if it were a dispute of the type mentioned in subsection (1) of that section.

(9) In this section and (where relevant) in section 190 and 191—

[F49]…

[[F50]"regulated service" ("*gwasanaeth rheoleiddiedig*") has the same meaning as in Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016;**]**

"relevant carer" ("*gofalwr perthnasol*") means a carer who—

(a) is an adult, and

(b) provides or intends to provide care for another adult;

"relevant person" ("*person perthnasol*") means—

(a) in a case involving an adult's needs for care and support, that adult;

(b) in a case involving a relevant carer's needs for support, the adult needing care.

[[F51]"service provider" ("*darparwr gwasanaeth*") has the same meaning as in Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016.**]**

Textual Amendments

F46 S. 189(1) substituted (2.4.2018) by Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2), s. 188(1), **Sch. 3 para. 33(a)**; S.I. 2017/1326, art. 2(3)(h), Sch. (with arts. 6, 8)

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

F47 Words in s. 189(2) substituted (2.4.2018) by Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2), s. 188(1), **Sch. 3 para. 33(b)**; S.I. 2017/1326, art. 2(3)(h), Sch. (with arts. 6, 8)

F48 Words in s. 189(5)(a) substituted (2.4.2018) by Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2), s. 188(1), **Sch. 3 para. 33(c)**; S.I. 2017/1326, art. 2(3)(h), Sch. (with arts. 6, 8)

F49 Words in s. 189(9) repealed (2.4.2018) by Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2), s. 188(1), **Sch. 3 para. 33(d)(i)**; S.I. 2017/1326, art. 2(3)(h), Sch. (with arts. 6, 8)

F50 Words in s. 189(9) inserted (2.4.2018) by Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2), s. 188(1), **Sch. 3 para. 33(d)(ii)**; S.I. 2017/1326, art. 2(3)(h), Sch. (with arts. 6, 8)

F51 Words in s. 189(9) inserted (2.4.2018) by Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2), s. 188(1), **Sch. 3 para. 33(d)(iii)**; S.I. 2017/1326, art. 2(3)(h), Sch. (with arts. 6, 8)

Commencement Information

I184 S. 189 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

190 Provider failure: exception to temporary duty

(1) A local authority is not required to meet needs which were, immediately before the **[**[F52]service provider became unable to provide the regulated service**]**, being met—

(a) under arrangements made by a local authority in England under Part 1 of the Care Act 2014;

(b) under arrangements made by a local authority in Scotland discharging its duty under section 12 or 13A of the Social Work (Scotland) Act 1968 or section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003;

(c) under arrangements made by a Health and Social Care trust under Article 15 of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14)) or section 2 of the Carers and Direct Payments Act (Northern Ireland) 2002;

(d) by the provision of accommodation or services all or part of the cost of which was paid for by direct payments made—

[F53](i) . . . . . .

[[F54](ia) by virtue of sections 31 to 33 of the Care Act 2014,**]**

(ii) as a result of the choice made by the adult pursuant to section 5 of the Social Care (Self-directed Support) (Scotland) Act 2013, or

(iii) by virtue of section 8 of the Carers and Direct Payments Act (Northern Ireland) 2002.

(2) Pending the commencement of Part 1 of the Care Act 2014, subsection (1)(a) is to be read as if there were substituted for it—

"(a) under arrangements made by or by means of services provided by a local authority in England under—

(i) Part 3 of the National Assistance Act 1948,

(ii) section 45 of the Health Services and Public Health Act 1968,

(iii) section 117 of the Mental Health Act 1983,

(iv) Schedule 20 to the National Health Service Act 2006, or

(v) section 2 of the Carers and Disabled Children Act 2000;".

(3) Pending the commencement of section 5 of the Social Care (Self-directed Support) (Scotland) Act 2013, subsection (1)(d)(ii) is to be read as if there were substituted for it—

Status: *Point in time view as at 02/04/2018.*
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"(ii) under section 12B of the Social Work (Scotland) Act 1968, or".

Textual Amendments

F52 Words in s. 190(1) substituted (2.4.2018) by Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2), s. 188(1), **Sch. 3 para. 34**; S.I. 2017/1326, art. 2(3)(h), Sch. (with arts. 6, 8)

F53 S. 190(1)(d)(i) omitted (6.4.2016) by virtue of The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **314**

F54 S. 190(1)(d)(ia) inserted (1.4.2015) by The Care Act 2014 and Children and Families Act 2014 (Consequential Amendments) Order 2015 (S.I. 2015/914), art. 1(2), **Sch. para. 98** (with arts. 1(3), 3)

Commencement Information

I185 S. 190 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

191 Provider failure: supplementary

(1) A local authority becomes subject to the duty under section 189(2) as soon as it becomes aware of the business failure.

(2) Section 34 (how to meet needs) and sections 46 to 49 (meeting needs: exceptions and restrictions) apply to meeting needs under section 189 as they apply to meeting needs under sections 35 to 45.

(3) Regulations may make provision about the persons whom the local authority must involve in connection with meeting needs under section 189(2).

(4) Where a person whose needs are being met by a local authority under section 189(2) is also being provided with continuing NHS care under arrangements made by a Local Health Board no part of whose area is in the local authority's area, the Local Health Board is to be treated as a relevant partner of the authority for the purposes of sections 162 and 164.

(5) In subsection (4) "continuing NHS care" means services or facilities provided by virtue of sections 3(1)(e) and 12 of the National Health Service (Wales) Act 2006.

(6) Where a local authority considers it necessary to do so for the purpose of carrying out its duty under section 189(2), it may request the **[**[F55]service provider, or such other person involved in the service provider's**]** business as it considers appropriate, to provide it with information.

(7) Regulations must make provision for the purposes of section 189 and this section as to the interpretation of references to business failure or to being unable to do something because of business failure; and the regulations may, in particular, specify circumstances in which a person is to be treated as unable to **[**[F56]provide a regulated service**]** because of business failure.

Textual Amendments

F55 Words in s. 191(6) substituted (2.4.2018) by Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2), s. 188(1), **Sch. 3 para. 35(a)**; S.I. 2017/1326, art. 2(3)(h), Sch. (with arts. 6, 8)

F56 Words in s. 191(7) substituted (2.4.2018) by Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2), s. 188(1), **Sch. 3 para. 35(b)**; S.I. 2017/1326, art. 2(3)(h), Sch. (with arts. 6, 8)

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Commencement Information
I186 S. 191 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

192 Amendment of the National Assistance Act 1948

In section 49 of the National Assistance Act 1948 (expenses of council officers acting as receivers), after "Act" insert " , other than one in Wales, ".

Commencement Information
I187 S. 192 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

Supplementary

193 Recovery of costs between local authorities

(1) Subsection (2) applies where—
- (a) a local authority ("authority A") provides or arranges care and support to a person who is ordinarily resident in the area of another local authority ("authority B"), and
- (b) the care and support was provided either—
  - (i) to meet urgent needs in order to safeguard the person's well-being, or
  - (ii) with the consent of authority B.

(2) Authority A may recover from authority B any reasonable expenses incurred by it in providing or arranging the care and support.

(3) Where a local authority provides accommodation under section 76(1) for a child who was (immediately before it began to look after the child) ordinarily resident within the area of another local authority **[**[F57]or local authority in England**]**, it may recover from that other authority any reasonable expenses incurred by it in providing the accommodation and maintaining the child.

(4) Subsection (5) applies where a local authority ("authority A") provides accommodation under section 77(1) or (2)(a) or (b) for a child who is ordinarily resident within the area of another local authority **[**[F58]or local authority in England**]** ("authority B") and it is not maintaining the child in—
- (a) a community home provided by authority A,
- (b) a controlled community home, or
- (c) a hospital vested in the Welsh Ministers, an NHS Trust, an NHS Foundation Trust or the Secretary of State, or any other hospital made available pursuant to arrangements made by a Local Health Board, an NHS Trust, an NHS Foundation Trust, the Welsh Ministers, the Secretary of State, the National Health Service Commissioning Board or a clinical commissioning group.

(5) Authority A may recover from authority B any reasonable expenses incurred by it in providing the accommodation and maintaining the child.

(6) Except where **[**[F59]subsection (7) or (8)**]** applies, where a local authority complies with any request under section 164(1) or (2) **[**[F60], or under section 27(2) of the Children Act 1989 (co-operation between authorities),**]** in relation to a person who is not ordinarily

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resident within its area, it may recover from the local authority **[**[F61]or local authority in England**]** in whose area the person is ordinarily resident any reasonable expenses incurred by it in respect of that person.

(7) Where a local authority ("authority A") complies with any request under section 164(1) or (2) from another local authority ("authority B") in relation to a person for whom authority B is the responsible local authority within the meaning of section 104, authority A may recover from authority B any reasonable expenses incurred by it in exercising its functions under sections 105 to 115 in respect of that person.

[[F62](8) Where a local authority ("authority A") complies with any request under section 27(2) of the Children Act 1989 (co-operation between authorities) from a local authority in England ("authority B") in relation to a person—

(a) whose responsible authority (within the meaning of Part 3 of that Act) is authority B for the purposes of section 23B or 23C of that Act, or

(b) whom authority B are advising or befriending or to whom it is giving assistance by virtue of section 24(5)(a) of that Act,

authority A may recover from authority B any reasonable expenses incurred by it in exercising its functions under sections 105 to 115 of this Act in respect of that person.**]**

Textual Amendments

F57 Words in s. 193(3) inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **315(a)**

F58 Words in s. 193(4) inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **315(b)**

F59 Words in s. 193(6) substituted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **315(c)(i)**

F60 Words in s. 193(6) inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **315(c)(ii)**

F61 Words in s. 193(6) inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **315(c)(iii)**

F62 S. 193(8) inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **315(d)**

Commencement Information

I188 S. 193 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

194 Ordinary residence

(1) Where an adult has needs for care and support which can be met only if the adult is living in accommodation of a type specified in regulations and the adult is living in accommodation in Wales of a type so specified, the adult is to be treated for the purposes of this Act as ordinarily resident—

(a) in the area in which the adult was ordinarily resident immediately before the adult began to live in accommodation of a type specified in the regulations, or

(b) if the adult was of no settled residence immediately before the adult began to live in accommodation of a type so specified, in the area in which the adult was present at that time.

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(2) Where, before beginning to live in his or her current accommodation, the adult was living in accommodation of a type so specified (whether or not of the same type as the current accommodation), the reference in subsection (1)(a) to when the adult began to live in accommodation of a type so specified is a reference to the beginning of the period during which the adult has been living in accommodation of one or more of the specified types for consecutive periods.

(3) The regulations may make provision for determining for the purposes of subsection (1) whether an adult has needs for care and support which can be met only if the adult is living in accommodation of a type specified in regulations.

(4) A person who is being provided with accommodation under a health enactment is to be treated for the purposes of this Act as ordinarily resident—

(a) in the area in which the person was ordinarily resident immediately before the accommodation was provided, or

(b) if the person was of no settled residence immediately before the accommodation was provided, in the area in which the person was present at that time.

[[F63](4A) A person who is being provided with accommodation under section 117 of the Mental Health Act 1983 (after-care) is to be treated for the purposes of this Act as ordinarily resident in the area of the local authority, or the local authority in England, on which the duty to provide that person with services under that section is imposed.**]**

(5) In subsection (4) "health enactment" means—

(a) the National Health Service (Wales) Act 2006;

(b) the National Health Service Act 2006;

(c) the National Health Service (Scotland) Act 1978;

(d) the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14));

(e) the Health and Social Care (Reform) Act (Northern Ireland) 2009.

(6) In determining the ordinary residence of a child for the purposes of this Act, the child's residence in the following places is to be disregarded—

(a) a school or other institution;

(b) a place in which the child is placed in accordance with the requirements of a supervision order under the Children Act 1989;

(c) a place in which the child is placed in accordance with the requirements of a youth rehabilitation order under Part 1 of the Criminal Justice and Immigration Act 2008;

(d) accommodation provided by or on behalf of a local authority or a local authority in England;

(e) a place specified in regulations.

(7) See also sections 185(1) to (3) and 186(2) for provision as to the ordinary residence of persons in prison, youth detention accommodation or bail accommodation etc.

[[F64](8) For provision about cross-border placements to and from England, Scotland or Northern Ireland, see Schedule 1 to the Care Act 2014.**]**

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Textual Amendments

F63 S. 194(4A) inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **316(a)**

F64 S. 194(8) inserted (6.4.2016) by Care Act 2014 (c. 23), s. 127(1), **Sch. 1 para. 13** (with Sch. 1 paras. 8, 14); S.I. 2016/464, art. 2(c)

Commencement Information

I189 S. 194 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

195 Disputes about ordinary residence and portability of care and support

(1) A dispute between local authorities about where a person is ordinarily resident in Wales for the purposes of this Act, or a dispute between a sending and receiving authority under section 56 about the application of that section in relation to a person, is to be determined by—

(a) the Welsh Ministers, or

(b) a person appointed by the Welsh Ministers for that purpose ("an appointed person").

[[F65](1A) Where the dispute is one to which section 30(2C) of the Children Act 1989 applies (questions of whether child ordinarily resident in England or Wales), then subsection (1) does not apply.**]**

(2) Regulations may make further provision about the resolution of disputes of the type mentioned in subsection (1); the regulations may, for example, make—

(a) provision for ensuring that care and support is provided to a person while a dispute is unresolved;

(b) provision requiring local authorities in dispute to take specified steps before referring a dispute to the Welsh Ministers or an appointed person;

(c) provision about the procedure for referring a dispute to the Welsh Ministers or an appointed person;

(d) provision about the review of a determination made under subsection (1).

Textual Amendments

F65 S. 195(1A) inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **317**

Commencement Information

I190 S. 195 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

[[F66]195A Offences committed by bodies or partnerships

(1) Where a body corporate is guilty of an offence under this Act, and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of—

(a) any director, manager, secretary or other similar officer of the body corporate; or

(b) any person purporting to act in any such capacity,

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that person is guilty of the offence as well as the body corporate, and is liable to be proceeded against and punished accordingly.

(2) For the purposes of this section "director" (" *cyfarwyddwr* ") in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(3) Proceedings for an offence alleged to have been committed under this Act by an unincorporated body are to be brought in the name of that body (and not in that of any of its members) and, for the purposes of any such proceedings, any rules of court relating to the service of documents have effect as if that body were a corporation.

(4) Any fine imposed on an unincorporated body on its conviction of an offence under this Act is to be paid out of the funds of that body.

(5) If an unincorporated body is charged with an offence under this Act, section 33 of the Criminal Justice Act 1925 (c. 86) and Schedule 3 to the Magistrates' Courts Act 1980 (c. 43) have effect as if a corporation had been charged.

(6) Where an offence under this Act committed by an unincorporated body (other than a partnership) is proved to have been committed with the consent or connivance of, or attributable to any neglect on the part of, any officer of the body or any member of its governing body, that person as well as the body is guilty of the offence and liable to be proceeded against and punished accordingly.

(7) Where an offence under this Act committed by a partnership or a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, that partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.**]**

Textual Amendments

F66 S. 195A inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **318**

General

196 Orders and regulations

(1) A power to make an order or regulations under this Act is to be exercised by statutory instrument.

(2) A power to make an order or regulations under this Act includes power—

(a) to make different provision for different cases or classes of case, different areas or different purposes;

(b) to make different provision generally or subject to specified exemptions or exceptions or only in relation to specific cases or classes of case;

(c) to make incidental, supplementary, consequential, transitory, transitional or saving provision.

(3) Subsections (1) and (2) do not apply to an order which may be made by a court or a justice of the peace.

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(4) A statutory instrument containing regulations made by the Welsh Ministers under this Act is subject to annulment in pursuance of a resolution of the National Assembly for Wales.

(5) Subsection (4) does not apply to regulations to which subsection (6) applies.

(6) A statutory instrument containing the following regulations or orders (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales—

(a) regulations under section 3(6), 16(3), 18(3), 32, 37(1), 40(1), 42(1), 119, 127(9), 135(4), 166, 167(3), 168 or 181;

(b) an order under section 140 or 143(2);

(c) regulations under section 198 which amend or repeal any provision of an Act of Parliament or a Measure or Act of the National Assembly for Wales;

[[F67](d) the first regulations made under section 144A(2)(b);**]**

(see sections 33 and 141 for further requirements in relation to the making of regulations under section 32 and orders under section 140).

(7) A statutory instrument containing regulations made by the Lord Chancellor under section 101 is subject to annulment in pursuance of a resolution of either House of Parliament.

Textual Amendments

F67 S. 196(6)(d) inserted (4.9.2017) by Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2), **ss. 56(2)**, 188(1); S.I. 2017/846, art. 2(b)

197 General interpretation and index of defined expressions

(1) In this Act—

"abuse" ("*camdriniaeth", "cam-drin*") means physical, sexual, psychological, emotional or financial abuse (and includes abuse taking place in any setting, whether in a private dwelling, an institution or any other place), and "financial abuse" ("*camdriniaeth ariannol*") includes—

(a) having money or other property stolen;

(b) being defrauded;

(c) being put under pressure in relation to money or other property;

(d) having money or other property misused;

"adult" ("*oedolyn*") has the meaning given by section 3;

"approved premises" ("*mangre a gymeradwywyd*") is defined for the purposes of sections 185 to 187 by section 188(1);

"bail in criminal proceedings" ("*mechnïaeth mewn achos troseddol*") is defined for the purposes of sections 185 to 187 by section 188(1);

"care and support" ("*gofal a chymorth*") has the meaning given by section 4;

[[F68]"care home" ("*cartref gofal*") -

((a)) has the same meaning as in the Care Standards Act 2000 in respect of a care home in England; and

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((b)) means a place in Wales at which a care home service within the meaning of Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 is provided wholly or mainly to adults;**]**

"carer" ("*gofalwr*") has the meaning given by section 3;

"child" ("*plentyn*") has the meaning given by section 3;

[[F69]"children's home" ("cartref plant") means—("*cartref plant*")

((a)) a children's home in England within the meaning of the Care Standards Act 2000 in respect of which a person is registered under Part 2 of that Act; and

((b)) means premises in Wales at which a care home service within the meaning of Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 is provided wholly or mainly to children by a person registered under Part 1 of that Act;**]**

"clinical commissioning group" ("*grŵp comisiynu clinigol*") means a body established under section 14D of the National Health Service Act 2006;

"community home" ("*cartref cymunedol*") and "controlled community home" ("*cartref cymunedol a reolir*") have the meanings given by section 53 of the Children Act 1989;

"disabled" ("*anabl*") has the meaning given by section 3;

"education functions" ("*swyddogaethau addysg*") has the meaning given by section 579(1) of the Education Act 1996;

"eligibility criteria" ("*meini prawf cymhwystra*") means criteria set under section 32;

"enactment" ("*deddfiad*") means—

(a) except in sections 140(2)(b), 172(7) and 198(2)(b), a provision contained in any of the following (whenever enacted or made)—
  (i) an Act of Parliament;
  (ii) an Act or Measure of the National Assembly for Wales;
  (iii) an Act of the Scottish Parliament;
  (iv) Northern Ireland legislation (within the meaning of the Interpretation Act 1978);
  (v) subordinate legislation made under an enactment falling within sub-paragraphs (i) to (iv);

(b) in sections 140(2)(b), 172(7) and 198(2)(b), a provision contained in any of the following (whenever enacted or made)—
  (i) an Act of Parliament;
  (ii) an Act or Measure of the National Assembly for Wales;
  (iii) subordinate legislation made under an enactment falling within sub-paragraph (i) or (ii);

"family" ("*teulu*"), in relation to a child, includes (but is not limited to) any person who has parental responsibility for the child and any other person with whom the child has been living;

"financial assessment" ("*asesiad ariannol*") has the meaning given by section 63;

"financial limit" ("*terfyn ariannol*") has the meaning given by section 66(5);

"function" ("*swyddogaeth*") means power or duty;

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"harm" ("*niwed*"), in relation to a child, means abuse or the impairment of—

(a) physical or mental health, or

(b) physical, intellectual, emotional, social or behavioural development,

and where the question of whether harm is significant turns on the child's health or development, the child's health or development is to be compared with that which could reasonably be expected of a similar child;

"Health and Social Care trust" ("*ymddiriedolaeth Iechyd a Gofal Cymdeithasol*") means a Health and Social Care trust established under the Health and Personal Social Services (Northern Ireland) Order 1991 (S.I. 1991/194 (N.I. 1));

"hospital" ("*ysbyty*") has the meaning given by section 206 of the National Health Service (Wales) Act 2006;

"independent hospital" ("*ysbyty annibynnol*")—

(a) in relation to Wales, has the meaning given by section 2 of the Care Standards Act 2000, and

(b) in relation to England, means a hospital as defined by section 275 of the National Health Service Act 2006 that is not a health service hospital as defined by that section;

"local authority" ("*awdurdod lleol*") means the council of a county or county borough in Wales;

[[F70] "local authority foster parent" ("*rhiant maeth awdurdod lleol*") means a person authorised as such in accordance with regulations made by virtue of—

(a) sections 87 and 93;

(b) paragraph 12F of Schedule 2 to the Children Act 1989 (regulations providing for approval of local authority foster parents);**]**

"local authority in England" ("*awdurdod lleol yn Lloegr*") means—

(a) a county council in England,

(b) a district council for an area in England for which there is no county council,

(c) a London borough council, or

(d) the Common Council of the City of London;

"local authority in Scotland" ("*awdurdod lleol yn yr Alban*") means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994;

"Local Health Board" ("*Bwrdd Iechyd Lleol*") means a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006;

"National Board" ("*Bwrdd Cenedlaethol*") is defined for the purposes of Part 7 by section 142;

"National Health Service Commissioning Board" ("*Bwrdd Comisiynu'r Gwasanaeth Iechyd Gwladol*") means the body established under section 1H of the National Health Service Act 2006;

"needs assessment" ("*asesiad o anghenion*") means an assessment under Part 3;

"neglect" ("*esgeulustod*") means a failure to meet a person's basic physical, emotional, social or psychological needs, which is likely to result in an impairment of the person's well-being (for example, an impairment of the

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person's health or, in the case of a child, an impairment of the child's development);

"NHS Foundation Trust" ("*Ymddiriedolaeth Sefydledig GIG*") has the meaning given by section 30 of the National Health Service Act 2006;

"NHS Trust" ("*Ymddiriedolaeth GIG*") means a National Health Service trust established under section 18 of the National Health Service (Wales) Act 2006;

"parental responsibility" ("*cyfrifoldeb rhiant*") has meaning given by section 3 of the Children Act 1989;

"prison" ("*carchar*") is defined—

(a) for the purposes of sections 185 to 187 by section 188(1),

(b) for the purposes of section 134, by section 134(11), and

(c) for the purposes of section 162, by section 162(11);

"private children's home" ("*cartref plant preifat*") means a children's home which is not—

(a) a community home, or

(b) a voluntary home (within the meaning given by section 60 of the Children Act 1989);

"regulations" ("*rheoliadau*"), other than in relation to section 101, means regulations made by the Welsh Ministers;

"relative" ("*perthynas*"), in relation to a child, means a step-parent, grandparent, brother, sister, uncle or aunt (including any person who is in that relationship by virtue of a marriage or civil partnership or an enduring family relationship);

"Safeguarding Board" ("*Bwrdd Diogelu*") is defined for the purposes of Part 7 by section 142;

"Safeguarding Board area" ("*ardal Bwrdd Diogelu*") is defined for the purposes of Part 7 by section 142;

"Safeguarding Board partner" ("*partner Bwrdd Diogelu*") is defined for the purposes of Part 7 by section 142;

"services" ("*gwasanaethau*") includes facilities;

"special guardian" ("*gwarcheidwad arbennig*") and "special guardianship order" ("*gorchymyn gwarcheidiaeth arbennig*") have the meaning given by section 14A of the Children Act 1989;

"Special Health Authority" ("*Awdurdod Iechyd Arbennig*") means a Special Health Authority established under section 22 of the National Health Service (Wales) Act 2006 or section 28 of the National Health Service Act 2006;

"specified" ("*penodedig", "a bennir", "a bennwyd*") and related expressions, unless the context otherwise requires, means specified in regulations;

"standard charge" ("*ffi safonol*") is defined for the purposes of Part 5 by section 63(3);

"upbringing" ("*magwraeth*"), in relation to a child, includes the care of the child but not the child's maintenance;

"voluntary organisation" ("*sefydliad gwirfoddol*") means a body (other than a public or **[**[F71]local authority**]**) whose activities are not carried on for profit;

"well-being" ("*llesiant*") has the meaning given by section 2;

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"Welsh family proceedings officer" ("*swyddog achosion teuluol Cymru*") has the meaning given by section 35 of the Children Act 2004;

"youth detention accommodation" ("*llety cadw ieuenctid*") is defined for the purposes of sections 185 to 187 by section 188(1);

"youth offending team" ("*tîm troseddwyr ifanc*") means a team established under section 39 of the Crime and Disorder Act 1998.

(2) In this Act—

(a) a reference to a child looked after by a local authority has the meaning given by section 74;

[[F72](b) a reference to a child looked after by a local authority in England has the same meaning as a reference in section 22 of the Children Act 1989 to a child who is looked after by a local authority in England;**]**

(c) a reference to a child looked after by a local authority in Scotland has the same meaning as a reference in Chapter 1 of Part 2 of the Children (Scotland) Act 1995 to a child who is "looked after" by a local authority (see section 17(6) of that Act);

(d) a reference to a child looked after by a Health and Social Care trust has the same meaning as a reference in the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)) to a child who is looked after by an authority (see article 25 of that Order).

(3) A reference in this Act to a child who is in the care of a local authority is a reference to a child who is in its care by virtue of a care order (within the meaning given by the Children Act 1989).

(4) A reference in this Act to accommodation provided by or on behalf of a local authority is a reference to accommodation so provided in the exercise of functions of that authority or any other local authority which are social services functions.

(5) A reference in this Act to a person having, or lacking, capacity in relation to a matter is to be interpreted as a reference to a person having, or lacking, capacity within the meaning of the Mental Capacity Act 2005 in relation to that matter.

(6) A reference in this Act to being authorised under the Mental Capacity Act 2005 is a reference to being authorised as—

(a) a donee of a lasting power of attorney created under that Act, or

(b) a deputy appointed by the Court of Protection under section 16(2)(b) of that Act.

(7) The Welsh Ministers may by regulations provide that the Council of the Isles of Scilly is to be treated as a local authority in England for the purposes of this Act, or for the purposes of specified provisions of this Act, with such modifications as may be specified.

Textual Amendments

F68 Words in s. 197(1) (2.4.2018) by Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2), a. 188(1), Sch. 3 para. 36(a); S.I. 2017/1326, ergl. 2(3)(h), Sch. (with art. 6)

F69 Words in s. 197(1) (2.4.2018) by Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2), a. 188(1), Sch. 3 para. 36(b); S.I. 2017/1326, ergl. 2(3)(h), Sch. (with art. 6)

F70 Words in s. 197(1) substituted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **319(a)**

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

F71 Words in s. 197(1) substituted (6.4.2016) by Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2), s. 188(1), **Sch. 3 para. 65**; S.I. 2016/467, art. 3

F72 S. 197(2)(b) substituted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **319(b)**

198 Power to make consequential and transitional provision etc

(1) If the Welsh Ministers consider it necessary or expedient for the purposes of giving full effect to any provision of this Act, or in consequence of any such provision, they may by regulations make—

(a) any supplementary, incidental or consequential provision, and

(b) any transitional or saving provision.

(2) Regulations under this section may (among other things)—

(a) provide for any provision of this Act which comes into force before another provision has come into force to have effect, until that other provision has come into force, with specified modifications;

(b) amend, repeal or revoke any enactment (including a provision of this Act) passed or made on or before the day on which this Act is passed.

(3) Nothing in this section limits the power by virtue of section 196(2) to include transitional or saving provision in an order under section 199(2).

199 Commencement

(1) The following provisions come into force on the day after the day on which this Act receives Royal Assent—

Part 1;
section 196;
section 197;
section 198;
this section;
section 200.

(2) The remaining provisions of this Act come into force on a day appointed by the Welsh Ministers by order.

(3) An order made under subsection (2) may appoint different days for different purposes.

(4) An order made under subsection (2) may not commence the provision in subsections (1) and (2) of section 32 before regulations made under subsections (3) and (4) of that section have come into force.

200 Short title

The short title of this Act is the Social Services and Well-being (Wales) Act 2014.

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[F73SCHEDULE A1

DIRECT PAYMENTS: AFTER-CARE UNDER THE MENTAL HEALTH ACT 1983

Textual Amendments

F73 Sch. A1 inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(6), 323

General

1 Sections 50 (direct payments to meet an adult's needs), 51 (direct payments to meet a child's needs) and 53 (direct payments: further provision) apply in relation to section 117 of the Mental Health Act 1983 but as if the following modifications were made to those sections.

Modifications to section 50

2 For subsection (1) of section 50 substitute—

"(1) Regulations may require or allow a local authority to make payments to an adult to whom section 117 of the Mental Health Act 1983 (after-care) applies that are equivalent to the cost of providing or arranging for the provision of after-care services for the adult under that section."

3 In subsection (3) of that section—

(a) in paragraph (a), for "who has needs for care and support ("A")" substitute " in respect of the provision to the adult ("A") of after-care services under section 117 of the Mental Health Act 1983 " , and

(b) in paragraph (c)(i), for "of meeting A's needs" substitute " of discharging its duty towards A under section 117 of the Mental Health Act 1983 " .

4 In subsection (4) of that section—

(a) in paragraph (a), for "who has needs for care and support ("A")" substitute " to whom section 117 of the Mental Health Act 1983 applies ("A") " , and

(b) in paragraph (d)(i), for "meeting A's needs" substitute " discharging its duty towards A under section 117 of the Mental Health Act 1983 " .

5 In subsection (5) of that section—

(a) in paragraph (a), for "A's needs for care and support" substitute " the provision to A of after-care services under section 117 of the Mental Health Act 1983 " , and

(b) in paragraph (b), for "towards the cost of meeting A's needs for care and support" substitute " equivalent to the cost of providing or arranging the provision to A of after-care services under section 117 of the Mental Health Act 1983 " .

6 In subsection (6)(b) of that section, for "A's needs for care and support" substitute " the provision to A of after-care services under section 117 of the Mental Health Act 1983 " .

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Modifications to section 51

7 For subsection (1) of section 51 substitute—

"(1) Regulations may require or allow a local authority to make payments to a person in respect of a child to whom section 117 of the Mental Health Act 1983 (after-care) applies that are equivalent to the cost of providing or arranging the provision of after-care services for the child under that section."

8 In subsection (3)(a) and (b) of that section, for "who has needs for care and support" (in each place it occurs) substitute " to whom section 117 of the Mental Health Act 1983 applies " .

9 In subsection (5)(a) of that section, for "meeting the child's needs" substitute " discharging its duty towards the child under section 117 of the Mental Health Act 1983 " .

Modifications to section 53

10 In subsection (1) of section 53—

(a) in the opening words, for "50, 51 or 52" substitute " 50 or 51 " ,

(b) omit paragraphs (a), (b) and (c),

(c) in paragraph (i), for "a local authority's duty or power to meet a person's needs for care and support or a carer's needs for support is displaced" substitute " a local authority's duty under section 117 of the Mental Health Act 1983 (after-care) is discharged " , and

(d) in paragraph (k), for "50 to 52" substitute " 50 and 51 " .

11 Omit subsections (2) to (8) of that section.

12 After subsection (8) of that section insert—

"(8A) Regulations under sections 50 and 51 must specify that direct payments to meet the cost of providing or arranging for the provision of after-care services under section 117 of the Mental Health Act 1983 (after-care) must be made at a rate that the local authority estimates to be equivalent to the reasonable cost of securing the provision of those services to meet those needs."

13 In subsection (9) of that section—

(a) for ", 51 or 52" substitute " or 51 " , and

(b) for "care and support (or, in the case of a carer, support)" substitute " after-care services " .

14 In subsection (10) of that section, for "care and support (or, in the case of a carer, support) to meet needs" substitute " after-care services ".**]**

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SCHEDULE 1

(introduced by section 85)

CONTRIBUTIONS TOWARDS MAINTENANCE OF LOOKED AFTER CHILDREN

Liability to contribute

1 (1) Where a local authority is looking after a child (other than in the cases mentioned in sub-paragraph (8)) it must consider whether it should recover contributions towards the child's maintenance from any person liable to contribute ("a contributor").

(2) An authority may only recover contributions from a contributor if it considers it reasonable to do so.

(3) A person is liable to contribute if he or she is an adult with parental responsibility for the child.

(4) A person is not liable to contribute during any period when the person is in receipt of a benefit which falls within a category specified in regulations.

(5) In sub-paragraph (4) "benefit" includes any allowance, payment, credit or loan.

(6) A person is not liable to contribute towards the maintenance of a child in the care of a local authority in respect of any period during which the child is living with a parent of the child under arrangements made by the authority in accordance with section 81.

(7) A contributor is not obliged to make any contribution towards a child's maintenance except as agreed or determined in accordance with this Schedule.

(8) The cases are those in which the child is looked after by a local authority under—
- (a) section 76;
- (b) an interim care order under the Children Act 1989;
- (c) section 92 of the Powers of Criminal Courts (Sentencing) Act 2000.

Modifications etc. (not altering text)

C14 Sch. 1 para. 1 excluded by S.I. 2012/2813, regs. 2A(c), 5A (as inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) (Secondary Legislation) Regulations 2016 (S.I. 2016/211), reg. 1(2), Sch. 3 paras. 131, **132**)

C15 Sch. 1 para. 1 excluded by S.I. 2005/1313, reg. 46A(2) (as inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) and Care Planning, Placement and Case Review (Miscellaneous Amendments) (Wales) Regulations 2016 (S.I. 2016/216), regs. 1(2), **5(8)**)

Commencement Information

I191 Sch. 1 para. 1 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

Agreed contributions

2 (1) Contributions towards a child's maintenance may only be recovered if the local authority has served a notice ("a contribution notice") on the contributor specifying—
- (a) the weekly amount which it considers should be contributed, and
- (b) arrangements for payment.

(2) The contribution notice must be in writing and dated.

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(3) Arrangements for payment must, in particular, include—
- (a) the date on which liability to contribute begins (which must not be earlier than the date of the notice),
- (b) the date on which liability under the notice will end (if the child has not, before that date, ceased to be looked after by the authority), and
- (c) the date on which the first payment is to be made.

(4) The authority may specify in a contribution notice a weekly amount which is a standard contribution determined by the authority for all children looked after by it.

(5) The authority may not specify in a contribution notice a weekly amount greater than that which it considers—
- (a) it would normally be prepared to pay if it had placed a similar child with local authority foster parents, and
- (b) it is reasonably practicable for the contributor to pay (having regard to his or her means).

(6) An authority may at any time withdraw a contribution notice (without affecting its power to serve another).

(7) Where the authority and the contributor agree—
- (a) the amount which the contributor is to contribute, and
- (b) arrangements for payment,

(whether as specified in the contribution notice or otherwise) and the contributor notifies the authority in writing that he or she so agrees, the authority may recover summarily, as a civil debt, any contribution which is overdue and unpaid.

(8) Sub-paragraph (7) is without prejudice to any other method of recovery.

(9) A contributor may, by serving a notice in writing on the authority, withdraw his or her agreement in relation to any period of liability falling after the date of service of the notice.

Commencement Information
I192 Sch. 1 para. 2 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

Contribution orders

3 (1) Where a contributor has been served with a contribution notice and has—
- (a) failed to reach any agreement with the local authority as mentioned in paragraph 2(7) within the period of one month beginning with the day on which the contribution notice was served, or
- (b) served a notice under paragraph 2(9) withdrawing his or her agreement,

the authority may apply to the court for an order under this paragraph.

(2) On such an application the court may make an order ("a contribution order") requiring the contributor to contribute a weekly amount towards the child's maintenance in accordance with arrangements for payment specified by the court.

(3) A contribution order—

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(a) may not specify a weekly amount greater than that specified in the contribution notice, and
(b) must be made with regard to the contributor's means.

(4) A contribution order may not—
(a) take effect before the date specified in the contribution notice,
(b) have effect while the contributor is not liable to contribute (by virtue of paragraph 1), or
(c) remain in force after the child has ceased to be looked after by the authority which obtained the order.

(5) An authority may not apply to the court under sub-paragraph (1) in relation to a contribution notice which it has withdrawn.

(6) Where—
(a) a contribution order is in force,
(b) the authority serves another contribution notice, and
(c) the contributor and the authority reach an agreement under paragraph 2(7) in respect of that other contribution notice,

the effect of the agreement is to discharge the order from the date on which it is agreed that the agreement is to take effect.

(7) Where an agreement is reached in the circumstances described in sub-paragraph (6) the authority must notify the court—
(a) of the agreement, and
(b) of the date on which it took effect.

(8) A contribution order may be varied or revoked on the application of the contributor or the authority.

(9) In proceedings for the variation of a contribution order, the authority must specify—
(a) the weekly amount which, having regard to paragraph 2, it proposes that the contributor should contribute under the order as varied, and
(b) the proposed arrangements for payment.

(10) Where a contribution order is varied, the order—
(a) may not specify a weekly amount greater than that specified by the authority in the proceedings for variation, and
(b) must be made with regard to the contributor's means.

(11) An appeal lies in accordance with rules of court from any order made under this paragraph.

[[F74](12) A contribution order in relation to a child, if it would otherwise still be in force, ceases to have effect when the child reaches the age of 18.**]**

Textual Amendments

F74 Sch. 1 para. 3(12) inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **320**

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information

I193 Sch. 1 para. 3 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

Enforcement of contribution orders etc

4 [F75](1) . . . . . .

[F75](2) . . . . . .

(3) Where a contributor has agreed, or has been ordered, to make contributions to a local authority, any other local authority **[**[F76]or a local authority in England**]** within whose area the contributor is for the time being living may—

(a) at the request of the local authority which served the contribution notice, and

(b) subject to agreement as to any amount to be deducted in respect of services rendered,

collect from the contributor any contributions due on behalf of the authority which served the notice.

(4) The power to collect amounts under sub-paragraph (3) includes the power to—

(a) receive and give a discharge for any contributions due, and

(b) (if necessary) enforce payment of any contributions,

even though those contributions may have fallen due at a time when the contributor was living elsewhere.

(5) Any contribution collected under sub-paragraph (3) is to be paid (subject to any agreed deduction) to the local authority which served the contribution notice.

(6) In any proceedings under this paragraph, a document which purports to be—

(a) a copy of an order made by a court under or by virtue of paragraph 3, and

(b) certified as a true copy by the designated officer for the court,

is to be accepted as evidence of the order.

(7) In any proceedings under this paragraph, a certificate which—

(a) purports to be signed by the clerk or some other duly authorised officer of the local authority which obtained the contribution order, and

(b) states that any amount due to the authority under the order is overdue and unpaid,

is to be accepted as evidence that the amount is overdue and unpaid.

Textual Amendments

F75 Sch. 1 para. 4(1)(2) omitted (6.4.2016) by virtue of The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **321(a)**

F76 Words in Sch. 1 para. 4(3) inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **321(b)**

Commencement Information

I194 Sch. 1 para. 4 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

Status: *Point in time view as at 02/04/2018.*
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Regulations

5 Regulations may provide for—

(a) the considerations which a local authority must take into account in deciding—

(i) whether it is reasonable to recover contributions, and

(ii) what the arrangements for payment should be;

(b) the procedures a local authority must follow in reaching agreements with—

(i) contributors (under paragraphs 2 and 3), and

(ii) any other local authority (under paragraph 4).

Commencement Information

I195 Sch. 1 para. 5 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

Service of contribution notice

6 (1) A contribution notice required under this Schedule to be served on a contributor may be served on the contributor—

(a) by being delivered personally to the contributor, or

(b) by being sent to the contributor—

(i) by a registered post service (as defined by section 125(1) of the Postal Services Act 2000), or

(ii) by a postal service which provides for the delivery of the document to be recorded.

(2) For the purposes of section 7 of the Interpretation Act 1978 in its application to this paragraph, a contributor's proper address is the contributor's last known address.

Commencement Information

I196 Sch. 1 para. 6 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

SCHEDULE 2

(introduced by section 143)

SOCIAL SERVICES FUNCTIONS

Commencement Information

I197 Sch. 2 in force at 6.4.2016 by S.I. 2016/412, **art. 2** (with art. 4, Schs. 1, 2)

TABLE 1

Enactment	Nature of functions
Children and Young Persons Act 1933 Sections 34 and 34A	Protection of the young in relation to criminal and summary proceedings.

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Health Services and Public Health Act 1968 Section 65	Financial and other assistance by local authorities to certain voluntary organisations.
Children and Young Persons Act 1969 The whole Act	Care and other treatment of children and young persons through court proceedings.
Adoption Act 1976	Functions continuing to be exercisable by virtue of any transitional or saving provision made by or under the Adoption and Children Act 2002.
Mental Health Act 1983 Parts 2, 3 and 4; Sections 66, 67, 69(1), 114, 115, 116, 117 and 130	Welfare of the mentally disordered; guardianship of persons suffering from mental disorder including such persons removed to England and Wales from Scotland or Northern Ireland; exercise of functions of nearest relative of person so suffering; exercise of functions of nearest relative in relation to applications and references to the First-tier Tribunal or the Mental Health Review Tribunal for Wales; appointment of approved mental health professionals; entry and inspection; welfare of certain hospitals; after-care of detained patients; prosecutions.
Public Health (Control of Disease) Act 1984 Section 46(2) and (5)	Burial or cremation of person dying in accommodation provided under **[**[F77]Part 4**]** of this Act and recovery of expenses from the person's estate.
Mental Health (Scotland) Act 1984 Section 10	Welfare of certain persons while in hospital in Scotland.
Disabled Persons (Services, Consultation and Representation) Act 1986 **[**[F78]Sections 1, 2 and 5(5)**]**	Representation and assessment of disabled persons.
Housing (Scotland) Act 1987 Section 38(b)	Co-operation in relation to homeless persons and persons threatened with homelessness.
[[F79]**Children Act 1989** The whole Act in so far as it confers functions on a local authority in Wales within the meaning of the Act except— (a) Part 3 and Schedule 2 (local authority support for children and families); (b) section 36 and paragraphs 12 to 19(1) of Schedule 3 (education supervision orders).**]**	**[**[F79]Welfare reports; consent to application for residence order in respect of child in care; functions relating to special guardianship orders; family assistance orders; care and supervision; protection of children; functions in relation to community homes, voluntary homes and voluntary organisations, private children's homes, and private arrangements for fostering children; inspection of children's homes on behalf of the Welsh Ministers; research and returns of information.**]**

Status: *Point in time view as at 02/04/2018.*
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[F80National Health Service and Community Care Act 1990 Section 47**]**	**[F80**Assessment of needs for services under section 117 of the Mental Health Act 1983.**]**
F81 . . .	**F81** . . .
Education Act 1996 Section 322	Help for another local authority in exercising functions under Part 4 of the Act.
Adoption (Intercountry Aspects) Act 1999 Sections 1 and 2(4)	Functions under regulations made under section 1 giving effect to the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, concluded at the Hague on 29th May 1993, and functions under Article 9(a) to (c) of the Convention.
Adoption and Children Act 2002	Maintenance of Adoption Service; functions of local authority as adoption agency.
Community Care (Delayed Discharges etc) Act 2003 Part 1	Functions relating to hospital patients likely to need community care services to be made available in order to be discharged safely.
Mental Capacity Act 2005 Sections 39, 39A, 39C, 39D, 49 and Schedule A1	Instructing independent mental capacity advocate before providing accommodation for person lacking capacity; instructing independent mental capacity advocate when giving an urgent authorisation, or making a request for a standard authorisation, under Schedule A1 to the Act; instructing independent mental capacity advocate when no representative for relevant person under Part 10 of Schedule A1 to the Act; instructing independent mental capacity advocate when representative for relevant person under Part 10 of Schedule A1 to the Act is not being paid; reports in proceedings; functions relating to hospital and care home residents.
Children and Families (Wales) Measure 2010 Section 66	Family social work standards officers.
[F82 Section 67**]**	**[F82**The provision of relevant care services within the meaning of that section.**]**
Mental Health (Wales) Measure 2010 Parts 1 to 3	Local primary mental health support services, coordination of and care planning for secondary mental health service users, assessments of former users of secondary mental health services.
Legal Aid, Sentencing and Punishment of Offenders Act 2012 Section 92	Functions in relation to a child remanded to local authority accommodation.

Status: *Point in time view as at 02/04/2018.*
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Care Act 2014 Sections 50 and 52	Temporary duty to meet needs for care and support (or needs for support) where establishment or agency unable to do so because of business failure.
[F83Housing (Wales) Act 2014 Section 95(2), (3) and (4); but only where those functions apply by virtue of subsection (5)(b) of that section.**]**	**[F83**Co-operation and information sharing in relation to homeless persons and persons threatened with homelessness.**]**
This Act The whole Act, except the functions under sections 15(4) (in so far as it relates to other functions that are not social services functions), 120(2), 128(1) and (2), 130(1) and (2), 162 and section 164.	Preventative services; care and support; support for carers; looked after and accommodated children; safeguarding adults and children.

Textual Amendments

F77 Words in Sch. 2 substituted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **324(a)**

F78 Words in Sch. 2 substituted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **324(b)**

F79 Words in Sch. 2 substituted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **324(c)**

F80 Words in Sch. 2 inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **324(d)**

F81 Words in Sch. 2 omitted (27.4.2015) by virtue of Housing (Wales) Act 2014 (anaw 7), s. 145(3), **Sch. 3 para. 22(3)(a)**; S.I. 2015/1272, art. 2, Sch. para. 53; S.I. 2015/1272, art. 2, Sch. para. 53

F82 Words in Sch. 2 inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **324(e)**

F83 Words in Sch. 2 inserted (27.4.2015) by Housing (Wales) Act 2014 (anaw 7), s. 145(3), **Sch. 3 para. 22(3)(b)**; S.I. 2015/1272, art. 2, Sch. para. 53; S.I. 2015/1272, art. 2, Sch. para. 53

SCHEDULE 3

(introduced by section 179)

INVESTIGATION OF COMPLAINTS ABOUT PRIVATELY ARRANGED OR FUNDED SOCIAL CARE AND PALLIATIVE CARE

PART 1

NEW PARTS 2A AND 2B FOR THE PUBLIC SERVICES OMBUDSMAN (WALES) ACT 2005

1 The Public Services Ombudsman (Wales) Act 2005 is amended as follows.

Commencement Information

I198 Sch. 3 para. 1 in force at 1.11.2014 by S.I. 2014/2718, **art. 2(b)**

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

2 After Part 2 (investigation of complaints) insert—

"PART 2A

INVESTIGATION OF COMPLAINTS RELATING TO OTHER PERSONS: SOCIAL CARE AND PALLIATIVE CARE

Application of this Part

Matters to which this Part applies

34A (1) This Part applies to the following matters—

(a) action taken by a care home provider in connection with the provision of accommodation, nursing or personal care in a care home in Wales;

(b) action taken by a domiciliary care provider in connection with the provision of domiciliary care in Wales;

(c) action taken by an independent palliative care provider in connection with the provision of a palliative care service in Wales.

(2) But this Part does not apply to—

(a) matters which may be investigated under Part 2, or

(b) matters described in Schedule 3A.

(3) The Welsh Ministers may by order amend Schedule 3A by—

(a) adding an entry,

(b) removing an entry, or

(c) changing an entry.

(4) Before making an order under subsection (3), the Welsh Ministers must consult the Ombudsman.

(5) No order is to be made under subsection (3) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the Assembly.

(6) For the meaning of the following terms see sections 34R to 34T—

"care home";
"care home provider";
"domiciliary care";
"domiciliary care provider";
"palliative care service";
"independent palliative care provider".

Investigation of complaints

Power to investigate complaints

34B (1) The Ombudsman may investigate a complaint about a matter to which this Part applies if—

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(a) the complaint has been duly made or referred to the Ombudsman, and

(b) in the case of a complaint which relates to an independent palliative care provider, the condition in subsection (2) is met.

(2) The condition is that the independent palliative care provider has received public funding, within the three years before the date of the action to which the complaint relates, in respect of a palliative care service that it provides in Wales.

(3) In subsection (2) "public funding" means funding from—

(a) the Welsh Ministers,

(b) a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006,

(c) an NHS Trust, or

(d) a county council or county borough council in Wales.

(4) A complaint is "duly made" to the Ombudsman if (but only if)—

(a) it is made by a person who is entitled under section 34D to make a complaint to the Ombudsman,

(b) before the complaint is made—

(i) the matter to which it relates has been brought, by or on behalf of the person affected, to the notice of the provider to whom it relates, and

(ii) the provider has been given a reasonable opportunity to investigate the matter and to respond, and

(c) the requirements of section 34E are met in respect of it.

(5) A complaint is "duly referred" to the Ombudsman if (but only if)—

(a) it is made by a person who is entitled under section 34D to make a complaint to the Ombudsman, and

(b) the requirements of section 34F are met in respect of it.

(6) It is for the Ombudsman to determine whether the requirements of subsection (1) have been met in respect of a complaint.

(7) Where the Ombudsman determines that the requirements of subsection (1) have not been met in respect of a complaint because the requirements of subsection (4)(b), section 34E or section 34F(1)(a)(ii) or (b)(ii) have not been met in respect of that complaint, the Ombudsman may nonetheless investigate the complaint if—

(a) it relates to a matter to which this Part applies, and

(b) the Ombudsman thinks it reasonable to do so.

(8) It is for the Ombudsman to decide whether to begin, continue or discontinue an investigation.

(9) The Ombudsman may take any action which he or she thinks may assist in making a decision under subsection (8).

(10) The Ombudsman may begin or continue an investigation into a complaint even if the complaint has been withdrawn.

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Alternative resolution of complaints

34C (1) The Ombudsman may take any action he or she considers appropriate with a view to resolving a complaint which he or she has the power to investigate under section 34B.

(2) The Ombudsman may take action under this section in addition to or instead of conducting an investigation into the complaint.

(3) Any action under this section must be taken in private.

Who can complain

34D (1) The persons entitled to make a complaint to the Ombudsman are—

(a) a member of the public (referred to in this Part as "the person aggrieved") who claims or claimed to have sustained injustice or hardship as a result of a matter to which this Part applies,

(b) a person authorised in writing by the person aggrieved to act on that person's behalf, or

(c) if the person aggrieved is not capable of authorising a person to act on his or her behalf (for example because the person has died), a person who appears to the Ombudsman to be appropriate to act on behalf of the person aggrieved.

(2) "Member of the public" does not include a person acting in his or her capacity as—

(a) a care home provider,

(b) a domiciliary care provider,

(c) an independent palliative care provider, or

(d) a listed authority.

(3) It is for the Ombudsman to determine any question of whether a person is entitled under this section to make a complaint.

Requirements: complaints made to the Ombudsman

34E (1) The requirements mentioned in section 34B(4)(c) are that the complaint must be made—

(a) in writing, and

(b) before the end of the permitted period.

(2) In subsection (1)(b) (and in section 34F(1)(a)(ii)) "the permitted period" means—

(a) where the person aggrieved has notice of the matter before the date on which section 34B comes into force, the period of 12 months beginning with the date on which that section comes into force, and

(b) in any other case, the period of 12 months beginning with the day on which the person aggrieved first has notice of the matter.

(3) It is for the Ombudsman to determine whether the requirements of subsection (1) are met in respect of a complaint.

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Requirements: complaints referred to the Ombudsman

34F (1) The requirements mentioned in section 34B(5)(b) are that the complaint—

(a) must have been made to the provider to whom it relates—

(i) by a person who would have been entitled under section 34D to make the complaint to the Ombudsman, and

(ii) before the end of the permitted period (within the meaning given by section 34E(2)), and

(b) must be referred to the Ombudsman—

(i) in writing, and

(ii) before the end of the period of 12 months beginning with the day on which the complaint was made to the provider.

Decisions not to investigate etc

Decisions not to investigate complaints or to discontinue investigations

34G (1) If the Ombudsman decides under section 34B(8) not to begin an investigation into a complaint or to discontinue an investigation, the Ombudsman must prepare a statement of the reasons for that decision.

(2) The Ombudsman must send a copy of the statement to—

(a) the person who made the complaint, and

(b) the provider to whom the complaint relates.

(3) The Ombudsman may also send a copy of the statement to any other persons he or she thinks appropriate.

(4) The Ombudsman may publish a statement under this section if, after taking account of the interests of the person aggrieved and any other persons the Ombudsman thinks appropriate, he or she considers that it would be in the public interest to do so.

(5) The Ombudsman may supply a copy of the published statement, or part of that statement, to any person who requests it.

(6) The Ombudsman may charge a reasonable fee for supplying a copy of a statement, or part of a statement, under subsection (5).

(7) The following information must not be included in a version of a statement sent to a person under subsection (2)(b) or (3) or published under subsection (4)—

(a) the name of a person other than the provider to whom the complaint relates;

(b) information which, in the opinion of the Ombudsman, is likely to identify such a person and which, in the Ombudsman's opinion, can be omitted without impairing the effectiveness of the statement.

(8) Subsection (7) does not apply if, after taking account of the interests of the person aggrieved and any other persons the Ombudsman thinks appropriate, the Ombudsman considers that it would be in the public interest to include that information in that version of the statement.

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Investigation procedure and evidence

Investigation procedure

34H (1) If the Ombudsman decides under section 34B(8) to conduct an investigation into a complaint, he or she must—

(a) give the provider to whom the complaint relates an opportunity to comment on the allegations contained in the complaint, and

(b) give any other person who is alleged in the complaint to have taken or authorised the action complained of an opportunity to comment on the allegations relating to that person.

(2) An investigation must be conducted in private.

(3) Subject to subsections (1) and (2), the procedure for conducting an investigation is that which the Ombudsman thinks appropriate in the circumstances of the case.

(4) The Ombudsman may, among other things—

(a) make any inquiries which he or she thinks appropriate, and

(b) determine whether any person may be represented in the investigation by an authorised person or another person.

(5) In subsection (4) "authorised person" means a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act).

(6) The Ombudsman may pay to the person who made the complaint and to any other person who attends or supplies information for the purposes of the investigation—

(a) sums in respect of the expenses properly incurred by them, and

(b) allowances to compensate for the loss of their time.

(7) The Ombudsman may attach conditions to those payments.

Information, documents, evidence and facilities

34I (1) This section applies for the purposes of an investigation under this Part.

(2) The Ombudsman may require a person he or she thinks is able to supply information or produce a document relevant to the investigation to do so.

(3) The Ombudsman has the same powers as the High Court in relation to—

(a) the attendance and examination of witnesses (including the administration of oaths and affirmations and the examination of witnesses abroad), and

(b) the production of documents.

(4) The Ombudsman may require a person he or she thinks is able to supply information or produce a document relevant to the investigation to provide any facility the Ombudsman may reasonably require.

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(5) Subject to subsection (6), no person may be compelled to give any evidence or produce any document which the person could not be compelled to give or produce in civil proceedings before the High Court.

(6) The Crown is not entitled to any privilege in relation to the production of documents or the giving of evidence that would otherwise be allowed by law in legal proceedings.

(7) Where an obligation to maintain secrecy or other restriction on the disclosure of information obtained by or supplied to persons in Her Majesty's service has been imposed by an enactment or rule of law, the obligation or restriction does not to apply to the disclosure of information for the purposes of the investigation.

Obstruction and contempt

34J (1) If the Ombudsman is satisfied that the condition in subsection (2) is met in relation to a person, he or she may issue a certificate to that effect to the High Court.

(2) The condition is that the person—

(a) without lawful excuse, has obstructed the discharge of any of the Ombudsman's functions under this Part, or

(b) has done an act in relation to an investigation which, if the investigation were proceedings in the High Court, would constitute contempt of court.

(3) If the Ombudsman issues a certificate, the High Court may inquire into the matter.

(4) If the High Court is satisfied that the condition in subsection (2) is met in relation to the person, it may deal with that person in the same manner as it may deal with a person who has committed contempt in relation to the High Court.

Reports about investigations

Investigation reports

34K (1) This section applies to investigations under this Part unless section 34N applies.

(2) The Ombudsman must, after conducting an investigation into a complaint about a matter to which this Part applies—

(a) prepare a report on the findings of the investigation ("an investigation report"), and

(b) send a copy of the report to the appropriate persons.

(3) The appropriate persons are—

(a) the person who made the complaint,

(b) the provider to whom it relates,

(c) any other person who is alleged in the complaint to have taken or authorised the action complained of, and

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(d) the Welsh Ministers.

(4) The Ombudsman may also send a copy of the report to any other persons he or she thinks appropriate.

(5) The Ombudsman may publish the report if, after taking account of the interests of the person aggrieved and any other persons the Ombudsman thinks appropriate, he or she considers that it would be in the public interest to do so.

(6) The Ombudsman may supply a copy of the published report, or part of that report, to any person who requests it.

(7) The Ombudsman may charge a reasonable fee for supplying a copy of a report, or part of a report, under subsection (6).

(8) The following information must not be included in a version of a report sent to a person under subsection (3)(b) or (c) or (4) or published under subsection (5)—

(a) the name of a person other than the provider to whom the complaint relates;

(b) information which, in the opinion of the Ombudsman, is likely to identify such a person and which, in the Ombudsman's opinion, can be omitted without impairing the effectiveness of the report.

(9) Subsection (8) does not apply if, after taking account of the interests of the person aggrieved and any other persons the Ombudsman thinks appropriate, the Ombudsman considers that it would be in the public interest to include that information in that version of the report.

Further publicity for investigation reports

34L (1) The Ombudsman may arrange for a notice about an investigation report to be published—

(a) in one or more newspapers, or

(b) by means of broadcast or other electronic media.

(2) The notice may, for example—

(a) provide a summary of the Ombudsman's findings,

(b) specify an address or addresses at which a copy of the published report can be inspected during ordinary office hours and from which a copy of that report (or part of that report) may be obtained, and

(c) specify a website address at which a copy of the published report can be viewed.

(3) The provider to whom the report relates must, if required to do so by the Ombudsman, reimburse the Ombudsman for the reasonable costs of arranging the publication of the notice.

(4) In deciding whether it is appropriate to make arrangements under subsection (1), the Ombudsman must take into account—

(a) the public interest,

(b) the interests of the person aggrieved, and

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(c) the interests of any other persons the Ombudsman thinks appropriate.

Action following receipt of investigation reports

34M(1) This section applies where the Ombudsman has concluded in an investigation report that the person aggrieved has sustained injustice or hardship as a result of the matter investigated.

(2) The provider to whom the matter relates must consider the report and notify the Ombudsman before the end of the permitted period of—

(a) the action the provider has taken or proposes to take in response to the report, and

(b) the period before the end of which the provider proposes to take that action (if that action has not already been taken).

(3) In subsection (2) "the permitted period"means—

(a) the period of one month beginning on the date on which the authority receives the report, or

(b) a longer period specified by the Ombudsman in writing (if any).

Reports: alternative procedure

34N(1) This section applies if, after the Ombudsman has conducted an investigation under this Part—

(a) the Ombudsman concludes that the person aggrieved has not sustained injustice or hardship as a result of the matter complained of, and

(b) the Ombudsman is satisfied that the public interest does not require sections 34K to 34M to apply.

(2) This section also applies if, after the Ombudsman has conducted an investigation under this Part—

(a) the Ombudsman concludes that the person aggrieved has sustained injustice or hardship as a result of the matter complained of,

(b) the provider to whom the complaint relates agrees to implement, before the end of the permitted period, any recommendations that the Ombudsman makes, and

(c) the Ombudsman is satisfied that the public interest does not require sections 34K to 34M to apply.

(3) In subsection (2)(b) "the permitted period"means—

(a) a period agreed between the Ombudsman, the provider and the person who made the complaint, or

(b) if the Ombudsman thinks that no such agreement can be reached, a period specified by him or her in writing.

(4) The Ombudsman may decide to prepare a report on his or her findings under this section, rather than under section 34K; and if the Ombudsman decides to do so, sections 34K to 34M do not apply.

(5) If a report is prepared under this section, the Ombudsman—

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(a) must send a copy of the report to the person who made the complaint and the provider to whom the complaint relates, and

(b) may send a copy of the report to any other persons he or she thinks appropriate.

(6) The Ombudsman may publish the report if, after taking account of the interests of the persons aggrieved and any other persons the Ombudsman thinks appropriate, he or she considers it to be in the public interest to do so.

(7) The Ombudsman may supply a copy of a report published under subsection (6), or a part of that report, to any person who requests it.

(8) The Ombudsman may charge a reasonable fee for supplying a copy of a report, or part of a report, under subsection (7).

(9) The following information must not be included in a version of the report sent to a person under subsection (5) or published under subsection (6)—

(a) the name of a person other than the provider to whom the complaint relates;

(b) information which, in the opinion of the Ombudsman, is likely to identify such a person and which, in the Ombudsman's opinion, can be omitted without impairing the effectiveness of the report.

(10) Subsection (9) does not apply if, after taking account of the interests of the person aggrieved and any other persons the Ombudsman thinks appropriate, the Ombudsman considers that it would be in the public interest to include that information in that version of the report.

Special reports

Circumstances in which special reports may be prepared

34O (1) The Ombudsman may prepare a special report under section 34P if case 1, 2 or 3 applies.

(2) Case 1 applies if—

(a) the Ombudsman has concluded in an investigation report that the person aggrieved has sustained injustice or hardship as a result of the matter investigated, and

(b) one of the circumstances in subsection (3) applies.

(3) The circumstances are that—

(a) the Ombudsman has not received the notification required under section 34M before the end of the period permitted under that section;

(b) the Ombudsman has received that notification but is not satisfied with—

(i) the action which the provider has taken or proposes to take, or

(ii) the period before the end of which the provider proposes to have taken that action;

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(c) the Ombudsman has received that notification but is not satisfied that the provider has, before the end of the permitted period, taken the action that the provider proposed to take.

(4) In subsection (3)(c) "the permitted period" means—

(a) the period referred to in section 34M(2)(b), or

(b) a longer period specified by the Ombudsman in writing (if any).

(5) Case 2 applies if—

(a) the Ombudsman has prepared a report under section 34N by virtue of subsection (2) of that section, and

(b) he or she is not satisfied that the provider has implemented the Ombudsman's recommendations before the end of the permitted period.

(6) In subsection (5)(b) "the permitted period" means—

(a) the period referred to in section 34N(2)(b), or

(b) a longer period specified by the Ombudsman in writing (if any).

(7) Case 3 applies if—

(a) a complaint in respect of a provider has been resolved under section 34C,

(b) in resolving the complaint, the Ombudsman has concluded that the person aggrieved has sustained injustice or hardship as a result of the matter complained of,

(c) the provider has agreed to take particular action before the end of a particular period, and

(d) the Ombudsman is not satisfied that the provider has taken that action before the end of the permitted period.

(8) In subsection (7)(d) "the permitted period" means—

(a) the period referred to in subsection (7)(c), or

(b) a longer period specified by the Ombudsman in writing (if any).

Special reports

34P (1) A special report must—

(a) set out the facts which entitle the Ombudsman to prepare the special report (that is, the facts on the basis of which case 1, 2 or 3 of section 34O applies), and

(b) make such recommendations as the Ombudsman thinks fit as to the action which, in his or her opinion, should be taken—

(i) to remedy the injustice or hardship to the person aggrieved, and

(ii) to prevent similar injustice or hardship being caused in the future.

(2) If the special report is prepared because case 1 of section 34O applies, the Ombudsman must send a copy of the report to each person to whom a copy of the section 34K report was sent under section 34K(2)(b).

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(3) If the special report is prepared because case 2 or 3 of section 34O applies, the Ombudsman must send a copy of the report to the person who made the complaint and the provider to whom the complaint relates.

(4) The Ombudsman may send a copy of a special report to any other persons he or she thinks appropriate.

(5) The Ombudsman may publish a special report.

(6) The Ombudsman may supply a copy of a published special report, or a part of such a report, to any person who requests it.

(7) The Ombudsman may charge a reasonable fee for supplying a copy of a special report, or part of such a report, under subsection (6).

(8) The following information must not be included in a version of a special report sent to a person under subsection (2), (3) or (4) or published under subsection (5)—
   (a) the name of any person other than the provider in respect of whom the complaint was made;
   (b) information which, in the opinion of the Ombudsman, is likely to identify any such person and which, in the Ombudsman's opinion, can be omitted without impairing the effectiveness of the special report.

(9) Subsection (8) does not apply if, after taking account of the interests of the person aggrieved and any other persons the Ombudsman thinks appropriate, the Ombudsman considers that it would be in the public interest to include that information in that version of the special report.

Further publicity for special reports

34Q (1) The Ombudsman may arrange for a notice about a special report to be published—
   (a) in one or more newspapers, or
   (b) by means of broadcast or other electronic media.

(2) The notice may, for example—
   (a) provide a summary of the Ombudsman's findings,
   (b) specify an address or addresses at which a copy of the published report can be inspected during ordinary office hours and from which a copy of that report (or part of that report) may be obtained, and
   (c) specify a website address at which a copy of the published report can be viewed.

(3) The provider to whom the report relates must, if required to do so by the Ombudsman, reimburse the Ombudsman for the reasonable costs of arranging the publication of the notice.

(4) In deciding whether to make arrangements under subsection (1), the Ombudsman must take into account—
   (a) the public interest,
   (b) the interests of the person aggrieved, and

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(c) the interests of any other person the Ombudsman thinks appropriate.

Interpretation

Meaning of "care home" and "care home provider"

34R (1) This section applies for the purposes of this Act.

(2) "Care home" has the same meaning as in the Care Standards Act 2000.

(3) "Care home provider" means a person who carries on a care home.

(4) Action is to be treated as action taken by a care home provider if it is taken by—
- (a) a person employed by that provider,
- (b) a person acting on behalf of that provider, or
- (c) a person to whom that provider has delegated any functions.

(5) Action is also to be treated as action taken by a care home provider if—
- (a) that provider provides, by means of an arrangement with another person, accommodation, nursing or personal care in a care home in Wales for a person falling within section 3(2) of the Care Standards Act 2000, and
- (b) the action is taken by or on behalf of the other person in carrying out the arrangement.

Meaning of "domiciliary care" and "domiciliary care provider"

34S (1) This section applies for the purposes of this Act.

(2) "Domiciliary care" means personal care provided in their own homes for persons who by reason of illness, infirmity or disability are unable to provide it for themselves without assistance.

(3) "Domiciliary care provider" means a person who carries on an activity which involves the provision of domiciliary care, but it does not include an individual who—
- (a) carries on the activity otherwise than in partnership with others,
- (b) is not employed by a body corporate or unincorporated association to carry it on,
- (c) does not employ any other person to carry out the activity, and
- (d) provides or arranges the provision of domiciliary care to fewer than four persons.

(4) Action is to be treated as action taken by a domiciliary care provider if it is taken by—
- (a) a person employed by that provider,
- (b) a person acting on behalf of that provider, or
- (c) a person to whom that provider has delegated any functions.

(5) Action is also to be treated as action taken by a domiciliary care provider if—
- (a) that provider provides domiciliary care by means of an arrangement with another person, and

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(b) the action is taken by or on behalf of the other person in carrying out the arrangement.

Meaning of "palliative care service" and "independent palliative care provider"

34T (1) This section applies for the purposes of this Act.

(2) "Palliative care service" means a service the main purpose of which is to provide palliative care.

(3) "Independent palliative care provider" means a person who—
(a) provides a palliative care service, and
(b) is not a Welsh health service body.

(4) Action is to be treated as action taken by an independent palliative care provider if it is taken by—
(a) a person employed by that provider,
(b) a person acting on behalf of that provider, or
(c) a person to whom that provider has delegated any functions.

(5) Action is also to be treated as action taken by an independent palliative care provider if—
(a) that provider provides palliative care by means of an arrangement with another person, and
(b) the action is taken by or on behalf of the other person in carrying out the arrangement.

PART 2B

INVESTIGATION OF COMPLAINTS: SUPPLEMENTARY

Consultation and co-operation

Consultation and co-operation with other ombudsmen

34U (1) This section applies if, in making a decision under section 2(5) or 34B(8) or conducting an investigation under Part 2 or 2A, the Ombudsman forms the opinion that a matter which is the subject of the complaint or investigation could be the subject of an investigation by an ombudsman mentioned in subsection (7).

(2) The Ombudsman must consult that ombudsman about the matter.

(3) The Ombudsman may co-operate with that ombudsman in relation to the matter.

(4) Consultation under subsection (2), and co-operation under subsection (3), may extend to anything relating to a matter which is the subject of the complaint or investigation, including (among other things)—
(a) the conduct of an investigation into the complaint, and
(b) the form, content and publication of a report of the investigation.

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(5) If the Ombudsman consults an ombudsman about a matter under subsection (2), the Ombudsman and that ombudsman may—
- (a) conduct a joint investigation into the matter,
- (b) prepare a joint report in relation to the investigation, and
- (c) publish the joint report.

(6) Subsection (5) does not apply if the ombudsman consulted under subsection (2) is the Scottish Public Services Ombudsman.

(7) The ombudsmen referred to in subsection (1) are—
- (a) the Parliamentary Commissioner for Administration;
- (b) the Health Service Commissioner for England;
- (c) a Local Commissioner;
- (d) the Scottish Public Services Ombudsman;
- (e) a housing ombudsman appointed in accordance with a scheme approved under section 51 of the Housing Act 1996;
- (f) the Children's Commissioner for Wales.

(8) The Welsh Ministers may by order amend subsection (7) by—
- (a) adding a person,
- (b) omitting a person, or
- (c) changing the description of a person.

(9) An order under subsection (8) may add a person to subsection (7) only if the person appears to the Welsh Ministers to have functions relating to the investigation of complaints.

(10) No order is to be made under subsection (8) unless a draft of the statutory instrument containing it has been laid before and approved by a resolution of the Assembly.

Working jointly with other Commissioners

34V (1) This section applies where it appears to the Ombudsman that—
- (a) there is a complaint in respect of a matter which he or she is entitled to investigate, and
- (b) the matter is one which could also be the subject of an examination by the Commissioner for Older People in Wales or the Welsh Language Commissioner.

(2) Where the Ombudsman considers it appropriate, he or she must (as respects the Commissioner for Older People in Wales) or may (as respects the Welsh Language Commissioner)—
- (a) inform the Commissioner about the matter, and
- (b) consult him or her in relation to it.

(3) Where the Ombudsman consults a Commissioner under this section, the Ombudsman and the Commissioner may—
- (a) co-operate with each other in relation to the matter,
- (b) conduct a joint investigation into the matter, and
- (c) prepare and publish a joint report in relation to the investigation.

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Working collaboratively with other Commissioners

34W(1) This section applies where it appears to the Ombudsman that a complaint relates to or raises a matter which could be the subject of an examination by the Commissioner for Older People in Wales or the Welsh Language Commissioner ("the connected matter").

(2) Where the Ombudsman considers it appropriate, he or she must (as respects the Commissioner for Older People in Wales) or may (as respects the Welsh Language Commissioner) inform the Commissioner about the connected matter.

(3) Where the Ombudsman considers that the complaint also relates to or raises a matter into which he or she is entitled to conduct an investigation ("the Ombudsman matter"), the Ombudsman must (as respects the Commissioner for Older People in Wales) or may (as respects the Welsh Language Commissioner) also if he or she considers it appropriate—

(a) inform the Commissioner about the Ombudsman's proposals for conducting an investigation into the complaint, and

(b) consult the Commissioner about those proposals.

(4) Where the Ombudsman and the Commissioner consider that they are entitled to investigate, respectively, the Ombudsman matter and the connected matter, they may—

(a) co-operate with each other in the separate investigation of each of those matters,

(b) act together in the investigation of those matters, and

(c) prepare and publish a joint report containing their respective conclusions in relation to the matters they have each investigated.

(5) Where the Ombudsman considers—

(a) that the complaint does not relate to or raise a matter into which he or she is entitled to conduct an investigation, and

(b) that it is appropriate to do so,

the Ombudsman must (as respects the Commissioner for Older People in Wales) or may (as respects the Welsh Language Commissioner) inform the person who initiated the complaint about how to secure the referral of the connected matter to the Commissioner.

Disclosure

Disclosure of information

34X(1) The information to which this section applies is—

(a) information obtained by the Ombudsman, a member of the Ombudsman's staff or another person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of his or her functions—

(i) in deciding whether to begin an investigation,

(ii) in the course of an investigation, or

(iii) in resolving a complaint under section 3 or 34C;

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(b) information obtained from an ombudsman mentioned in section 34U(7) by virtue of any provision of section 34U or a corresponding provision in an enactment relating to any of those ombudsmen;

(c) information obtained from the Commissioner for Older People in Wales by virtue of section 34V or 34W of this Act or section 16 or 17 of the Commissioner for Older People (Wales) Act 2006 (working with other ombudsmen);

(d) information obtained from the Welsh Language Commissioner by virtue of section 34V or 34W of this Act or section 22 of the Welsh Language (Wales) Measure 2011 (power to disclose information);

(e) information obtained from the Information Commissioner by virtue of section 76 of the Freedom of Information Act 2000 (disclosure between Information Commissioner and ombudsmen).

(2) The information must not be disclosed except—

(a) for the purposes of deciding whether to begin an investigation;

(b) for the purposes of an investigation;

(c) for the purposes of resolving a complaint under section 3 or 34C;

(d) for the purposes of a statement or report made in relation to a complaint or investigation;

(e) for the purposes of any provision of section 34U, 34V or 34W;

(f) for the purposes of proceedings for—

(i) an offence under the Official Secrets Act 1911 to 1989 alleged to have been committed by the Ombudsman, a member of the Ombudsman's staff or other person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of any of his of her functions;

(ii) an offence of perjury alleged to have been committed in the course of an investigation;

(g) for the purposes of an inquiry with a view to the taking of proceedings mentioned in paragraph (f);

(h) for the purpose of proceedings under section 15 or 34J;

(i) in the case of information to the effect that a person is likely to constitute a threat to the health or safety of one or more persons, to any person to whom the Ombudsman thinks it should be disclosed in the public interest;

(j) in the case of information to which subsection (3) applies, to the Information Commissioner.

(3) This subsection applies to information if it appears to the Ombudsman to relate to—

(a) a matter in respect of which the Information Commissioner could exercise a power conferred by an enactment mentioned in subsection (4), or

(b) the commission of an offence mentioned in subsection (5).

(4) The enactments are—

(a) Part 5 of the Data Protection Act 1998 (enforcement);

(b) section 48 of the Freedom of Information Act 2000 (practice recommendations);

(c) Part 4 of that Act.

(5) The offences are those under—

(a) any provision of the Data Protection Act 1998 other than paragraph 12 of Schedule 9 to that Act (obstruction of execution of warrant);

(b) section 77 of the Freedom of Information Act 2000 (offence of altering etc records with intent to prevent disclosure).

(6) No person may be called upon to give evidence in any proceedings (other than proceedings mentioned in subsection (2)) of information obtained by that person as mentioned in subsection (1)(a) or (b).

Disclosure prejudicial to safety of State or contrary to public interest

34Y (1) A Minister of the Crown may give notice to the Ombudsman with respect to—

(a) any document or information specified in the notice, or

(b) any class of document or information so specified,

that, in the opinion of the Minister, the disclosure of that document or information, or of documents or information of that class, would be prejudicial to the safety of the State or otherwise contrary to the public interest.

(2) If a notice is given under subsection (1), nothing in this Act is to be construed as authorising or requiring the Ombudsman, a member of the Ombudsman's staff or another person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of his or her functions to disclose to any person or for any purpose any document or information, or class of document or information, specified in the notice.

Protection from defamation claims

34Z (1) For the purposes of the law of defamation, the following are absolutely privileged—

(a) the publication of a matter, in the discharge of any of the Ombudsman's functions under this Act, by the Ombudsman, a member of the Ombudsman's staff or another person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of any of his or her functions;

(b) the publication of a matter by a person in the discharge of functions under section 17;

(c) the publication of a matter in connection with a complaint made or referred to the Ombudsman under this Act, in communications between—

(i) a listed authority, a member or co-opted member of a listed authority, an officer or member of the staff of a listed authority or another person acting on behalf of a listed authority or assisting it in the discharge of any of its functions, and

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(ii) the Ombudsman, a member of the Ombudsman's staff or another person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of any of his or her functions;

(d) the publication of a matter in connection with a complaint made or referred to the Ombudsman under this Act, in communications between—

(i) a care home provider, domiciliary care provider or independent palliative care provider, an officer or member of staff of such a provider or another person acting on behalf of such a provider or assisting it in the discharge of any of its functions, and

(ii) the Ombudsman, a member of the Ombudsman's staff or another person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of any of his or her functions;

(e) the publication of a matter in connection with a complaint made or referred (or to be made or referred) by or on behalf of a person to the Ombudsman under this Act, in communications between a person and an Assembly member;

(f) the publication of a matter in connection with a complaint made or referred (or to be made or referred) by or on behalf of a person to the Ombudsman under this Act, in communications between—

(i) the person, and

(ii) the Ombudsman, a member of the Ombudsman's staff or another person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of any of his or her functions.

(2) For the purposes of subsection (1)(d)(i) a person is an officer of a provider if he or she has control or management of a provider which is not an individual or the affairs of such a provider.”

Commencement Information

I199 Sch. 3 para. 2 in force at 1.11.2014 by S.I. 2014/2718, **art. 2(b)**

3 Until the coming into force of Part 5 of the Welsh Language (Wales) Measure 2011, sections 34V and 34W of the Public Services Ombudsman (Wales) Act 2005 have effect with the omission of the following words (wherever occurring)— “ or the Welsh Language Commissioner ”; “ or may (as respects the Welsh Language Commissioner) ”.

Commencement Information

I200 Sch. 3 para. 3 in force at 1.11.2014 by S.I. 2014/2718, **art. 2(b)**

4 After Schedule 3 (listed authorities) insert—

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"SCHEDULE
3A

EXCLUDED MATTERS: PART 2A

1 The commencement or conduct of proceedings before a court of competent jurisdiction.

2 Action taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters."

Commencement Information
I201 Sch. 3 para. 4 in force at 1.11.2014 by S.I. 2014/2718, **art. 2(b)**

PART 2

MINOR AND CONSEQUENTIAL AMENDMENTS RELATING TO THE OMBUDSMAN

Local Government Act 1974

5 The Local Government Act 1974 is amended as follows.

Commencement Information
I202 Sch. 3 para. 5 in force at 1.11.2014 by S.I. 2014/2718, **art. 2(b)**

6 In section 29 (investigations: further provisions), in subsection (5), for "26" substitute " 34X ".

Commencement Information
I203 Sch. 3 para. 6 in force at 1.11.2014 by S.I. 2014/2718, **art. 2(b)**

7 In section 33 (consultation between Local Commissioner, the Parliamentary Commissioner and the Health Service Commissioners and other Commissioners and Ombudsmen), in subsection (5), for "26" substitute " 34X ".

Commencement Information
I204 Sch. 3 para. 7 in force at 1.11.2014 by S.I. 2014/2718, **art. 2(b)**

8 In section 34G (investigations: further provisions), in subsection (2), for "26" substitute " 34X ".

Commencement Information
I205 Sch. 3 para. 8 in force at 1.11.2014 by S.I. 2014/2718, **art. 2(b)**

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

9 In section 34M (consultation with other Commissioners), in subsection (7), in paragraph (d), for "26" substitute " 34X ".

Commencement Information
I206 Sch. 3 para. 9 in force at 1.11.2014 by S.I. 2014/2718, **art. 2(b)**

Local Government Act 2000

10 The Local Government Act 2000 is amended as follows.

Commencement Information
I207 Sch. 3 para. 10 in force at 1.11.2014 by S.I. 2014/2718, **art. 2(b)**

11 Section 67 (consultation with ombudsmen) has effect, until the repeal of that section by Part 5 of Schedule 25 to the Localism Act 2011 is brought fully into force, with the following amendments—

(a) in subsection (2A), after "Part 2" insert " or 2A ", and

(b) in subsection (4), for "26" substitute " 34X ".

Commencement Information
I208 Sch. 3 para. 11 in force at 1.11.2014 by S.I. 2014/2718, **art. 2(b)**

12 In section 70 (investigations: further provisions), in subsection (2), in paragraph (b), for ", 25 to 27 and 32" substitute " and Part 2B ".

Commencement Information
I209 Sch. 3 para. 12 in force at 1.11.2014 by S.I. 2014/2718, **art. 2(b)**

Public Services Ombudsman (Wales) Act 2005

13 The Public Services Ombudsman (Wales) Act 2005 is amended as follows.

Commencement Information
I210 Sch. 3 para. 13 in force at 1.11.2014 by S.I. 2014/2718, **art. 2(b)**

14 In the heading to Part 2 (investigation of complaints), after "COMPLAINTS" insert " RELATING TO LISTED AUTHORITIES ".

Commencement Information
I211 Sch. 3 para. 14 in force at 1.11.2014 by S.I. 2014/2718, **art. 2(b)**

15 In section 2 (power of investigation)—

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(a) in subsection (1), after "complaint" (in the first place it occurs) insert " under this Part ", and

(b) in subsection (4), after "complaint" (in the first place it occurs) insert " under this Part ".

Commencement Information

I212 Sch. 3 para. 15 in force at 1.11.2014 by S.I. 2014/2718, **art. 2(b)**

16 In section 4 (who can complain), in subsection (1)—

(a) in the words before paragraph (a), after "Ombudsman" insert " under this Part ", and

(b) in paragraph (a), for "Act" substitute " Part ".

Commencement Information

I213 Sch. 3 para. 16 in force at 1.11.2014 by S.I. 2014/2718, **art. 2(b)**

17 In section 7 (matters which may be investigated), in subsection (1), after "investigate" insert " under this Part ".

Commencement Information

I214 Sch. 3 para. 17 in force at 1.11.2014 by S.I. 2014/2718, **art. 2(b)**

18 In section 9 (exclusion: other remedies)—

(a) in subsection (1), after "matter" (in the first place it occurs) insert " under this Part ", and

(b) in subsection (3), after "matter" (in the first place it occurs) insert " under this Part ".

Commencement Information

I215 Sch. 3 para. 18 in force at 1.11.2014 by S.I. 2014/2718, **art. 2(b)**

19 In section 10 (other excluded matters), in subsection (1), after "investigate" insert " under this Part ".

Commencement Information

I216 Sch. 3 para. 19 in force at 1.11.2014 by S.I. 2014/2718, **art. 2(b)**

20 In section 14 (information, documents, evidence and facilities), before subsection (1) insert—

"(A1) This section applies in relation to investigations conducted under this Part."

Commencement Information

I217 Sch. 3 para. 20 in force at 1.11.2014 by S.I. 2014/2718, **art. 2(b)**

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21 In section 23 (special reports: supplementary)—

(a) in subsection (1), in paragraph (a), after "report" insert " made under section 22 ", and

(b) in subsection (7), after "report" (in the first place it occurs) insert " under section 22 ".

Commencement Information
I218 Sch. 3 para. 21 in force at 1.11.2014 by S.I. 2014/2718, **art. 2(b)**

22 Omit the italic cross-heading before section 25 (consultation and co-operation).

Commencement Information
I219 Sch. 3 para. 22 in force at 1.11.2014 by S.I. 2014/2718, **art. 2(b)**

23 Omit sections 25 to 25B (consultation and co-operation).

Commencement Information
I220 Sch. 3 para. 23 in force at 1.11.2014 by S.I. 2014/2718, **art. 2(b)**

24 Omit the italic cross-heading before section 26 (disclosure).

Commencement Information
I221 Sch. 3 para. 24 in force at 1.11.2014 by S.I. 2014/2718, **art. 2(b)**

25 Omit sections 26 and 27 (disclosure of information).

Commencement Information
I222 Sch. 3 para. 25 in force at 1.11.2014 by S.I. 2014/2718, **art. 2(b)**

26 Omit section 32 (protection from defamation claims).

Commencement Information
I223 Sch. 3 para. 26 in force at 1.11.2014 by S.I. 2014/2718, **art. 2(b)**

27 In section 41 (interpretation), in subsection (1)—

(a) in the definition of "investigation", after "section 2" insert " or 34B ",

(b) in the definition of "the person aggrieved"—

(i) after "aggrieved"" insert " in Part 2 ", and

(ii) after "section 4(1)(a)" insert " and in Part 2A has the meaning given in section 34D(1)(a) ",

(c) in the definition of "special report"—

(i) after "report" insert " in Part 2 ", and

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(ii) after "section 22" insert " and in Part 2A has the meaning given in section 34P ", and

(d) insert, in the appropriate places—

""care home" has the meaning given by section 34R(2);";

""care home provider" has the meaning given by section 34R(3);";

""domiciliary care" has the meaning given by section 34S(2);";

""domiciliary care provider" has the meaning given by section 34S(3);";

""independent palliative care provider" has the meaning given by section 34T(3);";

""palliative care service" has the meaning given by section 34T(2);".

Commencement Information
I224 Sch. 3 para. 27 in force at 1.11.2014 by S.I. 2014/2718, **art. 2(b)**

28 In the heading to section 42 (former health care providers and social landlords: modifications), for "and social landlords" substitute " social landlords, social care providers and palliative care providers ".

Commencement Information
I225 Sch. 3 para. 28 in force at 1.11.2014 by S.I. 2014/2718, **art. 2(b)**

29 (1) Section 42 (former health care providers and social landlords: modifications) is amended as follows.

(2) In subsection (1), after paragraph (c) insert—

"(d) former care home providers in Wales;

(e) former domiciliary care providers in Wales;

(f) former independent palliative care providers in Wales."

(3) After subsection (4) insert—

"(4A) "Former care home provider in Wales" means a person who—

(a) at the relevant time, provided accommodation, nursing or personal care of a particular description at a care home (within the meaning given by the Care Standards Act 2000) in Wales, and

(b) subsequently ceased to do so (whether or not the person has later started to do so again).

(4B) "Former domiciliary care provider in Wales" means a person who—

(a) at the relevant time, provided domiciliary care services of a particular description in Wales, and

(b) subsequently ceased to do so (whether or not the person has later started to provide those services again).

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(4C) "Former independent palliative care provider in Wales" means a person who—

(a) at the relevant time, provided a palliative care service of a particular description in Wales, and

(b) subsequently ceased to do so (whether or not the person has later started to do so again)."

Commencement Information

I226 Sch. 3 para. 29 in force at 1.11.2014 by S.I. 2014/2718, **art. 2(b)**

30 (1) Schedule 1 (Public Services Ombudsman for Wales: appointment etc) is amended as follows.

(2) In paragraph 5—

(a) in sub-paragraph (1), after paragraph (e) insert—

"(f) he is a care home provider, domiciliary care provider or independent palliative care provider;

(g) he is an officer or member of staff of a provider of that kind.";

(b) after sub-paragraph (1) insert—

"(1A) For the purposes of sub-paragraph (1)(g) a person is an officer of a provider if he or she has control or management of a provider which is not an individual or the affairs of such a provider."

(3) In paragraph 14, in sub-paragraph (7)(a), after "authority" insert " , care home provider, domiciliary care provider or independent palliative care provider ".

Commencement Information

I227 Sch. 3 para. 30 in force at 1.11.2014 by S.I. 2014/2718, **art. 2(b)**

31 In the title to Schedule 2, after "MATTERS" insert " : PART 2 ".

Commencement Information

I228 Sch. 3 para. 31 in force at 1.11.2014 by S.I. 2014/2718, **art. 2(b)**

Commissioner for Older People (Wales) Act 2006

32 The Commissioner for Older People (Wales) Act 2006 is amended as follows.

Commencement Information

I229 Sch. 3 para. 32 in force at 1.11.2014 by S.I. 2014/2718, **art. 2(b)**

33 In section 18 (power to disclose information), in subsection (1), in paragraph (b), for "25A" substitute " 34V ".

Status: *Point in time view as at 02/04/2018.*
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Commencement Information
I230 Sch. 3 para. 33 in force at 1.11.2014 by S.I. 2014/2718, **art. 2(b)**

34 In Schedule 4 (minor and consequential amendments), in paragraph 2, omit sub-paragraphs (2) and (3).

Commencement Information
I231 Sch. 3 para. 34 in force at 1.11.2014 by S.I. 2014/2718, **art. 2(b)**

Government of Wales Act 2006

35 In Schedule 10 to the Government of Wales Act 2006 (minor and consequential amendments), omit paragraph 77.

Commencement Information
I232 Sch. 3 para. 35 in force at 1.11.2014 by S.I. 2014/2718, **art. 2(b)**

Welsh Language (Wales) Measure 2011

36 (1) Schedule 3 to the Welsh Language (Wales) Measure 2011 (amendments about joint and collaborative working) is amended as follows.

(2) Omit the italic cross-heading before paragraph 4 (Public Services Ombudsman (Wales) Act 2005).

(3) Omit paragraphs 4 to 6.

Commencement Information
I233 Sch. 3 para. 36 in force at 1.11.2014 by S.I. 2014/2718, **art. 2(b)**

Status:
Point in time view as at 02/04/2018.

Changes to legislation:
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