



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

2014 anaw 4

## 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.

#### **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.

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

### *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.

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- (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.

## **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—
  - (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—

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- (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.

## **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.

## **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.

## **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.

(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).

## **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.

### *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;

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- (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;
  - (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.
- (3) In section 40 of the National Health Service (Wales) Act 2006 (health and well-being strategies)—
- (a) after subsection (2) insert—
    - “(2A) The responsible bodies must take into account the most recent assessment under section 14 of the Social Services and Well-being (Wales) Act 2014 (assessment of needs for care and support, support for carers and preventative services) in the formulation or review of the strategy.
    - (2B) The responsible bodies must jointly publish the strategy.
    - (2C) The Local Health Board (or Boards) responsible for the strategy must submit to the Welsh Ministers any part of the strategy which relates to the health and well-being of carers (and if more than one Board is responsible for the strategy, they must do so jointly).”;
  - (b) in subsection (6), after paragraph (g) insert—
    - “(h) the submission of the strategy or a part of the strategy, to the Welsh Ministers (including, for example, the form in which and the time by which the strategy or part is to be submitted).”;
  - (c) in subsection (9), insert in the appropriate place—
    - ““carer” has the same meaning as in the Social Services and Well-being (Wales) Act 2014.”.
- (4) In section 26 of the Children Act 2004 (children and young people’s plans), after subsection (1A) insert—
- “(1AA) A local authority in Wales must take into account the most recent assessment under section 14 of the Social Services and Well-being (Wales) Act 2014 (assessment of needs for care and support, support for carers and preventative services) in the preparation and review of the plan.”

## 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;
  - (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.
- (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.

## **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).

(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.

## **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.
- (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.

## **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.