

Health and Social Care Committee

Meeting Venue:
Committee Room 3 – Senedd

Meeting date:
27 November 2013

Meeting time:
09:00

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



For further information please contact:

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Agenda

(Pre-meeting 09:00 – 09:15)

1 Introductions, apologies and substitutions

2 Social Services and Well-being (Wales) Bill: Stage 2 – Consideration of amendments (09:15 – 12:30)

In accordance with Standing Order 26.21, the Committee will dispose of amendments to the Bill in the following order:

- Sections 18-69
- Schedule 1
- Sections 70-119
- Schedule 2
- Sections 120-160
- Schedule 3
- Sections 161-169
- Section 1
- Long title

Supporting documents:

[Marshalled List of Amendments, 27 November 2013](#)

[Groupings of Amendments, 27 November 2013](#)

In attendance:

Gwenda Thomas AM, Deputy Minister for Social Services

3 Papers to note

Letter from the Minister for Health and Social Services relating to the implementation of the recommendations of the Greenaway Report (Page 1)

Letter from the Deputy Minister for Social Services relating to the Supplementary Legislative Consent Memorandum on the Care Bill (Pages 2 - 3)

Letter from the Deputy Minister for Social Services relating to the Social Services and Well-being (Wales) Bill and the repeal of the Carers Strategies (Wales) Measure 2010 (Pages 4 - 11)

Agenda Item 3a



Llywodraeth Cymru
Welsh Government

Mark Drakeford AC / AM
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

Ein cyf/Our ref MD/02021/13

David Rees AM
Chair, Health and Social Care
Committee
Cardiff Bay
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HSCCommittee@wales.gov.uk

18 November 2013

Thank you for your letter of 9th October following discussions at the Health and Social Care Committee held on 3rd October during which you heard information about service reconfiguration from with key stakeholders. During this session the need to reconfigure training was raised and in particular the recent report published on 29th October by Professor David Greenaway entitled Securing the future of excellent patient care. You have requested information about the approach we will be taking to respond to this report.

The report sets out a number of high level recommendations which will now need to be considered carefully. Considerable work will now be needed to understand the full implications of implementation and a Four Nations implementation group is being established to take this work forward. Welsh Government will be represented on this group.

The details of this group and the timetable it will be working to is still to be agreed, but initial indications are that an 18-month period is envisaged for implementation proposals to be developed.

I hope this information is helpful.

Mark Drakeford AC / AM
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

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Agenda Item 3b

Gwenda Thomas AC / AM

Y Dirprwy Weinidog Gwasanaethau Cymdeithasol
Deputy Minister for Social Services



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref LFGT110213

David Rees AM
Chair, Health and Social Care
Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

19 November 2013

Dear David,

Supplementary Legislative Consent Memorandum: Care Bill

Thank you for your letter of 8 November requesting clarification on the practical reasons for not using the Stage 2 process, to bring forward provisions in relation to mental health after-care services.

The Care Bill, being taken forward in Westminster, is the main vehicle through which the proposed amendments to section 117 of the Mental Health Act (MHA) 1983 are being driven. The MHA, as amended, will still be the main legislative statute under which mental health after care services are provided in England and Wales. However, there are some consequential amendments which need to be made to the Social Services and Well-being (Wales) Bill (“SSWB Bill”).

We are in a unique position with the Care Bill and the SSWB Bill progressing along similar, yet different, timelines. Timing is the main reason why it is not possible to make these consequential amendments through the SSWB Bill. The SSWB Bill is being considered by the Committee at Stage 2, however, the amendments to section 117, MHA which are being made by clause 71 of the Care Bill will not yet have become law and this creates a difficulty.

Amendments to the SSWB Bill which are required as a consequence of the amendments to section 117 can only be made once the Care Bill has become law. As this will not be the case until after the SSWB Bill has received Royal Assent, it is not possible to make these amendments at Stage 2 of the SSWB Bill process.

Legal advice indicated that the Care Bill was the best vehicle through which to effect these changes and that is the approach which I, and my counterpart Norman Lamb, MP Minister of State for Care and Support have adopted.

Whilst these proposals will not be discussed during Stage 2 and that the timing before the plenary debate is limited I am happy to meet with you to discuss this further if this would be helpful.

I will also seek to make members aware of this position when I introduce the LCM in Plenary on 26 November 2013.

Yours Sincerely

A handwritten signature in cursive script that reads "Gwenda". The signature is written in black ink on a white background. There is a vertical line through the middle of the signature, possibly a scanning artifact or a watermark.

Gwenda Thomas AC / AM

Y Dirprwy Weinidog Gwasanaethau Cymdeithasol
Deputy Minister for Social Services

Agenda Item 3c

Gwenda Thomas AC / AM

Y Dirprwy Weinidog Gwasanaethau Cymdeithasol
Deputy Minister for Social Services



Llywodraeth Cymru
Welsh Government

Our ref: LF/GT/1099/13

David Rees AM
Chair
Health and Social Services Committee
National Assembly for Wales
Cardiff CF99 1NA

20 November 2013

Dear David,

In its report on the Social Services and Well-being (Wales) Bill, the Committee recommended that I provide further assurances that the repeal of the Carers Strategies (Wales) Measure 2010 ("the Measure") will not undermine the existing rights and entitlements of carers. In my response I said that I would write to the Committee on this matter.

The Measure placed a duty upon Local Health Boards and local authorities to work together to produce Information and Consultation Strategies for Carers. A similar requirement was placed upon the Wales Ambulance Trust and Velindre NHS Trust. Regulations made under the Measure put the NHS in the lead in drawing up these strategies. The strategies were developed during 2012-13 and their implementation is supported by significant funding from the Welsh Government. The strategies were initially for three years up to 2014-15, but following our decision to extend implementation funding into 2015-16, they will run into a fourth year. The Measure will be repealed when the provisions in the Social Services and Well-being (Wales) Bill come into force in 2016.

I must stress that I do not believe that the decision to repeal the Measure will in any way dilute the focus on carers which the Measure has sought to develop. I think it is important to recognise that the Measure will be overtaken by a wholly new system of enhanced entitlements for carers under the Bill, designed to strengthen the focus and attention devoted to carers in service planning and delivery. For the first time, carers will have equivalent rights to the people they care for. They will have a right to an assessment of their needs for support without the need to formally request an assessment and have a new right to support where their need is one that meets with the new eligibility criteria. Where they have eligible needs they will also have a statutory support plan that the local authority must regularly review.

By 2016, I expect good practice around identification, information and consultation to be well-embedded within the NHS and local authorities; and the experience of developing and implementing the Information and Consultation Strategies will have led to enduring partnership arrangements being in place. The legal framework for this partnership working will be different under the Bill but is designed to reinforce collaboration across service providers and strengthen the support they provide to carers of all ages.

My assertion to the Committee that existing rights and entitlements would not be lost was based upon a detailed comparison of the existing provisions in the Measure with the new provisions in the Bill, undertaken by officials. I am happy to share with the Committee the attached comparison table.

I would particularly like to draw the following points to the Committee's attention.

- The Carers Strategies (Wales) Regulations 2011 (Regulation 3) place a joint duty on each Local Health Board, each local authority and the NHS Trusts to prepare and publish a strategy. Regulation 3(3) then states that, for the purposes of section 6(1) of the Measure (submission of draft strategy to the Welsh Ministers), the Local Health Board is the lead authority for the strategy which it prepares with a local authority. Nonetheless, the obligations to produce the strategy are still joint obligations and it would be wrong to attach too much significance to the NHS lead role.
- There is no provision for a separate strategy for carers under the Bill as carers will become part of the entire system of care and support offered to all people with relevant needs. Section 5(1) of the Bill places specific duties on local authorities and Local Health Boards to work together to assess the extent of needs for care and support (including the needs of carers) in the local authority's area, and the extent to which needs for care and support are not being met. They must also assess the range of services required to meet the care and support needs identified, and the range of services required to prevent, delay or reduce needs for care and support. The Bill requires this local needs assessment to be taken into account by local authorities and Local Health Boards as they prepare or review their joint health and well-being strategies.
- The Measure had a particular focus on information for carers, including arrangements for referrals and signposting. The Bill introduces a new requirement (under section 8) for an information, advice and assistance service, to provide people with information and advice relating to care and support, and with assistance in accessing it. The service will be available to all carers regardless of whether they have support needs. The duty to secure the provision of this service will be upon local authorities, but the Local Health Boards and NHS trusts will be under a duty to facilitate the service by providing the local authority with information about the care and support they provide.
- The information, advice and assistance service will be a first point of contact where individuals can access a range of information and advice on services provided locally by local authorities, the NHS, third sector organisations and user and carer-led support groups. Staffed by skilled professionals, the new service will (where appropriate) seek to provide a tailored response to members of the public and to professionals. It will play an important role in signposting and assisting carers and others in accessing preventative care and support services accessible in the community without the need for formalised assessments. In doing so, it will be able to draw upon the information and resources produced for carers through the Carers Information and Consultation Strategies, and further develop the signposting and referral pathways which partners have established.

- The co-operation and partnership provisions in section 143 of the Bill provide that a local authority must make arrangements to promote co-operation between the local authority and its relevant partners with a view to improving the well-being of carers within the authority's area. Local Health Boards are relevant partners for the purposes of this provision. Also, section 146 provides that a local authority must exercise its social services functions with a view to ensuring the integration of care and support with health provision and health-related provision, where it considers that this would promote the well-being of carers with need for support within the local authority's area.
- The importance that I attach to the need of carers is evident from the new duties imposed upon local authorities to meet the needs of carers in sections 26 and 27 of the Bill. Carers will be able to access information, be assessed and be considered as part of the local authority's preventative services in the same way as the people they care for.

I remain confident therefore that the general principles and features of the Measure have been carried across into the Bill. I am also confident that within the new framework the gains that are being made under the Measure in terms of implementation will not be lost.

However, I want to build on this, and I have therefore asked my officials to explore how we might continue to use the implementation funding for the Information and Consultation Strategies, which is currently committed until the end of 2015-16, beyond that point, to support local authorities and LHBs in delivering on their duties towards carers in the Bill and to optimise the opportunities for them to collaborate and work together to better support them.

Yours sincerely,

A handwritten signature in cursive script, reading "Gwenda".

Gwenda Thomas AC / AM

Y Dirprwy Weinidog Gwasanaethau Cymdeithasol
Deputy Minister for Social Services

Comparison Table on existing provision in the Carers Measure and new provisions in the Social Services and Well-being (Wales) Bill

Carers Strategies (Wales) Measure 2010	Social Services and Well-being (Wales) Bill
<p>Provides a definition of a carer that uses <i>“Regular and substantial test”</i></p>	<p>Section 3(4). This definition is wider than that used in the Carers Measure as it does not include the regular and substantial test that is used in that definition.</p> <p>A carer is defined as:</p> <p><i>“A person who provides or intends to provide care for an adult or disabled child”</i></p> <p>It does not include a person who provides or intends to provide care under or by virtue of a contract or as voluntary work. However, a local authority has the discretion to include such a person if it thinks that, due to the nature of the relationship, it is appropriate to do so.</p>
<p>Places a duty on LHBs and LAs to produce a strategy setting out how they will work together to:</p> <ul style="list-style-type: none"> (i) provide appropriate advice and information to carers (ii) ensure that carers are consulted before decisions are taken about services to be provided to or for the person cared for (iii) ensure that carers are consulted about the general provision of services to or for carers and the persons they care for <p>The Carers Strategies (Wales) Regulations 2011 provides the following at regulation 3:</p> <p>(1) Each Local Health Board, each local authority and the NHS Trusts must, prepare and publish a strategy.</p> <p>(2) A local authority must discharge its duty to prepare a strategy by participating in the preparation of a single joint strategy with the Local Health Board in whose area its local authority area lies, as shown in the Schedule.</p> <p>(3) For the purposes of section 6(1) of</p>	<p><u>Local Need Assessments and duty to produce a strategy</u></p> <p><u>Section 5(1) requires Local Authorities and Local Health Boards to work together</u> to assess the extent of needs for care and support (including the needs of carers) in the local authority’s area and the extent to which needs for care and support are not being met. They must also assess the range of services needed to meet the care and support needs identified, and the range of services needed to prevent, delay or reduce needs for care and support.</p> <p>This local needs assessment is in addition to any other assessment of the health and well-being needs of the local population that is required under section 40 of the NHS (Wales) Act 2006.</p> <p>Section 40 places a duty on each local authority in Wales and each Local Health Board to jointly formulate and implement a strategy for the health and well-being of members of the public in the local authority’s area.</p> <p>Subsection (3) of the Bill amends section 40 so as to require that this local needs assessment is taken into account when</p>

Comparison Table on existing provision in the Carers Measure and new provisions in the Social Services and Well-being (Wales) Bill

<p>the Measure (submission of draft strategy to the Welsh Ministers), the Local Health Board is the lead authority for the strategy which it prepares with a local authority.</p> <p>The strategy is, therefore, a joint strategy even though the regulations designate the LHB as the lead authority for the strategy, and the obligations to produce the strategy are still joint obligations.</p>	<p>preparing the joint health and well-being strategy or when this strategy is reviewed. It is intended that the detailed arrangements for population needs assessment and strategy for people with care and support needs will be incorporated into the Integrated Single Planning – (see guidance on Shared Purpose)</p> <p>Section 26 of the Children Act 2004 provides that local authorities in Wales must, in accordance with the regulations, prepare and publish a plan setting out the authority's strategy for discharging their functions in relation to children and relevant young persons. Subsection (4) of the Bill amends section 26 of the 2004 Act so that this local needs assessment is taken into account in the preparation and review of the plan.</p> <p>As above the arrangements for young carers with care and support needs will be included within the Single Integrated Plan</p> <p>The co-operation provisions in section 143 provide that a local authority must make arrangements to promote co-operation between the local authority and its relevant partners with a view to improving the well-being of carers within the authority's area (see section 143(2)(a)(ii)). LHBs are relevant partners for the purposes of this provision. Also, section 146 currently provides that a local authority must exercise its social services functions with a view to ensuring the integration of care and support with health provision and health-related provision, where it considers that this would promote the well-being of carers within the authority's area with needs for support (see section 145(1)(a)(iii)).</p> <p><u>Information, Advice and Assistance (IAA) to carers</u></p> <p>Section 8 of the Bill places a duty on local authorities to secure the provision of an information, advice and assistance service, the purpose of which is to provide people with information and advice relating to care and support and</p>
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Comparison Table on existing provision in the Carers Measure and new provisions in the Social Services and Well-being (Wales) Bill

	<p>provide assistance to them in accessing it. This service will be available to all carers regardless of whether they have support needs. <u>LHBs and NHS Trusts are under a duty to facilitate the service</u> by providing the local authority with information about the care and support that they provide to facilitate local authorities in carrying out it duties to provide IAA to carers.</p> <p>This service will cover the range of local authority functions, not just social services. It also includes assistance, not just information and advice, and is therefore broader than the Carers Measure.</p> <p>Types of assistance could include assisting some people in accessing services, or in booking or commissioning appointments on their behalf.</p> <p><u>Consultation with Carers</u></p> <p>Consultation will be an integral part of the assessment process for the person cared for. Carers will also have a right to an assessment of their own support needs for the first time under the Bill. The assessment must take into account their ability and willingness to continue caring as well as their employment, education, training or leisure needs (if an adult) and developmental needs (if a child). In addition, section 4(2) provides that a person exercising functions in relation to an adult or a child must have regard to the individual's views, wishes and feelings.</p> <p>At a strategic level, carers will be consulted via the duties in section 5 to assess the needs for care and support and preventative services.</p>
<p>Places a duty on LHBs and LAs to implement the strategy</p>	<p>Section 40 of the NHS Act places a duty on local authorities and Local Health Boards to jointly formulate and <u>implement</u> health and well-being strategies. In addition section 137 of the Bill provides that Ministers must issue a statement relating to the well-being of people who need care and support and carers who need support. The statement must specify the outcomes to be</p>

Comparison Table on existing provision in the Carers Measure and new provisions in the Social Services and Well-being (Wales) Bill

	<p>achieved in terms of the well-being of those people and the measures against which achievement of those outcomes will be measured. This could be used if it was felt that there were particular outcomes for carers that were not being delivered.</p>
<p>Provides that appropriate information and advice is that which is likely to be of interest or benefit to carers or a cared for person. Gives WM powers to make further provision in regulations about what constitutes appropriate information and advice.</p> <p>Information and advice must be provided free of charge</p>	<p>Covered by sections 5 and 8 of the Bill.</p> <p>The Deputy Minister had tabled an amendment to amend Section 54 so that the power to charge applies only to 'assistance' and not to information and advice.</p>
<p>Gives WM a power to make regulations specifying the steps which LHBs and LAs must or may take for the purpose of consulting carers</p>	<p>See section on consultation above. In addition the Welsh Government will, in the Code of Practice, set out the expectation of the detailed arrangements local authorities must have in place for consulting carers and the people they care for.</p>
<p>Gives WM a power to make further provision in regulations as to the preparation and publication of strategies. Includes but is not limited to provision about:</p> <ul style="list-style-type: none"> - services in respect of which the duty to prepare a strategy applies; - matters to be dealt with in the strategy - how and when the strategy is to be published - keeping the strategy under review - consultation which must be undertaken before or during the preparation, implementation or review of the strategy - arrangements for monitoring and evaluating implementation of the strategy 	<p>Section 40 of the NHS (Wales) Act currently has very wide regulation making powers that enable further detail about well-being strategies to be prescribed. These are sufficiently wide to have provision about publication of strategies etc. The current regulations are the Health, Social Care and Well-being Strategies (Wales) Regulations 2003.</p> <p>Section 26 of the Children Act 2004 similarly contains wide regulation making powers dealing with children and young people's plans. These include details about publication and review of plans. [See comment s3 above for reference to s.26 of the Children Act 2004 and relevant regulations].</p>
<p>Imposes a duty on LHBs and LAs to submit each strategy in draft to WMs for approval.</p> <p>Gives WM a power to make regulations</p>	<p>Whilst there is a requirement in the Health, Social Care and Well-being Strategies (Wales) Regulations to provide the Welsh Ministers with a copy of the strategy once published there is no</p>

Comparison Table on existing provision in the Carers Measure and new provisions in the Social Services and Well-being (Wales) Bill

as to how and when the requirement to submit strategies must be complied with	requirement to submit in draft. There is however a requirement to consult on the draft strategy.
Imposes a duty to make a copy of the strategy available for inspection, free of charge at the principal office of the authority	There is an equivalent duty in the Health, Social Care and Well-being Strategies (Wales) Regulations 2003. There is an equivalent duty in regulation 6 of the Children and Young People's Plan (Wales) Regulations 2007
Power for WM to add further bodies or categories of bodies	During scrutiny of the Measure stakeholders pushed hard for it to encompass not only the social services functions of local authorities but housing and transport too. The information, advice and assistance provisions within the Bill apply to all local authority functions so there is no requirement for such a power.

Links to Key Regulations

Children and Young People's Plan (Wales) Regulations 2007

[http://www.google.co.uk/#bav=on.2,or.r_qf.&fp=933b86cb73b1c985&q=Children+and+Young+People%E2%80%99s+Plan+\(Wales\)+Regulations+2007](http://www.google.co.uk/#bav=on.2,or.r_qf.&fp=933b86cb73b1c985&q=Children+and+Young+People%E2%80%99s+Plan+(Wales)+Regulations+2007)

Health, Social Care and Well-being Strategies (Wales) Regulations 2003.

<http://www.legislation.gov.uk/wsi/2003/154/contents/made>

<http://wales.gov.uk/consultations/childrenandyoungpeople/cypinterimguidance/?lang=en&status=open>