

Constitutional and Legislative Affairs Committee

Meeting Venue:
Committee Room 2 – Senedd

Meeting date:
1 June 2015

Meeting time:
13.30

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



For further information please contact:

Naomi Stocks
Committee Clerk
0300 200 6222
SeneddCLA@Assembly.Wales

Agenda

1 Introduction, apologies, substitutions and declarations of interest

2 Evidence in relation to the Environment (Wales) Bill (Pages 1 – 61) *(Indicative time: 13:30)*

Carl Sargeant AM, Minister for Natural Resources
Rhodri Asby, Welsh Government
Nicola Charles, Welsh Government

CLA(4)-14-15- Paper 1 – Statement of policy intent
CLA(4)-14-15- Paper 1A – Annex
CLA(4)-14-15- Paper 2 – Letter from the Presiding Officer
CLA(4)-14-15- Research Service Briefing
CLA(4)-14-15- Legal Advice Note

3 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3 (Page 62)

CLA(4)-14-15 – Paper 3 – Statutory Instruments with clear reports

Negative Resolution Instruments

CLA534 – The National Curriculum (Moderation of Assessment Arrangements for the Second and Third Key Stages) (Wales) Order 2015

Negative procedure; Date made: 6 May 2015; Date laid: 11 May 2015; Coming into force date: 1 September 2015.

4 Instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3

Negative Resolution Instruments

CLA533 – The Care and Support (Assessment) (Wales) Regulations 2015 (Pages 63 – 127)

Negative procedure; Date made: 6 May 2015; Date laid: 8 May 2015; Coming into force date: 6 April 2016.

CLA(4)-14-15– Paper 4 – Report

CLA(4)-14-15– Paper 5 – Regulations

CLA(4)-14-15– Paper 6 – Explanatory Memorandum

Super Affirmative Resolution Instruments

CLA532 – The Care and Support (Eligibility) (Wales) Regulations 2015 (Pages 128 – 215)

Super Affirmative procedure; Date made: Not stated; Date laid: Not stated; Coming into force date: 6 April 2016.

CLA(4)-14-15– Paper 7– Report

CLA(4)-14-15– Paper 8 – Regulations

CLA(4)-14-15– Paper 9– Draft Regulations, Consultation Version

CLA(4)-14-15– Paper 10 – Amendments to draft Regulations

CLA(4)-14-15– Paper 11 – Explanatory Memorandum

CLA(4)-14-15– Paper 12 – Letter from the Chair of the Health and Social Care Committee

5 Papers to note (Pages 216 – 219)

CLA(4)-14-15 – Paper 13 – Letter from Presiding Officer in relation to budget procedures

6 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:

(vi) the committee is deliberating on the content, conclusions or recommendations of a report it proposes to publish; or is preparing itself to take evidence from any person;

Environment (Wales) Bill: Consideration of evidence received

Inquiry into Making Laws in the Fourth Assembly: Draft Report (Pages 220 – 303)
CLA(4)-14-15 – Paper 14 – Draft Report

Environment (Wales) Bill – Statement of Policy Intent

This document provides an indication of the current policy intention for the subordinate legislation, directions and guidance that the Welsh Ministers are empowered or required to make under the provisions of the Environment (Wales) Bill ('the Bill'). It has been published in order to assist the responsible Committee during the scrutiny of the Bill and should be read in conjunction with the Explanatory Memorandum and Explanatory Notes. Details of the Assembly procedure for each subordinate legislative power are set out in detail in chapter 5 of the Explanatory Memorandum, which was laid alongside the Bill on 11 May 2015..

The overarching aim of the Bill is to put in place legislation that will enable Wales' resources to be managed in a more proactive, sustainable and joined-up manner and to establish the legislative framework necessary to tackle climate change. The Bill supports the Welsh Government's wider work to help secure Wales's long term well-being, so that it benefits from a prosperous economy, a healthy and resilient environment and vibrant, cohesive communities.

Section	Description	Policy Intention
Part 1 - Sustainable Management of Natural Resources		
11 (2)	Provides the Welsh Ministers with the power to add, remove or amend a description of a person listed as a public body under section 11(1).	<p><u>Policy intent</u> The public bodies listed in section 11(1) are subject to various requirements in Part 1. Section 12 of Part 1 provides that the Welsh Ministers may direct them to take steps as appear to them to be reasonably practicable to implement an area statement. Section 13 provides that they must have regard to guidance published by the Welsh Ministers on matters addressed in the area statements. Section 14 provides that they are under a duty to provide information or other assistance to Natural Resources Wales (NRW) if NRW asks them.</p> <p>Section 11 (2) provides for the Welsh Ministers, by regulations, to add to, remove or amend the list of public bodies in section 11(1).</p> <p>Section 11(5) provides that, before using these powers, the Welsh</p>

		<p>Ministers must consult with NRW, the person/body that would potentially be affected by the power and anyone else considered appropriate.</p> <p>The purpose of this power is to ensure that the list of bodies subject to the duties in Part 1 may be amended to take account of any organisational restructuring of public bodies in Wales, for example, where the functions of a public body are transferred to another body.</p> <p><u>Timing</u> Currently there is no intention to change the list but the power provides the flexibility to do so if needed.</p>
22(1)	<p>Provides the Welsh Ministers with the power to suspend provision(s) in legislation, in relation to an application from NRW of that provision on a specific person, for the purpose of undertaking an experimental scheme.</p>	<p><u>Policy Intent</u> This power enables a flexible approach to addressing any potential legislative barriers which may prevent new ways of working, and therefore prevent the realisation of the opportunity for furthering the sustainable management of natural resources.</p> <p>The power will only be used where NRW has submitted to the Welsh Ministers an application requesting that the Welsh Ministers use this power as NRW has identified a legislative barrier which prevents the trialling of a new approach via an experimental scheme. NRW will be required to provide detailed reasons on why the provision to be suspended creates a barrier and outline why the use of the power is necessary in order for them to undertake an experimental scheme.</p> <p>The Bill provides for an integrated approach, which considers the benefits received from ecosystems and the resilience of those ecosystems. Current legislation does not always provide for this approach. Trialling new techniques, approaches, methods or concepts may both enable the delivery of the objectives of legislation and also be in line with the approach proposed in the Bill. To ensure that the appropriate method for</p>

		<p>delivery is implemented, the power to undertake experimental schemes enables the trialling of new methods to identify the most appropriate method for particular situations. This approach also enables further understanding of the opportunity, risks, any unintended consequences from the application of the approach and what actions are needed to achieve change.</p> <p>These may include:</p> <ul style="list-style-type: none"> Trialling approaches to identify best practice, which can be introduced as general binding rules. This approach may enable specific activities to be authorised without the requirement for a licence or permit (see case study) Trialling the potential of new methods in relation to designed restoration, creation or use of a particular resource as a mitigation measure which will help contribute to ecological resilience (e.g. woodland creation or streamside vegetation; peatland or wetland restoration; natural reed-bed filtration system); Trialling approaches which adapt or amend an existing (or a group of existing) licensed / permitted activities in order to achieve improved outcomes within a specific area (e.g. water catchment); <p><u>Case Studies</u> Examples of where the power may be used have been provided in Annex 1. These case studies illustrate how existing legislation may be blocking new approaches to be applied in order to deliver sustainable management of natural resources. These case studies provide examples for the Forestry Act 1967 and the Land Drainage Act 1991.</p> <p><u>Timing</u> Only as and when an application has been submitted by NRW and the Welsh Ministers are satisfied that the suspension will contribute to the sustainable management of natural resources. As such the power will be</p>
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		<p>used as and when an application is submitted.</p> <p><u>Process</u></p> <p>In an application, NRW must identify a provision to be suspended in order for a proposed experimental scheme to be carried out and which will help to deliver sustainable management of natural resources.</p> <p>The provision to be suspended must relate to a function of NRW. It must be in relation to undertaking an experimental scheme and be for the purpose of contributing to the sustainable management of natural resources.</p> <p>It is intended that NRW will:</p> <ul style="list-style-type: none"> Provide details on the proposed experimental scheme. Identify the appropriate provision within legislation and why this provision blocks an experimental scheme. Provide information on the parties involved in the experimental scheme. Identify how the suspension will assist in the sustainable management of natural resources. Provide information on how the scheme will be monitored. <p>Under the Bill, the Welsh Ministers must will:</p> <ul style="list-style-type: none"> Consult with any person to be affected by the suspension. Consider whether the proposal is necessary to enable an experimental scheme and to contribute to sustainable management of natural resources. <p>The Welsh Ministers would also assess the implications in relation to compliance with EU legislation.</p> <p>The Welsh Ministers will then consider the proposed Order to temporarily suspend legislation through the affirmative procedure.</p>
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		<p><u>Key elements of the proposed subordinate legislation</u></p> <ol style="list-style-type: none"> 1. Identify provision which is a function for which NRW is responsible which is to be suspended. 2. Whether provision is amended, modified or an exemption applies to a specific person. 3. Duration of the suspension (not to exceed a period beyond three years).
22(6)	Provides the Welsh Ministers with the power to revoke regulations made under section 22(1), where regulations are no longer needed.	<p><u>Policy intent</u></p> <p>This power will be used to remove any suspension of legislation under section 22(1) so that it reverts to its original draft.</p> <p><u>Timing</u></p> <p>This power would be used to revoke the regulations made under section 22(1).</p>
24 (1)	Provides the Welsh Ministers with the power to change the timing for preparation or publication of the State of Natural Resources report (SoNaRR) and the National Natural Resources report (NNRP).	<p><u>Policy intent</u></p> <p>Under section 7 of the Bill, NRW must publish a State of Natural Resources Report (SoNaRR), which contains an assessment of the state of natural resources in Wales, including an assessment of the extent to which the sustainable management of natural resources is being achieved in Wales. NRW are required to publish the first SoNaRR four months after section 7 of the Bill comes into force. The subsequent SoNaRR documents must be published before the end of the calendar year prior to the year when the Assembly election is held.</p> <p>Under section 8, the Welsh Ministers must prepare and publish the National Natural Resources Policy (NNRP), setting out their policies for contributing to achieving the sustainable management of natural resources in Wales. The Welsh Ministers are required to publish the first NNRP before the end of ten months starting with the day the section</p>

		<p>comes into force. The Welsh Ministers must review the NNRP after each Assembly election.</p> <p>Section 24(1) of the Bill gives the Welsh Ministers the power to change the timing for the preparation or publication of SoNaRR and NNRP. At present the timings align with those under the Well-being of Future Generations (Wales) Act 2015. For example, the production of NNRP is aligned with the development of the Welsh Ministers' well-being objectives and preparation of the Future Trends Report. The power provides flexibility to change the timings in future, including if the timings of requirements under the Well-being of Future Generations (Wales) Act 2015 change.</p> <p><u>Timing</u> There is currently no intention to make the regulations, but the power provides flexibility to do so if required.</p>
13(1)	<p>Provides the Welsh Ministers with the power to issue guidance about steps that should be taken to address matters set out in an area statement. A public body must have regard to it in the exercise of its functions.</p>	<p><u>Policy intent</u> Section 14(2) of the Bill provides public bodies with a duty to provide assistance to NRW in relation to area statements, if NRW asks them. The public bodies are listed in section 11(1).</p> <p>The guidance issued under section 13(1) would provide these public bodies with further information on how they can assist NRW in the implementation of an area statement. The guidance would help ensure that there is buy-in from other stakeholders at the local level to implement an area statement.</p> <p>The guidance could also cover the link with the requirements of the Well-being of Future Generations (Wales) Act 2015. For example, some of the public bodies will be statutory members of a Public Services Board and may assist in the implementation of an area statement through the</p>

		<p>preparation and delivery of local well-being plans.</p> <p>The guidance would also help to provide public bodies with advice on how they may deliver their functions in a way that can contribute to the sustainable management of natural resources through implementing an area statement, for example, by considering it in the development of their plans, programmes or strategies.</p> <p>Under section 12(1) of the Bill, the Welsh Ministers will have a power to direct a public body to take steps to implement an area statement. Therefore if the public body does not comply with the guidance issued under section 13(1), the Welsh Ministers could direct them to.</p> <p><u>Timing</u> It is intended that the guidance would be provided as soon as possible after the Bill receives Royal Assent.</p>
Part 2 – Climate Change		
30(1)	<p>This section requires the Welsh Ministers to outline one or more interim target years before 2050 and set a maximum amount of net Welsh emissions for each of those target year(s) as a percentage below the baseline.</p>	<p>This power enables the Welsh Ministers to develop and set interim targets based on the most up to date scientific and technical evidence at national, European and International level as well as draw upon advice from a specified advisory body. The power will enable the Welsh Ministers to develop and set interim targets, in order to provide an appropriate pathway to meet the 2050 target and provide the direction for carbon budgets.</p> <p>In relation to the power to make subordinate legislation in general the provisions ensure that future measures needed for the purposes of reducing emissions are flexible and can be introduced, if required, quickly in the light of experience and evidence without the need for primary legislation.</p>

		<p><u>Policy intent</u> Interim targets are intended to guide the setting of carbon budgets in the medium term and to guide the rate at which carbon budgets are reduced to meet the long-term 2050 target. In the absence of interim targets the total cumulative emissions to the atmosphere are largely unrestricted. By setting interim targets the total cumulative emission permitted under a carbon budget system is set out to ensure short and medium term goals are met.</p> <p>Before using these powers, the Welsh Ministers must request advice from the Advisory Body on the setting of the targets as outlined in section 49 of the Bill and take the advice into account.</p> <p>The interim targets are set in secondary legislation to ensure that they are set at a level that is up to date with the latest scientific and technical evidence and that emissions reductions can be made at the most economically effective rate. Section 32(3) sets out the range of issues that must be taken in to account as an evidence base to inform the decision making when setting the targets such as the latest scientific knowledge about climate change and the most recent future trends report under the Well-being of Future Generations (Wales) Act 2015.</p> <p>Setting interim targets in advance recognises that it is not possible now to accurately forecast up until 2050 the range of factors which need to be taken into account regarding reducing Welsh greenhouse gas emissions. Some technologies or changes in plant need a long lead in time and some behaviours take time to change.</p> <p><u>Timing:</u> The power to set an interim target will be used as soon as is reasonably practicable based on advice received from the advisory body and in</p>
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		<p>conjunction with the development and setting of the first two carbon budgets to ensure consistency.</p> <p>Any further use of the power to set any further interim targets will only be used if scientific and technical evidence, advice from the advisory body or reviews of progress on meeting the 2050 target indicate that a further interim target is required.</p> <p>.</p>
<p>31(1)</p>	<p>This section requires the Welsh Ministers to set carbon budgets, which set a maximum amount of emissions for each budgetary period. The budgetary periods are 2016-2020 and each succeeding period of five years.</p>	<p><u>Policy intent</u> Section 31 (1) imposes a requirement on the Welsh Ministers to set carbon budgets, which set a maximum amount of emissions and guide the rate of emission reduction. The budgetary periods are 2016-2020 and then each succeeding period of five years up until 2050.</p> <p>The Welsh Ministers must set these budgets in advance with the first two budgetary periods, needing to be set before the end of 2018 and each subsequent budget will need to be set five years before the budget in question.</p> <p>Before using these powers, the Welsh Ministers must request advice from the Advisory Body on the setting of carbon budgets as outlined in section 49 of the Bill and take the advice into account.</p> <p>The budgets are set in secondary legislation to ensure that they are set at a level that is up to date with the latest evidence and that emissions reductions can be made at the most economically effective rate. Section 32(3) sets out the range of issues that must be taken in to account as an evidence base to inform the decision making when setting budgets such as the latest scientific knowledge about climate change, the most recent future trends report under the Well-being of Future Generations (Wales) Act 2015.</p> <p>Setting carbon budgets in advance recognises that it is not possible to</p>

		<p>accurately forecast now up until 2050 the range of circumstances and factors which may occur and effect (and therefore need to be taken into account) the ability to reduce Welsh greenhouse gas emissions. Some technologies or changes in plant need a long lead in time and some behaviours take time to change.</p> <p><u>Timing</u></p> <p>The budgetary periods are 2016-2020 and then each succeeding period of five years up until 2050. Section 31(4) requires the first two budgets to be set by 2018 and each subsequent budget to be set at least 5 years before the start of the budgetary period in question.</p> <p>The setting of the carbon budgets and wider emission reduction framework will be developed over time taking in to account the latest evidence base and advice from the Advisory Body.</p>
33(2)	<p>Enables the Welsh Ministers to provide in regulations which carbon units can be credited to and debited from the net Welsh emissions account and how this can be done.</p>	<p><u>Policy intent</u></p> <p>Regulations under section 33(2) are intended to define how the net Welsh emission account can be credited and debited as a result of carbon trading schemes. The regulations will define what units will be permitted to count towards the net Welsh emissions account and how they are accounted for. The policy intention is to define how carbon credits that exist within the traded (EU-ETS) and non-traded sectors will be included within the net Welsh emissions account. By defining these provisions in regulation it is possible to retain flexibility to take into account future European and international practice in relation to carbon units. This power allows for flexibility in the future. It is possible that firms in Wales may participate in other such trading schemes. If the net Welsh emissions account is to take account of the units traded within such schemes, it will be necessary to define the terms by which this occurs.</p>

		<p><u>Timing:</u> This power will be used as and when required in order to retain flexibility to address any changes in relation to future European and international practice as well as to address any new trading schemes that may be introduced in the future.</p>
33(3) and 33(4)	<p>Provides the Welsh Ministers with the power to limit the net amount of carbon units that may reduce the net Welsh emissions account for a period and allows the Welsh Ministers to specify carbon units that do not count towards the limit in section 33(3).</p>	<p><u>Policy Intent</u> This power is intended to limit the degree to which carbon credits can be used to offset net Welsh emissions account in Wales and provides a means to ensure that action is taken domestically to reduce emissions within Wales.</p> <p>This power allows certain types of carbon units to be unrestricted in their use towards the Welsh emission target. This power will permit certain carbon units to be traded freely in Wales and ensures that section 33(3) does not restrict the operation of carbon schemes in Wales. For example, this power may specify that trading under a certain scheme can operate freely of any limit introduced by any regulations under section 33(3).</p> <p><u>Timing:</u> This power will be used as and when required in order to retain flexibility to address any scientific or technical evidence, European or international practice or advice from the advisory body.</p>
35 (1)	<p>Enables the Welsh Ministers to make provision, by regulations, for a proportion of emissions from international aviation and international shipping to be attributed to Wales</p>	<p><u>Policy intention</u> As international aviation and international shipping emissions are generally not directly emitted in a specific country, it may be necessary to specify how certain amounts of these emissions will be allocated to the Welsh emissions account. This allocation may also need to change over time, particularly if a European or international agreement makes such a change necessary in the future. There is no current international</p>

		<p>agreement on how to allocate these emissions to states. This power allows for flexibility in the future to take into account international aviation and international shipping emissions to the net Welsh emissions account. Providing for this inclusion through regulation allows the Net Welsh Emissions Account to be updated to reflect international reporting guidelines as agreements are reached on the approach to international aviation and shipping emissions.</p> <p><u>Timing:</u> This power will be used as and when required in the first instance after having received advice from the advisory body and in future in response to any European or international agreement that makes such a change necessary. There is no current international agreement on how to allocate these emissions to states.</p>
36(1)	Provides the Welsh Ministers with the power to define the meaning of Carbon Units in terms of reducing, removing and imposing an amount of greenhouse gas emissions.	<p><u>Policy intent</u> This power allows for flexibility in the future defining what “carbon units” are in line with wider practice.</p> <p><u>Timing:</u> As soon as reasonably practicable after receiving Royal Assent, having received advice from the advisory body.</p>
36(2)	Provides the Welsh Ministers with the power to establish a scheme, or use an existing scheme, for the registering and tracking of carbon units and for establishing and maintaining accounts in which carbon units may be held and between which they may be transferred.	<p><u>Policy intent</u> Regulations made under section 36(2) would establish a scheme for registering and accounting for the carbon units which are bought or sold or otherwise transferred in Wales. Such a scheme may be necessary to administer the trading of carbon units in Wales. The regulations may (under section 36(3)) allow the Welsh Ministers to amend an existing scheme to allow for such administration. In addition under section 36(4) the regulations may provide for a range of functions including the appointment of an administrator, conferral of functions on an appointed administrator, conferral of function on the Welsh Ministers and for the</p>

		<p>Welsh Ministers to delegate functions conferred or imposed on them through regulations.</p> <p><u>Timing</u> The intention is to use this power only if it is necessary to monitor the use of carbon units and at present it is not yet known whether such a scheme is necessary. However, if it does become necessary, these provisions allow such a scheme to be created.</p>
37(2)	Provides the Welsh Ministers with the power to amend, add or modify the list of greenhouse gases targeted by the Act section 37(1)	<p><u>Policy intent</u> This power allows for flexibility in the future to keep up to date with the latest climate science, particularly as the Bill is designed to be long-term. As climate change science is an evolving science, it may become necessary in the future to amend, modify or add new gases to the list of those covered by the targets in the Bill in line with international reporting guidelines, or the ambition of the Welsh Ministers. For example, hydrofluorocarbons and perfluorocarbons are families of gases; it is accepted practice to refer to them collectively but it may be appropriate in the future to describe individual gases within those families. The regulations would enable the Welsh Ministers to respond to these kinds of changes.</p> <p><u>Timing</u> This power will only be used in response to up to date scientific knowledge that indicates that a new greenhouse gas requires to be added to the list. This power enables flexibility to respond to developing science in this area.</p> <p>For example, in 2013 the Intergovernmental Panel on Climate Change added a new gas to the greenhouse gas protocol which increased the list of six target greenhouse gases to seven with the inclusion of nitrogen trifluoride. The timing of the Bill allows us to add this gas to the list of</p>

		greenhouse gases in the Bill.
38(3)	Provides the Welsh Ministers with the power to amend and modify the baseline year for a greenhouse gas outlined in section 38(2).	<p><u>Policy intent</u> This power allows for flexibility in the future to keep up to date with the latest climate science, particularly as the Bill is designed to be long-term. If a new greenhouse gas is added under section 37(2) a baseline year will need to be designated alongside the quantity of emissions for that year in order for it to be added to the net emissions account for the purposes of targets and budgets within the Bill. Furthermore, this provision allows for the chosen baseline year to be modified. This enables the Bill to remain up-to-date with international reporting guidelines, or the ambition of the Welsh Ministers, should evidence indicate that alternative baseline years should be adopted for existing gases listed under 38(2).</p> <p><u>Timing</u> This power enables flexibility to address any new scientific evidence or any changes in European and international practice which indicates that an amendment is required. Any such amendment would be based upon up to date evidence and advice from the advisory body.</p> <p>In relation to the addition of a greenhouse gas to the list, this power will only be used in response to up to date scientific knowledge that requires that a new greenhouse gas requires to be added to the list and therefore a baseline year has to be established. This power enables flexibility to respond to developing science in this area.</p>
44(1)	Provides the Welsh Ministers with the power to designate a person to be the advisory body	<p><u>Policy intent</u> Section 44(1) enables the Welsh Ministers to designate, by regulations, a person (to be known as the advisory body) to carry out the advisory functions set out in the Bill. In the absence of regulations made under section 44(1), the UK Committee on Climate Change established by the UK Climate Change Act 2008 will be the Advisory body.</p>

		<p>The Bill specifies what the advisory functions are in relation to the setting of interim targets, budgets and various other provisions and clarifies that these may include further advisory functions.</p> <p>This power allows for flexibility in the future as to which body or person carries out advisory functions under this Bill, particularly as the Bill framework is designed to be long-term. Should the Welsh Ministers identify a suitably qualified expert on climate change who can specialise/focus on Welsh emissions, they may wish to designate such an individual, as the advisory body for the purpose of Part 2 of the Bill.</p> <p><u>Timing</u> This power will only be used if and when a suitable body or individual can be identified as the advisory body. It is not intended to use this power immediately. In the absence of regulations designating a person, the UK Climate Change Committee is designated as the Advisory Body. This power allows for flexibility in the future as to which body or person carries out advisory functions under this Bill, particularly as the Bill is designed to be long-term.</p>
47	The provision gives the Welsh Ministers the power to give guidance to the Advisory Body.	<p><u>Policy intent</u> The Advisory Body has a key role in providing advice in relation to a number of provisions within the Bill. The science, technology and policy around climate change is constantly being developed and reviewed in light of the latest evidence.</p> <p>Section 47 allows the Welsh Ministers to give guidance to the Advisory Body. In certain areas of advice or analysis, it may be appropriate to give the Advisory Body guidance to ensure they take into account international or Welsh specific policies or practices such as the setting of standards, methods or approaches.</p>

		<p><u>Timing</u> The intention is not to provide guidance immediately but this power will enable the Welsh Ministers the flexibility to ensure that the advisory body is providing the most effective evidence and advice for reducing emissions in Wales.</p> <p>The science, technology and policy around climate change is constantly being developed and reviewed in light of the latest evidence. This provision allows flexibility in the future to keep up to date with the latest evidence to inform our decision making and to utilise the provision at a later date if appropriate.</p>
52	<p>This section defines international carbon reporting practice in terms of the protocols to the United Nations Framework Convention on Climate Change, or other European or international arrangements or agreements which the Welsh Ministers specify by regulations.</p>	<p><u>Policy intent</u> This power allows for flexibility in the future taking into account future European and international agreements and arrangements relating to “international carbon reporting practice” which is to be taken into account when acting under certain provisions of the Bill (see sections 43(4) and 51(2).</p> <p><u>Timing</u> This power will only be used in response to any developments in international carbon reporting and provides flexibility in order to address these developments. As such the power will only be used to add future European and international agreements and arrangements relating to climate change to the meaning of “international carbon reporting practice” which must be taken into account when acting under the provisions of Part 2 of the Bill.</p>
Part 3 - Charges for Carrier Bags		
55(1)	<p>The Welsh Ministers have the ability to make regulations to place</p>	<p><u>Policy intent</u> The intention of widening the scope of the Climate Change Act 2008 is</p>

	<p>a charges on different types of carrier bags, in addition to the charge already placed on single use carrier bags, and place a duty on sellers to apply the net proceeds of the carrier bags charge to both environmental and non-environmental good causes as specified in regulations.</p>	<p>twofold.</p> <p>The Welsh Government is taking the opportunity to replace the provisions in section 77 of, and Schedule 6 to, the Climate Change Act 2008 with a carrier bags regime for Wales which can be adapted in a flexible and targeted way through the use of regulations as evidence of need emerges. Provisions in Part 3 are broadly the same as those in Schedule 6 except that they will extend the Welsh Ministers' enabling powers so that they may make regulations to place minimum charges on different types of carrier bags as specified in the regulations and not just those intended for single use. This will allow Welsh Ministers to be responsive to changes in consumer behaviour and the demand for different types of bags, should future evidence identify that the supply and disposal of these types of carrier bags is to the detriment of the environment. If future evidence does identify that this course of action is necessary, the options for placing minimum charges on different types of bags would be consulted on and subject to a full and detailed impact assessment at that time, taking into account learning and experiences of other administrations in this area. In addition, any changes to the current regulations to include a minimum charge on other types of carrier bags would be subject to the affirmative process.</p> <p>Secondly section 57 of the Bill will impose a duty on sellers to apply the net proceeds of the carrier bag charge to good causes as specified in regulations. This will ensure that all of the net proceeds generated from the carrier bags charge will be donated to good causes and that there is consistency in practice by all sellers across Wales. As a consequence, sellers will no longer have the option of retaining the proceeds.</p> <p>The Bill no longer contains the limitation in paragraph 4A of Schedule 6 to the Climate Change Act 2008 which is that regulations may only provide for the net proceeds to be applied to environmental good causes. Sellers</p>
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		<p>may apply the net proceeds to any charitable purpose as will be specified in regulations. This amendment will ensure that when section 57 which requires sellers to apply the net proceeds of the charge to good causes comes into force, it will not disrupt the existing arrangements of those sellers who are currently donating the net proceeds to non-environmental good causes. Regulations could provide that sellers may apply the net proceeds to any charitable purpose or could specify the charitable purposes that may benefit.</p> <p><u>Timing</u> As stated above it is not the policy intention to amend the current regulations to place a minimum charge on other types of carrier bags until evidence does identify that this course of action is necessary. Work is currently ongoing to gather and analyse the current evidence available and this will also include the findings of the independent review on the single use carrier bags charge which is due to report in June this year. We are also considering the current learning and experiences of other administrations in this area and if, following the analysis of all of the evidence available, it is determined that a minimum charge should be placed on other types of bags. We will exercise the power to make Regulations.</p> <p>Regulations made under section 57 which apply the net proceeds of the charge to charitable purposes will come into force at the same time as this section is commenced in accordance with section 88(3)(a).</p>
Part 4 - Waste Disposal and Collection		
<p>66 inserts a new section 45AA into the Environmental</p>	<p>Section 45AA(6): power of the Welsh Ministers to specify separation requirements in regulations, which are steps to be taken for the purpose of ensuring</p>	<p><u>Policy intent</u> In relation to the powers in sections 45AA(6) and (7), sections 45AA(1) and (2) require local authorities responsible for arranging waste collection, and those (businesses) responsible for collection, transport etc. of waste, to carry out their functions in accordance with separation requirements</p>

<p>Protection Act 1990</p>	<p>the separation of different types of waste from each other or from other substances or articles.</p> <p>Section 45AA(7): Power of the Welsh Ministers to specify in regulations, the circumstances in which a separation requirement under section 45AA(6) is applicable.</p> <p>Section 45AA(10)(a): Power of the Welsh Ministers in regulations, to specify exceptions to the duties in sections 45AA(1) and (2) (collection etc of waste in accordance with separation requirements).</p> <p>Section 45AA(10)(b): Power of the Welsh Ministers to specify exceptions to the duty in section 45AA(4)(presentation of waste for collection in accordance with separation requirements).</p>	<p>specified in regulations under sub-sections 6) and (7). It is anticipated that the powers under subsections (6) and (7) may be used, amongst other things, to:</p> <ul style="list-style-type: none"> specify the types of waste to be collected separately, and kept separate thereafter; specify acceptable levels of contamination within separately collected materials or other technical requirements appropriate to the separate collection, transport, treatment et.c of different types of waste; set out particular circumstances in which particular requirements apply; specify when the particular requirements come into effect. <p>Materials such as recyclable paper, card, glass, plastic, metal, food and wood are currently being considered for separate collection. The technical requirements surrounding the collection of specified materials, particular circumstances and timings will be developed as part of the development of Regulations and statutory guidance.</p> <p>It is intended that the Regulator for these provisions will be Natural Resources Wales.</p> <p>The power in section 45AA(10(a)) is intended to be used to specify exceptions to the separate collection etc. duties in sections 45AA(1) and (2). It is anticipated that as policy develops, or when consultation takes place in relation to making regulations to specify separation requirements, it may become necessary to except certain as yet unidentified individuals or bodies, from the duties in subsections (1) and (2).</p> <p>The power in section 45AA(10(b)) is intended to be used in relation to section 45AA(4) which places a duty on occupiers of non-domestic premises in Wales, to present waste for collection in accordance with</p>
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	<p>Section 45AA(11): Power of the Welsh Ministers when exercising the enabling powers in sections 45AA(6), (7) and (10), to make different provision for different purposes, different cases (including different persons, premises or types of waste) and different areas.</p>	<p>separation requirements specified in regulations made under sections 45AA(6) and (7). Section 45AA(5) contains exceptions () to the duty in subsection (4) for domestic property and caravans. It is anticipated that, as for the duties under subsections (1) and (2), as policy develops, or when consultation takes place in relation to making regulations to specify separation requirements, it may become necessary to except certain as yet unidentified individuals or bodies, from the duties in subsection (4). In that event, the power in section 45AA(10(b)) can be used to make additional exceptions to those already set out in subsection (5).</p> <p>The power in section 45AA(11) is intended to be used in conjunction with the exercise of any or all of the enabling powers in subsections (6), (7) and (10). As the description of the power implies, it is intended to confer sufficient flexibility on the Welsh Ministers in exercise of the other enabling powers, to adapt the effects of regulations made under those powers, to take account for example, of individual circumstances, local conditions and requirements of proportionality, when making regulations.</p> <p>New section 45AB enables the Welsh Ministers to produce codes of practice to give practical guidance around the separation requirements. This would cover additional points of detail to assist those obligated by the regulations and the Regulator. Matters the codes could cover include preferred separate collection methods and the maximum levels of contamination in recyclate. Such codes of practice would be admissible in evidence in court proceedings</p> <p>It is intended that the Regulator for these provisions will be Natural Resources Wales</p> <p><u>Timing</u> It is not intended that the Welsh Ministers will exercise any of the powers to make regulations in section 45AA, before January 2017.</p>
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<p>67 Inserts new section 34D into the Environmental Protection Act 1990</p>	<p>Section 34D(6)(a): Power of the Welsh Ministers to make provision in regulations, for the duty in section 34D(1) (prohibition on disposal of food waste to sewer) to apply only in specified circumstances.</p> <p>Section 34D(6)(b): power of the Welsh Ministers to specify in regulations, exceptions to the duty in section 34D(1), in addition to those in section 34D(2).</p> <p>Section 34D(6)(c): Power of the Welsh Ministers to amend the definition of food waste in section 34D(5).</p> <p>Section 34D(7): Power of the Welsh Ministers when making regulations under subsection (6)(a) or (b), to make different provision for different purposes, different cases (including different persons, premises or types of food waste)</p>	<p>Section 34D(1) prohibits occupiers of non-domestic premises in Wales, from disposing of food waste to the sewer. The prohibition, subject to statutory exceptions in subsection (2), applies to all such occupiers in all circumstances. The power in section 34D(6)(a) is intended to be used to specify circumstances in which the prohibition is to apply. Such circumstances may in future be identified as a result of policy development or future consultation. The power would be used to specify particular circumstances in which the prohibition may or may not apply, or to apply subject to variations, to take account of particular circumstances.</p> <p>Subsection (2) excepts domestic households and caravans from the duty in section 34D(1). As policy develops, or as a result of future consultation, further necessary exceptions may be identified. The power in section 34D(6)(b) is intended to be used in such circumstances, to permit the Welsh Ministers to make necessary exceptions.</p> <p>Food waste is defined in section 34D(5). As food processing and recovery technology changes, or as a result of future consultation or policy change, a necessity may arise to change the definition of “food waste” to which the prohibition in subsection (1) applies. The power in section 34D(6)(c) is intended to enable the Welsh Ministers to adapt the provision to such changes.</p> <p>The power in section 34D(7) is intended to be used in conjunction with the exercise of the enabling powers in subsections (6)(a) and (b). It is intended to confer sufficient flexibility on the Welsh Ministers in exercise of the other enabling powers, to adapt the effects of regulations made under those powers, to take account for example, of individual circumstances, local conditions and requirements of proportionality.</p> <p><u>Timing</u> It is not intended that the prohibition in section 34D(1) or associated</p>
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	<p>and different areas.</p>	<p>regulations made under this section, will be brought into force before January 2017. It is likely that regulations will need to be made to support implementation of the prohibition after this date, although the precise content and extent of the supporting regulations will be determined later, following further policy development and consultation on the regulations themselves.</p>
<p>68 Inserts new section 9A into the Waste (Wales) Measure 2010</p>	<p>Section 9A(1) and (2): Power of the Welsh Ministers to make provision to prohibit or otherwise regulate the incineration of specified kinds of waste</p>	<p><u>Policy intent</u> The policy intention is that otherwise recyclable materials are prohibited from being burnt at incineration plants in Wales.</p> <p>The regulations may, amongst other things:</p> <p>Specify materials to be banned from incineration plants in Wales. The Welsh Government is considering bans on recyclable materials such as uncontaminated paper and plastics.</p> <p>Amend Regulations made under the Pollution, Prevention and Control Act 1999, linked to the incineration of waste, for example, the Environmental Permitting (England and Wales) Regulations 2010. This is currently intended to be the first use of the enabling powers. The power will be used in order to amend the existing Environmental permitting Regulations, to prohibit, by way of the permitting regime, the incineration of specified materials. In time, free-standing Wales only regulations may be made in relation to prohibition of incineration of specified materials. These would, amongst other things:</p> <ul style="list-style-type: none"> ➤ Provide for offences for failure to comply with the ban. ➤ Provide for penalties for failure to comply with the ban, including criminal and civil sanctions ➤ Provide for Appeals against civil sanctions. ➤ Provide for regulators and their functions. The Welsh Government intends Natural Resources Wales (NRW) to regulate this

		<p>provision. NRW permit and inspect existing facilities in Wales and it is anticipated that the prohibition would be regulated via this system.</p> <p><u>Timing</u> It is not intended that the new section 9A, or regulations made under the powers in it, will come into force before January 2017.</p>
Part 5 - Fisheries for Shellfish		
72	<p>Enables the Welsh Ministers to require any person that applies for an Order under section 1 (via new sub-sections 2A and 2B) of the Sea Fisheries (Shellfish) 1967 Act to provide any information that the Welsh Ministers consider necessary in order to consider such an application.</p>	<p><u>Policy intent</u> Subsections 1(2A) and 1(2B) of the 1967 Act will enable the Welsh Ministers to:</p> <p>Specify the form and manner in which an application for a Shellfishery Order must be made, without the need to make subordinate legislation for that purpose. At present, the application form which must be used is set out in the Several and Regulating Fisheries (Form of Application) Regulations 1987 (S.I. 1987/217). However, the information which needs to be provided in relation to each such proposed fishery will be determined on a case by case basis and a requirement to specify that information in a Statutory Instrument is, consequently, undesirably inflexible.</p> <p>Require any person that applies for an Order under section 1 of the 1967 Act to provide any information that the Welsh Ministers consider necessary (which could include environmental information) in order to consider such an application. The information which will be required in relation to such applications will be considered and determined on a case by case basis.</p> <p><u>Timing</u> Orders will be made on an ad-hoc basis when applications are received.</p>

<p>73</p>	<p>Requires the Welsh Ministers to ensure that an Order made under section 1 (via new sub-section 5A) of the Sea Fisheries (Shellfish) 1967 Act includes any provisions considered appropriate to prevent harm to any EMS or to otherwise protect the marine environment</p>	<p><u>Policy intent</u> Section 73 ensures that when deciding whether to grant such an Order, the Welsh Ministers consider the possibility of a European Marine Site (EMS) or the marine environment being harmed by the granting of the Order and to attach conditions to avoid such harm from occurring.</p> <p><u>Timing</u> Orders will be made on an ad-hoc basis when applications are received.</p>
<p>74</p>	<p>Provides the Welsh Ministers with the new power (via new section 5(B) of the Sea Fisheries (Shellfish) Act 1967) to serve a Site Protection Notice on the Grantee of a Shellfishery, requiring them to take action or operate their fishery in the manner specified in the Notice.</p>	<p><u>Policy intent</u> Section 5 of the 1967 Act allows the Welsh Ministers to determine a several or regulating fishery if certain matters are occurring (for example, the Grantees are not properly cultivating the relevant fishery).</p> <p>The main scenario where the new Site Protection Notice power would be used is where a several or regulating Order has been granted and it later transpires that the normal operation of that fishery was threatening to, or actually, causing harm to an EMS.</p> <p>The new Site Protection Notice power provides greater flexibility to the Welsh Ministers in the management of the operation of such shellfisheries in order to ensure that the Welsh Ministers can take action quickly where such a fishery is being operated properly but damage to an EMS could still result (or has resulted) from the same.</p> <p>This new power will ensure that the Welsh Ministers are able to comply with their obligations under the Habitats Directive.</p> <p><u>Timing</u> Notices will be issued an ad-hoc basis when circumstances require.</p>

75	Provides the Welsh Ministers with the new power (via new section 5E of the Sea Fisheries (Shellfish) Act 1967) to, in certain circumstances (where a Site Protection Notice has been served), vary or revoke Shellfishery Orders, made under section 1 of the 1967 Act, in order to protect a European marine site.	<p><u>Policy intent</u> This power can only be used to vary or revoke a Shellfishery Order (made under section 1 of the Sea Fisheries (Shellfish) Act 1967) in order to ensure that the terms of that Order reflect the terms of the Site Protection Notice issued under section 74 of the Bill.</p> <p><u>Timing</u> On an ad-hoc basis when circumstances require.</p>
Part 6 - Marine Licensing		
78	Where the Welsh Ministers are the appropriate licensing authority, enables the appropriate licensing authority, to charge fees for monitoring an activity authorised by a marine licence, assessing and interpreting the results of any monitoring of an activity authorised by a licence as well as fees for dealing with an application by the licensee for a variation, suspension, revocation or transfer of marine licences.	<p><u>Policy intent</u> These provisions are being inserted into the Marine and Coastal Access Act 2009 (MCAA).</p> <p>The functions for the appropriate licensing authority have been delegated to Natural Resources Wales (NRW), who administers the marine licensing system in Wales.</p> <p>Part 6 will supplement existing charging powers at section 67 of the MCAA so as to enable NRW to charge fees for a broader range of functions that they undertake as the appropriate licensing authority. This includes the ability to charge fees in relation to monitoring the activities authorised by a marine licence and licensee requested variations, transfers, suspensions and revocations.</p> <p>These fees are to be determined by or in accordance with regulations made by the Welsh Ministers in its capacity as licensing authority. Fees and charges applied will be based on the principle of full cost recovery.</p>

		<p>Fees for an application for a marine licence (as opposed to fees for monitoring, variation, transfer etc.) are currently set by type of activities and are generally set out in bands. Fees range from £127 for small scale construction activities through to £38,650 for large scale renewable energy projects.</p> <p>There are some monitoring fees currently in place for projects which are subject to Environmental Impact Assessment (EIA), ranging from £535 - £32,625 per annum, depending on the size and type of project. A Fees Review, followed by a public consultation, will establish fees for all types of licensable activities to recover costs of the marine licensing process. Subject to the outcome of the review there are a number of models that may be adopted to set marine licensing fees for example fixed banded fees or hourly rates.</p> <p>If a fee is not paid for varying, suspending, revoking or transferring a licence, the licensing authority may refuse to proceed with the application completely or until the matter is resolved.</p> <p>This section also enables the licensing authority, if it carries out any investigation, examination or test which in its opinion is necessary or expedient to enable it to determine an application by a licensee for a variation, suspension, revocation or transfer of a licence under section 72, to require the licensee to pay a fee towards the reasonable expenses of that investigation, examination or test (see subsection (6) of proposed section 72A of the MCAA). Given the ad hoc and project specific nature of these fees they will not be set within subordinate legislation.</p> <p>Where fees under provisions of this Bill are required to be set out in Regulations, it is anticipated that the 2011 Regulations will be updated, by the Welsh Ministers, using existing regulation making powers alongside the new Regulation making powers contained in the Bill to produce one</p>
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		<p>statutory instrument setting out all marine licensing fees. Fees will be set following a fees review and public consultation.</p> <p><u>Timing</u> The intention is to introduce a new marine licensing fees and charges regime by the end of 2016. As such, all necessary secondary legislation will need to be brought into force at that time.</p>
79	<p>This section enables the licensing authority to charge a deposit on account of a fee, require payment in advance and the power to waive or reduce a fee.</p>	<p><u>Policy intent</u> These provisions are being inserted into the MCAA.</p> <p>This section makes provision enabling the licensing authority to charge a deposit on account of a fee, require payment in advance and the power to waive or reduce a fee.</p> <p>This section requires that deposit amounts are to be determined by or in accordance with regulations made by the licensing authority (these functions are not delegated to NRW). The Regulations may also set out how and when a fee or deposit is to be paid.</p> <p>Current marine licensing fees are set out in the Marine Licensing (Application Fees) (Wales) Regulations 2011. It is anticipated that the 2011 Regulations will be updated, by the Welsh Ministers, using existing regulation making powers alongside the new Regulation making powers contained in the Bill, to produce one statutory instrument setting out all marine licensing fees and deposits. Fees and deposits will be set following a fees review and public consultation.</p> <p>If a deposit is not paid when required in relation to monitoring of an existing licence, the licensing authority may vary, suspend or revoke a licence.</p>

		<p>If a deposit is not paid when required in relation to an application to vary, suspend, revoke or transfer a licence, the licensing authority may refuse to proceed with the application completely or until the matter is resolved.</p> <p>Notwithstanding any action taken as set out above in response of a non payment, the non payment of a fee or deposit may be recovered by the licensing authority as a civil debt.</p> <p><u>Timing</u> The intention is to introduce a new marine licensing fees and charges regime to include deposits by the end of 2016. As such, all necessary secondary legislation will need to be brought into force at that time.</p>
80	<p>This section makes provision to require the Welsh Ministers, by Regulations, to provide an appeal mechanism against a notice issued to vary, suspend or revoke a marine licence as a result of the non-payment of a fee or a deposit charged in relation to monitoring an activity authorised by a marine licence or assessing and interpreting the results of any monitoring of an activity authorised by a marine licence..</p>	<p><u>Policy intent</u></p> <p>These provisions are being inserted into the MCAA.</p> <p>The provision requires the Welsh Ministers to make regulations to provide for an appeal mechanism against the imposition of notices to vary, suspend or revoke a licence, as a result of the non payment of fees or a deposit in relation to the monitoring of an activity authorised by a marine licence or assessing and interpreting the results of any monitoring of an activity authorised by a marine licence,. The procedure for appeals against notices issued under sections 72, 90, 91, 102 and 104 of the MCAA is currently set out in the Marine Licensing (Notice Appeals) (Wales) Regulations 2011. Appeals are made to the First-tier Tribunal, in accordance with those Regulations. It is anticipated that the same approach will be adopted for notices relating to non payment of monitoring fees. The existing Regulations will be amended to bring the necessary changes into effect.</p>

		<p><u>Timing</u> The intention is to introduce a new marine licensing fees and charges regime by the end of 2016. As such, all necessary secondary legislation will need to be brought into force at that time.</p>
Part 7 – Miscellaneous and General		
<p>82</p>	<p>Enables the Welsh Ministers to make decisions on membership and payments relating to new Flood and Coastal Erosion Committee.</p>	<p><u>Policy intent</u></p> <p>These provisions are being inserted into the Flood and Water Management Act 2010. The policy intent is to establish a committee to provide advice on flood and coastal erosion risk management to the Welsh Ministers, to be known as the Flood and Coastal Erosion Committee. The advice provided by this committee will be based on information from different risk management authorities in Wales and cover all sources of flooding. The current committee, Flood Risk Management Wales, will be abolished.</p> <p>This provision will enable the Welsh Ministers to make regulations regarding the membership of the committee (including the number of members, conditions of eligibility for appointment, and the method for selection and appointment). The Welsh Ministers will also make provision about the proceedings of the committee (including quorum and the nature and extent of a majority required for specified purposes) and for the payment of the chair of the committee and the payment of allowances to committee members.</p> <p><u>Timing</u> Regulations will need to be made immediately in order that the new committee is created as soon as possible and the current committee abolished.</p>

Section 22: Power to suspend statutory requirements for experimental schemes: Case Studies

The following are some potential examples of how the suspension power provided in section 22 of the Environment (Wales) Bill may be used. These are merely illustrative examples and not proposals for suspension.

The detail of any proposal would need to be worked through, for example to avoid unintended consequences in relation to other permitting or licensing regimes (including of course where those are implementing European obligations in Wales (e.g. licensing of activities by NRW under the Conservation of Habitats and Species Regulations 2010)).

A. FORESTRY ACT 1967

1. Section 1(3A) – Balancing Duty

1.1 Achieving a ‘Reasonable Balance’ in relation to the exercise of forestry functions

This case study provides an example of how a temporary suspension of section 1(3A) could enable an experimental scheme. Section 1(3A) provides:

In discharging their functions. . . the [appropriate forestry authority] shall, so far as may be consistent with the proper discharge of those functions, endeavour to achieve a reasonable balance between—

(a) the development of afforestation, the management of forests and the production and supply of timber [, the production and supply of timber and, in Scotland, the delivery of the climate change targets], and

(b) the conservation and enhancement of natural beauty and the conservation of flora, fauna and geological or physiographical features of special interest.

The appropriate forestry authority in Wales is Natural Resources Wales (NRW).

This subsection requires NRW to discharge its functions while endeavouring ‘to achieve a reasonable balance’ between the afforestation and the management of forests for the production and supply of timber, and the ‘conservation and enhancement of natural beauty and the conservation of flora, fauna and geological or physiographical features of special interest’.

An experimental scheme would enable NRW on behalf of Welsh Ministers, to test the suspension of the ‘balancing duty’ in order to trial a different approach to managing Welsh Government Forestry Estate in line with the sustainable management of natural resources.

1.2 Reasons:

While the balancing duty suggests that a trade-off is required between economic and conservation considerations in relation to the Welsh Government Woodland Estate, it does not recognise the value of ecosystem services. Therefore the duty may act as a blockage to NRW fully undertaking its role in relation to the sustainable management of natural resources and in applying the principles in the exercise of their functions.

1.3 Scheme:

An experimental scheme could involve, for example, temporarily suspending the section 1(3A) to enable NRW to continue its ongoing work on recreation, education and community engagement on the forestry estate, which would aim to maximise the multiple benefits of the woodland estate for society, the economy and the environment. A scheme of this kind would inform how NRW's forestry functions could be best extended to reduce the risk of challenge that may come with the balancing duty as currently worded.

In addition, the balancing duty may not enable targeted action in relation to carbon storage.

For example in relation to Scotland, this part of the Forestry Act enables afforestation to 'deliver climate change targets'. There is no equivalent provision for England or Wales. This may be an important tool in relation to the new targets provided in Part 2 of the Bill.

1.4 Potential conflicts with NRW's new purpose:

- Considering multiple benefits provided by ecosystems;
- Take account of the benefits and intrinsic value of natural resources and ecosystems;
- Take account of the short, medium and long-term consequences of actions.

2. Section 9(1) – Felling Licences

This case study provides an example of how a temporary suspension of section 9(1) may assist an experimental scheme. Section 9(1) states:

A felling licence granted by the [appropriate forestry authority] shall be required for the felling of growing trees, except in a case where by or under the following provisions of this Part of this Act this subsection is expressed not to apply.

The appropriate forestry authority in Wales is NRW.

2.1 The current situation

NRW uses the UK Forestry Standard as the basis against which forestry proposals, including felling licences are approved. Felling licences are issued for both felling and thinning of trees. For the former, NRW are able to apply restocking conditions which ensure that woodland cover is maintained. These conditions are prescribed

within the Act. Under the legislation NRW has powers to enforce restocking conditions where the licence is not complied with.

The UK Forestry Standard sets out the UK Government's approach to sustainable forestry and delivers a balance between the interests of forestry as a commercial business on one hand, and safeguarding environmental and other public benefits on the other hand.

Many woodlands in Wales are certified under the UK Woodland Assurance Standard (UKWAS). UKWAS exists to provide a practical basis for certification schemes to operate in the UK. The UKWAS standard is essentially an audit protocol or check-list, and it is endorsed by both the major international certification schemes, FSC and PEFC.

The UKWAS check-list is derived from two principal sources: the requirements of the UKFS, (which are necessary for forestry proposals to be approved in any case), and the requirements of the international certification schemes.

2.2 The Suspension Power

The suspension power could be used to explore how an 'earned recognition' exemption from some felling licences as required by Forestry Act 1967 might be desirable.

2.3 Potential Schemes

Thinning licences

Certified woodlands in Wales must meet UKFS, so an assessment of proposals by NRW and the need for it to issue a felling licence for thinning operations may be an additional burden in some situations where woodlands are certified and therefore being managed to UKFS standards.

An experimental power would enable NRW on behalf of the Welsh Ministers, to test an exemption for thinning in certified woodlands, with a records management system to monitor activity.

Clear Felling licence conditions

All certified woodlands must have management planning documentation which meets the requirements set out in UKWAS, and therefore the principles of FSC and/or PEFC. These will specify how the woodland management across the whole woodland meets the standards of sustainable forest management and therefore requires the woodland to be restocked or regenerated in accordance with those principles. One restriction of felling licences is that restocking conditions are set at a "licence by licence" scale, and therefore apply UKFS at that scale rather than at the forest scale. Also there are burdens on both NRW and owners in relation to time taken to ensure that the owner agrees with the conditions.

Under an experimental power, NRW would be able to test on behalf of Welsh Ministers, allowing conditions for felling licences in certified woodlands to be adapted to simply state 'restocking as per the FCS/PEFC approved management planning documentation'. NRW would still issue the licence, due to the checks required in UKFS such as acidification implications but could

take a light touch to restocking proposals. The requirement for the owner to agree the proposals could be removed, as he/she would be a party to the approved management plan.

2.4 Delivering sustainable management of natural resources

Lifting regulatory burdens on persons managing forestry sustainably in accordance with UKFS and UKWAS;

Promoting sustainable forest management by incentivising compliance with UKFS and UKWAS certification;

Improving regulating services provided by ecosystems;

Improving supporting services provided by ecosystems;

Improving provisioning and cultural services provided by ecosystems

B. LAND DRAINAGE ACT 1991

3. Section 23 – Consent Requirements

This case study provides an example of how a temporary suspension of section 23(1) may assist an experimental scheme. Section 23(1) states:

No person shall—

(a) erect any mill dam, weir or other like obstruction to the flow of any ordinary watercourse or raise or otherwise alter any such obstruction; or

(b) erect a culvert in an ordinary watercourse, or

(c) alter a culvert in a manner that would be likely to affect the flow of an ordinary watercourse,

without the consent in writing of the drainage board concerned.

3.1 Operation of section 23

Each consent is assessed on the impact the obstruction may have on the watercourse and the impact further down the watercourse, where there are a number of obstructions e.g. grip blocks, as each obstruction may be in different part of the watercourse, the impact of the one obstruction at one point in a watercourse may be very different to the impact of another obstruction at another point in the watercourse.

Under the LDA, a contravention of the requirement for consent is classed as a nuisance. Section 24(1) states:

If any obstruction is erected or raised or otherwise altered, or any culvert is erected or altered, in contravention of section 23 above, it shall constitute a nuisance in respect of which the drainage board concerned may serve upon such person as is specified in subsection (2) below a notice requiring him to abate the nuisance within a period to be specified in the notice."

An IDB (where the land is within an internal drainage district) or local authority where it is not in an IDD may issue a notice to a person to stop the nuisance within

specified period of time (s24(1), LDA 1991). If a person does not comply with the notice or acts in contravention of the notice, the drainage board may remove the works and recover the costs of the removal (s24(4), LDA 1991). Further they may be liable to a fine (s24(3)).

Under the LDA a drainage board is:

a) in relation to a watercourse in an internal drainage district – it is the IDB – for the majority of IDD, NRW are therefore the drainage board for all of the IDDs in Wales;

b) in relation to a watercourse in an area outside and IDD – it is the lead local flood authority (i.e. the local authority) as defined in s6 of the Flood and Water Management Act 2010.

3.2 Potential Scheme in relation to grip blocking

Grip blocking is the practice of creating small dams across a ditch or “grip” to retain water in areas of previously drained land, usually peat-bogs. It is an important tool in facilitating the rewetting of upland areas for peat restoration, carbon storage and slowing down the release water into ordinary and main river system.

To identify situations where the application of best practice can be applied in relation to the use of grip blocks without the need of a consent. To assess what best practice approaches are appropriate and effective. This would be where NRW are the party undertaking the scheme on the land that they either own or manage.

3.3 Suspension power

The power could be used to remove the requirement for consent for the installation of grip blocking under an experimental scheme where NRW is the applicant. This would ensure that NRW were not therefore subject to a contravention under section 24.

3.4 Assisting sustainable management of natural resources

Improving regulating services provided by ecosystems, in particular peatbogs to provide carbon storage;

Improving regulating services provided by ecosystems, in particular in relation to assisting flood alleviation;

Improving supporting and cultural services provided by ecosystems, in particular rewetting of upland areas.

David Melding AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

Your ref:
Our ref: PO/RB/CW

20 May 2015

Dear David

Environment (Wales) Bill – legislative competence

Further to my statement on the legislative competence in respect of the Environment (Wales) Bill, published on 11 May, I am writing to draw your attention to the factors I considered in reaching my view. This is because some of the issues which arose during my consideration of this Bill were not straightforward, and they may be of interest to your Committee during the Stage 1 inquiry.

There are 5 substantive issues which I wish to highlight. I have summarised the key points very briefly below:

1. Secretary of State consents

In my view, although the Bill is mostly within the legislative competence of the Assembly, sections 6, 11(2) and 21 are currently outside that competence. These sections require the consent of the Secretary of State, pursuant to Part 2 of Schedule 7 to GoWA, and that consent has not yet been forthcoming.

Croesewir gohebiaeth yn y Gymraeg a'r Saesneg/We welcome correspondence in both English and Welsh



This is consistent with the way I have previously interpreted section 110(3) of the Government of Wales Act 2006 (GoWA), as requiring me to reflect whether the Bill would be within competence if it were passed as drafted when introduced. A Bill can be introduced whether or not my view is that it would be within competence.

In contrast, under GoWA a Bill cannot be introduced unless the Member in charge states that it is within competence. It appears that the Minister for Natural Resources, as the Member in charge of the Bill, has relied on a different interpretation of GoWA which has enabled him to state that, in his view, all of the Bill's provisions would be within competence.

2. Whether all of the provisions "relate to" a subject in Schedule 7 of GoWA

Section 6 of the Bill places a duty on public authorities, when carrying out their functions in Wales, to do so in a way that aims to maintain and enhance biodiversity. The duty will apply to – amongst others – bodies such as Police and Crime Commissioners and sewerage undertakers. The Assembly would not have general competence to legislate in respect of these bodies: the police, crime (in general) and sewerage are not included in subjects in Schedule 7. On the other hand, they are not listed as exceptions in Schedule 7 either. I am satisfied, in the light of the Supreme Court judgment on the Agricultural Sector (Wales) Bill, that section 6 is within competence, in so far as it affects these bodies, because the purpose of this section is to maintain and improve biodiversity in Wales; and "biodiversity" is a subject within Schedule 7.

Section 57 of the Bill requires sellers to give money received from the sale of carrier bags (less deductions) to a charitable purpose, beyond the environment-related purposes which the Welsh Ministers can currently specify, to be prescribed in regulations. This could include charitable purposes which would be outside the competence of the Assembly. I am content that this section is within competence because it is appropriate to make the charging provision effective. Moreover, the Bill itself does not oblige or indeed empower sellers to apply their proceeds to charities that are outside the Assembly's competence. The Assembly will, however, have to scrutinise the regulations specifying the relevant charitable purposes with particular care to ensure that they are wholly within competence.



3. Whether any provisions fall within any of the exceptions set out in Part 1 of Schedule 7 of GoWA

The biodiversity duty in section 6 described above also applies to bodies which are mentioned specifically as exceptions from competence in Schedule 7, such as the Industrial Development Advisory Board, the Health and Safety Executive, Research Councils and the Post Office. I am satisfied that this section is within competence because the purpose of section 6 is to protect and improve biodiversity; it is not to affect the excepted bodies in any other way, and the duty applies only “in so far as consistent with the proper exercise of [the body’s other] functions”. I note that the Scottish Parliament has enacted a very similar provision in section 1 of the Nature Conservation (Scotland) Act 2004, and that this has not (to date) been challenged, despite the Scottish Parliament’s competence being subject to specific reservations for Research Councils, the Industrial Development Advisory Board and the Health and Safety Executive.

Section 35 of the Bill bears the title ‘Welsh emissions from international aviation and shipping’. Schedule 7 to GOWA includes exceptions for ‘Aviation, air transport, airports and aerodromes’, ‘Shipping’ and ‘Technical and safety standards of vessels’. I am content that section 35 does not fall within these exceptions, because it is clear that there is no attempt to legislate substantively on the excepted topics. The section merely clarifies how such emissions are to count as Welsh emissions.

Section 55 of the Bill gives the Welsh Ministers powers to make regulations about charges for carrier bags. Schedule 7 to GOWA includes an exception for “Consumer protection, including the sale and supply of goods to consumers”. In my view, this exception applies to the sale and supply of goods only to the extent of forming part of the concept of “consumer protection”, and therefore it does not apply in this case. Although the Bill deals with the sale and supply of carrier bags, its purpose is not to protect consumers, nor is that its effect.

4. Whether any provisions apply other than in relation to Wales

There is no requirement in sections 54 and 55 for a seller of goods obliged to charge for carrier bags to be located in Wales. However, the obligation to charge will apply only where the item is bought in Wales or delivered to someone in Wales, and the provisions are appropriate for making the rest of



the carrier bag provisions effective. Therefore I am content that these sections would be within competence.

5. Whether any provisions extend beyond England and Wales

Paragraph 2(3) of Schedule 2 of the Bill repeals a provision in existing legislation which extends to Scotland. I am content that the provision would be interpreted by the courts as being within competence, because section 154 of GOWA provides that, in case of doubt, Assembly Acts must be interpreted as narrowly as is required to bring them within competence. However, I am concerned that claiming to repeal a provision that will continue to apply in Scotland is not a very clear way to legislate. This is likely to be a recurring problem as Assembly Acts continue to diverge from UK Acts of Parliament.

This is a very short summary of the issues. If you would like further information and advice on these, or any of the other competence tests I applied to the Bill, the officials supporting your inquiry will be pleased to assist.

I am writing in similar terms to the Chair of the Environment and Sustainability Committee, and copying this to the Member in charge of the Bill.

Dame Rosemary Butler AM
Presiding Officer

cc Carl Sargeant AM, Minister for Natural Resources

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Agenda Item 3

Constitutional and Legislative Affairs Committee Statutory Instruments with Clear Reports

1 June 2015

CLA534 – The National Curriculum (Moderation of Assessment Arrangements for the Second and Third Key Stages) Order 2015

Procedure: Negative

This Order requires all schools to participate in cluster group moderation at the end of the second and third key stages. Head teachers are placed under a duty to take part in moderation cluster group meetings to ensure accurate and consistent teacher moderation by all schools following teacher assessment of pupils' school work at the end of the second and third key stages.

Constitutional and Legislative Affairs Committee

CLAXXX – The Care and support (Assessment) (Wales) Regulations 2015

The Social services and Well-being Act 2014 (“the Act”) imposes duties on local authorities to assess the needs of adults and children for care and support and carer’s (including child carers) needs for support.

These Regulations make provision about such assessments.

Procedure: Negative

1. Technical Scrutiny

No points are identified for reporting under Standing Order 21.2.

2. Merits Scrutiny

The points are identified for reporting under Standing Order 21.3(ii) in respect of this instrument.

The current assessment regime legislates separately for adults and children. Assessment for adults is covered by the NHS and Community Care Act 1990, the Carers and Disabled children Act 2000 and the Chronically sick and Disabled Persons Act 1970.

Schedule 2 to the Children Act 1989 provides for the assessment of children in need.

Under the NHS and Community Care Act 1990 local authorities are under a duty to decide whether, following assessment, an adult’s needs require a service to be provided. Guidance issued in 2002 – ‘Creating a Unified and Fair System for Accessing and Managing Care’ – provided a standardised framework within which local authorities were to decide local criteria about which needs should be met. This guidance required local authorities to use the Unified Assessment Process to evaluate an individual’s presented needs and circumstances and how they constrain or support their capacity to live independently. In 2013 this guidance was superseded for adults aged over 65 years by the ‘Integrated Assessment, Planning

and Review Arrangements for Older people' issues to local authorities under section 7 of the social services Act 1970.

For children the principal guidance is the Framework for assessment for children in Need and their Families, issued under section 7 of the Social Services Act 1970.

Carers' needs are currently dealt with under the Carers (Recognition and Services) Act 1995, the Carers and Disabled Children Act 2000, the carers (Equal Opportunities) Act 2004 and the Carers Strategies (Wales) Measure 2010.

The Act imposes on local authorities a duty to assess the needs of an adult for care and support where it appears that an adult may have needs for care and support. This duty is wider than that imposed on local authorities under the NHS and Community Care Act 1990 which requires a local authority to assess whether an individual is in need of local authority services. The Act requires a local authority to assess whether an individual has needs for care and support and what those needs are.. It must also identify to what extent the provision of care and support, preventative services, information, advice and assistance or other matters could contribute to9 the outcomes the adult wishes to achieve in day to day life pr otherwise meet those needs,

The Act refers to children in need of care and support, not to a children in need. In practice there is little difference other than in the terminology used, although the Act imposes a broader duty to establish whether a child is in need of care and support.

Under the Act, carers – defined as those providing or intending to provide care to an adult or disabled child – will have the same rights to assessment and support to meet their needs. The Act removes the requirement that only carers providing a 'substantial amount of care on a regular basis' are entitled to a carer's assessment.

The Explanatory Memorandum accompanying the Regulations states that the current system is unsustainable and seeks to simplify and improve service efficiency and effectiveness by delivering improved integration, collaboration and by providing service users with a stronger voice and control over their service and well-being. A uniform assessment approach will make for simplification of the process which will be consistent with that now adopted in relation to mental health

TEMPLATE – SI REPORT

following the implementation of the Mental Health (Care Coordination and Care and Treatment Planning) (Wales) Regulations 2011.

Legal Services

11 May 2015

2015 No. 1305 (W.111)

SOCIAL CARE, WALES

**The Care and Support (Assessment)
(Wales) Regulations 2015**

EXPLANATORY NOTE

(This note is not part of the Regulations)

Sections 19, 21 and 24 of the Social Services and Well-being (Wales) Act 2014 impose duties on a local authority to assess an adult's needs for care and support, a child's needs for care and support and a carer's needs for support. These Regulations make further provision about such assessments.

Regulation 2 makes provision about the co-ordination of assessments. Regulation 3 makes provision about the training and expertise of persons carrying out an assessment.

Regulation 4 makes provision about the matters to which the local authority must have regard when carrying out an assessment.

Regulation 5 makes provision for the recording of assessments and Regulation 6 deals with the persons to whom the local authority must offer to give a copy of such records.

Regulation 7 makes provision for the review of an assessment, including the circumstances in which the local authority must review the assessment, the persons who may request a review of the assessment, the circumstances in which the local authority must comply with such a request and the circumstances in which they may refuse to do so.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained by contacting the Department for Health and Social Services, Welsh Government, Cathays Park, Cardiff CF10 3NQ.

2015 No. 1305 (W.111)

SOCIAL CARE, WALES

**The Care and Support (Assessment)
(Wales) Regulations 2015**

Made 6 May 2015

Laid before the National Assembly for Wales

8 May 2015

Coming into force 6 April 2016

The Welsh Ministers, in exercise of the powers conferred by section 30 of the Social Services and Well-being (Wales) Act 2014⁽¹⁾, make the following Regulations:

Title, commencement, application and interpretation

1.—(1) The title of these Regulations is the Care and Support (Assessment) (Wales) Regulations 2015.

(2) These Regulations come into force on 6 April 2016 and apply in relation to Wales.

(3) In these Regulations—

“assessment” (*“asesiad ac asesu”*) means an assessment which is carried out by a local authority under section 19, 21 or 24 of the Act;

“personal outcomes” (*“canlyniadau personol”*) means the outcomes which have been identified in relation to a person in accordance with section 19(4)(a), 21(4)(b) or 24(4)(c) or (d) of the Act;

“the Act” (*“y Ddeddf”*) means the Social Services and Well-being (Wales) Act 2014.

Co-ordination

2. The local authority responsible for carrying out an assessment must ensure that there is a named

(1) 2014 anaw 4.

individual whose function is to co-ordinate the carrying out of the assessment.

Training, expertise and consultation

3.—(1) A local authority must ensure that any person carrying out an assessment—

- (a) has the skills, knowledge and competence to carry out the assessment in question, and
- (b) has received training in the carrying out of assessments.

(2) When carrying out an assessment, a local authority must consider whether the nature of the person's needs calls for the involvement of a person who has specialist skills, knowledge or expertise.

(3) If the local authority decides that such involvement is called for, it must either consult with a person who it considers will be able to provide those skills or that knowledge or expertise or arrange for the assessment to be carried out by a person with the required specialist skills, knowledge or expertise.

Considerations to which the local authority must have regard

4. In carrying out an assessment, a local authority must—

- (a) assess and have regard to the person's circumstances,
- (b) have regard to the personal outcomes,
- (c) assess and have regard to any barriers to achieving those outcomes,
- (d) assess and have regard to any risks to the person or to other persons if those outcomes are not achieved, and
- (e) assess and have regard to the person's strengths and capabilities.

Written records of assessments

5.—(1) When an assessment has been completed, the local authority must make a written record of the results of the assessment and the matters to which the authority has had regard in carrying out the assessment.

(2) If, in the course of carrying out the assessment, the local authority considers that the provision of preventative services, the provision of information, advice or assistance or other matters could contribute to the achievement of the personal outcomes or otherwise meet needs identified in the assessment, the written record must—

- (a) include details of that provision or those matters, and

- (b) include details of how that provision or those matters could contribute to the achievement of the personal outcomes or otherwise meet needs identified in the assessment.

Copies of records

6.—(1) Where the assessment is of an adult’s needs (including the needs of an adult carer), the local authority must offer to give a copy of the record to—

- (i) the adult,
- (ii) any person authorised to act on behalf of the adult, and
- (iii) where the adult lacks capacity to be able to request a person to act on their behalf and there is no person authorised to act on their behalf, any person who the local authority considers to be acting in the best interests of the adult.

(2) Where the assessment is of a child’s needs (including the needs of a child carer), the local authority must offer to give a copy of the record to—

- (i) the child,
- (ii) any person with parental responsibility for the child, unless doing so would be inconsistent with the child’s well-being,
- (iii) any person authorised to act on behalf of the child, and
- (iv) where the child lacks capacity or is not competent to request a person to act on their behalf and there is no person authorised to act on their behalf, any person who the local authority considers to be acting in the best interests of the child.

(3) In this regulation and in regulation 7, a person is authorised to act on behalf of an adult or a child if—

- (a) the adult or the child has requested the person to act on their behalf, or
- (b) the adult or child lacks capacity and the person is authorised under the Mental Capacity Act 2005 (whether in general or in specific terms) to make decisions about the assessment of the person’s needs.

Reviews

7.—(1) A local authority must review an assessment if it appears to it that there has been a significant change in the person’s circumstances or in their personal outcomes .

(2) The following persons may request a review of an assessment—

- (a) where the assessment is of an adult's needs (including the needs of an adult carer)—
 - (i) the adult;
 - (ii) any person authorised to act on behalf of the adult;
- (b) where the assessment is of a child's needs (including the needs of a child carer)—
 - (i) the child;
 - (ii) any person with parental responsibility for the child;
 - (iii) any person authorised to act on behalf of the child.

(3) The local authority must comply with the request if it is satisfied that there has been a significant change in the person's circumstances or in their personal outcomes.

(4) The local authority may refuse to comply with the request if it is satisfied that there has not been any significant change in the person's circumstances or in their personal outcomes since the assessment was completed.

Mark Drakeford

Minister for Health and Social Services, one of the
Welsh Ministers

6 May 2015

Explanatory Memorandum to the Care and Support (Assessment) (Wales) Regulations 2015

This Explanatory Memorandum has been prepared by the Department of Health and Social Services and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Care and Support (Assessment) (Wales) Regulations 2015. I am satisfied that the benefits outweigh any costs.

Mark Drakeford

Minister for Health and Social Services, one of the Welsh Ministers

6 May 2015

Part 1 – OVERVIEW

1. Description

The Social Services and Well-being (Wales) Act 2014 (the Act) brings together local authorities' duties and functions in relation to improving the well-being of people who need care and support, and carers who need support. The Act provides the statutory framework to deliver the Welsh Government's commitment to integrate social services to support people of all ages, and support people as part of families and communities. Sections 19, 21 and 24 of the Act place a duty on local authorities to provide a single process of assessment that will apply to all individuals.

Sections 19, 21 and 24 of the Social Services and Well-being (Wales) Act 2014 impose duties on a local authority to assess an adult's needs for care and support, a child's needs for care and support and a carer's needs for support. The regulations make further provision about such assessments.

This Explanatory Memorandum should be read in conjunction with the Explanatory Memorandum to The Care and Support (Eligibility) (Wales) Regulations 2015.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

No specific matters identified.

3. Legislative background

The powers enabling these regulations to be made are contained in Sections 19, 21 and 24 of the Social Services and Well-being (Wales) Act 2014. The Act creates a right to an assessment for all people, where it appears to the local authority that the individual may have need for care and support, or support in the case of carers. The Act will simplify the assessment process so that it is appropriate to the needs of the individual and considers the person's circumstances.

This instrument is subject to the annulment procedure by the National Assembly for Wales (the negative procedure).

The Regulations will come into force in April 2016.

Current legislation

The current legislative framework is complex and the provision of social care is currently found within a broad array of Acts, which legislate separately for children and adults.

Assessment for adults is covered by the NHS & Community Care Act 1990, Carers and Disabled Children Act 2000 and the Chronically Sick and Disabled Persons Act 1970.

For children Schedule 2 of the Children Act 1989 provides for assessment of children in need.

The principal tools / guidance to assist the assessment of children and adults under the respective pieces of legislation are:

- The Framework for the Assessment of Children in Need and their Families (2001)
- Creating a Unified and Fair System for Assessing and Managing Care (2002).
- The Integrated Assessment, Planning and Review Arrangements for Older People (2013)

Each of these was issued under section 7 of Local Authority Social Services Act 1970 (LASSA).

Section 47 (1) (b) of the NHS and Community Care Act 1990 places a duty on local authorities to decide whether, following assessment, an adult's needs require a service to be provided. Specifically, in Wales the statutory guidance: '*Creating a Unified and Fair System for Accessing and Managing Care*' (FACS) guidance¹ was implemented in 2002, which provides a standardised framework within which local authorities should decide local criteria about which needs should be met. In 2013, this guidance was superseded, for adults over the age of 65, by the 'Integrated Assessment, Planning and Review Arrangements for Older People' issued under section 7 of the Local Authority Social Services Act 1970.

For adults under 65 the FACS guidance requires the use of the Unified Assessment Process (UAP) to evaluate an individual's presented needs and circumstances and how they constrain or support their capacity to live a full and independent life.

Key sub-sets (specialist assessment) have been developed and work within the UAP for mental health and substance misuse domains. These are known as:

- Care and Treatment Planning under the Mental Health Measure (2010), which in June 2012 superseded the Care Programme Approach (CPA) in Wales (although the CPA continues to operate in England) *and*
- The Wales In-Depth Integrated Substance Misuse Assessment Toolkit (WIISMAT).

The Mental Health (Care Coordination and Care and Treatment Planning) (Wales) Regulations 2011 prescribe a care and treatment plan for people in receipt of secondary mental health services. Many of these people will have multiple needs and be eligible for an assessment for community care services. The UAP is the tool that practitioners continue to use as a multi-agency assessment for secondary mental health services and community care services.

¹ Creating a unified and fair system for assessing and managing Care (FACS), Welsh Government, 2002

Schedule 2 of the Children Act 1989 provides for assessment of children in need and the principal guidance to assist the assessment of children is the *Framework for Assessment for Children in Need and their Families*² issued under section 7 of the Local Authority Social Services Act 1970 (LASSA).

The *Framework for the Assessment of Children in Need and their Families* provides a systematic basis for collecting and analysing information to support professional judgements about how to help children and families in the best interests of the child. Practitioners use the framework to gain an understanding of a child's developmental needs; the capacity of parents or caregivers to respond appropriately to those needs, including their capacity to keep the child safe from harm; and the impact of wider family and environmental factors on the parents and child. There are three main aspects of the framework:

- the child's developmental needs;
- parenting capacity, and
- wider family and environmental factors.

The framework is used for the assessment of all children in need, including those where there are concerns that a child may be suffering significant harm.

There are three Acts of Parliament and a Welsh Measure under the National Assembly for Wales, which are directly concerned with the needs of carers. These are:

- Carers (Recognition and Services) Act 1995
- Carers and Disabled Children Act 2000
- Carers (Equal Opportunities) Act 2004
- Carers Strategies (Wales) Measure 2010

In addition, Disabled Persons (Services, Consultation and Representation) Act 1986 Section 8 requires that during an assessment of a disabled person the views of Carers who 'provide a substantial amount of care on a regular basis' should be taken into account. There is no definition of "substantial amount of care on a regular basis".

Under the Carers (Recognition and Services) Act 1995 individuals who provide or intend to provide regular and substantial care are entitled to request an assessment in their own right regarding their ability to provide care and sustain this caring role.

The Carers and Disabled Children Act 2000 gave carers the right to an assessment independent of the community care assessment for the cared-for person.

The Carers (Equal Opportunities) Act 2004 gave local authorities the duty to inform carers of their right to an assessment which should now also consider the carer's wishes in relation to leisure, education, training and work activities.

Children (anyone under the aged of 18 years) who are carers should be routinely assessed under the Children Act 1989. As a matter of law, they could be assessed

² Framework for the Assessment of Children in Need and their Families, The Stationary Office, London, 2001

under the 1995 Act but in practice it is more common for young carers assessments to be carried out in line with the Children Act 1989 guidance.

Proposed Legislation

The statutory framework will consist of three main elements, the Act itself, regulations made under the Act, and codes of practice/statutory guidance. These three elements work together to form the framework within which social services will operate from April 2016.

The Social Services and Well-being (Wales) Act 2014 will change the way that all individuals and families, including carers, are assessed.

- Section 19 places a duty on local authorities to assess the needs of an adult for care and support where it appears that an adult may have needs for care and support.

This is a wider duty on local authorities than is set out in section 47 of the NHS and Community Care Act which requires that where it appears to a local authority that any person for whom they may provide or arrange for the provision of community care services may be in need of any such services, the authority shall carry out an assessment of his needs for those services; and shall then decide whether those needs call for the provision by them of any such services.

The difference is that whereas the NHS and Community Care Act 1990 requires local authorities to assess whether someone is in need of local authority services the Social Services and Well-being (Wales) Act 2014 requires local authorities both to identify whether someone has needs for care and support (and what those needs are), and also to seek to identify to what extent the provision of care and support, preventative services, Information Advice and Assistance, or other matters could contribute to the outcomes the adult wishes to achieve in day to day life or otherwise meet those needs.

- Section 21 places a duty on local authorities to assess the needs of a child for care and support where it appears 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 Act refers to a child in need of care and support whereas Section 17 of the Children Act 1989 defines a child as being in need in law if:

- He or she is unlikely to achieve or maintain or to have the opportunity to achieve or maintain a reasonable standard of health or development without provision of services from the LA;
- His or her health or development is likely to be significantly impaired, or further impaired, without the provision of services from the LA;
- He or she has a disability.

In practice there is little difference here and the distinction is in terminology. The Act creates a broader duty to establish whether a child is in need of care and support and that understanding is refined in the regulations made under the Act.

- Section 24 places a duty on local authorities to assess the needs of a carer for support where it appears to a local authority that a carer may have needs for support;

For the first time carers will have the same rights to assessments and support to meet their needs, as do adults and children in need of care and support.

The Act removes from legislation the requirement that only carers providing a 'substantial amount of care on a regular basis' are entitled to a carer's assessment and defines a carer as someone who provides or intends to provide care to an adult or disabled child.

Purpose and intended effect of the legislation

There have been two valuable reports which have informed the development of the regulations. Primarily the 2011 report "*Better Support at Lower Cost*" commissioned by the Social Services Improvement Agency for Wales (SSIA)³, reviewed the current practice on the approaches used by local authorities in delivering efficient care and support services for older people. This report was used to inform the first stages of the legislation reform.

An Assessment and Care Planning Technical Group was established by the former Deputy Minister for Social Services to advise the Welsh Government on producing a suite of regulations and code of practice on the determination of assessment, care planning and review under the Act. The report of that group was also informed by a 2013 SSIA report on "Access to Care and Well-being in Wales"⁴, commissioned by the Welsh Government and co-produced with the Institute of Public Care at Oxford Brookes University. The 2013 report was accepted by the then Deputy Minister and published for comment; and subsequently informed the work of the Eligibility Technical Group⁵ which preceded, and made recommendations to, the Assessment and Care Planning Technical Group.

In relation to assessment, the final report from the Assessment and Planning Technical Group⁶ recommended that there should be a duty on local authorities, with the help of local health boards where required, to offer a proportionate assessment to anyone seeking help to meet their personal well-being outcomes.

The case for change is set out in the "Better Support at Lower Cost" report where it is identified that the single biggest challenge which many Welsh local authorities are facing is how to change the prevailing culture within adult social care. The report recognises that there needs to be a further culture shift towards a service which offers real opportunity to help people become more independent; both in the way they live their lives and how flexibly they can use services. The report, however, notes that there are examples where local authorities have already started to reshape their services for older people, with much evidence of a shift towards a re-ablement approach to care.

³ Better Support at Lower Cost - Improving efficiency and effectiveness in services for older people in Wales – SSIA – April 2011

⁴ Access to Care and Well-being in Wales – SSIA – March 2013

⁵ Report of the Eligibility Technical Group – Welsh Government - June 2014

⁶ Assessment and Planning Technical Group – Final Report – Welsh Government – September 2014

The current system can be unclear and confusing, with the focus being placed on the process of the assessment instead of the outcome. Intervention is often triggered at the point of crisis, rather than intervening early through preventative measures. The Act will encourage a renewed focus on prevention and early intervention. The 2011 SSIA report echoes the support for early intervention and prevention, and states that such services will help local authorities to meet their savings targets whilst improving outcomes for individuals.

The report of the Commission on Public Service Governance and Delivery⁷ observed:

“We are very clear that public services in Wales face severe and prolonged challenges. The effects of recession and austerity on public-sector budgets will continue to be felt for many years. At the same time, our population is growing, becoming older, and public expectations on the providers of public services are higher than ever before. This creates severe pressures – demand for public services is growing while resources to provide them are falling”.

The pressures on local authority social services departments relate to many factors including, but not limited to:

- People are living longer. Projections show that by 2030 there will be twice the number of people aged over 85 there are currently. The associated costs to social care are explored further in the attached Regulatory Impact Assessment;
- Changing behaviours and expectations; and
- An increase in people with long standing and complex disabilities.

Although demands on social services are increasing, there is no commensurate increase in routine funding to support service delivery. The current financial settlement for 2015/16 has been decreased by 3.4% compared to 2014/15, as a consequence of the large scale budget reductions by the UK Government.

Due to this increase in demand it is essential that the future delivery of social care is transformed. The current system is unsustainable. Specifically there is a need to simplify and improve service efficiency and effectiveness of the system. The system must be improved to deliver better integration, improved collaboration, a stronger workforce, and to provide people with a greater voice and control over their services and well-being.

Intended effect of the Regulations

The primary objective of the policy is to promote an individual’s independence and ensure they have a stronger voice and control over their care and support. The changes are crucial to enable current and future generations to live their lives independently, providing the correct level of support to maintain their well-being.

The overall effect of the regulations is to provide greater clarity, consistency and quality of care and support for individuals and carers. The aim is that the assessment process

⁷ Report of the Commission on Public Service and Delivery – January 2014 <http://gov.wales/topics/improving-services/public-service-governance-and-delivery/report/?lang=en>

will be more proportionately applied so that it is appropriate to the needs of the individual and considers the person's circumstances. The process will be simplified by introducing a uniform approach to assessment for all people and by simplifying the process itself.

The proposed approach to assessment is consistent with the mental health model in that it is about enabling each individual to achieve their outcomes, as well as with the social model of disability, in that it is about removing the barriers that prevent people achieving those outcomes.

The approach to assessment is also informed by the report of the Independent Commission on Social Services in Wales⁸ which observed that "Negative media coverage of social work has, however, promoted a risk averse culture and an over reliance on process. The need is to rebalance towards professional judgment and reflective practice, to assist, safe confident, evidence based-practice".

The proposed approach to assessment in the regulations, sets out that the assessment must be appropriate to the needs of the individual and consider the person's circumstances in the round. The approach supports a move away from the deficit model of care to an emphasis on strengths, capacity and personal resources and focusses on enabling services. The Act and its associated regulations introduce an assessment and eligibility test based on a comprehensive analysis of 5 inter-related elements to ensure that local authorities consider the person's circumstances in the round. These five inter-related elements are set out in the regulations by requiring that in carrying out an assessment, a local authority must:

- assess and have regard to the person's circumstances,
- have regard to their personal outcomes,
- assess and have regard to any barriers to achieving those outcomes,
- assess and have regard to any risks to the person or to other persons if those outcomes are not achieved, and
- assess and have regard to the person's strengths and capabilities.

The assessment process will be proportionate and responsive to people's needs, and will support practitioners to exercise their professional judgement working in partnership with people to agree solutions that are in the best interests of the individual and their families.

The regulations set out the assessment process for individuals as follows:

Section 19 – assessing the needs of an adult for care and support

The duty is triggered where it appears to a local authority that an adult may have needs for care and support.

Section 21 – assessing the needs of a child for care and support

⁸ From Vision to Action: The Report of the Independent Commission on Social Services in Wales – November 2011 - <http://www.icssw.org/vision/?lang=en>

The duty is triggered 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.

Section 24 – assessing the needs of a carer for support

The duty is triggered where it appears to the local authority that the carer may have needs for support.

Section 24 replaces the existing law, and removes the requirement that the carer must be providing “a substantial amount of care on a regular basis”. This will mean more carers are able to access an assessment, and that the duty is comparable to that for the people they support. This will also replace the existing law which applies to young carers, and a carer of a disabled child.

Additionally, the Act provides for refusal of assessment, but equally prescribes the circumstances in which a refusal is to be disregarded. The local authority's duty would not be discharged, for example, where there is a risk of abuse or neglect. It also provides for the combining of different assessments (to better support the integration of assessments required under other statutes / programmes e.g. mental health, special education needs); and creates regulation-making powers for the Welsh Ministers to provide greater detail in relation to assessments. The local authorities' duties with respect to these aspects of the assessment of need are detailed in the Code of Practice for Part 3 of the Act: Assessing the Needs of Individuals.

To support local government and its partners in making the transition to the new arrangements of the Act, a Delivering Transformation Grant was made available to the six regional partnerships and selected national partners to enable local government and its partners to put in place the requirements of the new Act in 2013/14 and 2014/15. Welsh Government has doubled the funding available through this grant to £3m in 2015/16.

4. Consultation

A 12 week consultation on the regulations ran between 6 November 2014 and 2 February 2015. Further details on the consultation are set out in the Regulatory Impact Assessment attached at Part 2.

PART 2 – REGULATORY IMPACT ASSESSMENT

This Regulatory Impact Assessment should be read in conjunction with the Regulatory Impact Assessment for the Care and Support (Eligibility) (Wales) Regulations 2015.

The current assessment process is unwieldy and time consuming for both individuals and practitioners to complete. It is not a sufficiently person centred process and does not adequately support people to remain in control of decisions about how their needs are met. With the projected rise in population of those receiving social care in Wales likely to be around 43,000 people by 2030, compared to figures for 2015 the current assessment process is unsustainable.

From an existing 650 fields to be completed during an assessment under the Unified Assessment Process (UAP), the new national assessment and eligibility tool has been redesigned to contain less than 30 fields for completion, seeing a 95% reduction.

The proposed ‘National Assessment and Eligibility Tool’ contains three sections: The national minimum core data set; five elements to achieve well-being; and action / outcome statements.

Research shows that social workers currently spend more time on administrative work and less time on face to face contact with service users. A UNISON survey indicated that 96% of practitioners felt that too much of their time was spent with paper work. Of those surveyed, 73% felt the time they had available to spend with service users was “insufficient” or “very insufficient”.⁹

Similarly, research from 2003 found that three of the activities most frequently reported by social workers were office-based paperwork relating to caseload, negotiating and arranging social services for users, and completing assessment documentation in the office.¹⁰

The new process will enable resources currently focussed on process and paperwork to be re-invested in supporting people to meet their identified personal well-being outcomes.

This section of the Regulatory Impact Assessment presents two different options in relation to the policy objectives of the proposed regulations. Both of the options are analysed in terms of how far they would achieve the Welsh Government’s objectives, along with the risks associated with each. Both options have been explored to identify the costs and benefits. However, it is recognised that there are limitations and challenges with projecting future demand for social care in Wales.

- Option 1: Do the minimum and retain the current approach to assessment.

⁹ UNISON, *Not Waving But Drowning: Paperwork and Pressures in Adult Social Work Services* (2009), <http://www.unison.org.uk/acrobat/B4710a.pdf> (last visited 4 April 2011). These figures relate to all social work, not just adult social care. We see no reason to suppose there is a significant difference between child work and adult work.

¹⁰ A Weinberg and others, “What Do Care Managers Do? A Study of Working Practice in Older Peoples’ Services” (2003) 33 *British Journal of Social Work* 901, 914.

- Option 2: Create a national system for assessments.

As a basis for making projections about the future expenditure on social care under each option the actual expenditure for 2010/11 (as reported on in the Community Care Statistics report¹¹) and 2013/14 (most recent data collection) has been used to make estimates on the predicted expenditure for 2030. These projections correspond with baseline projections by House of Lords Committee on Public Service and Demographic Change¹². The data contained in the Regulatory Impact Assessment is used for illustrative purposes and offers indicative costings and scenarios, rather than an accurate statement of fact.

This Regulatory Impact Assessment has explored the options and costings. Further details and the analysis of these options are contained in the evidence paper at annex 1.

Option 1: Do the minimum and retain the current approach to assessment

Under this option the current approach to assessment will remain, with the exception of the assessment process for carers. Primary legislation, contained in Section 24 of the Act, sets out the additional duties for assessing the support needs of a carer. On the whole, if the current approach is retained, the assessment process will remain complex and costly without assisting individuals to address their concerns or achieve their desired outcomes, enabling people to maintain their independence or supporting families to remain together.

Costs

As noted in annex 1, the continuing cost of providing social care for adults in Wales is considered high, particularly in relation to those aged over 85 years and expected to receive local authority social care services in 2030¹³. The projections currently estimate that the number of those aged 85 years and over and in need of social care will increase by 45% between 2013 - 2030. As shown in annex 1 the estimated total cost of assessments for all adults is likely to increase by £19.5m between 2013 and 2030. This is the difference between expenditure in 2013 and 2030, as shown in table 7.

The attached evidence paper (annex 1) shows that within Option 1, 11.1% of gross expenditure on adult social services will be spent on assessment and care management. However, given the projected increase in the older population it is likely that more funding will be required to provide social care in Wales in the coming years. In the absence of any available supporting data, if the projected population levels are realised, and no additional interventions are applied, it is expected that local authorities will need to spend more of their social services budget to cover the required assessment and care management costs, and accordingly the assessment costs. This

¹¹ Community Care Statistics, Social Care Activity, England, 2013/14 - <http://www.hscic.gov.uk/catalogue/PUB14397>

¹² Report: Ready for ageing? | Committee on Public Service and Demographic Change | House of Lords - 2012/13

¹³ Lord Filkin, Chair of the Lords Committee on Public Service and Demographic Change.

means that expenditure on assessment and care management could likely rise above the current 11.1% of gross expenditure.

Based on evidence from the Audit Commission report 2012¹⁴ '*Spending on Assessment and Care Management in English local authorities*', spending on assessment and care management varied between 8% and 17%. Using these figures the evidence paper shows what the additional costs would mean for local authorities in Wales if they had to cover an increase from the 11.1% estimate of their current operating level, to the highest level identified by the Audit Commission i.e. 17% of their gross expenditure. Local authorities in Wales would have to find an additional £82m (based on 2013/14 figures).

The Local Government Association estimated that there would be a spending gap in the budget for adult social care in England of 29% by 2019/20¹⁵. Using the same assumptions, and applying this figure of 29% to Wales's budgets, this would represent an additional shortfall of £44m that local authorities would need to find.

Annex 1 identified that some 35% of adult assessments did not result in a service being provided. Under Option 1 these assessments would still need to be conducted and are likely to cost £23m in total, across all local authorities in Wales, in 2030.

Applying the adult costs to children's assessments would mean that by 2030 the costs of assessments for children would exceed £12 million – increasing at a rate of over £100,000 per year.

Whilst there is no evidence on which to base a solid projection of what will happen with carers and their assessments, past experience suggests that a spike in activity may be seen when the new Act comes into force but that this is likely to settle down over time.

Benefits

If the system remains the same local authorities will not need to change any of their processes and procedures nor require any further training of staff of those already working in the social care system. No further benefits have been identified under this option

Risks

The Report of the Independent Commission on Social Services in Wales¹⁶: "From Vision to Action" observed that " Helping to make service users co-producers in their own solutions wherever possible is also much more likely to help people to retain or regain whatever degree of independence is achievable rather than allow them to slip into avoidable dependency. Avoidable dependency is a poor outcome for individuals as

¹⁴ Reducing the cost of assessment and reviews - Audit commission – August 2012 - <http://www.audit-commission.gov.uk/2012/08/reducing-the-cost-of-assessments-and-reviews/>

¹⁵ Adult social care funding: 2014 state of the nation report – Local Government Association - October 2014 - http://www.local.gov.uk/publications/-/journal_content/56/10180/6659174/PUBLICATION

¹⁶ "From Vision to Action": The Report of the of the Independent Commission on Social Services in Wales – November 2010

well as a continuing drain on resources.

Without a more nationally consistent model that is less complex and process based the current weaknesses within the system are likely to become more evident as more people are anticipated to be receiving social care services in the future. This in turn may lead to resources becoming more limited and may lead to more care and support needs being judged as ineligible as local authorities attempt to manage their limited resources. The Care and Social Services Inspectorate Wales (CSSIW) has already reported this trend in their publication *National Review of Access and Eligibility Criteria in Adult Social Care, Sept 2010*¹⁷ where it was reported that the current system is a potential barrier to individuals receiving services and screening individuals out of eligibility.

Retaining the existing system may create further unnecessary burdens on local authorities and impede individuals in accessing support services.

The Independent Commission on Social Services in Wales¹⁸ commented that “Proper assessment and proper records are important but it is about finding the right balance in professionals’ workloads, particularly at a time of rising demand and shrinking resources. In our view there are important opportunities for streamlining the processes.” and recommended that the Welsh Government should “review assessment systems for both adults and children as a significant contribution to improved efficiency and the better use of professional time and skills”.

If the system is not changed, in light of the evidence for the need for change, there is a risk of reputational damage for the Welsh Government.

The current model cannot deliver the Welsh Government’s commitments to equality of provision set out in the Sustainable Social Services (SSS) framework. The current system provides different systems for children, adult and carers and does not provide an integrated service for all people, which is a requirement of the Sustainable Social Services framework.

Ultimately, the current system is unlikely to cope with an increased number of people needing care and support, and the pressure on the system, in future years, will result in system failure and people failing to achieve their outcomes.

¹⁷ National Review of Access and Eligibility Criteria in Adult Social Care, Care and Social Services Inspectorate Wales, September 2010

¹⁸ From Vision to Action: The Report of the Independent Commission on Social Services in Wales, November 2010

Option 2: Create a national system for assessments.

Under this option a single process of assessment will apply, through the regulations, to all individuals, whilst introducing distinct considerations for adults, children, and carers as set out in the Code of Practice. The proposed option will introduce changes to local authorities' core processes and ensure that assessments are based on a holistic understanding of each individual. The assessment will be based on identifying and understanding:

- a person's well-being outcomes,
- the resources available to the person,
- the barriers to achieving those outcomes,
- the risks to themselves and others, and
- their needs for care and support,

in order to agree the most appropriate support for each individual.

Costs

Under this option the Welsh Government considers that there will be long term cost savings both through a reduction in the length and complexity of the assessment process, and through the practice of supporting individuals and families at an earlier stage through the Information, Advice and Assistance Service and preventative services. All local authorities in Wales currently operate an information system, although these differ in structure and approach.¹⁹ Although there is an expectation that local authorities will need to invest to further to develop and expand these into an Information, Advice and Assistance Service as detailed under the Act it has not been possible to quantify what this will mean because the starting points for local authorities will be different.

As noted in annex 1, currently on average 48% of adults over the age of 85 receive local authority social care services all having completed the Unified Assessment Process, which is known to be time consuming for both individuals and practitioners²⁰. By 2030 the numbers of individuals requiring a care and support assessment is likely to equate to around 160,000 individuals (table 2). The proposed new model will deliver efficiencies by simplifying the structure of the assessment process and by placing a focus on early intervention and prevention services. It is therefore predicted that the percentage of these individuals who will receive local authority social care services will be reduced. The 2011 SSIA Report: *"Better Support at Lower Cost"* concluded that "Typically, a council which has an effective domiciliary care re-ablement service can expect to see a 10% reduction in demand for domiciliary care through a combination of [preventative] measures"

¹⁹ Provision of Information Advice and Assistance on Social Services and Well-being across Wales – SSIA – April 2014

²⁰ UNISON, *Not Waving But Drowning: Paperwork and Pressures in Adult Social Work Services* (2009)

Annex 1 shows the cost savings that could be reached if local authorities reduced expenditure on assessment and care management from the current 11.1% to 8%. Under Option 2, the expectation is that local authorities in Wales would follow this pattern and realise similar efficiencies. If these efficiencies can be met, they could represent savings amounting to £43m based on the gross social services expenditure in Wales in 2013/14. This is the difference between spending at 8% and spending at 11.1% of the gross expenditure for adult social services as at 2013/14 (Table 5). If these savings were realised then these costs could be reallocated for service delivery.

The funding gap of £44m identified in Option 1 is still relevant for Option 2. However, the potential saving of £43m, identified in the above paragraph, could be used to off-set this funding gap if local authorities were to operate at 8% of the gross expenditure

Annex 1 has shown that the estimated total cost of assessment for all adults is likely to increase by £19.5m between 2013 and 2030. This is the difference between expenditure in 2013 and 2030 as shown in Table 7. However, under Option 2 the amount of assessments undertaken is expected to reduce considerably as these would be applied proportionately. This could result in a £19.5m cost saving, which could be used to off-set this funding gap of £44m, as identified in the paragraph above.

The new assessment process proposed under Option 2 for children is considered to be in keeping with the assessment process that is currently in place under the Children Act 1989. As a result it is anticipated that costs for children's services will not be expected to alter significantly.

In practice, the proposed system under Option 2 could address the needs of many carers through the initial Information Advice and Assistance service. Carers will be provided with access to relevant, accurate, high quality and timely information, advice and assistance, which may meet their needs without the requirement for a complex, in-depth, UAP-style assessment. Instead, the assessment process will be applied in a manner proportionate to the presenting support needs of the carer; but there are no specific costs that can be evidenced.

The report to Welsh Local Government Association and NHS Confederation on the transitional and longer-term implications of the Social Services and Well-being (Wales) Bill commented²¹: "The push for greater integration of assessments and the introduction of proportionate assessments should allow local authorities to manage and respond to demand as it changes, and there is no reason to assume that the changes proposed will inevitably lead, in the long term, to greater costs for local authorities. Indeed there is the potential for savings and greater cost-effectiveness if individual authorities get their assessment practice right".

²¹ Transitional and longer-term implications of the Social Services and Well-being (Wales) Bill 2013 – Welsh Local Government Association and NHS Confederation – IPC September 2013

Benefits

The critical benefit, under Option 2, is the expectation that there will be fewer individuals needing to receive a disproportionately complex assessment for care and support, or support if they are a carer. The proposed approach will offer a proactive approach which encourages people to seek help earlier and supports them to help themselves to retain their independence in a proportionate way.

Individuals will be provided with a greater voice and control over their care and support arrangements and there will be an expected reduction in the amount of time practitioners spend in completing paper work, with the 95% reduction in the fields requiring completion in the new National Assessment and Eligibility Tool. Research from Portsmouth in 2013, demonstrates that it is possible to achieve a 70% reduction in the time practitioners spend on assessment meetings and associated paperwork²².

The proposed regulations will bring greater clarity, consistency and improved quality of care and support for all individuals.

The approach will support people to remain in control of decisions about their own care and how they will be supported to achieve their outcomes.

Individuals are likely to benefit from improved consistency and equality to access care and support, quicker proportionate assessments of their needs, and have the burden of having to repeat information, to many different practitioners during the assessment process removed.

The first report of the Review of Child Protection undertaken for the Department of Education in England by Professor Eileen Munro²³ commented that: “ The (current) assessment framework and process is inefficient and does not easily facilitate professional judgment about risk and safe next steps for a child, young person and their family ...” and “social workers are required to spend too much time completing documentation”

Risks

The proposals under Option 2 are based on a new model of social care, for which there is no precedent. This includes the assumptions that have been made in Annex 1, which are based on data that has not been fully tested. The risk is that potential outcomes may differ from those that have been predicted. However, we know that the current model of assessment is too costly, with respect both to its operation and to its effectiveness as a method for ensuring that people are accessing the right care, in the right place, at the right time. The cost and efficacy of the existing assessment process is a significant factor in the analysis that leads to the conclusion that the current model

²² <http://www.communitycare.co.uk/blogs/adult-care-blog/2013/09/saying-goodbye-to-unnecessary-paperwork-in-personalisation/>

²³ The Munro Review of Child Protection. Part One: A Systems Analysis - Professor Eileen Munro – Department of Education 2010

for identifying needs and delivering social care is not a sustainable model in the long term.

Preparing the workforce and the population is a key element to ensuring that there is a smooth transition to the new system. There will be considerable transitional costs associated with the training / re-training of local authority staff and producing associated supporting resources associated with this option. As the assessment process is such a fundamental part of the proposed new social care system, the costs of introducing these regulations will consume a greater proportion of the overall transitional costs.

To militate against this risk Welsh Government has commissioned the Care Council for Wales to lead on the development and implementation of a national learning and development strategy.

The strategy is critical to the implementation of the Act and will need sustained, deliberate and high-profile leadership, which can reach out across a wide range of organisations and partners beyond the boundaries of the traditional social care sector.

The Care Council has developed this work with key stakeholders to ensure that the strategy covers all of those involved in the provision of social care, together with their key partners, and that it is delivered jointly and in collaboration with those partners.

The strategy includes a training deployment plan and the development of a one-stop-shop resource hub, playing a key supporting role for the sector in readiness for the changes and a place where Care Council for Wales can host their training resources. The Care Council for Wales will also update and promote the basic awareness raising materials. These awareness raising materials will be a common tool for use across partners to support and encourage delivery. The resources and material developed by the Care Council will be made available free of charge to all organisations and will be published online.

These developments have been supported by £1m in 2015/16 through the Social Care Workforce Development Programme (SCWDP). A further £7.1m has been made available through the programme, in previous years, together with the local authority match funding - making a total of some £11m which will support the development and implementation of cross-sector regional training plans, which align with both the national strategy and regional implementation plans.

In 2013/14 and 2014/15, a Delivering Transformation Grant was made available to the six regional partnerships, and selected national partners, to enable local government and its partners to put in place the requirements of the new Act. The Welsh Government has doubled the funding available through this grant to £3m in 2015/16. This is in addition to the £20m already announced this year to carry on the work of projects funded through the Intermediate Care Fund, and the £10m increase in the Revenue Support Grant for Social Services. To ensure that support for implementation of the Act evolves into support for the embedding process post April 2016 a further £3m in grant funding will be made available in 2016/17, subject to budgetary decisions.

The Welsh Government intends to commission an evaluation to enable the impact of the new national model of assessment and eligibility to be considered.

Summary and preferred option

Welsh Government considers that Option 1 - retaining the current model, is not sustainable. The costs of providing social care using the current model are too high.

The Welsh Government considers Option 2 to be the preferred option to ensure that greater clarity, consistency and quality of care and support for individuals and carers. The introduction of the regulations will ensure that the assessment process is proportionately applied, so that it is appropriate to the needs of the individual, and considers the individual's circumstances.

The proposed model will also ensure individuals are able to live their lives independently and are provided with a stronger voice and control over the decision that affect them. Option 2 is also consistent with case for change as set out in the many reports that have been referenced in the Explanatory Memorandum.

	Current model: at 2013/14	Option 1: at 2030	Option 2: at 2030
Total cost for Assessment and Care Management expenditure (noted in table 1)	£153m	£235m	£110m

Consultation

The Welsh Government undertook a 12 week consultation on the regulations between 6 November 2014 and 2 February 2015. The consultation on parts 3 and 4 covered 'assessing the needs of individuals, eligibility, direct payments and care planning'.

There were 103 responses received from a variety of stakeholders, including the Welsh Local Government Association (WLGA), The Children's Commissioner, The Older People's Commissioner, Social Services Improvement Agency (SSIA), Local Government representatives and Third Sector Organisations

There was general support for the proposed system change to an outcomes-based approach with a simplified assessment and care planning process and greater integration of services.

The consultation responses identified a need to ensure that the Code of Practice provided a clear explanation of the process of assessment and determination of eligibility. In response to points raised during the consultation process, amendments were made to the regulations, and the codes of practice were re-drafted to ensure that the process for assessment is clear to follow.

A priority from many responders is to reallocate resources to staff training and workforce development. The Care Council for Wales, as the lead body for workforce development, has been commissioned to lead on the development and implementation

of a national learning and development strategy. The strategy is critical to the implementation of the Act and will need sustained, deliberate and high-profile leadership, which can reach out across a wide range of organisations and partners beyond the boundaries of the traditional social care sector.

Further detail on the consultation process can be found in annex 2.

A detailed consultation response report has been published on the Welsh Government's website.

Competition Assessment

Competition Filter Test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulations do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisations?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

The filter test shows that it is not likely that the regulation will have any detrimental effect on competition; therefore a detailed assessment has not been conducted.

Post implementation review

The Social Services and Well-being (Wales) Act 2014 contains provisions to allow for Ministers to monitor functions of the Act carried out by local authorities and other bodies. Ministers may require these bodies to report on their duties in implementing these regulations.

The Welsh Government intends to commission an evaluation to enable the impact of the new national model of assessment and eligibility to be considered.

Additionally, the Welsh Government will continue to monitor the impact of the regulation on areas such as the Welsh language, the UN rights of the child and Older People and Equality.

Annex 1 – Doc 1

Evidence Paper

Annex 1. Evidence Paper

The Care and Support (Assessment) (Wales) Regulations 2015

The Regulatory Impact Assessment presents two different options in relation to the policy objectives of the proposed Regulations. Both of the options are analysed in terms of how far they would achieve the Welsh Government's objectives, along with the risks associated with each. Both options have been explored to identify the costs and benefits. However, it is recognised that there are limitations and challenges with projecting future demand for social care in Wales.

- Option 1: Do the minimum and retain the current approach to assessment.
- Option 2: Create a national system for assessments for both users and carers.

Option 1: Do the minimum and retain the current approach to assessment

Under this option the current approach to assessment will remain, with the addition of an assessment process for carers. Primary legislation, contained in Section 24 of the Act, sets out the additional duties for assessing the support needs of a carer. On the whole, if the current approach is retained, the assessment process will remain complex and costly without assisting individuals to address their concerns or achieve desired outcomes.

The regulations on Assessment, Eligibility and Care Planning are designed to ensure a full system change. The option to continue with the current approach to assessment will not support the delivery of the proposed new approach to eligibility and care planning. The proposed approach to eligibility requires a process of assessment that is based on understanding a person's well-being outcomes, identifying the resources available to the person, the barriers to achieving those outcomes, the risks to themselves and others, and their needs for care and support, in order to agree the most appropriate support for each individual.

The current approach to assessment for care and support is inconsistent across Wales and ineffective in helping people to get the right support at the right time. New arrangements are needed which promote greater voice and control for the individual with a more mature relationship between the individual and those services which promote care and well-being.

Additionally, if the full system change is not achieved, variations in what service users can expect in different parts of the country will remain, as evidenced by the Independent Commission on Social Services in Wales²⁴ and the Care and Social Services Inspectorate for Wales²⁵.

A new duty to assess the needs of a carer for support is placed on local authorities through the Social Services and Well-being (Wales) Act 2014. The duty is comparable

²⁴ From Vision to Action: The Report of the Independent Commission on Social Services in Wales - 2009

²⁵ CSSIW – Suite of reports in relation to Arrangements for the Assessment and Care Management of Adults – 2011/12

to the duty for those that the carer supports. The new duty under the Act has removed the existing requirement that the carer must be providing “a substantial amount of care on a regular basis” and replaced this with the requirement that the person “provides, or intends to provide, care”. This new duty to assess a carer’s needs for support requires a new approach to assessment.

Option 2: Create a national system for assessments for both users and carers

Under this option a single process of assessment will apply to all individuals. The proposed approach to assessment will introduce changes to local authorities’ core process for assessment to ensure that assessment is based on understanding of each individual. The assessment will be based on identifying and understanding:

- a person’s well-being outcomes,
- the resources available to the person,
- the barriers to achieving those outcomes,
- the risks to themselves and others, and
- their needs for care and support,

in order to agree the most appropriate support for each individual.

The regulations on Assessment, Eligibility and Care Planning will ensure a full system change. To fully implement the suite of regulations, it is essential that the current model of assessment is improved. Option 2 will simplify the assessment process so that it is appropriate to the needs of the individual and promotes greater voice and control with a more mature relationship between the individual and those services which promote care and wellbeing.

Although the proposed regulations will introduce a single process of assessment that will apply to all people, they allow for particular and distinct considerations when assessing the needs of adults, children, and carers.

An additional duty on the local authority is that carers will be entitled to an assessment in their own right, no matter how much care they provide. The new legislation will remove the requirement for the individual to provide a ‘substantial’ amount of care before they become entitled to an assessment and replaced this with the requirement that the person “provides, or intends to provide, care”. This change is consistent with the consultation paper proposed on Adult Social Care²⁶ where it was stated that the ‘regular and substantial’ test lacked clarity, was overly complex, and was apparently being applied inconsistently.

²⁶ Adult Social Care – Law Commission No 326 – Section 7.10 - 10 May 2011

Baseline Evidence and Projections

Although demands on social services are increasing, there is no commensurate increase in the routine funding to support service delivery. The current financial settlement for 2015/16 has decreased by 3.4% compared to 2014/15, as a consequence of the large scale budget reductions.

A 2011 report from the Social Services Improvement Agency (SSIA)²⁷ outlined the challenges in projecting future demand for social care in Wales. The report recognised the complexities within the process and recognised that the projections may be affected, in part, by the way in which local authorities shape their services. The report also suggested that building a care and support system that focuses on keeping older people out of residential care, and using re-ablement models of care, may assist not only in achieving better outcomes for individuals, but also in reducing demand for services.

A report by the Institute for Fiscal Studies²⁸ summarises the challenges in predicting the allocation of funding for social care. The report outlined that there is substantial uncertainty about how much the Welsh Government will have to spend over the next 12 years. The most optimistic scenario is that the Welsh block grant will only be around 8% higher in real terms in 2025/26 than in 2010/11: this represents an annual average growth rate of just 0.5%. Given population growth, the block grant available per person would be just 1% higher per person than 15 years earlier. With regard to social care, the projections are subject to wide margins of error, reflecting uncertainty about future demands for health and social care, and the future costs of providing these services.

It is recognised, therefore, that making assumptions for the future delivery of social care is complex on multiple levels. However, as a basis for making projections about the future expenditure of social care under each option, the actual expenditure for 2010/11 (as reported on in the Community Care Statistics report²⁹) and 2013/14 (most recent data collection) have been used to make estimates on the predicted expenditure for 2030. These projections correspond with baseline projections by House of Lords Committee on Public Service and Demographic Change³⁰ used in its 2013 report "Ready for Ageing"³¹.

To date, England and Wales have used the same legislation and virtually the same model for assessments in social care. Based on these similarities, and for the purposes of illustrating cost savings and expenses, assumptions have been based on Welsh figures wherever possible. Where these figures are not available, the most comparable English data sets have been used.

²⁷ Better Support at Lower Cost: Improving efficiency and effectiveness in services for older people in Wales - SSIA – April 2011

²⁸ Scenarios for the Welsh Government, Budget to 2025/26, Institute for Fiscal Studies – September 2013

²⁹ Community Care Statistics, Social Services Activity, England – 2013/14 – July 2014

³⁰ <http://www.parliament.uk/business/committees/committees-a-z/lords-select/public-services-committee/report-ready-for-ageing/overview/>

³¹ <http://www.parliament.uk/business/committees/committees-a-z/lords-select/public-services-committee/report-ready-for-ageing/overview>

Calculations have been based on data provided by StatsWales,³² Health and Social Care Information Centre (HSCIC)³³, and on direct comparisons to calculations made for the Care Act 2014 in England, much of which have been based on HSCIC data. Information based on the existing Fairer Access to Care (FACS) model has also been used.

The following sections convey the estimated cost of an assessment for care and support and population projections which have been used to make assumptions on expenditure for both options 1 and 2.

As a baseline, data for 2013/14 has been used (as it is the most recent used).

Population Projections for Wales

Projections³⁴ show that by 2030 there will be twice the number of people aged over 65 years than there were in 2010 living in England. If existing rates of prevalence, for various health conditions and care needs, are applied to this changing demographic picture, then this implies that there will be significant increases in need for social care services in future. However, improvements in health and care services, including better prevention, could play a role in counteracting some of these pressures³⁵.

The census collection for Wales was reported upon in 2011 and the population projections for 2013 and 2030 have been used to make assumptions of the population.

³² Welsh Government's online repository for detailed statistical data for Wales. The data is updated by the Knowledge and Analytic Services (KAS), Welsh Government.

³³ Health and Social Care Information Centre (HSCIC) - The national provider of information, data and IT systems for health and social care in England

³⁴ Report: Ready for ageing? | Committee on Public Service and Demographic Change | House of Lords - 2012/13 (Lord Filkin, chairman of the Lords Committee on Public Service and Demographic Change)

³⁵ Future of Paying for Social Care in Wales – LE Wales – April 2014

Table 1: Population projections for Wales (Adults)

	2011 ³⁶	2012	2013	2014	2015	2030 (Estimated)
Number of adults aged 18-64 living in Wales	1,867,505	1,857,283	1,853,049	1,851,715	1,852,593	1,814,014
Number of adults aged 65 – 74 living in Wales	300,550	318,140	329,161	337,726	345,293	380,617
Number of adults aged 75 – 84 living in Wales	187,434	190,806	193,832	197,447	200,549	286,975
Number of adults aged over 85 living in Wales	74,560	76,932	77,332	78,952	80,972	141,037
Total	2,430,049	2,443,161	2,453,374	2,465,840	2,479,407	2,622,643

The figures in table 1 demonstrate that there is expected to be a 55% rise in those aged over 65 years, living in Wales from 2011 to 2030. These estimates are consistent with the projections for England, where there is a predicted 50% increase of those aged over the age of 65 years living in England.

The predictions also show that there is likely to be a slight decline (-3%) in the number of adults aged 18 - 65 years living in Wales between 2011 and 2030.

On average, about 1.5% of adults aged 18-64 years, and about 14% of over 65s in Wales receive local authority social care services. For the group of people aged 65 years and over there is significant variation across age bands in the proportion of individuals receiving local authority social care services: the ratio share of the population aged 65-74, 75-84 and 85+ years is around 5%, 16% and 48% respectively. These ratios have stayed broadly constant over the last six or seven years.³⁷

Table 2 has used these average projections to work out the percentage of the population who are likely to receive a local authority social care service in the years between 2011 and 2015, and then used these figures to estimate the proportion of population receiving local authority social care services in 2030.

³⁶ Stats Wales: 2011 Census: Usual resident population by single year of age and sex, Wales

³⁷ Future of Paying for Social Care in Wales – LE Wales – April 2014

Table 2: Proportion of population receiving local authority social care services by age

	2011 ³⁸	2012	2013	2014	2015	2030 (Estimated)
Number of adults aged 18-64 living in Wales (1.5% of population)	28,013	27,859	27,796	27,776	27,789	27,210
Number of adults aged 65 – 74 living in Wales (0.5% of population)	15,028	15,907	16,458	16,886	17,265	19,031
Number of adults aged 75 – 84 living in Wales (16% of population)	29,989	30,529	31,013	31,592	32,088	45,916
Number of adults aged over 85 living in Wales (48% of population)	35,789	36,927	37,119	37,897	38,867	67,698
Actual total number of adults receiving local authority social care services:	109,334	111,810	110,895	110,415	Not known	Not known
Total predicted number of adults receiving local authority social care services	108,818	111,223	112,386	114,151	116,008	159,855

If the current model of social care remains, overall there is like to be a 45% increase in those receiving local authority social care services between 2011 and 2030 (as noted in table 2).

The table reflects the actual number of adults receiving local authority social care services in the years between 2011 and 2014³⁹. When the percentages of those who are predicted to use local authority social care services in the future, are applied the population projections, they are broadly consistent with those who actually received services. Therefore, the estimates of the population who are likely to received local authority social care services have been used to illustrate the variations of expenditure when the options are applied in practice. These variations have been used throughout the Regulatory Impact Assessment to provide cost effectiveness of the proposed options.

³⁸ Stats Wales: 2011 Census: Usual resident population by single year of age and sex, Wales

³⁹ Stats Wales: CARE0005: Adults receiving services – 2013/14

Table 3 - Population projections for Wales (Children)

	2011 ⁴⁰	2012	2013	2014 ⁴¹	2015	2030 (Estimated)
Number of children aged 0-18 living in Wales	632,433	630,906	630,211	629,235	627,758	652,571

The figures in table 3 demonstrate that between 2011 to 2030 there is expected to be a 3% rise in those aged under 18 years and living in Wales.

Table 4 - The rate of looked after children per 10,000 under 18 years in England and Wales

Years	Wales	England
2003	64	Not known
2004	66	Not known
2005	67	Not known
2006	70	Not known
2007	72	Not known
2008	72	Not known
2009	73	54
2010	81	57
2011	85	58
2012	90	59
2013	91	60
2014 (As of 31 March 2014)	91	60

Table 4 demonstrates that the rate of 'Looked After' children per 10,000 people under 18 years has risen steadily in Wales in the last 10 years, and is around 50% higher than the rate in England⁴².

Assessment and Care Management Expenditure

Based on evidence from the Audit Commission (2012)⁴³ report spending on assessment and care management in English local authorities represented an average of 12% of gross spending on adult social services. It further stated that this spend varied across local authorities, between 8% and 17%.

40 Stats Wales: National level population estimates by year, age and UK country
Mid-Year population estimates (1991 onwards), by Welsh local authorities, English regions and UK countries, for single year of age and gender (2011, 2102 and 2013 data)

41 Stats Wales: Population projections - 2012-based national population projections for Wales, 2012-2037

⁴² British Association for Adoption and Fostering (BAFF) - <http://www.baaf.org.uk/res/stats>

⁴³ Value for money in assessments and reviews - Audit Commission – August 2012

Using data provided by StatsWales the following table 5 explores the different levels of spending on assessment and care management that local authorities could work towards achieving in Wales. On average Welsh local authorities currently spend 11.1% of their gross adult social care budget on Assessment and Care Management, at £153m annually.

Table 5: Gross Social Service expenditure⁴⁴ in Wales 2013 /14: £1,380m

Total spend on assessment and care management⁴⁵ at:	
8% of expenditure	£110m
10% of expenditure	£138m
11.1% of expenditure (current position in Wales)	£153m
12% of expenditure	£166m
17 % of expenditure	£235m

Adult assessments

Cost of an assessment for care and support

The average cost of an assessment for care and support is not currently measured in Wales. As noted above, England and Wales have used the same legislation and the same model for assessment in Social Care. Data from the Health and Social Care Information Centre (HSCIC), together with data provided by StatsWales, have been used to calculate the average cost of Assessment and Care Management in Wales, and the average cost of an assessment for care and support per adult receiving a service in Wales.

⁴⁴ Stats Wales – Revenue outturn expenditure: Social Services – 2013/14

⁴⁵ Stats Wales - LGFS0015: Social services revenue expenditure by client group (£ thousand)

Table 6 – The cost of Assessment and Care Management

	Wales 2013/14	English comparable data (2013/14) ⁴⁶
Gross Social Service expenditure (for all adults in Wales, over the age of 18, including carers)	£1,400,000,000 ⁴⁷	£17,250,000,000
Gross expenditure for adult cost of Assessment and Care Management ⁴⁸ (for all adults in Wales, over the age of 18, including carers)	£153,000,000 ⁴⁹	£2,070,000,000
Percentage of gross Social Services expenditure used for adult assessment and care management (see text below)	11.1%	12%
The number of adults assessed during the year	96,547 ⁵⁰	1,193,540
Estimated cost of assessment and care management per adult receiving a service in Wales	£1,585	£1,734
Assessment representation of assessment and care management cost (see text below)	26%	26%
Estimated cost of assessment	£412	£450

The data available through StatsWales reports details the costs of assessment and care management across authorities and for particular categories of needs. However this data is not separated into the cost of assessment as distinct from care management. To address this question, an approach has been taken to identify the average costs of assessment alone.

Based on the data in table 6 the average expenditure of providing assessment and care management for each individual receiving an assessment in Wales is £1,585⁵¹. Based on the comparable data of England it is estimated that the expenditure in England represents £1,734⁵².

46 Community Care Statistics, Social Services Activity, England - 2013-14, Final release
<http://www.hscic.gov.uk/catalogue/PUB16133>

47 Stats Wales –Revenue outturn expenditure – Social Services. <https://statswales.wales.gov.uk/Catalogue/Local-Government/Finance/Revenue/Social-Services/social-services-socialservicesrevenueexpenditure-by-clientgroup> - to the nearest million

48 Assessment and care management - Include costs of commissioning services for older people, specifically the process of receiving referrals, assessing needs, defining eligibility and arranging for packages of care to be provided and reviewing the quality of and continued relevance of that care for older people. This includes field social work costs (including hospital social workers); other social services staff based in primary healthcare settings; occupational therapy services to older people; and relevant support staff costs.

49 Future Paying for Social Care in Wales – LE Wales – 2014 - <https://statswales.wales.gov.uk/Catalogue/Health-and-Social-Care/Social-Services/Adult-Services/Service-Provision/AdultsReceivingServices-by-LocalAuthority-Measure>

50 Stats Wales – CARE0013: Adults assessed and care plans reviewed during the year

51 £153,000,000/96,547

52 £2,070,000,000/1,193,540

The Impact Assessment of the Care Act 2014⁵³ states that the average cost of assessment is £450. Based on the calculations (Table 6) for England, this cost is 26% of the estimated cost of assessment and care management expenditure of £1,734.

If the same assumptions are applied to the Welsh figures it can be estimated that the average cost of an assessment for care and support per adult receiving a service in Wales is £412 (26% of £1,585).

Social worker time

Research shows that social workers currently spend a great deal of time on administrative work and less time on face to face contact with service users. A UNISON survey indicated that 96% of practitioners felt that too much of their time was spent with paper work. Of those surveyed, 73% felt the time they had available to spend with service users was “insufficient” or “very insufficient”.⁵⁴

Similarly, research from 2003 found that three of the activities most frequently reported by social workers were office-based paperwork relating to caseload, negotiating and arranging social services for users, and completing assessment documentation in the office.⁵⁵

Professor Eileen Munro in her review of Child Protection⁵⁶ argued that “There is a need to strip away much of the top-down bureaucracy that previous reforms have put in the way of frontline services. Giving professionals greater opportunity for responsible innovation and space for professional judgment is fundamental if the child protection system is to realise the improvements that have been lacking following previous reforms” and referenced a London School of Economics and Human Reliability evaluation which identified that a reduction of bureaucratic constraints on practice enables practitioners to spend more time (working) with families. Professor Munro also referenced a 2010 study showed that some social workers were spending up to 80 per cent of their time on paperwork but this had developed gradually making it hard for those involved to notice⁵⁷.

Option 1: Do the minimum and retain the current approach to assessment

53 The Care Act: Impact Assessment number 6107. <http://www.legislation.gov.uk/ukpga/2014/23/impacts>

54 UNISON, Not Waving But Drowning: Paperwork and Pressures in Adult Social Work Services (2009), <http://www.unison.org.uk/acrobat/B4710a.pdf> (last visited 4 April 2011). These figures relate to all social work, not just adult social care. We see no reason to suppose there is a significant difference between child work and adult work.

55 A Weinberg and others, “What Do Care Managers Do? A Study of Working Practice in Older Peoples’ Services” (2003) 33 *British Journal of Social Work* 901, 914.

56 The Munro Review of Child Protection: Final Report A child-centred system - Professor Eileen Munro - Department of Education – May 2011

57 White, S., Wastell, D., Broadhurst, K. & Hall, C. (2010), ‘When policy o’erleaps itself: The ‘tragic tale’ of the Integrated Children’s System’, *Critical Social Policy*, 30, pp405–429.

As illustrated in tables 1 and 2 there is predicted to be a significant rise in the adult population who received social care services by 2030. An assessment cost of £412 (see earlier) has been used to predict the possible increase in expenditure required to provide assessments to the increased population⁵⁸.

Table 7: Total predicted cost of assessment for all adults receiving social care services

	Total predicted number of adults receiving local authority social care services (as illustrated in table 3)	Total predicted cost of assessment for all adults receiving social care services
2011	108,818	£44,833,016
2012	111,223	£45,823,876
2013	112,386	£46,303,032
2014	114,151	£47,030,212
2015	116,008	£47,795,296
2030	159,855	£65,860,260

As illustrated in the calculations above the estimated cost of the total amount of assessments for all adults is likely to increase by £19.5m between 2013 and 2030.

Table 5 and the assumptions derived from it, shows that by retaining the current approach to assessment it is expected that 11.1% of gross expenditure on adult social services will be spent on assessment and care management. However, given the predicted large increase in the population of those over the age of 85, there is likely to be a larger proportion of the overall social services budget requiring to be spent on assessment and care management. On this basis, if the current approach to assessment remains, local authorities may need to use larger proportions of the budget in order to provide services to all those that require them. If all local authorities were to spend 17% of their gross spending on adult social care on assessment and care management, this element of the service would have cost an extra £82m across Wales in the year 2013/14.

Assessments that did not result in a service

⁵⁸ Any financial projections in this Impact Assessment are based on the most recent identified costs - adjustments for inflation have not been taken in to account.

The Community Care Statistics⁵⁹ reported that following assessment 65% of adults assessed went on to receive services as a result of their assessment. This means that 35% of assessments did not result in a service being delivered. Under the existing legislative requirement each of those assessments will have been undertaken as full Unified Assessment Process (UAP) assessments. An approach to assessment that is more proportionate to presenting need may tend towards reducing the overall cost of assessment by reducing the costs by anything up to a third of the number of assessments undertaken.

Table 8: Potential cost savings from assessments that did not result in a service

	2013/14	2030 (estimated cost)
Average cost of assessment for care and support per adult receiving a service in Wales	£412	£ 412
Total cost of assessments for care and support for all adults receiving a service in Wales (as calculated following Table 7)	£46,303,032	£65,860,260
Potential savings per annum (35% of assessment costs as evidenced by Community Care Statistics)	£16,206,061	£23,051,091

Some local authorities in Wales are seeking to reduce the number of costly UAP assessments (that frequently do not result in a service being provided) by moving to the application of a model of proportionate assessments. However, local authorities' recording of assessments is inconsistent, so this is proving difficult to measure.

If the system remains the same, it can be assumed there will be a continuation of just 65% of adults assessed receiving services as a result of their assessment. As demonstrated in Table 7, over time the amount of assessments will rise, as will the potential cost increase for local authorities.

Children

Although the data collected for Children's Services is not directly comparable to Adult Services it is likely that there will be similar patterns followed. The census collection for Wales was reported upon in 2011, and the population projections for 2013 and 2030 have been used to make assumptions of the population of those aged 18 years and under.

Table 9: Number of initial assessments for those aged under 18 years of age

⁵⁹ Community Care Statistics, Social Services Activity, England - 2013-14

	2011	2013	2030
Number of individuals under the age of 18 in Wales ⁶⁰	632,433	630,211	652,571
The number of initial assessments that were completed during the year ⁶¹	27,387	27,767	29,155 (estimated).

The Welsh Government's Children in Need Census reported that there were 20,145 children in need at 31 March 2014⁶², which accounts for 3% of the under 18s population in Wales. The data in Table 9 demonstrates that between 2011/12 to 2030 there will be a 3% rise in those living in Wales aged 18 years and under. Therefore, if the approach to assessment remains static, it can be expected that there will be a proportionate rise in the number of children entering the social care system by 2030.

The figures show that there is a 1% rise in the number of initial assessments completed between 2011/12 and 2013/14. If it is assumed that this pattern will continue, in 10 years it can be predicted that there will be a 5% rise in the number of initial assessments completed, which will result in 29,155 assessments by 2030.

There is no data for the costs of children's assessments. Nevertheless an annual 1% increase in assessment costs is likely to be substantial. Given the multi-disciplinary nature of many assessments for children, and the importance of the assessment process in safeguarding the welfare of children, it would be unreasonable to think that an assessment for a child in need would be less costly than the assessment of an adult.

Recent evidence on the Common Assessment Framework (CAF) for children and young people suggests that costs to implement can be a little as £100 through to £8,000 per assessment for more serious, and complex levels of need. The process was in the region of £3,000 in most cases⁶³.

Applying the adult costs used in this paper to the process of children's assessments would mean that by 2030 the costs of assessments for children would exceed £12 million – increasing at a rate of over £100,000 per year.

Carers

Irrespective of the regulations for assessment being introduced, the duty to assess the needs of a carer for support will be placed upon local authorities. The duty is comparable to that used for those for whom carers are providing care, and the Act has removed the existing requirement that the carer must be providing "a substantial amount of care on a regular basis", thereby providing all carers with the right of access to an assessment. This requires that the approach to providing assessments for adult

⁶⁰ Stats Wales: 2011 Census: Usual resident population by single year of age and sex, Wales – ((Data for 2011/12 and 2013/14))

⁶¹ Stats Wales: CARE0020: Care Plan/Assessments Summary (Data for 2011/12 and 2013/14)

⁶² Stats Wales: Summary of Children in Need data

⁶³ Taken from: Transitional and longer-term implications of the Social Services and Well-being (Wales) Bill 2013 – Welsh Local Government Association and NHS Confederation – IPC September 2013.

carers who may have needs for support, will need to mirror the approach used for adults who may be in need of care and support.

In Wales, there are 30,000 individuals providing unpaid care⁶⁴. In 2001 it was estimated that in Wales the care that unpaid carers provide would cost £5.69 billion per year to deliver using paid support⁶⁵. If the process for assessing carers' needs for support is not amended to fit with the whole system changed introduced through the Act, it is probable that the consequence will be that many carers, without any support in place, will need the provision of substantial support to meet their own needs following an extensive and bureaucratic assessment that does not emphasise supporting carers through preventative and early intervention approaches,

A similar projection to the ones used above can be used to estimate the rising costs of assessments for carers.

Welsh Government collected data on the number of carers of adults who had an assessment or review of their needs in their own right during the year (first data collection 2008/09). The data shows that there was an increase in carers requesting an assessment following the introduction of the Carers Strategies (Wales) Measure 2010 and this is evidenced in table 10.

Table 10: Carers assessments

	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14
Number of carers of adults who had an assessment or review of their needs in their own right during the year	5,484	5,916	6,335	6,978	6,968	7,163
Annual % rise in adults who had an assessments or review of their needs in their own right during the year	NA	8%	7%	10%	0%	3%
Number of carers or adults who were assessed or reassessed in their own right during the year and who were provided with a service	2,281	2,755	3,690	4,298	4,373	4,570
Percentage of carers assessed or reassessed in their own right during the year and who were provided with a service	42%	47%	72%	62%	59%	57%

Based on figures provided by StatsWales⁶⁶, Welsh Government identified that over the six year period (as referred to in table 10) an average 57%, of carers assessed went on to receive services as a result of their assessment. This is broadly consistent with the Community Care Statistics⁶⁷ report for adult assessments where it stated that 65% of adults assessed went on to receive services as a result of their assessment. This

⁶⁴ Office for National Statistics - 2011 Census: Provision of unpaid care

⁶⁵ Carers, Employment and Services in Wales - Carers UK - 2011

⁶⁶ Stats Wales - CARE0013: Adults assessed and care plans reviewed during the year – 2013/14

⁶⁷ Community Care Statistics, Social Services Activity, England - 2013-14

further demonstrates the similar statistics between Wales and England when both countries operated under the same legal framework.

The percentage increase in the amount of carers completing an assessment or review in their own right is too sporadic to predict future trends. It is likely that the increase in assessments and reviews for carers is due to an increased awareness of carers rights following the introduction of the Carers Strategies (Wales) Measure in 2010/11.

Option 2: Create a national system for assessments for both users and carers through regulations

Under this option Welsh Government considers that there will be long term cost savings as individuals will be supported at an earlier stage through the Information, Advice and Assistance service and through preventative services. Wider access to a more supportive and open system will enable people to get the help they need earlier. As a result fewer individuals will need to have an assessment. This argument is reinforced by the Social Services Improvement Agency (SSIA)⁶⁸ report which sets out that early intervention and prevention will help local authorities to meet their savings targets whilst improving outcomes for individuals.

The cost of the current assessment processes is too great. The regulations are designed to support a simplification of the assessment processes and thereby reduce the cost of assessments.

In the last decade the gross expenditure of adult social services has risen by 53%⁶⁹. There is no additional funding available to meet this predicted rise in expenditure should this trend continue. As demand, and service user expectation increases, and budgets are constrained, the current approach to social services has to be redrawn.

Population Projections

As noted in table 7, the continuing cost of providing social care for adults in Wales is too high, particularly in relation to those estimated to be aged over 85 years, and expected to receive local authority social care services in 2030. The projections currently estimate the number of those aged 85 years and over to increase by 45% between 2013 and 2030.

The proposed approach to assessment that will be introduced through the regulations will recognise that needs can be met not only through support and services provided by the local authority but also through a person's abilities to support themselves or with support from their friends family, and/or preventative, community based services focused on helping people to meet well-being outcomes. Table 2 identified a relatively consistent ratio of 48% of the population over age of 85 years as needing to use directly provided or arranged local authority social care services in the future. The model of

⁶⁸ Social Services Improvement Agency – Better Support at Lower Cost - Improving efficiency and effectiveness in services - for older people in Wales - 2011

⁶⁹ Stats Wales – Revenue outturn expenditure: Social Services

assessment introduced through the proposed regulations supports a whole system approach that will lower the percentages of the population being supported by such intrusive and expensive provision. It is predicted, therefore, that there can be a reduction in the number of substantial assessments for this population.

The proposed approach to assessment will encourage local authorities to assist individuals to access preventative well-being community based services themselves or support people to develop the skills and confidence they need through early intervention and prevention.

The report to Welsh Local Government Association and NHS Confederation on the transitional and longer-term implications of the Social Services and Well-being (Wales) Bill⁷⁰ commented:

“Notwithstanding the potential impact anyway of the likely increase in the numbers of people requiring assessments, due to the projected increase in older people across Wales, there is no reason to assume that changes in assessment requirements will inevitably lead to greater costs in the longer term for local authorities. Indeed, it could lead to downward pressure on overall costs:

- More responsive information services, early support, informal assessments and preventative community support will result in fewer people needing to secure a formal care and support assessment and plan, thus reducing transaction costs.
- Better quality early intervention and prevention services will reduce the need for more costly acute and substitute care”.

Assessment and Care Management Expenditure

The statistics for community care activity in England⁷¹ show that following assessment 35% of adult assessed did not result in a service being provided. The potential savings from a more responsive, proportionate and efficient assessment process could therefore approach 35% of current assessment costs.

The Audit Commission (2012)⁷² reported that the total spend on assessment and care management represented 12% of the gross adult social care budget. It further evaluated that this varied across local authorities, with some local authorities working at 8% spending on Assessment and Care Management. The report evidenced that 8% is an achievable target for local authorities to work to and that it is feasible to reduce expenditure to 8% by streamlining processes, reducing bureaucracy and applying assessment proportionately. As evidenced by the Social Services Improvement

⁷⁰ Transitional and longer-term implications of the Social Services and Well-being (Wales) Bill 2013 – Welsh Local Government Association and NHS Confederation – IPC September 2013.

⁷¹ Community Care Statistics, Social Services Activity, England - 2013-14

⁴⁷ Value for money in assessments and reviews - Audit Commission –August 2012

Agency (SSIA)⁷³ early intervention and prevention helps local authorities to meet their savings targets whilst improving outcomes for individuals. The introduction of the regulations will assist local authorities in this agenda, with the likelihood that the spending on assessment and care management will move closer to 8% of the gross expenditure on adult social care.

The data provided in Table 5 demonstrates the cost savings that could be reached if local authorities reduced the expenditure on assessment and care management to 8%. Under option 2 the expectation is that local authorities in Wales would follow this pattern and realise similar efficiencies. If these efficiencies can be met, they could represent savings amounting to £43m in 2013/14, and these costs could be reallocated to the £44m funding gap, as evidenced earlier.

The Association of Directors of Social Services⁷⁴ reported that local authorities can meet their savings targets whilst improving outcomes for users by planning to deliver more cost effective services. The report stated that the main approach for achieving such savings is through preventive services focusing on helping people stay out of longer term care, consequently reducing the demand for longer term care.

Assessments that did not result in a service

The Community Care Statistics⁷⁵ reported that 65% of adults assessed went on to receive services as a result of their assessment. This means that 35% of assessments did not result in a service being delivered.

Some local authorities in Wales are seeking to reduce the number of costly UAP assessments by moving towards the delivery of a model of proportionate assessments. This approach recognises the long term cost savings, that could result from individuals being assessed at an earlier stage e.g. through the Information, Advice and Assistance service.

It is anticipated that the Information, Advice and Assistance Service and preventative services will reduce the number of people needing complex, in-depth assessments as they will be able to access support before they reach crisis point. This earlier intervention will reduce the number of people needing to access managed care and support. Potentially much of the cost of completing the 35% of assessments that currently do not result in a service being delivered can be avoided. This could represent up to £23m in 2030 (as stated in table 8).

⁷³ Social Services Improvement Agency – Better Support at Lower Cost - Improving efficiency and effectiveness in services - for older people in Wales - 2011

⁷⁴ Better Support at Lower Cost: Improving efficiency and effectiveness in services for older people in Wales - ADSS Cymru – April 2011

⁷⁵ Community Care Statistics, Social Services Activity, England - 2013-14

Children

The new assessment process proposed under Option 2 for children is considered to be in keeping with the assessment process that is currently in place under the Childrens Act 1989. As a result we do not anticipate that costs for children's services will alter significantly. The approach to assessing children's needs through both the regulations and code of practice encourages improved efficiency through streamlined and proportionate assessments. Although there are no negative impacts, it is not possible for Welsh Government to quantify any positive impact.

Carers

It is anticipated that more carers will be eligible for an assessment under the new legislation. Even so, it is not estimated that the aggregated cost of assessment will increase in direct proportion to the increase in the number of people seeking assessment. It is anticipated that carers will be supported through early intervention, the provision of Information, Advice and Assistance, and preventative services as referred to under the earlier section on adults. This will reduce the number of people needing complex and expensive assessments as they will access support that will prevent or delay a crisis point being reached. This earlier intervention will reduce the number of people needing to access managed care and support.

StatsWales provides data on the number of carers of adults who had an assessment or review of their needs in their own right during the year. This data shows that there was an increase in carers requesting an assessment following the introduction of the Carers Strategies (Wales) Measure 2010.

As evidenced in table 10, and based on figures provided by StatsWales⁷⁶, Welsh Government identified that an average 57% of carers assessed went on to receive services as a result of their assessment between 2008/09 and 2013/14. This may indicate that almost half of carers' assessments are being completed with unnecessary complexity. The figure quoted is broadly consistent with the Community Care Statistics⁷⁷ report for adult assessments, as demonstrated above. If this trend continues, there is likely to be a rise in the number of assessments being completed with unnecessary complexity, and in turn resulting in rising costs.

In practice, the proposed system under Option 2 could address the needs of many carers through the initial Information Advice and Assistance service. Carers will be provided with access to relevant, accurate, high quality and timely information, advice and assistance, which may meet their needs without the requirement for a complex, in-depth, UAP-style assessment process. Instead, the assessment process will be applied in a manner that is proportionate to the presenting support needs of the carer.

⁷⁶ Stats Wales - CARE0013: Adults assessed and care plans reviewed during the year – 2013/14

⁷⁷ Community Care Statistics, Social Services Activity, England - 2013-14

Following the introduction of the Carers Strategies (Wales) Measure in 2010/11 there was an increase in the number of carers requesting an assessment, presumably due to a sharp rise in people's awareness of their rights as carers. However, there was a significant decrease in the numbers the following year after the first 'wave' of assessment requests had subsided. It is reasonable to assume that the same pattern will occur with the implementation of the Act.

Annex 2

Consultation Summary

Regulatory Impact Assessment The Care and Support (Assessment) (Wales) Regulations 2015 Annex 2. Consultation

Welsh Government officials undertook a 12 week consultation on the regulations between 6 November 2014 and 2 February 2015. The consultation on parts 3 and 4 covered assessing the Needs of individuals, eligibility, direct payments and care planning.

As well as being made available to the wider public via the Welsh Government internet pages, the consultation was distributed to:

- Welsh Local Government Association (WLGA)
- The Children’s Commissioner
- The Older People’s Commissioner
- Social Services Improvement Agency (SSIA)
- Local Government representatives
- Third Sector Organisations

The consultation was also distributed more widely through our communications network to ensure full scale coverage of stakeholder and partner organisations. This extensive network includes:

- Local Authorities
- Association of Directors for Social Services Cymru
- Care Council for Wales
- Care and Social Service Inspectorate Wales
- Wales Council for Voluntary Action
- Welsh Local Government Association
- Children in Wales
- Social Services Improvement Agency
- Care Forum Wales

The consultation and engagement process was underpinned from the start by a commitment to working with people to help shape the implementation and deliver the practice and culture change being driven forward through the Act. Many people helped us to develop the policy instructions, regulations and codes of practice on the Social Services and Well-being (Wales) Act. Technical groups were established to discuss and debate and work with Welsh Government to help shape this work. The composition of these groups spanned the care sector and beyond to encompass local authorities, health, voluntary and independent sectors, user led organisations, banks, and youth justice to name just a few.

Discussions were held with the “Alliance of Alliances” – voluntary sector organisations brought together and supported by the WCVA – about the best way to get citizens directly involved to present their views. Officials worked with a broad range of organisations to help bring together people who use services and carers to get their views first hand about what mattered to them and what needed to change.

As well as formal consultation, using various formats, Welsh Government officials gave presentations to groups, held discussions, attended one to one meetings, encouraged people to invite them to their existing meetings, and wrote articles and gave them to our partners to use within their networks. Stakeholders were asked to share information with their networks and feed back to Welsh Government and open offers were made to work directly with people.

The National Social Services Citizen Panel was asked to consider the consultation as individuals within their own networks, but also together as a Panel, where they produced reports to inform the consultation on integration, safeguarding, direct payments and paying for care.

Focus groups were held, with invaluable support from many organisations who brought people together to share their views. These included WCVA, County Voluntary Councils, Children in Wales, Voices from Care, and Community Lives amongst others. Officials spoke about the Act, the Regulations, and the Codes of Practice at meetings and events – for example with local authority social services, health, prisoners and their families, and housing.

As well as key contacts being encouraged to disseminate the consultation documents amongst their networks, to support wider engagement, Easy Read and children and young-people friendly versions were also produced and disseminated.

There were 103 responses received from a variety of stakeholders, a list of respondents is attached at Document 1

A detailed consultation response report will be published on the Welsh Government's website.

Two consultation events were held as part of the consultation process. The purpose was to promote engagement with the consultation and provide a base level of understanding of the areas we were consulting on to key stakeholder groups

Overall the uptake of spaces for the events was positive with capacity reached at both. There were approximately 170 attendees at the event in South Wales and 90 attendees in the North Wales. Document 2 indicates the range of stakeholders represented at these events.

Workshops were held at the events on each of the parts out to consultation. The content of the workshops was varied and tailored to suit the subject matter, but at the core of each was a presentation from officials and group discussions and activities.

Key Changes to the Regulations

The following key amendments were made to the Care and Support (Assessment) (Wales) Regulations 2015, informed by analysis of the consultation responses.

Some respondents felt 'consult' was not a strong enough term when referring to the contribution of specialists to the assessment process. The view was that specialisms were needed for the assessment, and direct contact is required.

The regulations have been strengthened to ensure that

- When carrying out an assessment, a local authority must consider whether the nature of the person's needs call for specialist skills, knowledge or expertise and
- If the local authority considers that specialist skills, knowledge or expertise is required, it must either consult with a person who it considers will be able to provide those skills or that knowledge or expertise , or arrange for the assessment to be carried out by a person with the required specialist skills, knowledge or expertise

The regulations have also been amended to clarify that the requirement to offer a copy of the record of assessment to the person (adult or child) whose needs are being assessed also applies where that person is an adult carer or a child carer whose needs for support are being assessed. A similar clarification has been made to the regulation stating who can request a review of the assessment.

To ensure proper sharing of the record of assessment, amendments have also been made to this regulation to require the local authority, where an adult lacks capacity to be able to request a person to act on their behalf (and where a child lacks this capacity or is not competent to request a person to act on their behalf), and there is no person authorised to act on their behalf, to offer a copy of the record of the assessment to any person who the local authority considers to be acting in the best interests of the adult;

Doc.1 - List of respondents

No	Confidential Y / N	Name	Organisation/On behalf of
1.	✓		
2.		Fiona Wilke	Individual
3.		Ms Maxine Norrish	Cardiff University RTP student
4.		Gillian Cooper	Cardiff University
5.	✓		
6.		Laura Tuckley	Individual
7.		Charlotte Beare-on behalf of the Hywel Dda Health Board by Dr Phil Kloer	Hywel Dda Health Board
8.		Cheryl Bulman	Individual
9.		Dr Aideen Naughton	Public Health Wales
10.		Ruth Northway	Learning disability advisory group
11.		Zoë Williams	Direct Payments Overview Group
12.		Zoë Williams	All Wales Direct Payments Forum
13.		Beth Evans	Carers Wales
14.	✓		
15.		Gareth Cooke	Torfaen Social Care and Housing

16.		✓	Lynne Doyle -	Neath Port Talbot CBC
17.		✓	Mike Mainwaring	Neath Port Talbot Council for Voluntary Service
18.		✓	Dr Catrin Mair Edwards	SeNSE Cymru
19.		✓	Vin West-	Arfon Access Group
20.		✓	Eve Parkinson -	Welsh Therapy Advisory Committee
21.		✓	Colin Hopwood	Individual
22.		✓	Simon Legg	Spinal Injuries Association
23.		✓	Rachel Williams	Parkinson's UK Cymru
24.	✓			
25.		✓	Ann Acock	Welsh Physiotherapy Leaders Advisory Group
26.	✓			
27.		✓	n/a (Nigel champ - e-mail)	the Chair of the Welsh Medical Committee
28.		✓	Joe Powell	All Wales People First
29.		✓	Hannah Isaacson	Powys Association of Voluntary Organisations
30.		✓	Peter Jones	Guide Dogs Cymru and Blind Children UK Cymru
31.		✓	Natasha Wynne	Marie Curie
32.		✓	Cecile Gwilym	NSPCC Cymru
33.		✓	Peter Martin	Hafal
34.		✓	Meleri Thomas	National Autistic Society Cymru
35.		✓	Tess Saunders,	RNIB CYMRU
36.		✓	Laura Cook	Alzheimer's Society
37.		✓	Liz Majer	Blaenau Gwent County Borough Council
38.		✓	DEBBIE POWELL	SOCIAL CARE IN PARTNERSHIP – SOUTH EAST (SCiPse)
39.		✓	Edwin Jones	LDAG Subgroup - Transforming Care in Wales for people with learning disabilities and challenging behaviour
40.		✓	James Crowe	Learning Disability Wales
41.		✓	Lynne Hughes	MS Society Cymru
42.		✓	Paul Swann / Rick Wilson	Disability Wales / Wales Alliance for Citizen Directed Support Provider Network
43.		✓	Kelly Ball	Newport People First
44.		✓	Alex Perry	Newport People First (trustee)
45.		✓	Allan	Member of Newport People First
46.		✓	Zarah Kaleem	Trustee of Newport People First
47.		✓	Deborah Driffield	City & County of Swansea Social Services
48.		✓	Lola Richards	Cyngor Sir Ynys Mon
49.		✓	No Name	Cyngor Sir Ynys Mon
50.		✓	Jacqueline Davies	CYPP

51.		✓	Ruth Crowder	College of Occupational Therapists
52.		✓	Kieron Rees	Carers Trust Wales
53.		✓	Ruth Crowder	Welsh Reablement Alliance
54.		✓	Ann James	Care Council for Wales
55.		✓	Robin moulster	BASW Cymru
56.		✓	Ruth Coombs	Mind Cymru
57.	✓			
58.		✓	Hywel Ap Dafydd	Children's Commissioner for Wales
59.		✓	Dr Sam Clutton	Barnardos Cymru
60.	✓			
61.		✓	Caroline Hawkings	Scope Cymru
62.		✓	Judith Brooks	Bridgend County Borough Council
63.		✓	Catherine Manning	British Red Cross
64.		✓	Philippa Ford	CSP
65.		✓	Holly Towell	Headway
66.		✓	Bethan Jones Edwards	North Wales Social Services Improvement Collaborative
67.		✓	Alice Southern	Alzheimer's Society
68.		✓	Dusty Kennedy	Youth Justice Board
69.		✓	Ian Thomas	Citizens Advice Cymru
70.		✓	Nicola Evans	Older People's Commissioner for Wales
71.		✓	Jenny Williams	Conwy County Borough Council
72.		✓	Catherine Poulter	Carmarthenshire County Council
73.		✓	Ele Hicks	Diverse Cymru
74.		✓	Erin Rodgers	The Disabilities Trust
75.		✓	Giovanni Isingrini	ADSS Cymru
76.		✓	Sue O'Grady	Powys CC
77.		✓	Paul Apreda	FNF Both Parents Matter Cymru
78.		✓	Suzanne Griffiths	National Adoption Service
79.		✓	Catherine Lewis	North Wales Disabled Children Social Services Managers Network
80.	✓			
81.		✓	Dominic Carter	UK Homecare Association
82.		✓	Catherine Lewis	North Wales Disabled Children Social Services Managers Network
83.		✓	Sian Walker, Tony Young	Cardiff Council
84.	✓			
85.		✓	Martyn Palfreman	Mid and West Wales Health and Social Care Collaborative
86.		✓	Rosanne Palmer	Age Cymru
87.		✓	Gill Paul	Gwynedd Council
88.		✓	Michael Nicholson	Newport County Council
89.		✓	Mair Kromei	Hywel Dda Health Board

90.	✓	Iola Richards	Cyngor Sir Ynys Môn
91.	✓	Judith Brooks	Bridgend County Borough Council
92.	✓	Phil Evans	Vale of Glamorgan
93.	✓	Owen Williams	Wales Council of the Blind
94.	✓	Judith Hall	CSSIW - National Advisory Board
95.	✓	Sara Harvey	Western Bay Programme
96.	✓		Voices from Care Cymru
97.	✓	Roger Bishop	All Wales Children and Young Persons Advocacy Providers Group
98.	✓	Katie Dalton	Gofal
99.	✓	Marshall Phillips	Wales Sub -Committee of Association of HM District Judges
100.	✓	Bobby Bolt	Aneurin Bevan University Health Board
101.	✓	Catrin Edwards	Sense Cymru
102.	✓		Carers Wales
103.	✓	Anselm Benedict	Law Society

Doc.2 - List of stakeholders at consultation events

No	Name		Organisation/On behalf of
1	Bryony	Hughes	
2	Lewis	Rachel	Age Alliance Wales
3	Palmer	Rosanne	Age Alliance Wales
4	Young	Kate	All Wales Forum of Parents and Carers of People with Learning Disabilities (AWF)
5	Pearse	John	All Wales People First
6	Slater	Lin	Aneurin Bevan University Health Board
7	Southern	Tim	Ategi - Shared Lives Services
8	Lesley	Cotter	Betsi Cadwaladr University Health Board
9	Michelle	Denwood	Betsi Cadwaladr University Health Board
10	Wendy	Hooson	Betsi Cadwaladr University Health Board
11	Eleri	Lloyd-Burns	Betsi Cadwaladr University Health Board
12	David	O'Brien	Betsi Cadwaladr University Health Board
13	Sue	Owen	Betsi Cadwaladr University Health Board
14	Barry	Starter	Betsi Cadwaladr University Health Board
15	Diamond	Phil	Blaenau Gwent County Borough Council
16	Evans	Tanya	Blaenau Gwent County Borough Council
17	Hoskins	Alyson	Blaenau Gwent County Borough Council
18	Jones	Sarah	Blaenau Gwent County Borough Council
19	Tyrrell	Heather	Blaenau Gwent County Borough Council
20	Bowen	Fay	Bridgend County Borough Council
21	Bracey	Avril	Bridgend County Borough Council
22	Bradshaw	Adrian	Bridgend County Borough Council

23	Donovan	Carmel	Bridgend County Borough Council
24	Harris	Mike	Bridgend County Borough Council
25	Hughes	Tracy	Bridgend County Borough Council
26	Hutchinson	Jane	Bridgend County Borough Council
27	Morgan	Jaci	Bridgend County Borough Council
28	Morgan	Louise	Bridgend County Borough Council
29	Owen	Carol	Bridgend County Borough Council
30	Pickrell	Scott	Bridgend County Borough Council
31	Roche	Emma-Jayne	Bridgend County Borough Council
32	Silcox	Natalie	Bridgend County Borough Council
33	Warrilow	Terri	Bridgend County Borough Council
34	Wyatt	Tony	Bridgend County Borough Council
35	Fowler-Powe	Michelle	British Deaf Association
36	Blake	Tina	Caerphilly County Borough Council
37	Davies	Carol A	Caerphilly County Borough Council
38	Davies	Denise	Caerphilly County Borough Council
39	Daye	Viv	Caerphilly County Borough Council
40	Edwards	Janine	Caerphilly County Borough Council
41	Howells	Stephen	Caerphilly County Borough Council
42	Lock	Sion	Caerphilly County Borough Council
43	Powell	Karen	Caerphilly County Borough Council

44	Rogers	Michaela	Caerphilly County Borough Council
45	Street	Dave	Caerphilly County Borough Council
46	Thomas	Dave	Caerphilly County Borough Council
47	White	Deborah	Caerphilly County Borough Council
48	Williams	Steph	Caerphilly County Borough Council
49	Wright	Sue	Caerphilly County Borough Council
50	Morris	Cerys	Cambian Healthcare
51	Martin	Christine	Cardiff Metropolitan University
52	Roberta	Hayes	Care Council for Wales
53	Sheila	Lyons	Care Council for Wales
54	Ian	Thomas	Care Council for Wales
55	Ceri	Williams	Care Council for Wales
56	Griffith	Stephanie	Care Council for Wales
57	Wakelin	Karen	Care Council for Wales
58	Rees	Kieron	Carers Trust Wales
59	Bowen	Keith	Carers Wales
60	Edwards	Neil	Carmarthenshire County Council
61	Jackman	Noreen	Carmarthenshire County Council
62	James	Bethan T	Carmarthenshire County Council
63	Meredith	Jayne	Carmarthenshire County Council
64	Smith	Stefan	Carmarthenshire County Council
65	Thomas	Noeline	Carmarthenshire County Council
66	Thomas	Jayne	Carmarthenshire County Council
67	Sian	Howys	Ceredigion County Borough Council
68	Carys	James	Ceredigion County Borough Council

69	Amanda	Jones	Ceredigion County Borough Council
70	O'Rourke	Judi	Ceredigion County Borough Council
71	Lewis	Catherine	Children in Wales
72	Martin	Cheryl	Children in Wales
73	Curtis	Emma	City and County of Swansea
74	Williams	Allison	City and County of Swansea
75	Denise	Moriarty	City of Cardiff Council
76	Bourge	Angela	City of Cardiff Council
77	Cole	Andy	City of Cardiff Council
78	David	Geraldine	City of Cardiff Council
79	Felvus	Jan	City of Cardiff Council
80	Finch	Jo	City of Cardiff Council
81	George	Ceri	City of Cardiff Council
82	Griffiths	Menai	City of Cardiff Council
83	Hoey	Jane	City of Cardiff Council
84	James	Natasha	City of Cardiff Council
85	Madell	Finn	City of Cardiff Council
86	Miller	Sharon	City of Cardiff Council
87	Osbourne	Matt	City of Cardiff Council
88	Reed	Julie	City of Cardiff Council
89	Schelewa	Susan	City of Cardiff Council
90	Teague	Siobhan	City of Cardiff Council
91	Tonkinson	Ceri	City of Cardiff Council
92	Westwell	Sally	City of Cardiff Council
93	Crowder	Ruth	College of Occupational Therapists
94	Kate	Davenport	Conwy County Borough Council
95	Anne	Flanagan	Conwy County Borough Council
96	Hannah	Fleck	Conwy County Borough Council
97	Tesni	Hadwin	Conwy County Borough Council
98	Marian	Hankin	Conwy County Borough Council
99	Marie	Jones	Conwy County Borough Council
100	Claire	Lister	Conwy County Borough Council

101	Jenny	Williams	Conwy County Borough Council
102	Erica	Wynn Roberts	Conwy County Borough Council
103	Jennie	Lewis	CSSIW
104	Vicky	Poole	CSSIW
105	Marc	Roberts	CSSIW
106	Davies	Donna	CSSIW
107	Glynn Jones	Sarah	CSSIW
108	Huws-John	Gill	CSSIW
109	Redman	Ken	CSSIW
110	Young	Katie	CSSIW
111	Lewis	Lyndon	Cym Taf YOS
112	Townsend	Oliver	Cymorth Cymru
113	Gareth	Llwyd	Cyngor Sir Ynys Mon
1	Vicky	Allen	Denbighshire County Council
2	Maria	Bell	Denbighshire County Council
3	Cathy	Curtis-Nelson	Denbighshire County Council
4	Joanna	Driver	Denbighshire County Council
5	Melanie	Evans	Denbighshire County Council
6	Phil	Gilroy	Denbighshire County Council
7	Gwynfor	Griffiths	Denbighshire County Council
8	Vanessa	Kyte	Denbighshire County Council
9	Sandra	Naughton	Denbighshire County Council
10	Stephanie	O'Donnell	Denbighshire County Council
11	Alaw	Pierce	Denbighshire County Council
12	Bethan	Wyn Roberts	Denbighshire County Council
13	Swann	Paul	Disability Wales
14	Ffion	Alun	Estyn Llaw
15	Christine	Duffy	Flintshire County Council
16	Susie	Lunt	Flintshire County Council
17	Saunders	Lisette	G4S Custodial & detention Services, YMP &YOI Parc

18	David	Nulty	Glyndwr University
19	Dalton	Katie	Gofal
20	Laurent	Louisa	Greater Gwent Transformation Project
21	Sara	Lloyd Evans	Gwynedd & Anglesey Local Safeguarding Children's Board
22	Stephen	Wood	Gwynedd Mon YJS
23	Morwena	Edwards	Gwynedd CBC
24	Olwen	Ellis Jones	Gwynedd CBC
25	Nerys	Evans	Gwynedd CBC
26	Iona	Griffith	Gwynedd CBC
27	Meilys	Heulfryn Smith	Gwynedd CBC
28	Marian	Hughes	Gwynedd CBC
29	Glenda	Lloyd Evans	Gwynedd CBC
30	Gwenno	Williams	Gwynedd CBC
31	Martin	Peter	Hafal
32	Maggs	Dave	Headway
33	Phillips	Marie	HMP Swansea
34	Toohey	Karen	Hywel Dda Health Board
35	Dawson	Rhian	Hywel Dda UHB/ Carms CC
36	Iola	Richards	Isle Of Anglesey County Council
37	Sian	Owen	Learning Disability Wales
38	Kevin	Sibbons	Learning Disability Wales
39	Karen	Warner	Learning Disability Wales
40	Sutherns	Alan	Learning Disability Wales
41	Allen	Angela	Merthyr Tydfil CBC
42	Anderton	Mark	Merthyr Tydfil CBC
43	Beckham	Alex	Merthyr Tydfil CBC
44	Bow	Jill	Merthyr Tydfil CBC
45	Cawley	Mike	Merthyr Tydfil CBC
46	Davies	Jonathan	Merthyr Tydfil CBC
47	Edevane	Angela	Merthyr Tydfil CBC
48	Eyre	Jon	Merthyr Tydfil CBC
49	Hughes	Sue	Merthyr Tydfil CBC
50	Jayne	Michelle	Merthyr Tydfil CBC
51	Jones	Alyson	Merthyr Tydfil CBC
52	Lipian	Pauline	Merthyr Tydfil CBC
53	O'Keefe	Kathryne	Merthyr Tydfil CBC
54	Powell	Gareth	Merthyr Tydfil CBC
55	Preece	Sue	Merthyr Tydfil CBC
56	Rees	Lowri	Merthyr Tydfil CBC

57	Rush	Christina	Merthyr Tydfil CBC
58	Owen	Arabella	Mid and West Wales Health and Social Care Collaborative
59	Palfreman	Martyn	Mid and West Wales Health and Social Care Collaborative
60	Smith	Sarah	Ministry of Justice
61	Carter	Joseph	MS Society Cymru
62	Pearce	Rebecca	MS Society Cymru
63	Andy	Jones	National Probation Service - Wales
64	Donovan	Bethan	Neath Port Talbot CBC
65	Doyle	Lynne	Neath Port Talbot CBC
66	Hinton	Amanda	Neath Port Talbot CBC
67	Kneath	Jayne	Neath Port Talbot CBC
68	Marchant	Claire	Neath Port Talbot CBC
69	Williams	Pauline	Neath Port Talbot CBC
70	Bowler	Peter	Newport City Council
71	Close	Tracey	Newport City Council
72	Davies	Ceri	Newport City Council
73	Davies	Julie	Newport City Council
74	Hughes	Nicola	Newport City Council
75	Jenkins	Sally	Newport City Council
76	Richardson	Katrina	Newport City Council
77	Taylor	Amii	Newport City Council
78	Thomas	Julia	Newport City Council
79	Jones	Elfed	NOMS HMP Prison Service
80	Gawthorpe	Aine	NOMS in Wales
81	Graham	Opie	North Wales Police
82	Gabrielle	Heeney	North Wales Social Services Improvement Collaborative
83	Bethan	Jones Edwards	North Wales Social Services Improvement Collaborative
84	Bartley	Stephen	Older People's Commissioner for Wales
85	Evans O'Brien	Catherine	Older People's Commissioner for Wales
86	Ruth	Ingram	Powys County Council
87	Anderson	Lee	Powys County Council
88	Jeffreys	Jen	Powys County Council
89	Jukes	Hazel	Powys County Council
90	Self	Keith	Powys County Council

91	Pauline	Galluccio	Powys Teaching Health Board
92	Day	Sarah	Practice Solutions
93	Kate	McDonald	Public Health Wales
94	Rachel	Shaw	Public Health Wales
95	Angela	Tinkler	Public Health Wales
96	Evans	Janet	Public Health Wales
97	Smith	Gloria	Public Health Wales
98	Bately	Ann	Rhondda Cynon Taf CBC
99	Bridgman	Luisa	Rhondda Cynon Taf CBC
100	Clark	Julie	Rhondda Cynon Taf CBC
101	Gatis	Bob	Rhondda Cynon Taf CBC
102	Harris	Mark	Rhondda Cynon Taf CBC
103	Holloman	Gail	Rhondda Cynon Taf CBC
104	Jones	Gail	Rhondda Cynon Taf CBC
105	Neale	Jackie	Rhondda Cynon Taf CBC
106	Nichols	Sara	Rhondda Cynon Taf CBC
107	Pearce	Liz	Rhondda Cynon Taf CBC
108	Preston	Jayne	Rhondda Cynon Taf CBC
109	Williams	Alexis	Rhondda Cynon Taf CBC
110	Williams	Claire	Rhondda Cynon Taf CBC
111	Saunders	Tess	RNIB Cymru
112	Ian	Bottrill	Safeguarding Advisory Board
113	Edwards	Catrin	Sense Cymru
114	Hayes	Melanie	Shine Cymru
115	Cooke	Catherine	South Wales Police
116	Penhale	Lian	South Wales Police
117	Baker	Melanie	Torfaen County Borough Council
118	Davies	Kevin	Torfaen County Borough Council
119	Eva	Catherine	Torfaen County Borough Council
120	Evans	Maria	Torfaen County Borough Council
121	Hopkins	Howard	Torfaen County Borough Council
122	Jones	Eunice	Torfaen County Borough Council
123	Newman	Joanne	Torfaen County Borough Council
124	Orford	Peter	Torfaen County Borough Council

125	Thole	Adrian	Torfaen County Borough Council
126	Watkins	James	Torfaen County Borough Council
127	Williams	Zoe	Torfaen County Borough Council
128	Williams	Richard	Torfaen County Borough Council
129	Jenny	Burgess	Unique Transgender Network
130	Dominic	Carter	United Kingdom Home Care Association
131	Randell	Peter	United Kingdom Home Care Association
132	Betteridge	Joanne	Vale of Glamorgan Council
133	Evans	Rachel	Vale of Glamorgan Council
134	Jones	Gaynor	Vale of Glamorgan Council
135	Poole	Nichola	Vale of Glamorgan Council
136	Vin	West	Wales Alliance for Citizen Direct Support
137	Rob	Wilson	Wales Alliance for Citizen Direct Support (The Rowan Organisation)
138	Meloy	Ceri	Wales Alliance for Citizen Directed Support
139	Judith	Magaw	Wales Community Rehabilitation Company
140	Magaw	Judith	Wales Community Rehabilitation Company
141	Owen	Williams	Wales Council for the Blind
142	Elizabeth	Thornburn	Wales Council for Voluntary Action
143	Davies	Alison	Welsh Ambulance Service
144	Tim	Griffiths	Welsh Ambulance Services NHS Trust
145	Hewitt	Gareth	Welsh Government
146	Sarah	Laing	Welsh Government:
147	Williams	Hannah	Welsh Government: Children, Young People and Families
148	Temple-Williams	Heather	Welsh Government: Community Safety Division
149	Gear	Stephen	Welsh Government: Dept for Education & Skills

150	Sharples	Jacqui	Welsh Government: Dept for Education & Skills
151	Gareth	John	Welsh Government: DHSS
152	Evans	Nicola	Welsh Government: DHSS
153	Owen	Rob	Welsh Government: Housing and Regeneration
154	Prothero	Simon	Welsh Government: Housing and Regeneration
155	Alleyne	Naomi	Welsh Local Government Association (WLGA)
156	Blythe	Stewart	Welsh Local Government Association (WLGA)
157	Elaine	Blease	Wrexham CBC
158	Ann	Chadd	Wrexham CBC
159	Ruth	Davies	Wrexham CBC
160	Sheila	Finnigan-Jones	Wrexham CBC
161	Annette	Green	Wrexham CBC
162	Mark	Jones	Wrexham CBC
163	Margaret	Sloan	Wrexham CBC
164	Cressida	Travis	Wrexham CBC
165	Charlotte	Walton	Wrexham CBC
166	Jo	Ward	Wrexham CBC
167	Steve	Williams	Wrexham CBC
168	Cooper	Sarah	Youth Justice Board Cymru

Constitutional and Legislative Affairs Committee

CLAXXX – The Care and Support (Eligibility) (Wales) Regulations 2015

The Social Services and Well-being Act 2014 (“the Act”) provides a single Act which brings together local authorities’ duties and functions in relation to improving the well-being of those who need care and support and of carers who need support.

The Regulations set out the test which a local authority must apply to determine whether an individual with needs identified pursuant to an assessment undertaken by the local authority is entitled to have those needs met by the local authority. The Regulations set out the test to be applied in relation to adults, to children and to carers (including a child carer).

Procedure : ‘Super Affirmative’

1. Technical Scrutiny

No points are identified for reporting under Standing Order 21.2.

2. Merits Scrutiny

The following Standing Order 21.3(ii) in respect of this draft instrument. These Regulations have been made utilising a ‘super affirmative’ procedure.

The places a requirement on local authorities to apply national eligibility criteria to determine their duty to meet identified needs. For adults, this will remove the traditional threshold for access to managed care and support. The Explanatory Memorandum which accompanies the Regulations states that this will ensure a more responsive and bespoke response for each individual.

The Act places a requirement on local authorities to apply national eligibility criteria to determine their duty to meet the care and support needs of children. This contrasts with the approach in the Children Act 1989 which contains a definition of a child in need and requires local authorities to safeguard and promote the welfare of such children. A child’s eligibility will flow from the process of assessment.

Under the Act, a local authority is under a duty to undertake an assessment of a carer’s – including a child carer– needs where it appears to the authority that the

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carer has needs for support. A local authority will be under a duty to meet the identified needs where they meet the national eligibility criteria.

Members will wish to note that the Regulations set out the test which a local authority must apply in determining whether or not an individual has needs which must be met. The Regulations will be supplemented by Code of practice issued under section 145 of the Act which encourages local authorities to meet its duties to provide or arrange for the provision of preventative services, promote social enterprises, co-operatives, user-led services and the third sector and to provide information, advice and assistance services so reducing the number of individuals who will require a care and support plan.

Legal Services

11 May 2015

Draft Regulations laid before the National Assembly for Wales under section 33 of the Social Services and Well-being (Wales) Act 2014 Act, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2015 No. (W.)

SOCIAL CARE, WALES

**The Care and Support (Eligibility)
(Wales) Regulations 2015**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out the test which a local authority must apply to determine whether or not an individual with needs identified in an assessment under section 19, 21 or 24 of the Social Services and Well-being (Wales) Act 2014 (“the Act”) is entitled to have those needs met by a local authority. The Regulations set out the tests to be applied in relation to adults, to children and to carers.

Regulations 3, 4 and 5 set out the eligibility criteria for adults, for children and for carers respectively. In each case the criteria include a requirement about how the need in question arises, about whether it relates to one of the well-being-related factors, about whether or not the need can be met by the person alone or with assistance, and about whether or not a person is likely to achieve personal outcomes without provision of care and support by the local authority.

Regulation 6 provides that for the purposes of judging whether or not a person is able to meet one of their needs, whether with assistance or without it, the person should be regarded as unable to do so even if they can in fact meet the need but only by enduring significant pain, anxiety or distress, by endangering him or herself or another person, or by taking a significantly longer time than would normally be expected.

Where needs do meet these eligibility criteria, section 32 requires a local authority to consider what could be done to meet those needs and whether it should impose a charge in accordance with Part 5 of the Act.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained by contacting the Department for Health and Social Services, Welsh Government, Cathays Park, Cardiff CF10 3NQ.

Draft Regulations laid before the National Assembly for Wales under section 33 of the Social Services and Well-being (Wales) Act 2014, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2015 No. (W.)

SOCIAL CARE, WALES

**The Care and Support (Eligibility)
(Wales) Regulations 2015**

Made

Coming into force

6 April 2016

The Welsh Ministers, in exercise of the powers conferred by section 32(3), (4) and (5) of the Social Services and Well-being (Wales) Act 2014⁽¹⁾, make the following Regulations.

A draft of these Regulations was laid before the National Assembly for Wales in accordance with section 33 of that Act and has been approved by a resolution of the National Assembly for Wales in accordance with section 196(6) of that Act .

Title, commencement, application and interpretation

1.—(1) The title of these Regulations is the Care and Support (Eligibility) (Wales) Regulations 2015.

(2) These Regulations come into force on 6 April 2016 and apply in relation to Wales.

(3) In these Regulations—

“the Act” (“*y Ddeddf*”) means the Social Services and Well-being (Wales) Act 2014;

“carer” (“*gofalwr*”) has the meaning given in section 3 of the Act;

“eligibility determination” (“*dyfarniad cymhwysra*”) means a determination under section 32(1)(a) of the Act;

(1) 2014 anaw 4.

“personal outcomes” (*“canlyniadau personol”*) means the outcomes which have been identified in relation to a person by an assessment under sections 19, 21, or 24 of the Act;

“self-care” (*“hunanofal”*) means tasks that a person carries out as part of daily life including—

- (i) eating and drinking;
- (ii) maintaining personal hygiene;
- (iii) getting up and getting dressed;
- (iv) moving around the home;
- (v) preparing meals;
- (vi) keeping the home clean, safe and hygienic.

Eligibility determinations

2.—(1) When the local authority is making an eligibility determination in relation to an adult who has been assessed under section 19 of the Act as having one or more needs for care and support, any one of those needs meets the eligibility criteria if it is of a description specified in regulation 3.

(2) When a local authority is making an eligibility determination in relation to a child who has been assessed under section 21 of the Act as having one or more needs for care and support, any one of those needs meets the eligibility criteria if it is of a description specified in regulation 4.

(3) When a local authority is making an eligibility determination in relation to a carer who has been assessed under section 24 of the Act as having one or more needs for support, any one of those needs meets the eligibility criteria if it is of a description specified in regulation 5.

Needs which meet the eligibility criteria – adults with needs for care and support

3. The need of an adult referred to in regulation 2(1) meets the eligibility criteria if—

- (a) the need arises from the adult’s physical or mental ill-health, age, disability, dependence on alcohol or drugs, or other similar circumstances;
- (b) the need relates to one or more of the following—
 - (i) ability to carry out self-care or domestic routines;
 - (ii) ability to communicate;
 - (iii) protection from abuse or neglect;
 - (iv) involvement in work, education, learning or in leisure activities;

- (v) maintenance or development of family or other significant personal relationships;
 - (vi) development and maintenance of social relationships and involvement in the community; or
 - (vii) fulfilment of caring responsibilities for a child;
- (c) the need is such that the adult is not able to meet that need, either—
 - (i) alone;
 - (ii) with the care and support⁽¹⁾ of others who are willing to provide that care and support; or
 - (iii) with the assistance of services in the community to which the adult has access; and
 - (d) the adult is unlikely to achieve one or more of the adult's personal outcomes unless—
 - (i) the local authority provides or arranges care and support to meet the need; or
 - (ii) the local authority enables the need to be met by making direct payments⁽²⁾.

Needs which meet the eligibility criteria – children with needs for care and support

4.—(1) The need of a child referred to in regulation 2(2) meets the eligibility criteria if—

- (a) either—
 - (i) the need arises from the child's physical or mental ill-health, age, disability, dependence on alcohol or drugs, or other similar circumstances; or
 - (ii) the need is one that if unmet is likely to have an adverse effect on the child's development;
- (b) the need relates to one or more of the following—
 - (i) ability to carry out self-care or domestic routines;
 - (ii) ability to communicate;
 - (iii) protection from abuse or neglect;
 - (iv) involvement in work, education, learning or in leisure activities;

(1) "Care and support" is partially defined in section 4 of the Act.
 (2) Regulations under sections 50 to 53 of the Act may require or allow a local authority to make payments to a person towards the cost of meeting their needs. Such payments are referred to in the Act as "direct payments".

- (v) maintenance or development of family or other significant personal relationships;
- (vi) development and maintenance of social relationships and involvement in the community; or
- (vii) achieving developmental goals;
- (c) the need is one that neither the child, the child's parents nor other persons in a parental role are able to meet, either—
 - (i) alone or together,
 - (ii) with the care and support of others who are willing to provide that care and support, or
 - (iii) with the assistance of services in the community to which the child, the parents or other persons in a parental role have access; and
- (d) the child is unlikely to achieve one or more of the child's personal outcomes unless—
 - (i) the local authority provides or arranges care and support to meet the need; or
 - (ii) the local authority enables the need to be met by making direct payments.
- (2) In this regulation—
 - (i) references to a child's development include the physical, intellectual, emotional, social and behavioural development of that child;
 - (ii) "other persons in a parental role" ("*personau eraill mewn rôl rhiant*") includes persons with parental responsibility⁽¹⁾ or relatives who play a role in looking after the child;
 - (iii) "relative" ("*perthynas*") has the meaning given in section 197 of the Act.

Needs which meet the eligibility criteria - carers with needs for support

5. The need of a carer referred to in regulation 2(3) meets the eligibility criteria if—

- (a) the need arises as a result of providing care for either—
 - (i) an adult who has needs which fall within Regulation 3 (a) and (b), or
 - (ii) a disabled child;
- (b) the need relates to one or more of the following—

(1) "Parental responsibility" is defined in section 3 of the Children Act 1989 (c. 41).

- (i) ability to carry out self-care or domestic routines;
- (ii) ability to communicate;
- (iii) protection from abuse or neglect;
- (iv) involvement in work, education, learning or in leisure activities;
- (v) maintenance or development of family or other significant personal relationships;
- (vi) development and maintenance of social relationships and involvement in the community; or
- (vii) in the case of an adult carer, fulfilment of caring responsibilities for a child;
- (viii) in the case of a child carer, achieving developmental goals;
- (c) the carer cannot meet the need whether—
 - (i) alone;
 - (ii) with the support of others who are willing to provide that support; or
 - (iii) with the assistance of services in the community to which the carer has access; and
- (d) the carer is unlikely to achieve one or more of their personal outcomes unless—
 - (i) the local authority provides or arranges support to the carer to meet the carer's need;
 - (ii) the local authority provides or arranges care and support to the person for whom the carer provides care, in order to meet the carer's need; or
 - (iii) the local authority enables the need to be met by making direct payments.

Ability to meet need

6. For the purposes of regulations 3(c), 4(1)(c) and 5(c), a person who is able to meet the need, alone or with the assistance of others is to be regarded as unable to meet the need if doing so—

- (a) causes significant pain, anxiety or distress to that person;
- (b) endangers or is likely to endanger the health or safety of that person or another person;
- (c) takes that person significantly longer than would normally be expected.

Minister for Health and Social Services, one of the Welsh Ministers

Date

Draft Regulations laid before the National Assembly for Wales under section 33 of the Social Services and Well-being (Wales) Act 2014 Act, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2015 No. (W.)

SOCIAL CARE, WALES

**The Care and Support (Eligibility)
(Wales) Regulations 2015**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These regulations set out the test which a local authority must apply to determine whether or not an individual with needs identified in an assessment under section 19, 21 or 24 of the Social Services and Well-being (Wales) Act 2014 is entitled to have those needs met by a local authority. The regulations set out the tests to be applied in relation to adults, to children and to carers.

Where needs do meet these eligibility criteria then section 32 requires a local authority to consider what could be done to meet those needs and whether it should impose a charge in accordance with Part 5 of the Social Services and Wellbeing (Wales) Act 2014.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained at

Draft Regulations laid before the National Assembly for Wales under section 33 of the Social Services and Well-being (Wales) Act 2014 Act, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2015 No. (W.)

SOCIAL CARE, WALES

**The Care and Support (Eligibility)
(Wales) Regulations 2015**

Laid before the National Assembly for Wales

Coming into force ***

The Welsh Ministers, in exercise of the powers conferred by sections 32(3)(4) and (5) of the Social Services and Well-being (Wales) Act 2014(1), make the following Regulations.

A draft of these Regulations was laid before the National Assembly for Wales under section 33 of that Act and has been approved by a resolution of the National Assembly for Wales.

Title, commencement, application and interpretation

1.—(1) The title of these Regulations is The Care and Support (Eligibility) (Wales) Regulations 2015.

(2) These Regulations come into force on XXXXXXX and apply in relation to Wales.

(3) In these Regulations—

“the Act” means the Social Services and Well-being (Wales) Act 2014;

“carer” has the meaning given in section 3 of the Act;

“eligibility determination” means a determination under section 32(1)(a) of the Act;

(1) 2014 anaw 4.

“personal outcomes” means the outcomes which have been identified in relation to a person by an assessment under sections 19, 21, or 24 of the Act; “specified outcomes” means the outcomes specified in regulation 6.

Eligibility determinations

2.—(1) When the local authority is making an eligibility determination in relation to an adult who has been assessed as having one or more needs for care and support, any one of those needs meets the eligibility criteria if it is of a description specified in regulation 3.

(2) When a local authority is making an eligibility determination in relation to a child who has been assessed as having one or more needs for care and support, any one of those needs meets the eligibility criteria if it is of a description specified in regulation 4.

(3) When a local authority is making an eligibility determination in relation to a carer who has been assessed as having one or more needs for support, any one of those needs meet the eligibility criteria if it is of a description specified in regulation 5.

Needs which meet the eligibility criteria – adults with needs for care and support

3. The need meets the eligibility criteria if—

- (a) the need arises from the adult’s physical or mental ill-health, age, disability, dependence on alcohol or drugs, or other similar circumstances;
- (b) the need relates to one or more of the specified outcomes;
- (c) the need is such that the adult is not able to meet that need, either—
 - (i) alone,
 - (ii) with the support of others who are willing to provide that support, or
 - (iii) with the assistance of services in the community to which the adult has access; and
- (d) the adult is unlikely to achieve one or more of their personal outcomes which relate to one or more of the specified outcomes unless—
 - (i) the local authority provides or arranges care and support to meet the need; or
 - (ii) the local authority enables the need to be met by making direct payments.

Needs which meet the eligibility criteria – children with needs for care and support

4.—(1) The needs meet the eligibility criteria if—

- (a) either—
 - (i) the need arises from the child’s physical or mental ill-health, age, disability, dependence on alcohol or drugs, or other similar circumstances; or
 - (ii) the need is one that if unmet is likely to have an adverse effect on the child’s development;
- (b) the need relates to one or more of the specified outcomes;
- (c) the need is one that neither the child, the child’s parents nor other persons caring for the child are able to meet, either—
 - (i) alone or together,
 - (ii) with the support of others who are willing to provide that support, or
 - (iii) with the assistance of services in the community to which the parents or other persons caring for the child have access; and
- (d) the child is unlikely to achieve one or more of their personal outcomes which relate to one or more of the specified outcomes unless—
 - (i) the local authority provides or arranges care and support to meet the need; or
 - (ii) the local authority enables the need to be met by making direct payments.

(2) In this regulation—

- (i) references to a child’s development include the physical, intellectual, emotional, social and behavioural development of that child;
- (ii) “other persons caring for the child” includes persons with parental responsibility⁽¹⁾ or relatives who have a role in providing care for the child;
- (iii) “relative” is defined in section 197 of the Act.

Needs which meet the eligibility criteria - carers with needs for support

5.—(1) The needs meet the eligibility criteria if—

- (a) the need arises as a result of providing care for either—

(1) “Parental responsibility” is defined in section 3 of the Children Act 1989 (c.41).

- (i) an adult who has needs which fall within Regulation 3 (a) and which relate to one or more of the specified outcomes, or
- (ii) a disabled child;
- (b) the carer cannot meet the need whether—
 - (i) alone;
 - (ii) with the support of others who are willing to provide that support; or
 - (iii) with the assistance of services in the community to which the carer has access; and
- (c) the carer is unlikely to achieve one or more of their personal outcomes which relate to the specified outcomes unless—
 - (i) the local authority provides or arranges support to the carer to meet the carer's needs;
 - (ii) the local authority provides or arranges care and support to the person for whom the carer provides care, in order to meet the carer's needs; or
 - (iii) the local authority enables the needs to be met by making direct payments.

Outcomes to which needs for care and support must relate

6.—(1) For the purposes of regulations 3(b) and 4(b), the outcomes to which a need must relate are—

- (a) ability to carry out basic self-care or domestic routines;
- (b) protection from abuse or neglect;
- (c) involvement in work, education, learning or in leisure activities;
- (d) maintenance or development of family or other significant personal relationships;
- (e) development and maintenance of social relationships and involvement in the community;
- (f) in the case of an adult, fulfilment of caring responsibilities for a child; or
- (g) in the case of a child, achieving developmental goals.

(2) In this regulation “basic self-care” means essential tasks that a person carries out as part of normal daily life including—

- (i) eating and drinking;
- (ii) maintaining personal hygiene;
- (iii) getting up and getting dressed;
- (iv) moving around the home;

- (v) preparing meals;
- (vi) keeping the home clean, safe and hygienic.

Exclusion of care provided by carers when making an eligibility determination

- 7.—(1) When a local authority considers whether—
- (a) in accordance with regulation 3(c)(ii), an adult is able to meet a need with the support of others;
 - (b) in accordance with regulation 3(d), an adult is likely to achieve one or more of their personal outcomes without the intervention of the local authority;
 - (c) in accordance with regulation 4(c)(ii), a child's needs can be met with the support of others; or
 - (d) in accordance with regulation 4(d), a child is unlikely to achieve one or more of their personal outcomes without the intervention of the local authority,

a local authority must disregard the matters set out in paragraph (2).

- (2) The matters to be disregarded in the circumstances set out in paragraph (1) are—
- (a) in the case of an adult, any care given to the adult by a carer; and
 - (b) in the case of a child, care provided to that child by the child's family or a carer.⁽¹⁾

Minister for Health and Social Services, one of the Welsh Ministers

Date

(1) But note section 35(6) of the Act which provides that the duty on a local authority to meet an adult's needs for care and support does not apply where the local authority is satisfied that the needs are being met by a carer and section 37(5) of the Act which provides that the duty on a local authority to meet a child's needs for care and support does not apply where the local authority is satisfied that the needs are being met by the child's family or a carer.

Statement setting out the amendments made to the Draft Care and Support (Eligibility) (Wales) Regulations following consultation

A copy of the consultation draft is annexed to this statement

Preamble

1. The preamble is amended to recite compliance with the requirement in section 33(2) and (3) for the regulations to be the subject of consultation. Reference to section 196(6) is added as the source of the requirement that the regulations be approved by a resolution of the National Assembly for Wales.

Section 1

2. The coming into force date has been added.

3. The definition of “specified outcomes” has been removed. This phrase is not used in the regulations. Feedback from the consultation was that it was confusing to include reference to both “personal outcomes” and “specified outcomes”.

4. A definition of “self-care” is added. This was in regulation 6 which was removed. The word “basic” which was used to qualify self-care is removed to avoid an inference that a person with care and support needs would only have a need recognised at that level. This is a change in response to consultation feedback.

Section 2

5. Footnotes have been added in relation to the meanings of “child” and “care and support” to assist the reader. In each of the paragraphs of the regulation wording has been added to make reference to the section of the Act under which an adult, a child and a carer are assessed. This is a drafting improvement for greater accuracy.

Section 3

6. The introductory phrase of the regulations is amended to make clear that the provision of this regulation refers to adults who have been the subject of assessment under section 19 of the Act. This is a drafting improvement.

7. Reference to “specified outcomes” is removed from paragraph (b). Instead the factors which were listed in regulation 6 are listed in regulation 3 itself. There is one addition to the list – (ii) ability to communicate. This is included in response to consultation feedback and views that it was of sufficient significance in this context to be included expressly.

8. In paragraph (c), the word “care” is added so that care provided by a carer is also taken into account as a factor in determining whether a person’s need is eligible for the purposes

of the regulations. This is an amendment linked to the removal of regulation 7 of the consultation draft.

9. In paragraph (d) “their” is replaced by “the adult’s” to be more grammatically correct. Reference to “the specified outcomes” is removed. This makes the drafting simpler and removes a duplication because the outcomes are already built in to regulation 3 at an earlier point through the requirement in paragraph (b).

Section 4

10. The introductory phrase of the regulations is amended to make clear that the provision of this regulation refers to children who have been the subject of assessment under section 21 of the Act. This is a drafting improvement.

11. Reference to “specified outcomes” is removed from paragraph (b). Instead the factors which were listed in regulation 6 are listed in regulation 4 itself. There is one addition to the list – (ii) ability to communicate. This is included in response to consultation feedback and views that it was of sufficient significance in this context to be included expressly.

12. In paragraph (c), the word “care” is added so that care provided by a carer is also taken into account as a factor in determining whether a person’s need is eligible for the purposes of the regulations. This is an amendment linked to the removal of regulation 7 of the consultation draft.

13. In sub-paragraph (c)(iii), the word “child “ is added to reflect the fact that in many cases children, particularly older children, will have an independent ability to access services available in the community.

14. In the same sub-paragraph, the phrase “other persons caring for the child” is replaced by the phrase “other persons in a parental role”. The purpose of this is to avoid confusion with the concept of “carers”. Under the Act a person is a carer for a child who is disabled. A parent caring for a child who is not disabled is not a carer for the purposes of the Act.

15. The wording in the definition of “relative” is amended to reflect the fact that the definition is not a complete definition but is limited to what the word means in relation to a child.

16. In paragraph (d) Reference to “the specified outcomes” is removed. This makes the drafting simpler and removes a duplication because the outcomes are already built in to regulation 4 at an earlier point through the requirement in paragraph (b).

Section 5

17. The introductory phrase of the regulations is amended to make clear that the provision of this regulation refers to carers who have been the subject of assessment under section 24 of the Act. This is a drafting improvement.

18. Subparagraph (a)(i) is amended to clarify that the person for whom a carer provides care must have needs which relate to the factors set out in paragraph (b) of regulation 3.

19. A footnote is added in relation to the definition of “disabled” to assist the reader.

20. Reference to “specified outcomes” is removed from paragraph (b). Instead the factors which were listed in regulation 6 are listed in regulation 5 itself. There is one addition to the list – (ii) ability to communicate. This is included in response to consultation feedback and views that it was of sufficient significance in this context to be included expressly.

21. In paragraph (d) reference to “the specified outcomes” is removed. This makes the drafting simpler and removes a duplication because the outcomes are already built in to regulation 3 at an earlier point through the requirement in paragraph (b).

Regulation 6

22. This is a new regulation added in response to consultation feedback. In regulations 3, 4 and 5, eligibility is dependent on a person being unable to meet needs. This regulation provides that a person will be regarded as unable to do something even when they can but only with a greater level of difficulty than would normally be expected.

Removal of Regulation 6 of consultation draft

23. This regulation has been removed in response to consultation feedback that the concept of “specified outcomes” alongside “personal outcomes” was confusing. The different sorts of outcomes are instead inserted into each of regulation 3, 4 and 5.

Removal of Regulation 7 of consultation draft

24. Regulation 7 of the consultation draft was included to tie in with section 35(6) and section 37(5) of the Act. The purpose of these provisions was that a local authority would not have a duty to meet need so long as a carer was meeting the need in question but that, in the event that a carer declined to continue in a caring role, the local authority would instantly be under a duty to provide care and support itself. The intention of regulation 7 was to ensure that the effect of regulations 3(c), 4(c) and 5(c) did not obstruct the effect of that provision.

25. Consultation feedback was that the provision was complicated and difficult to understand. The conclusion reached is that it is unnecessary in any event. Where a carer declines to continue in a caring role, the effect of the test in regulations 3(c), 4(c) and 5(c) will be different in any event. A need which was not eligible because it was being met by a carer would become eligible if the carer no longer wished to provide that care. The effect of sections 35(6) and 37(5) will therefore be kept intact. The regulation has therefore been removed.

Explanatory Memorandum to the Care and Support (Eligibility) (Wales) Regulations 2015

This Explanatory Memorandum has been prepared by the Department for Health and Social Services and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Care and Support (Eligibility) (Wales) Regulations 2015. I am satisfied that the benefits outweigh any costs.

Mark Drakeford

Minister for Health and Social Services

6 May 2015

Part 1 – OVERVIEW

1. Description

The Social Services and Well-being (Wales) Act 2014 provides a single Act that brings together local authorities' duties and functions in relation to improving the well-being of people who need care and support, and carers who need support. The Act provides the statutory framework to deliver the Welsh Government's commitment to integrate social services to support people of all ages, and support people as part of families and communities.

These regulations set out the test which a local authority must apply to determine whether or not an individual with needs identified in an assessment under section 19, 21 or 24 of the Act is entitled to have those needs met by a local authority. The regulations set out the test to be applied in relation to adults, to children and to carers.

This Explanatory Memorandum should be read in conjunction with the Explanatory Memorandum to the Care and Support (Assessment) (Wales) Regulations 2015.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

No specific matters identified.

3. Legislative background

The powers enabling these Regulations to be made are contained in sections 32(3) (4) and (5) of the Social Services and Well-being (Wales) Act 2014.

This instrument is subject to consideration by the National Assembly for Wales under a special procedure as set out in Section 33 of the Social Services and Well-being (Wales) Act 2014 (the super-affirmative procedure).

The Regulations will come into force in **April 2016**

Current legislation

The current legislative framework is complex and the provision of social care is currently found within a broad array of Acts, which legislate separately for children and adults.

Adults

Section 47 (1) (b) of the NHS and Community Care Act 1990 places a duty on local authorities to decide whether, following assessment, an adult's needs require a service to be provided. The basis for that decision is provided in Statutory Guidance only. In Wales, this was through *the Creating a Unified and Fair System for Assessing and Managing Care*¹. This provides a standardised framework within which local authorities

should decide local criteria about which needs should be met. This guidance sets out four bands of need; critical, substantial, moderate and low. Each band describes the extent of risk to independence if needs and issues are not addressed. Local authorities are entitled to set their eligibility threshold at any band within this framework.

The duty to meet eligible need is absolute, regardless of available resources within social services funds.

Children

There is no comparable determination of eligibility used in children's services. However under Section 17 (10) of the Children Act 1989, a child is a Child in Need if:

- He/she is unlikely to achieve or maintain, or have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him/her of services by a local authority;
- His/her health or development is likely to be significantly impaired, or further impaired, without the provision for him/her of such services; or
- He/she is a Disabled Child.

Carers

There are three Acts of Parliament and a Welsh Measure under the National Assembly for Wales, which are directly concerned with the needs of carers. These are:

- Carers (Recognition and Services) Act 1995
- Carers and Disabled Children Act 2000
- Carers (Equal Opportunities) Act 2004
- Carers Strategies (Wales) Measure 2010

In addition, Disabled Persons (Services, Consultation and Representation) Act 1986 Section 8 requires that during an assessment of a disabled person the views of Carers who 'provide a substantial amount of care on a regular basis' should be taken into account. There is no definition of "substantial amount of care on a regular basis".

Each of these pieces of legislation place duties on local authorities with respect to the right of carers to an assessment of their needs. However, there are no current statutory duties to provide services to carers, although there are powers to provide services which a) the local authority sees fit to provide and b) will in the local authority's view help the carer care for the person cared for (section 2 of the Carers and Disabled Children Act 2000) which cover all carers and disabled children aged 16-17 years. In exercising this power, local authorities can, but are not required to, apply an eligibility framework and criteria.

Local authorities have a duty to inform carers of their right to request an assessment, where the local authority believes there is an entitlement under either the Carers (Recognition and Services) Act 1995, the Carers Strategies (Wales) Measure 2010 or the Carers and Disabled Children Act 2000. Currently only carers providing a substantial amount of care on a regular basis are entitled to a carer's assessment (2000 Act) and a carer's assessment could only be undertaken if requested by a carer (1995 Act). There is no definition of 'a substantial amount of care on a regular basis' therefore the definition is open to determination by the local authority. There is also no legislative requirement on local authorities to take actions to meet those assessed needs.

Proposed legislation

The statutory framework will consist of three main elements, the Act itself, regulations made under the Act, and codes of practice/statutory guidance. These three elements work together to form the framework within which social services will operate from April 2016.

The new legislation will introduce greater consistency of practice across Wales by introducing changes to the current eligibility framework. Through the introduction of these Regulations, the new national eligibility criteria will remove, for adults, the traditional threshold for access to managed care and support, and replace it with a more responsive model that considers a bespoke response for each individual. Eligibility will flow from the assessment process.

The Social Services and Well-being (Wales) Act 2014 places a requirement on local authorities to apply national eligibility criteria to determine their duty to meet the care and support needs of children. This is in contrast to the approach under the Children Act 1989 which contains a definition of a child in need and requires local authorities to safeguard and promote the welfare of such children. The proposed Regulations and Codes of Practice place requirements on local authorities with respect to the criteria for, and process of, that determination. The proposed approach is parallel to that described for adults in that the determination of eligibility will flow from the process of assessment.

The Act 2014 sets a duty on local authorities to undertake a carer's assessment where it appears to the authority that the carer has needs for support. The person no longer needs to be providing 'a substantial amount of care on a regular basis' to be deemed to be a carer - it is sufficient only that the person provides, or intends to provide, care for an adult or disabled child. The Act also places a duty on a local authority to meet the support needs of a carer where those needs meet the national criteria for eligibility.

4. Purpose and intended effect of the legislation

- Option 1: No national criteria
- Option 2: Eligibility based on need
- Option 3: Eligibility based on a judgment that encompasses needs, outcomes, barriers, risks and resources

The Regulatory Impact Assessment (Part 2) and the evidence paper (Annex 1) will explore these options in more detail.

The case for change is further set out in the report *“Better Support at Lower Cost: Improving efficiency and effectiveness in services for older people in Wales²”*. The report identified that the single biggest challenge which many Welsh local authorities face is changing the prevailing culture within adult social care. The report recognised that a further culture shift was needed to create a service which offers real opportunity to help people become more independent, both in the way they live their lives, and how flexibly they can use services.

The current system can be confusing, with the main focus on the process instead of the outcome. The proposed new system will place greater focus on early intervention and prevention and build on people’s strengths to enable them to exercise voice and control over what matters to them, having regard to their needs and well-being outcomes. The new system will ensure that people are able to receive help to meet their care and support needs whether they are deemed eligible or not. Eligibility will mean that the individual requires a care and support plan to access and manage ways to meet their care and support needs; but those that are not eligible will still receive help and will be signposted to preventative well-being services in their community and encouraged to build on their own strengths and those within their network to meet their needs. This will mean that more people will be supported earlier through preventative measures irrespective of whether or not the eligibility criteria have been met. When this approach to determining eligibility is applied nationally it will provide a consistent response across Wales.

Currently, Intervention is often not triggered until the point of crisis, and there is little early intervention or prevention in place. The Act will encourage a renewed focus on prevention and early intervention. The Social Services Improvement Agency (SSIA) report emphasises the need for early intervention and prevention and states that such services will help local authorities to meet their savings targets whilst improving outcomes for individuals.

Increasing demands on social services have been evident throughout Wales. It is likely the demands will continue to increase in the future. The pressures on local authority social services departments relate to many factors including, but not limited to:

- People are living longer. Projections show that by 2030 there will be twice the number of people aged over 85 than there are currently. The associated costs to social care are explored further in the attached Regulatory Impact Assessment;
- Changing behaviours and expectations; and
- An increase in people with long standing and complex disabilities.

Although demands on social services are increasing, there is no commensurate increase in routine funding to support service delivery. The current financial settlement for 2015/16 has been decreased by 3.4% compared to 2014/15, as a consequence of the large scale budget reductions by the UK Government.

Due to this increase in demand it is essential that the future delivery of social care is transformed as the current system is unsustainable. Specifically there is a need to

² Better Support at Lower Cost: Improving efficiency and effectiveness in services for older people in Wales - ADSS Cymru – April 2011

simplify and improve service efficiency and effectiveness of the system. The system must be improved to deliver better integration, improved collaboration, a stronger workforce, and to provide people with a greater voice and control over their services and well-being.

Intended effect of the Regulations

The primary objective of the policy is to promote an individuals' independence and ensure they have a stronger voice and control over their care and support services. The proposed changes are crucial to enable current and future generations to live their lives independently, providing the correct level of support to maintain their independence and wellbeing. A 2011 report published by the Social Services Improvement Agency: *Better Support at Lower Cost: Improving efficiency and effectiveness in services for older people in Wales*³ notes that there are examples where local authorities have already started to reshape their services for older people, with evidence of a shift towards a re-ablement approach to care.

The proposed model of determining eligibility through assessment ensures a national framework that will be consistently applied across Wales. It will generate a uniform and consistent approach by which each local authority will identify those needs an individual has which must be met through the planning and delivery of a care and support plan. The individual's needs will become 'eligible' for social care and support if an assessment establishes that they need the local authority to develop and deliver a 'care and support plan' in order to overcome the barriers to achieving their outcomes.

The first part of the eligibility process is to assess if care and support intervention can address the need, risk or barrier, or enhance the resources that will enable the individual to achieve their personal well-being outcomes. The second part of the process is the determination that the individual's well-being outcomes cannot be met, or cannot be sufficiently met, solely through care and support co-ordinated by themselves, their family or carer, or others. If this is the case, the individual requires support through a care and support plan, to co-ordinate their care and support or to manage it completely.

The current approaches to eligibility and to assessment are different for children and adults, and there is inconsistency across Wales. The new model is designed to bring these processes under one framework.

The current framework for assessing and meeting the social care needs of adults is set out in the *Fairer Access to Care (FACS)*⁴ guidance that was published in 2002, and the current *Framework for the Assessment of Children in Need and their Families*,⁵ which was issued as guidance under the Children Act 1989, provides a systematic basis for collecting and analysing information to support professional judgements about how to help children and families in the best interests of the child.,

The new approach will reduce the number of people who require a care and support plan by introducing opportunities to help people retain independence, and access early

3 http://www.ssiacymru.org.uk/home.php?page_id=7067

4 Creating a Unified and Fair System for Assessing and Managing Care – Welsh Assembly Government – April 2002

5 <https://www.wales.nhs.uk/sites3/docmetadata.cfm?orgid=441&id=76272>

intervention and prevention services without the need for a formal plan, whether these are adults, children or carers. This approach is informed by the understanding that intervening in the right way, at the right time can lead to many older people being supported in the community outside the formal social care system, and families can be supported to stay together.

A recent report⁶ on access to care and well-being in Wales published by the Social Services Improvement Agency identified three key concerns with the current system which were identified consistently by participants from across children and adult services. The report identified:

1. That there is too little early intervention and prevention;
2. Too much time and too many skills and resources are going in to over-elaborate assessment activities which do not help individuals to address their concerns or achieve desired outcomes; and
3. Inconsistent approaches to eligibility applied across different groups of citizens within the population.

The proposed model of eligibility will address these concerns by introducing regulations that promote a much more consistent approach and equality of access to meeting the social care needs of the population. The regulations will provide individuals who have an assessed need for care and support with an enforceable right to care and support from the local authority where that cannot otherwise be provided. The local authority will have a corresponding legal duty to provide, or arrange that care and support (support in the case of carers).

Consultation

A 12 week consultation on these Regulations ran between 6 November 2014 and 2 February 2015. Further details on the consultation process are set out in the Regulatory Impact Assessment in Part 2.

⁶ Access to Care and Wellbeing in Wales Report - SSIA - 2013

PART 2 – REGULATORY IMPACT ASSESSMENT

This Regulatory Impact Assessment should be read in conjunction with the Regulatory Impact Assessment for the Care and Support (Assessment) (Wales) Regulations 2015.

The argument set out in this paper states that there is no correlation between the point at which local authorities set their eligibility thresholds, and the cost per head of providing adult social care.

The conclusion therefore is that the eligibility criterion is not the primary determinate of the cost per head of adult social care.

The two graphs below show how the local authority average spend per head is spread across the local authorities.

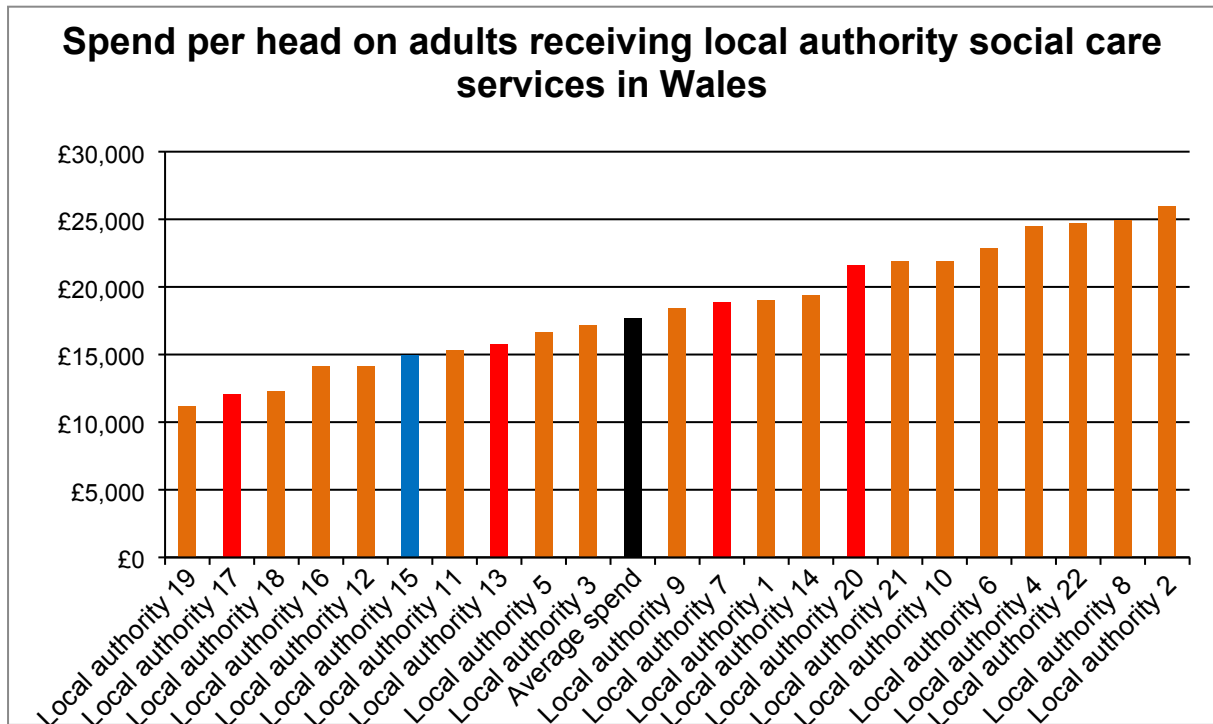
Graph 1 shows the spend per head on adults receiving local authority social care services in Wales; and

Graph 2 shows the spend per head of adult population on local authority social care in Wales.

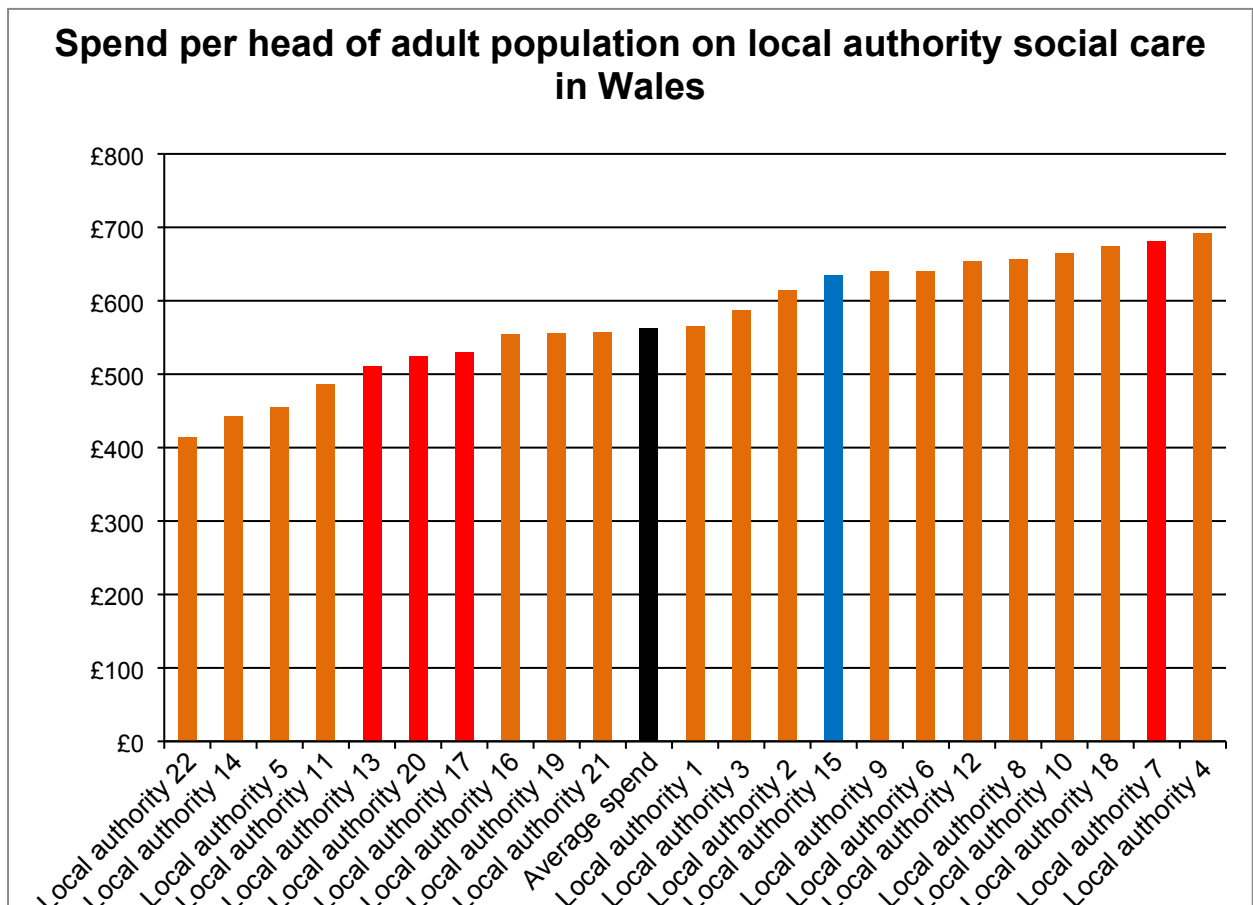
Each graph shows how the 22 local authorities in Wales set their eligibility criteria:

- The blue bar shows the authority that is currently working to a low threshold.
- The black bar shows the average spend per head across all authorities.
- The red bars show the four authorities who have set their threshold at moderate.
- The orange bars show the seventeen authorities who have set their threshold at substantial.

Graph 1. Spend per head on adults receiving local authority social care services in Wales



Graph 2: Spend per head of adult population on local authority social care in Wales



Overall both graphs show how the local authority average spend per head is spread across the local authorities.

Those four authorities (shown by the red bars) which are operating at 'moderate' on the threshold of eligibility for adult services show that costs for this group are spread across the chart. Both of the graphs show the four local authorities who have set their threshold at moderate, highlighted in red. In both cases three of these local authorities are providing social care at a lower than the estimated average spend per head, and one at a higher than the average spend per head. This further demonstrates that there is little correlation between the levels at which a local authority sets its threshold and the average cost per head of providing social care.

If the system remains the same the projected increase in the number of adults receiving social care in Wales is likely to rise by around 47,000 people between 2013 and 2030 (table 2 in annex 1).

As evidenced in table 8 of annex 1, if the average cost per head was spent on these additional adults the cost to the Welsh social care system is predicted to be an additional £600m by 2030. This is not sustainable, and this provides strong evidence of the need to change the system.

The strength of introducing the proposed new national eligibility criteria is that it removes the inconsistent application of setting local thresholds and creates national criteria for all local authorities to apply. At the same time, the proposed approach supports the delivery of early intervention and prevention, without the need for formal care and support plans in all cases, and this will enable more people to access and meet their wellbeing outcomes.

Options

This section of the Regulatory Impact Assessment presents three different options in relation to the policy objectives of the proposed Regulations. These options are consistent with those that were identified through the Eligibility Technical Group. The Technical Group was established by the former Deputy Minister for Social Services to advise the Welsh Government on producing Regulations and a Code of Practice. The Technical Group's report⁷, which outlines proposed options for the design of national eligibility criteria for Wales, can be found at document 1 of annex 1 (the evidence report).

All three of the options have been analysed in terms of how far they would achieve the Welsh Government's objectives, as set in the Sustainable social services for Wales framework⁸, along with the risks associated with each. All three options have been explored and the costs and benefits of each have been identified. However, it is recognised that there are limitations and challenges with projecting future demand for social care in Wales.

⁷ Options for the Eligibility Framework for Care & Support under Regulations stemming from the Social Services and Well-being (Wales) Act 2014 – Institute of Public Care – June 2014

⁸ Sustainable social services for Wales: a framework for action – Welsh Government - 2011

The options are as follows:

- Option 1: No national criteria specified
- Option 2: Create a national model setting the criterion at critical and substantial needs only
- Option 3: Create a consistent approach to meeting the social care needs of all of the population by setting an eligibility framework that will apply to all people.

As a basis for making projections on the future expenditure on social care under each option, the actual expenditure for 2010/11 (as reported on in the Community Care Statistics report⁹) and 2013/14 (most recent data collection) have been used to make estimates on the predicted expenditure for 2030. These estimates correspond with baseline projections by the House of Lords Committee on Public Service and Demographic Change.¹⁰ The data contained in the Regulatory Impact Assessment is based on current data and projections and provides indicative costings and scenarios.

This Regulatory Impact Assessment has explored the options and costings, and these are explored further in the evidence paper at annex 1.

Option 1: No national criteria specified

Option 1, as detailed in the report of the Eligibility Technical Group, is one where no national criteria would be specified. There would be no national criteria upon which to draw when making a judgement about whether an individual, and/or their family or carer, should receive social care and support to secure the solutions they need, this would be left to professional discretion and local criteria.

This is not a viable option as the Social Services and Well-being (Wales) Act 2014 requires Welsh Ministers to make regulations on how local authorities must determine whether needs meet an eligibility criteria. With no eligibility criteria set, Welsh Ministers would not be able to meet their duties under the Act.

Cost

The current estimated average cost of providing adult social care is estimated at £1,436m at 2013. This is predicted to rise to £2,043m by 2030, an increase of £607m over this period (table 9 in annex 1).

The main reason for this predicted rise in the cost of providing social care is the estimated rise of 44% between 2013 and 2030 in the number of those aged 85 years and over who are expected to receive a local authority service.

9 Community Care Statistics, Social Services Activity, England - 2013-14

10 <http://www.parliament.uk/business/committees/committees-a-z/lords-select/public-services-committee/report-ready-for-ageing/overview/>

Annex 1 shows that 11.1% of gross expenditure on adult social care is spent on assessment and care management (table 5). In Wales, this equates to £153m annually. However, given the projected increase in the population of those aged 85 years and over, it is likely, if the system remains the same that more funding will be required to keep pace with the demands for social care.

Annex 1 shows that the current system for determining eligibility for children is unlikely to alter significantly, and that this will not therefore impact on the costs of providing social care to children and young people.

The conclusion is that the projected rise in numbers of those needing to receive social care, particularly attributable to the rise in the population of those 85 years and over, and with the budgetary constraints in future years, is likely to cause local authorities to tighten their thresholds, and possibly screen more individuals out of the social care system. For children the level of provision may remain the same but overall the increases in demand are likely to result in resources being focused on people whose needs are substantial or critical to the detriment of those with low to moderate needs. This will mean that many people will not have their wellbeing outcomes met until they reach a substantial or critical level of need. Annex 1 (table 8) shows that providing social care at the critical and substantial level is far more expensive than at the moderate and low level.

Benefits

There are no extensive benefits under Option 1, other than if local authorities are not required to operate to a regulated framework for eligibility, they would be free to maintain their current eligibility systems and the processes associated with the assessment of needs. Staff will have experience of operating the system and there will be no immediate costs related to the re-training – although the prevalence of different systems will continue to mean added costs to local authorities with respect to re-training staff who have transferred in from elsewhere.

Risks

Option 1 was not recommended by the Eligibility Technical Group.

Without a more nationally consistent model of analysing eligibility in Wales, the future projections suggest that costs will be intensified and local authorities are likely to raise their thresholds as financial demands increase. This will mean an increase in the numbers of people who are not eligible for care until they reach a substantial /critical level. In turn this will introduce additional demands on the social care system.

Under Option 1 local authorities will continue to have the ability to adjust their local eligibility criteria, and they could operate at critical only if they chose to do so. However, there will be no requirement for any criteria to be consistently applied by all authorities and there is no evidence that the thresholds applied will effectively ration the services effectively.

The Care and Social Services Inspectorate (CSSIW)¹¹ reported this trend in a review of access and eligibility criteria in adult social care. The CSSIW reported that the current system is a potential barrier to individuals receiving services and screened individuals out of eligibility.

This approach does not fit with existing requirements about having clear eligibility criteria for access to social care and support set out in the regulations.

11 National Review of Commissioning for Social Services in Wales - CSSIW - 2014

Option 2: Create a National model setting the criterion at critical and substantial needs only

Option 2, as detailed in the report of the Eligibility Technical Group, is one where a national eligibility criterion would operate at substantial and critical only.

Option 2 is similar to the current system in operation in Wales because the majority of local authorities in Wales operate at critical and substantial. Annex 1 shows that 17 local authorities are currently working to this model, 4 local authorities are working at critical, substantial and moderate and only 1 local authority is applying their criteria at all 4 levels (annex 1, table 6).

The Social Services and Well-being (Wales) Act 2014 requires Welsh Ministers to make regulations on how local authorities must determine whether needs meet eligibility criteria. Option 2 could, therefore, be a practical option to introduce.

Costs

As 17 out of 22 local authorities are already operating this model, there are unlikely to be any additional costing associated with the adoption of this approach. However, the same projections in growth of the population, particularly those aged 85 years and over, do impact on the feasibility of this model in the longer-term (as set out in Option 1 above).

Many of the costs associated with Option 1 also apply. The current cost of providing adult social care is estimated at £1,436m at 2013. This is predicted to rise to £2,043m by 2030, an increase of £607m over this period (table 7 in annex 1).

The main reason for this predicted rise in the cost of providing social care is the estimated rise in the number of those aged 85 years and over who are expected to receive a local authority service.

Annex 1 shows that 11.1% of gross expenditure on adult social care is spent on assessment and care management (table 5). In Wales this equates to £153m annually. However, given the projected increase in the population of those aged 85 years and over, it is likely, if the system remains the same that more funding will be required to keep pace with the demands for social care.

Annex 1 shows that the current system for determining eligibility for children is unlikely to alter significantly and that this will not impact on the costs of providing social care to children and young people.

The conclusion is that the projected rise in numbers of those needing to receive social care, particularly attributable to the rise in the population of those 85 years and over, will result in higher demand for local authority social care services. Under Option 2 local authorities must provide care at both substantial and critical level. . Applying Option 2 is likely to have little impact on those that have low to moderate needs and they are likely to continue to have unmet needs until they reach these or the stated threshold level and

the Graphs in annex 1 demonstrate that there is little correlation between the level at which the local authority sets its eligibility threshold, and the average unit cost per adult receiving local authority social care services or the average cost of local authority social care per head of the adult population

Benefits

Some 17 of the 22 local authorities are already operating this model and therefore this will require little or moderate change to implement. Staff will already be familiar with the approach and will not have to learn new arrangements.

There is anecdotal evidence that the structure of the Unified Assessment Process (UAP) framework has raised the standard of social care assessments, so keeping the approach would be beneficial. However, there is no identified objective measurement and the evidence suggests there is no consistent approach to decision making. For example, a recent survey of Fair Access to Care Services (FACS) in England (Fernandez & Snell 2012)¹², found significant variability between care managers in the assignment of people's needs to the four categories: low, moderate, substantial and critical; with the inference that the current system is not fair and consistently applied.

Slasberg¹³ argues that what happens in practice derives from the over riding imperative to ensure that spend matches budget. Once the budget is set, spend is matched to it by the definition of an 'eligible' need expanding or contracting according to budget availability. The eligibility threshold is used as little more than a crude signal as to relative generosity or tightness of the allocation of resources. One of the benefits of adopting Option 2 is that this is likely to result in local authorities' spend matching their budget in any given year but this is not necessarily the same as being able to address the needs of their population.

The Graphs in Annex 1 have been produced following a survey of local authority eligibility thresholds in Wales. The graphs show that there is no correlation between the threshold set for eligibility and the average cost per adult receiving care services. There is also no correlation between that threshold and the spend per head of the local authority population. The figures cast severe doubt on the viability of a needs-based eligibility threshold as a mechanism for managing demand for local authority social care services.

Just as with Option 1, there are no extensive benefits under Option 2, apart from if system remains the same local authorities will not be required to make any amendments to their current eligibility systems nor with the processes associated with the assessment of needs. There will be no costs related to the re-training of staff already working in the social care system.

12 Fernandez & Snell: Survey of Fair Access to Care Services (FACS) Assessment criteria among local authorities in England (ESHCRU) <http://eprints.lse.ac.uk/44404/>

13 Colin Slasberg: Toward a new eligibility framework that serves the interests of both service users and councils. Journal of Research, Policy and Planning Vol. 29 No. 1 © Social Services Research Group 2011/12

Risks

Option 2 was not recommended by the Eligibility Technical Group.

The eligibility threshold is a framework enabling local authorities to prioritise the use of adult social care resources, such that social care can be provided to those with the highest need i.e. substantial and critical, often to the exclusion of those with low to moderate needs. However, if low level needs are not met in a timely manner they are likely to escalate into higher level needs which in turn are more expensive to address. If these low level social care needs are not met, then there is a likelihood that the impact on the NHS in Wales is likely to increase, particular in respect of older people.¹⁴

Although Option 2 offers a set criterion of just substantial and critical, these would still not necessarily be applied consistently across Wales. The future projections on demographic changes suggest that costs will be intensified and local authorities are likely to raise their thresholds as financial demands increase. Just with Option 1, this is likely to mean that more people will not be eligible for care until they reach a substantial /critical level. In turn this will introduce additional demands on the social care system.

Under Option 2 local authorities will not have the ability to adjust their local eligibility criteria, and they must operate at both substantial and critical levels. However, without any way of ensuring this is consistently applied across all Welsh authorities this is unlikely to see any major change.

While this approach does meet the existing commitments about having clear eligibility criteria for access to social care and support set out in the regulations, it is likely that those with low to moderate needs are likely to continue to go unmet.

Any needs-based approach can only focus on a very limited proportion of the full range of factors which might have an impact on the final judgement about the kind of support which might be right for a specific individual and/or their family or carer – they centre on inability or deficits and the risks this poses. There is no mention of the strengths and capacity which a person might bring to bear to their situation, nor the outcomes they look to achieve – this does not fit for example with the Disability Wales Toolkit “Transforming Social Services; Towards an Enabling Wales” which was developed with the Welsh Government to inform policy makers, and others, as they develop guidance to underpin the Act.

¹⁴ Integrated Assessment, planning and review Arrangements for Older People, Dec 2013.

Option 3: Create a consistent approach to meeting the social care needs of all of the population by setting an eligibility framework that will apply to all people.

Option 3, as detailed in the report of the Eligibility Technical Group, is one where new national eligibility criteria would operate.

Of the three proposed options, Option 3 represents the greatest change and therefore the greatest risk. However, this is considered to be the only sustainable option that will deliver the commitments as set out in the White Paper: *'Sustainable Social Services for Wales: A Framework for Action'*¹⁵

Option 3 is very different from the current system in operation in Wales because it provides an opportunity to create a consistent approach to meeting the social care needs of all people and supports the concept of early intervention and prevention as being beneficial.

Under this option the traditional threshold for access to managed care and support will be replaced by a more responsive model. The process for establishing an individual's eligibility will be simplified, and will be based on the needs of the individual. The changes will bring clarity, transparency and consistency for those who deliver care, those who receive it, their carers and families.

In the report to the Welsh Local Government Association and NHS Confederation on the transitional and longer-term implications of the Social Services and Well-being (Wales) Bill 2013 it was observed that: "There has long been a call for eligibility to be aligned with the service user's needs, rather than as a tool to ration resources, and critics would argue that this has been how eligibility criteria have often been used in practice".

The proposed new system will ensure that people are able to receive help to meet their care and support needs whether they are deemed eligible or not – eligibility will mean that the individual requires a care and support plan to access and manage ways to meet their care and support needs; but those that are not eligible will still receive help and will be signposted to preventative well-being services in their community and encouraged to build on their own strengths, and those their network, to meet their needs. This will mean that more people will be supported earlier through preventative measures irrespective of whether or not the eligibility criteria has been met, and applied nationally. It will provide a consistent response across Wales. This option will create eligibility criteria based on a comprehensive set of five inter-related elements to ensure that local authorities consider a person's circumstances in the round.

The report of the Independent Commission on Social Services in Wales¹⁶ highlighted children in need and carers as particular areas where more timely, flexible responses are needed.

The Eligibility Technical Group recommended the eligibility framework that these regulations introduce as one that recognises the differences in the basis for care and support required by people at different stages of their life, and is sensitive to the

¹⁵ Sustainable Social Services for Wales: A Framework for Action – Welsh Government -2011

¹⁶ The report of the independent commission on social services in Wales – November 2010

differing needs, context and outcomes for children, adults and carers. Carers groups have told us that carers want to be recognised for their contribution, and to be able to access timely advice and support to help them care and to support their own well-being.

The second report of Professor Eileen Munro's¹⁷ review of Child protection, considered the child's journey through the child protection system – from needing to receiving help – to show how the system could be improved. It concluded that instead of “doing things right” (i.e. following procedures) the system needed to be focused on doing the right thing (i.e. checking whether children and young people are being helped). Professor Munro argued that: “Services have become so standardised that they do not provide the required range of responses to the variety of need that is presented. This review recommends a radical reduction in the amount of central prescription to help professionals move from a compliance culture to a learning culture, where they have more freedom to use their expertise in assessing need and providing the right help.”¹⁸

The rate of ‘Looked After’ Children per 10,000 under 18 years has risen steadily in Wales in the last ten years and is around 50% higher than the rate in England. Looked After status is not the best pathway for children to achieve the best developmental outcomes and a better assessment process linked to a different understanding of eligibility has the potential to reduce these numbers

The Munro review recommended that Government place a duty on local authorities and their statutory partners to secure the sufficient provision of local early help services for children, young people and families. This should lead to the identification of the early help that is needed by a particular child and their family, and to the provision of an offer of help where their needs do not match the criteria for receiving children's social care services.

The approach to eligibility set out in Option 3 is consistent with that analysis in that determining eligibility is not about giving a right to any one service, it is about guaranteeing access to care and support where without it well-being outcomes could not be met.

The Social Services and Well-being (Wales) Act 2014 requires Welsh Ministers to make regulations on how local authorities must determine whether needs meet an eligibility criteria. Option 3 could be a practical option to introduce.

Costs

Cost savings will be inherited from the assessment process. These are laid out in the Regulatory Impact Assessment for the Care and Support (Assessment) (Wales) Regulations 2015.

Welsh Government does not foresee any significant cost implications in removing the current eligibility threshold. The proposed approach to determining eligibility will

¹⁷ The Munro Review of Child Protection Interim Report: The Child's Journey Professor Eileen Munro –Department of Education - 2011

¹⁸ The Munro Review of Child Protection: Final Report A child-centred system Professor Eileen Munro – Department of Education - 2011

encourage local authorities to assist individuals to access local services themselves or support people to develop the skills and confidence they need.

Annex 1 demonstrates the cost savings that could be reached if local authorities reduced the expenditure on assessment and care management to 8% to match some local authorities in England (table 5). If these efficiencies can be met, they could represent savings amounting to £43m (based on 2013/14 figures) and these costs could be reallocated to be used for service delivery.

Annex 1 also shows there is little correlation between the level at which the local authority sets its threshold and the average cost per head of providing social care (both with regard to spend per head of the adult population and the spend per head of all adults receiving local authority social care services in Wales). Although there are four authorities in Wales that are operating at moderate level, their average unit cost per adult are very different.

There is one authority in Wales which is operating closely to the way on which the new proposed model would work (blue bar, Graphs 1 & 2). These graphs show that the average cost per head in this authority is below many of those currently operating at critical and substantial only. This is also borne out in Annex 1 (table 6) which shows that the average costs of meeting low needs could be significantly lower (almost a third) than the cost of meeting critical needs.

The conclusion is that if the eligibility thresholds are removed, and replaced with a more flexible interpretation of individuals' needs, this does not mean that costs will rise.

Benefits

This option was recommended by the Eligibility Technical Group as the sustainable option for the delivery of social care and support over the long term.

As noted above, there is little correlation between the level at which a local authority sets its eligibility threshold, and the average cost per head of providing social care. The model of eligibility proposed through Option 3 will establish a national framework for eligibility for social services that enables more proportionate responses. This will help an individual to meet their personal well-being outcomes at a much earlier stage, and will deliver more effective and citizen-directed care and support through a system that is less complex and more cost efficient.

The projections on demographic changes state that by 2030 the numbers of those aged 85 years and over, receiving social care will rise significantly. Annex 1 (table 2) shows the population projections based on age groups in Wales, 48% of those aged 85 years and over are estimated to receive local authority social care services; the highest proportion of any age group. So the overall rise in the number of those aged 85 years and over by 2030 is likely to place a significant demand on the social care system in Wales. It is estimated that, compared to 2015, by 2030 the social care system is going to have to address the needs of an additional 32,000 people in that age group (table 2). Option 3 will enable local authorities to meet this increased level of demand with a more flexible and responsive approach.

In September 2010 the Care and Social Services Inspectorate Wales (CSSIW) undertook a review of access and eligibility in adult social care¹⁹. The report concluded that the current system has become focused on screening people out of eligibility and is acting as a barrier that is stopping individuals from accessing services. As result, there is a growing section of the population with unmet need.

The strength of introducing the proposed new national eligibility criteria is that it removes the inconsistent application of setting local thresholds and creates national criteria for all local authorities to apply. At the same time, the proposed approach supports the delivery of early intervention and prevention, without the need for formal care and support plans in all cases, to enable more people to access and meet their wellbeing outcomes.

If low level needs are not met in a timely manner they are likely to escalate into higher level needs which in turn are more expensive to address. If, these low level social care needs are met before they escalate the cost of meeting these needs is substantially lower than meeting higher level needs (annex 1, table 6). In addition, the intention is that this approach will reduce the impact on the NHS in Wales, in particular in respect of older people, keeping individuals living independently in the community.²⁰

This framework for eligibility supports and encourages the cultural change to a different way of working that is introduced through the Act. It prioritises early intervention and prevention, and supports a shift in from a 'service-led' to 'citizen-directed' approach, which implies a shift away from the 'cliff-face' response to eligibility that FACS promotes.

The proposed system will provide clarity and consistency for a holistic approach, bringing together assessment and eligibility.

The proposed model has been subjected to a substantial design process through a programme of stakeholder engagement which will need to be followed by a comprehensive training and awareness raising exercise.

Risks

Of the three, Option 3 represents the greatest change and therefore the greatest risk. However, this is considered to be the only sustainable option that will deliver the commitments as set out in the 'Sustainable Social Services for Wales: A Framework for Action'²¹

This was the preferred option of the Eligibility Technical Group, which advised Welsh Government on producing Regulations and a Code of Practice on the determination of eligibility for care and support services under the Act.

19 National Review of Access and Eligibility Criteria in Adult Social Care – Care and Social Services Inspectorate for Wales - September 2010.

20 Integrated Assessment, planning and review Arrangements for Older People, Dec 2013.

21 Sustainable Social Services for Wales: A Framework for Action – Welsh Government -2011

The evidence, as set out in annex 1, is based on data that has not been fully tested. There is no precedent for the proposed new model. The draft regulations and code of practice have not been delivered before in the UK. However the likely demand on the social care system as a result of the population projections, against a backdrop of limited financial resources means that the current system is unsustainable. Therefore a new model is required.

Unless the workforce and population is adequately supported in making a smooth transition from the existing to the new system, Option 3 is not likely to meet its full potential. To militate against the risk Welsh Government has commissioned the Care Council for Wales to lead on the development and implementation of a national learning and development strategy.

This strategy is critical to the implementation of the Act and will need sustained, deliberate and high-profile leadership, which can reach out across a wide range of organisations and partners beyond the boundaries of the traditional social care sector.

The Care Council has developed this work with key stakeholders to ensure they have a strategy which covers all of those involved in the provision of social care, together with their key partners, and that it is delivered jointly and in collaboration with those partners.

The strategy includes a training deployment plan and a one-stop-shop resource hub, playing a key supporting role for the sector in ensuring its own readiness for the changes the Act and its regulations will bring into force. The Care Council for Wales will also update, publish on line and promote basic awareness raising material as a common tool for use across partners and support, encourage and monitor delivery. The resources and material developed by the Care Council will be made available free of charge to all organisations.

This work has been supported by £1m in 2015/16 from the Social Care Workforce Development Programme (SCWDP). A further £7.1m from the programme, together with the local authority match funding, making a total of some £11m will support the development and implementation of cross-sector regional training plans, which align with both the national strategy and regional implementation plans.

There will need to be a change in the structures and processes administered by local authorities to ensure that Option 3 is implemented effectively to support this change. A Delivering Transformation Grant was made available to the six regional partnerships in 2013/14 and 2014/15. Funding has doubled to £3m in 2015/16. This is in addition to the £20m already announced this year to carry on the work of projects funded through the Intermediate Care Fund and the £10m increase in the Revenue Support Grant for Social Services purposes. To ensure that the proposed new system continues to be embedded post April 2016 a further £3m in grant funding will be made available in 2016/17, subject to budgetary decisions.

Consultation

Welsh Government officials undertook a 12 week consultation on the regulations between 6 November 2014 and 2 February 2015. The consultation on parts 3 and 4 covered assessing the Needs of individuals, eligibility, direct payments and care planning.

There were 103 responses received from a variety of stakeholders, including the Welsh Local Government Association (WLGA), The Childrens Commissioner, The Older People's Commissioner, Social Services Improvement Agency (SSIA), Local Government representatives and Third Sector Organisations

There was general support for the proposed system change to an outcomes-based approach with a simplified assessment and care planning process and greater integration of services.

The responses flagged some potential changes to regulations and also outlined some areas of broader concern. These have been addressed through re-drafting of the codes of practice and amendments to regulations.

The priority from many responders is to reallocate resources to staff training and workforce development. The Care Council for Wales, as the lead body for workforce development, has been commissioned to lead on the development and implementation of a national learning and development strategy. The strategy is critical to the implementation of the Act and will need sustained, deliberate and high-profile leadership, which can reach out across a wide range of organisations and partners beyond the boundaries of the traditional social care sector.

Further detail on the consultation process can be found in the document at annex 2.

A detailed consultation response report has been published on the Welsh Government's website.

Competition Assessment

Competition Filter Test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulations do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisations?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

The filter test shows that it is not likely that the regulation will have any detrimental effect on competition; therefore a detailed assessment has not been conducted.

Post implementation review

The Social Services and Well-being (Wales) Act 2014 contains provisions to allow for Ministers to monitor functions of the Act carried out by local authorities and other bodies. Ministers may require these bodies to report on their duties in implementing these regulations.

As set out under option 3 there is a considerable amount of work required both in the run up to and post implementation should the regulation be agreed.

The Welsh Government intends to commission an evaluation to enable the impact of the new national model of assessment and eligibility to be considered. Additionally, officials will continue to monitor the impact of the regulation on areas such as the Welsh language, the United Nations Convention on the Rights of the Child (UNCRC), The United Nations Principles for Older Persons and Equality.

Annex 1
Evidence Paper

Regulatory Impact Assessment The Care and Support (Eligibility) (Wales) Regulations 2015 Annex 1. Evidence Paper

The Regulatory Impact Assessment presents three different options in relation to the policy objectives of the proposed Regulations. These options are consistent with those that were identified through the Eligibility Technical Group, which advised the Welsh Government on producing Regulations and a Code of Practice on the determination of eligibility for care and support services under the Social Services and Well-being (Wales) Act 2014. The Technical Group identified three options for the way in which national criteria might be formulated to inform a judgement about eligibility. The full report, which outlines the options for the design of national eligibility criteria for Wales, can be found at document 1.

All three of the options are analysed in terms of how far they would achieve the Welsh Government's objectives, along with the risks associated with each. The options have been explored to identify the costs and benefits. However, it is recognised that there are limitations and challenges to projecting future demand for social care in Wales.

- Option 1: No national criteria specified.
- Option 2: Create a national model setting the criterion at critical and substantial needs only.
- Option 3: Create a consistent approach to meeting the social care needs of all of the population by setting an eligibility framework that will apply to all people.

Option 1: No national criteria specified

As set out in Option 1 in the report of the Eligibility Technical Group, no national criteria would be specified upon which to draw when making a judgement about whether an individual, and/or their family or carer, should receive social care and support to secure the solutions they need; this would be left to professional discretion and local criteria. The Social Services and Well-being (Wales) Act 2014 requires Welsh Ministers to make regulations on how local authorities must determine whether needs meet the eligibility criteria. This is not, therefore considered a realistic option with respect to the intent of the legislation.

Option 2: Create a National model setting the criterion at critical and substantial needs only

As set out under Option 2 of the Eligibility Technical Group Report, this option will introduce an eligibility model based on the level of need. With this option the traditional threshold for access to managed care and support will be replaced by a National Eligibility Framework set at a level equivalent to bands designated as 'Critical' and 'Substantial' in the statutory guidance: *'Creating a Unified and Fair System for Assessing and Managing Care'*.²²

²² Creating a unified and fair system for assessing and managing care (Welsh Assembly Government 2002)

Option 3: Create a consistent approach to meeting the social care needs of all of the population by setting an eligibility framework that will apply to all people.

As set out under Option 3 of the Eligibility Technical Group Report this option will create eligibility criteria based on a comprehensive set of 5 inter-related factors to ensure that local authorities consider a person's circumstances in the round. Under this option the traditional threshold for access to managed care and support will be replaced by a more responsive model. The process for establishing an individual's eligibility will be simplified, and will be based on the needs of the individual. The changes will bring clarity, transparency and consistency for those who deliver care, those who receive it, and their carers and families.

Baseline Evidence and Projections

Although demands on social services are increasing, there is no commensurate increase in the routine funding to support service delivery. The current financial settlement for 2015/16 has decreased by 3.4% compared to 2014/15, as a consequence of the large scale budget reductions.

A 2011 report commissioned by the Social Services Improvement Agency (SSIA)²³ outlined the challenges in projecting future demand for social care in Wales. The report recognised the complexities within the process and recognised that the projections may be affected, in part, by the way in which local authorities shape their services. The report also suggested that building a care and support system that focuses on keeping older people out of residential care, and using re-ablement models of care, may assist not only in achieving better outcomes for individuals, but also in reducing demand for services.

A report by the Institute for Fiscal Studies²⁴ summarised the challenges in predicting the allocation of funding for social care. The report outlined that there is substantial uncertainty about how much the Welsh Government will have to spend over the next 12 years. The most optimistic scenario is that the Welsh block grant will only be around 8% higher in real terms in 2025/26 than in 2010/11: this represents an annual average growth rate of just 0.5%. Given population growth, the block grant available per person would be just 1% higher per person than 15 years earlier. With regard to social care, the projections are subject to wide margins of error, reflecting uncertainty about future demands for health and social care, and the future costs of providing these services. Whilst the past is not necessarily a guide to the future, recent experience suggests that baseline projections may have overstated demand.

It is recognised, therefore, that making assumptions for the future delivery of social care is complex on multiple levels. However, as a basis for making projections about the future expenditure of social care under each option, the actual expenditure for 2010/11 (as reported on in the Community Care Statistics report²⁵) and 2013/14 (most recent data collection) have been used to make estimates on the predicted expenditure for

23 Better Support at Lower Cost: Improving efficiency and effectiveness in services for older people in Wales - SSIA – April 2011

24 Scenarios for the Welsh Government , Budget to 2025-26, Institute for Fiscal Studies

25 Community Care Statistics, Social Services Activity, England - 2013-14

2030. These projections correspond with baseline projections by House of Lords Committee on Public Service and Demographic Change²⁶.

To date, England and Wales have used the same legislation and virtually the same model for assessments in social care. Based on these similarities, and for the purposes of illustrating cost savings and expenses, assumptions have been based on Welsh figures wherever possible. Where these figures are not available, the most comparable English data sets have been used.

Calculations have been based on data provided by StatsWales²⁷, Health and Social Care Information Centre (HSCIC)²⁸, and on direct comparisons to calculations made for the Care Act 2014 in England, much of which have been based on HSCIC data. Information based on the existing Fairer Access to Care (FACS) model has also been used.

The following sections convey the population projections, which have been used to make assumptions on expenditure for both Options 1, 2 and 3.

Population Projections for Wales

Projections²⁹ show that by 2030 there will be twice as many people aged over 65 years living in England as there were in 2010. If existing rates of prevalence for various health conditions and care needs are applied to this changing demographic structure, then this implies that there will be significant increases in need for social care services in future. However, improvements in health and care services, including better prevention, could play a role in counteracting some of these pressures³⁰.

The census collection for Wales was reported upon in 2011 and the population projections for 2013 and 2030 have been used to make assumptions about the population.

26 <http://www.parliament.uk/business/committees/committees-a-z/lords-select/public-services-committee/report-ready-for-ageing/overview/>

27 Welsh Government's online repository for detailed statistical data for Wales. The data is updated by the Knowledge and Analytic Services (KAS), Welsh Government.

28 Health and Social Care Information Centre (HSCIC - The national provider of information, data and IT systems for health and social care in England

29 Lord Filkin, chairman of the Lords Committee on Public Service and Demographic Change

30 Future of Paying for Social Care in Wales – LE Wales – April 2014

Table 1: Population projections for Wales (Adults)

	2011 ³¹	2012	2013	2014	2015	2030 (Estimated)
Number of adults aged 18-64 living in Wales	1,867,505	1,857,283	1,853,049	1,851,715	1,852,593	1,814,014
Number of adults aged 65 – 74 living in Wales	300,550	318,140	329,161	337,726	345,293	380,617
Number of adults aged 75 – 84 living in Wales	187,434	190,806	193,832	197,447	200,549	286,975
Number of adults aged over 85 living in Wales	74,560	76,932	77,332	78,952	80,972	141,037
Total	2,430,049	2,443,161	2,453,374	2,465,840	2,479,407	2,622,643

The figures in table 1 demonstrate that there is expected to be a 55% rise in those aged over 65 years living in Wales from 2011 to 2030. These estimates are consistent with the projections for England, where there is a predicted 50% increase of those aged over the age of 65 years living in England.

The predictions also show that there is likely to be a slight decline (-3%) in the number of adults aged 18 - 65 years living in Wales between 2011 and 2030.

On average, about 1.5% of adults aged 18-64 years, and about 14% of over 65s in Wales receive local authority social care services. For the group of people aged 65 years and over there is significant variation across age bands in the proportion of individuals receiving local authority social care services: the ratio share of the population aged 65-74, 75-84 and 85+ years is around 5%, 16% and 48% respectively. These ratios have stayed broadly constant over the last six or seven years.³²

Table 2 has used these average projections to work out the percentage of the population who are likely to receive a local authority social care service between 2011 and 2015, and then used these figures to estimate the proportion of population receiving local authority social care services in 2030

³¹ StatsWales: 2011 Census: Usual resident population by single year of age and sex, Wales

³² Future of Paying for Social Care in Wales – LE Wales – April 2014

Table 2: Proportion of the adult population receiving local authority social care services by age

	2011 ³³	2012	2013	2014	2015	2030 (Estimated)
Number of adults aged 18-64 living in Wales (1.5% of population)	28,013	27,859	27,796	27,776	27,789	27,210
Number of adults aged 65 – 74 living in Wales (0.5% of population)	15,028	15,907	16,458	16,886	17,265	19,031
Number of adults aged 75 – 84 living in Wales (16% of population)	29,989	30,529	31,013	31,592	32,088	45,916
Number of adults aged over 85 living in Wales (48% of population)	35,789	36,927	37,119	37,897	38,867	67,698
Actual total number of adults receiving local authority social care services:	109,334	111,810	110,895	110,415	Not known	Not known
Total predicted number of adults receiving local authority social care services	108,818	111,223	112,386	114,151	116,008	159,855

If the current model of social care remains, overall there is likely to be a 45% increase in those receiving local authority social care services between 2011 and 2030 (as noted in table 2).

The table reflects the actual number of adults receiving local authority social care services in the years between 2011 and 2014³⁴. When the percentages of those who are predicted to use local authority social care services in the future, are applied to the population projections, they are broadly consistent with the number of those who actually received services. Therefore, the estimates of the population which is likely to receive local authority social care services have been used to illustrate the variations of expenditure when the options are applied in practice. These variations have been used throughout the Regulatory Impact Assessment to provide estimates of the cost effectiveness of the proposed options.

³³ StatsWales: 2011 Census: Usual resident population by single year of age and sex, Wales

³⁴ StatsWales: CARE0005: Adults receiving services – 2013/14

Table 3 - Population projections for Wales (Children)

	2011 ³⁵	2012	2013	2014 ³⁶	2015	2030 (Estimated)
Number of children aged 0-18 living in Wales (Mid-Year)	632,433	630,906	630,211	629,235	627,758	652,571

The figures in table 3 demonstrate that there is expected to be a 3% rise in those aged under 18 years living in Wales between 2011 to 2030.

Table 4: The rate of looked after children per 10,000 under 18 years in England and Wales

	Wales	England
<u>2003</u>	64	Not known
<u>2004</u>	66	Not known
<u>2005</u>	67	Not known
<u>2006</u>	70	Not known
<u>2007</u>	72	Not known
<u>2008</u>	72	Not known
<u>2009</u>	73	54
<u>2010</u>	81	57
<u>2011</u>	85	58
<u>2012</u>	90	59
<u>2013</u>	91	60
2014 (As of 31 March 2014)	91	60

Table 4 demonstrates that the rate of 'Looked After' children per 10,000 under 18 years has risen steadily in Wales in the last 10 years, and is around 50% higher than the rate in England³⁷.

35 StatsWales: National level population estimates by year, age and UK country – Mid Year
Mid-Year population estimates (1991 onwards), by Welsh local authorities, English regions and UK countries, for single year of age and gender (2011, 2102 and 2013 data)

36 StatsWales: Population projections - 2012-based national population projections for Wales, 2012-2037

37 British Association for Adoption and Fostering (BAFF) - <http://www.baaf.org.uk/res/stats>

Assessment and Care Management Expenditure

Based on evidence from the Audit Commission (2012)³⁸ report: 'Value for money in assessments and reviews', spending on assessment and care management in English local authorities represented an average of 12% of gross spending on adult social services. It further stated that this varied across local authorities, with local authorities spending between 8% and 17% of their gross expenditure on adult social care on assessment and care management.

Using data provided by StatsWales the following table 5 explores the different levels that local authorities could work towards in Wales. On average Welsh local authorities currently spend 11.1% of their gross adult social care budget on assessment and care management, at £153,000,000 per authority annually.

Table 5: Gross Social Services expenditure³⁹ in Wales 2013 /14:.. £1,380,000,000

Total cost of assessment and care management ⁴⁰ at:	
8% of expenditure	£110,000,000
10% of expenditure	£138,000,000
11.1% of expenditure (current position in Wales)	£153,000,000
12% of expenditure	£166,000,000
17 % of expenditure	£235,000,000

Eligibility Criteria

Currently local authorities have the discretion to set their eligibility threshold at differing levels within a set framework. This results in a variation across Wales with regard to where local authorities place their thresholds. However, it is important to note that a report by the Care and Social Services Inspectorate Wales⁴¹ found that it was difficult to define what a particular threshold means in practice, and so there is uncertainty if the criteria are applied consistently across client groups.

The table below shows how thresholds are set in Wales⁴²:

Table 6: Local authority thresholds

Threshold for access to care and support	Number of local authorities setting their threshold at that criterion
Critical, Substantial, Moderate and Low	1
Critical, Substantial and Moderate	4
Critical and Substantial	17

38 Value for money in assessments and reviews - Audit Commission –August 2012

39 StatsWales – Revenue outturn expenditure: Social Services

40 StatsWales - LGFS0015: Social services revenue expenditure by client group (£ thousand)

41 CSSIW – National review of access & eligibility in adult social care – Overview Report September 2010

42 Future paying for Social Care in Wales – LE Wales – April 2014

One local authority in Wales places their threshold at a point that encompasses Critical, Substantial, Moderate and Low; which is an approach to eligibility for social care that has similarities to the model that the proposed regulations, informed by the recommendations of the Eligibility Technical Group (Option 3), would introduce. The four local authorities that set their threshold at a level that encompasses Critical, Substantial and Moderate have also made progress to implement the principles set out within the proposed regulations.

Table 7 highlights the differing criteria that local authorities have set as their thresholds. The table shows two methods of illustrating the estimated cost of applying eligibility thresholds. The first approach sets a cost of eligibility for the whole adult population by sharing the total social adult social services expenditure⁴³ equally amongst the population of Wales⁴⁴. The second method uses a similar approach but divides the total social adult social services expenditure by all adults who receive local authority social services⁴⁵.

43 StatsWales: Gross Social Services Expenditure 2013/14

44 StatsWales: Census 2011 - Usual resident population by broad age group and local authority

45 StatsWales: Number of adults receiving a service in 2013/14

Table 7: The distribution of Eligibility threshold in Wales

	Critical	Substantial	Moderate	Low	Average cost per head of total population	Average cost per head of people receiving a service
Local Authority 1	✓	✓			£566	£19,035
Local Authority 2	✓	✓			£614	£25,992
Local Authority 3	✓	✓			£587	£17,148
Local Authority 4	✓	✓			£691	£24,507
Local Authority 5	✓	✓			£455	£16,643
Local Authority 6	✓	✓			£641	£22,854
Local Authority 7	✓	✓	✓		£680	£18,895
Local Authority 8	✓	✓			£657	£24,966
Local Authority 9	✓	✓			£640	£18,420
Local Authority 10	✓	✓			£664	£21,917
Local Authority 11	✓	✓			£487	£15,350
Local Authority 12	✓	✓			£654	£14,138
Local Authority 13	✓	✓	✓		£511	£15,802
Local Authority 14	✓	✓			£443	£19,384
Local Authority 15	✓	✓	✓	✓	£634	£14,988
Local Authority 16	✓	✓			£554	£14,116
Local Authority 17	✓	✓	✓		£530	£12,089
Local Authority 18	✓	✓			£674	£12,291
Local Authority 19	✓	✓			£555	£11,177
Local Authority 20	✓	✓	✓		£525	£21,620
Local Authority 21	✓	✓			£557	£21,886
Local Authority 22	✓	✓			£415	£24,687
Average spend per head					£563	£17,674

The local authority that sets its threshold at low is highlighted in blue and those who set their threshold at moderate are highlighted in red. Through analysis of this data, it is evidenced that there is no consistency with regard to spend per head between local authorities with the same thresholds even when population and budgets are taken into account.

In summary, table 7 demonstrates that the eligibility criterion is not the primary determinant of cost per head of adult social care. The figures do not appear to convey a correlation between the point at which local authorities set their threshold and the cost per head of providing adult social care. This is true whether the eligibility criterion is matched with the cost per head of the adult population or only the cost per head of

those receiving social care services. This is also consistent with the findings of the recent Social Services Improvement Agency (SSIA) report 'Better Support at Lower Cost'⁴⁶.

However, this data does not provide any information about the level of need of the individuals for whom eligibility has been determined and a service is being provided. The data only shows that their needs are above the threshold set by the local authority in question. It has not been possible to identify, at scale, the spread of needs (critical, substantial, moderate or low) that occur within the set of those people who have met the authority's threshold for eligibility. Therefore English data, provided by the Personal Social Services Research Unit has been used to illustrate the estimated cost of providing services at each threshold. PSSRU recently produced a report⁴⁷ to investigate the operation of the current Fair Access to Care Services (FACS) system; in particular in relation to how care managers allocate different people to the different needs groups defined by FACS. The report also identifies whether the care managers agree in the decisions that they make about these ratings, and in deciding whether an individual is eligible for services.

Table 8 provides an approximation of expenditure per individual on the basis of reported spend per category of need and service user group, as reported by local authorities in England, and referenced in the Survey of FACS assessment criteria. When averaged out the expenditure⁴⁸ per threshold is noted in the table below.

Table 8: The distribution of Eligibility threshold in England

	Older People	Physical disabilities	Learning disabilities	Mental health	Other	Average
Critical	£15,483	£20,163	£47,860	£19,829	£12,669	£23,200.80
Substantial	£9,052	£9,738	£34,640	£9,839	£8,883	£14,430.40
Moderate	£6,298	£7,699	£23,518	£7,619	£1,790	£9,384.80
Low	£6,483	£3,722	£13,564	£9,818	£4,333	£7,584

As discussed, the data collected for Wales has not been able to provide the average spend per threshold or service provision group. However, the identified average estimated cost per head for social services in Wales is £12,781 (as identified in table 7). Using table 8 this can be seen as a level of spending per head that sits between the costs of meeting those needs identified as either 'moderate' or 'substantial'.

This will reinforce the view that the majority of local authorities in Wales are indeed currently meeting needs at the substantial threshold and above. However, it should be noted that the level of the threshold is not the only factor in the wider context of how the eligibility model operates.

46 Social Services Improvement Agency - Better Support at Lower Cost - Improving efficiency and effectiveness in services for older people in Wales – 2011

47 Survey of Fair Access to Care Services (FACS) assessment criteria amount local authorities

48 Figures are based on the same sample when comparing across FACS groups

Option 1 –No national criteria specified

Under this option Welsh Government considers that the costs of meeting the demand for social services will continue to rise and will become financially unsustainable. The cost of doing nothing is likely to extend and intensify the financial pressures that challenge the current model of social care.

In the last decade the gross expenditure of adult social services has risen by 53%. There is no additional funding available to meet this predicted rise in expenditure should this trend continue.

The current model for eligibility places its focus on intervention at the point of crisis rather than helping individuals to postpone or prevent the onset of illness or loss of independence. Table 6 shows that 17 (77%) local authorities in Wales currently set their eligibility criteria threshold at 'substantial and critical'. Therefore a high percentage of local authorities in Wales only provide support to individuals who are assessed as having high level needs. Only one local authority in Wales currently provides support to individuals with low level needs, and thereby provides individuals with early support in the planning of their care needs. The Social Services Improvement Agency (SSIA)⁴⁹ analysis supports an emphasis early intervention and prevention, acknowledging that it improves outcomes for individuals.

In the short term this option would avoid additional costs associated with implementing a new system i.e. training costs. However, in the longer term costs may be incurred by the local authority as they are likely to have to raise their thresholds in order to meet increases in demand.

As illustrated in tables 1 and 2 there is predicted to be a significant rise in the population of those who will receive local authority social care services by 2030. The population is rising, particularly in relation to the age group of over 85s. It is crucial that local authority social care services become more efficient to ensure that all those who require services are provided with good quality services. The cost of providing these services to the growing population is too great. It is evident that a transformation in the delivery of health and social care services is required to meet the needs of the ageing population and to respond to the changing burden of rising public expectations.

⁴⁹ Social Services Improvement Agency – Better Support at Lower Cost - Improving efficiency and effectiveness in services - for older people in Wales - 2011

Table 9: The estimated cost implications of providing local authority adult social care services

	Total predicted number of adults receiving local authority social care services	Total cost – using an average estimated cost of £12,781 (as detailed in table 2).
2011	108,818	£1,390,802,858
2012	111,223	£1,421,541,163
2013	112,386	£1,436,405,466
2014	114,151	£1,458,963,931
2015	116,008	£1,482,698,248
2030(estimated)	159,855	£2,043,106,755

Currently the estimated average cost of providing services to the adult population who require a service is estimated at £1,436 as at 2013. By 2030 this cost is likely to rise to £2,043m.

As illustrated in the calculations above the estimated cost of the total amount of assessments for all adults is likely to increase by £607m between 2013 and 2030.

Table 5 shows that on average 11.1% of gross expenditure on adult social services expenditure is spent on assessment and care management. However, given the predicted large increase in the population of those over the age of 85 years, there is likely to be a larger proportion of the overall social services budget needing to be spent on assessment and care management in the future. On this basis, if the current approach social care remains, local authorities may need to use larger proportions of their budget in order to provide services to all those that require them, with consequent budgetary pressures elsewhere in the system..

There is a funding gap for local authorities in England. The funding gap for councils in England between March 2014 and the end of 2015/16 will be £5.8 billion, it is noted that The gap is the disparity between the total money local authorities will have next year (£46.3 billion) and the amount of money they would need to maintain 2013/14 levels of service. The Local Government Association estimated this spending gap in the budgeted for adult social care of 29% by 2019-20⁵⁰.

There is an absence of statistics relating to any funding gap for councils in Wales, however, applying the 29% spending gap to Welsh figures would represent a shortfall of £44m.

Population Projections

As evidenced in table 2, the population is rising, particularly in relation to the age group of over 65s. It is crucial that local authority social care services become more efficient to ensure that all those who require services are provided with good quality services.

⁵⁰ Adult social care funding: 2014 state of the nation report – Local Government Association - October 2014

The cost of providing these services to the growing population is too great. It is evident that a transformation in the delivery of health and social care services is required to meet the needs of the ageing population and to respond to the changing burden of rising public expectations.

Due to the complexities of predicting the future budget for social care, it has been assumed that the average cost per head of an individual receiving a service will remain at £12,975. If this figure is applied to all individuals expected to receive a service in the given year, a total cost can be estimated as set out in table 9.

Table 10: The estimated cost implications of providing local authority social care services

	Total predicted number of adults receiving local authority social care services	Total cost – using an average estimated cost of £12,781 (as detailed in table 2).
2011	108,818	£1,390,802,858
2012	111,223	£1,421,541,163
2013	112,386	£1,436,405,466
2014	114,151	£1,458,963,931
2015	116,008	£1,482,698,248
2030(estimated)	159,855	£2,043,106,755

Currently the estimated average cost of providing services to the adult population who require a service is estimated at £1,436m. By 2030 this cost is likely to rise to £2,043m.

Based on these calculations, it can be estimated that the total cost of providing local authority social care services is likely to increase by £607m.

Additionally, as evidenced in the report by the Institute for Fiscal Studies⁵¹ it is difficult to predict an increase in this expenditure. If it is assumed that there will be no significant changes to the adult social services budget in Wales, there would need to be a decrease in the estimated spend per head of adults receiving local authority social care services – if no other changes in service design or provision are effected.

If the gross adult social services expenditure was to remain at £1,380,515,630, with the service model unchanged, the average spend per head would need to be reduced to £8,636.05 (£1,380,515,630/ 159,855) in 2030, for the budget available to meet the predicted number of adults needing to receive local authority social care services.

The unintended consequence of the reduction in the average cost per head of providing local authority social care services is likely to cause local authorities to tighten their thresholds, and possibly screen more individuals out of the social care system. This will result in resources being focused on people whose needs are substantial or even critical only.

⁵¹ Scenarios for the Welsh Government , Budget to 2025-26, Institute for Fiscal Studies

The lack of support being offered to those with low or moderate level needs will only speed up the rate at which those needs move from low/moderate to critical/substantial, accelerating the pressures on the system and increasing the level of demand for services to meet substantial and critical needs to the extent that they too become unsustainable.

The use of a needs-based 'cliff-face' approach to eligibility is a crude, short term attempt to limit demand but it is not an effective way to manage demand over time – if anything it is an approach that is likely to feed the demand for care and support in the long term.

As evidenced in table 5, 17 out of the 22 local authorities in Wales currently set their threshold at substantial and critical. This suggests that investment in some local authorities is not focused on providing for individuals with low level needs. This lack of investment in prevention for those with low level needs could contribute to poorer health and wellbeing outcomes for individuals at higher unit costs. As illustrated in table 8, the costs of providing services for those with critical needs are far higher than providing services for those with low level needs.

Carers

Table 2, showing the proportion of the population receiving local authority social care services by age, is understood as not including those people who receive support services solely as a carer. The current legal situation is that local authorities are required to assess the needs of carers, but there is no commensurate legal requirement to meet those identified needs. It is therefore unlikely that the amount of the population predicted to receive local authority social care services, as summarised in table 2, has included any increase in demand as a result of carers requesting assessments.

Irrespective of the regulations for assessment being introduced, a new duty to provide services for the needs of a carer support will be placed upon local authorities. The duty is comparable to that for the people they support and has removed the existing requirement that the carer must be providing "a substantial amount of care on a regular basis", providing all carers with access to an assessment. Therefore the approach to determining eligibility and providing support for carers will need to mirror the approach used for determining eligibility and meeting needs for those they care for.

In Wales there are 30,000 individuals providing unpaid care.⁵² In 2001 it was estimated that the care that unpaid carers provide would cost £5.69 billion per year to deliver using paid support⁵³. If the process for meeting carers needs is to remain the same, with no preventative work put in place, it is probable that an unintended consequence of this is likely to be that many of the individuals providing care, without any support in place, will have possible social care needs themselves in the future.

The impact of the approach to eligibility will be affected by the number of carers requiring an assessment as a result of:

- (1) the new definition of a carer and

52 Office for National Statistics - 2011 Census: Provision of unpaid care
53 Carers, Employment and Services in Wales - Carers UK - 2011

(2) the awareness of carer's new rights to services.

However we are unable to quantify these effects other than to note that following the introduction of the Carers Strategies (Wales) Measure in 2010/11 there was an increase in the number of carers requesting an assessment - presumably due to a sharp rise in people's awareness of their rights as carers. There was, however, a significant decrease in the numbers the following year after the first 'wave' of assessment requests had subsided. It is reasonable to assume that the same pattern will occur with the implementation of the Act.

Children

For children the process of assessment has been developed through guidance under the Children Act 1989 and is set out in the associated statutory guidance: *The Framework for the Assessment of Children in Need and their Families*. The Munro report⁵⁴ endorsed the "excellent principles" of that framework but observed that "it has become clear that they have become linked with specific theories, recording forms and processes. evidence to the review has clearly indicated that professionals too often feel they must complete a form before a child is eligible to receive support, instead of responding to obvious or urgent needs while carrying out the assessment process".

Although the Act will impact on the process of assessment for children, it is considered that the determination of eligibility in practice will not alter so greatly as to have significant impact on costs. Although no negative impacts are anticipated, it is not possible for Welsh Government to quantify any positive financial impact.

Table 11: The estimated cost implications of providing local authority social care services, for those ages under the age of 18

	Total number of children in need	Percentage increase/decrease from previous year
2010	18,865	
2011	19,710	4%
2012	20,240	3%
2013	19,920	-2%
2014	20,145	1%

54 The Munro Review of Child Protection: Final Report A child-centred system - Professor Eileen Munro - Department of Education - 2011

Although the terminology of 'Children in Need' is likely to change the model does not anticipate any immediate impact on the numbers of children who have needs for care and support. A more preventative and community based early intervention approach to working with families as set out under part 2 of the Act is likely to have a positive impact over time on the percentage of children who have needs for care and support, but this is not of itself a result of changes to the model of eligibility and no attempt has been made to quantify that impact here.

Transitional Costs

Retaining the current system would avoid any transition costs associated with implementing a new social services system.

Option 2: Create a national model setting the criterion at critical and substantial needs only

Most local authorities in Wales (17) are already working to this model. Therefore there is unlikely to be any additional costs other than those detailed for option 1.

However possible cost implications have been explored further in options 1 and 3.

This option was also not recommended within the Eligibility Technical Group report.

Option 3: Create a consistent approach to meeting the social care needs of all of the population by setting an eligibility framework that will apply to all people.

Cost savings will be inherited from the assessment process. These are laid out in the Regulatory Impact Assessment for the Care and Support (Assessment) (Wales) Regulations 2015.

The Welsh Government does not foresee any significant cost implications in removing the existing eligibility threshold. At present The Fair Access to Care Services (FACS) framework sets out eligibility criteria against which local authorities assess an individual's needs. Local authorities set their own eligibility thresholds. This results in a variation across Wales with regard to where local authorities place their thresholds as we have shown in table 7 above.⁵⁵

The proposed approach to determining eligibility will encourage local authorities to assist individuals to access local services themselves or support people to develop the skills and confidence they need.

Assessment and Care Management Expenditure

The data provided in Table 5 demonstrates the cost savings that could be reached if local authorities reduced the expenditure on assessment and care management to 8% to match some local authorities in England. If these efficiencies can be met, they could

⁵⁵ Future paying for Social Care in Wales 70– LE Wales – April 2014

represent savings amounting to £43m, and these costs could be reallocated to be used for service delivery.

As evidenced by the Social Services Improvement Agency (SSIA)⁵⁶ early intervention and prevention helps local authorities to meet their savings targets whilst improving outcomes for individuals. The introduction of the regulations will assist local authorities in this agenda, with the likelihood that the spending on Assessment and Care Management will move closer to 8%.

Population Projections

As evidenced in table 2, the population is rising, particularly in relation to the age group of over 65s. It is crucial that local authority social care services become more efficient to ensure that all those who require services are provided with good quality services. The cost of providing these services to the growing population with the current model is too great. It is evident that a transformation in the delivery of health and social care services is required to meet the needs of the ageing population and to respond to rising public expectations. Improvements in health and care services, including better prevention, could play a role in counteracting some of these pressures⁵⁷.

The rate of 'Looked After' children per 10,000 under 18 years has risen steadily in Wales in the last 10 years, and is around 50% higher than the rate in England⁵⁸.

The introduction of the Act encourages local authorities to deliver a whole system change, and to encourage early intervention and investment in preventative services. The Social Care Institute for Excellence (SCIE) supports a whole system change to prevention, re-ablement and universal services⁵⁹.

The Social Services Improvement Agency (SSIA)⁶⁰ report supports early intervention and prevention and identifies that the delivery of preventative services should reduce demand for longer term care. As evidenced in table 8, it is more cost effective to assist individuals with low level needs than it is when they reach a critical level of need.

Eligibility criteria

As evidenced in table 6, one local authority in Wales currently sets its threshold at a low threshold, and so is already in line with the proposed model set out in the regulations. Table 7 shows that this local authority, as highlighted in blue, is providing services at a comparable cost to other local authorities.

To further convey this, the graphs. Graph 1 shows the average spend per head on adults receiving local authority social care services in Wales and Graph 2 shows the spend per head of adult population on local authority social care in Wales. Both graphs

56 Social Services Improvement Agency – Better Support at Lower Cost - Improving efficiency and effectiveness in services - for older people in Wales - 2011

57 Future of Paying for Social Care in Wales – LE Wales – April 2014

58 British Association for Adoption and Fostering (BAFF) - <http://www.baaf.org.uk/res/stats>

59 Crossing the threshold: The implications of the Dilnot Commission and Law Commission reports for eligibility and assessment in care and support - SCIE

60 Social Services Improvement Agency – Better Support at Lower Cost - Improving efficiency and effectiveness in services - for older people in Wales - 2011

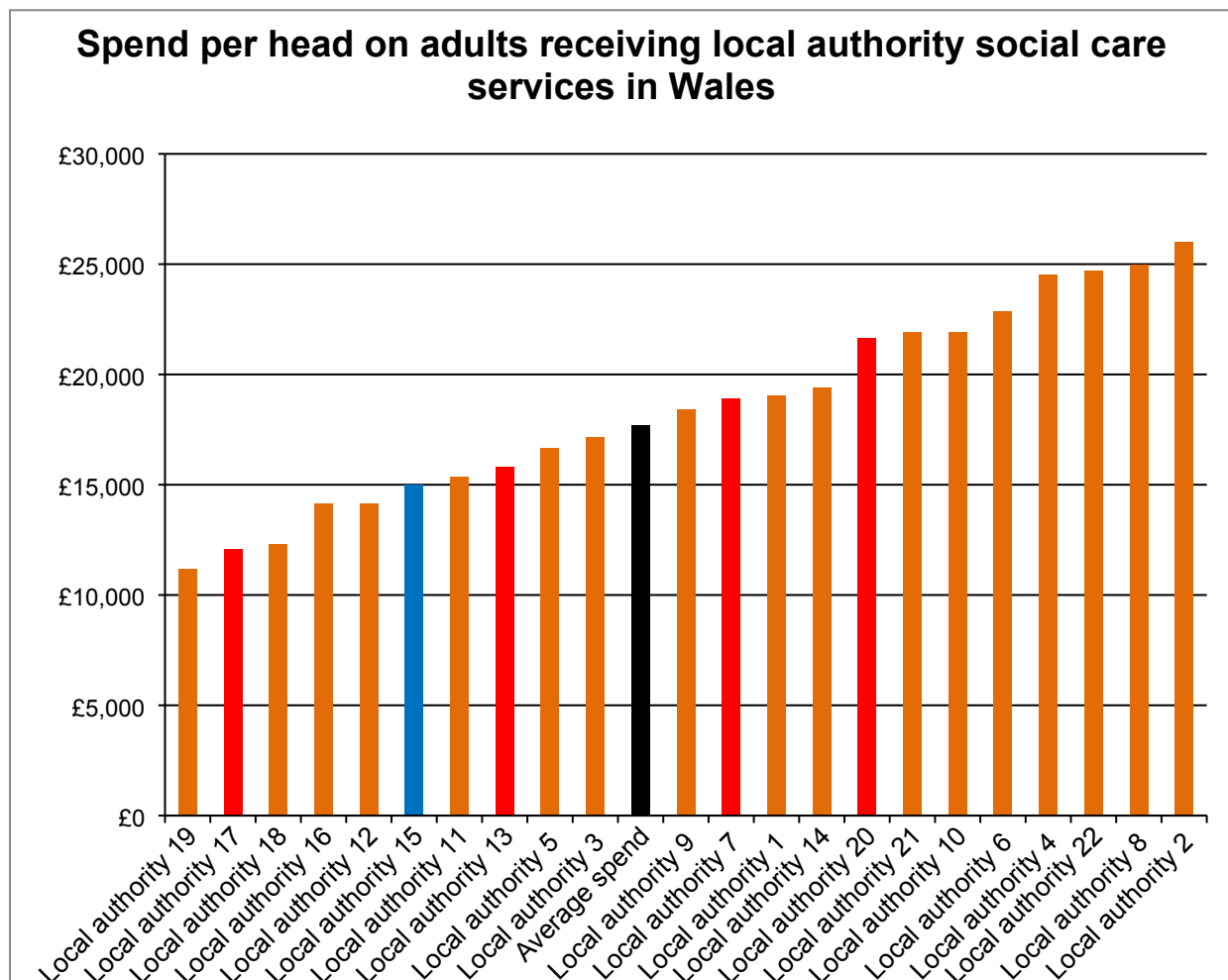
show how the local authority average unit cost per head is spread across the local authorities.

The bar in black shows the average spend per head for Wales, and the bar in blue shows the figure for authority that is currently working to a low threshold. The red bars show the four authorities who have set their threshold at moderate. The orange bars show the seventeen authorities who have set their threshold at substantial.

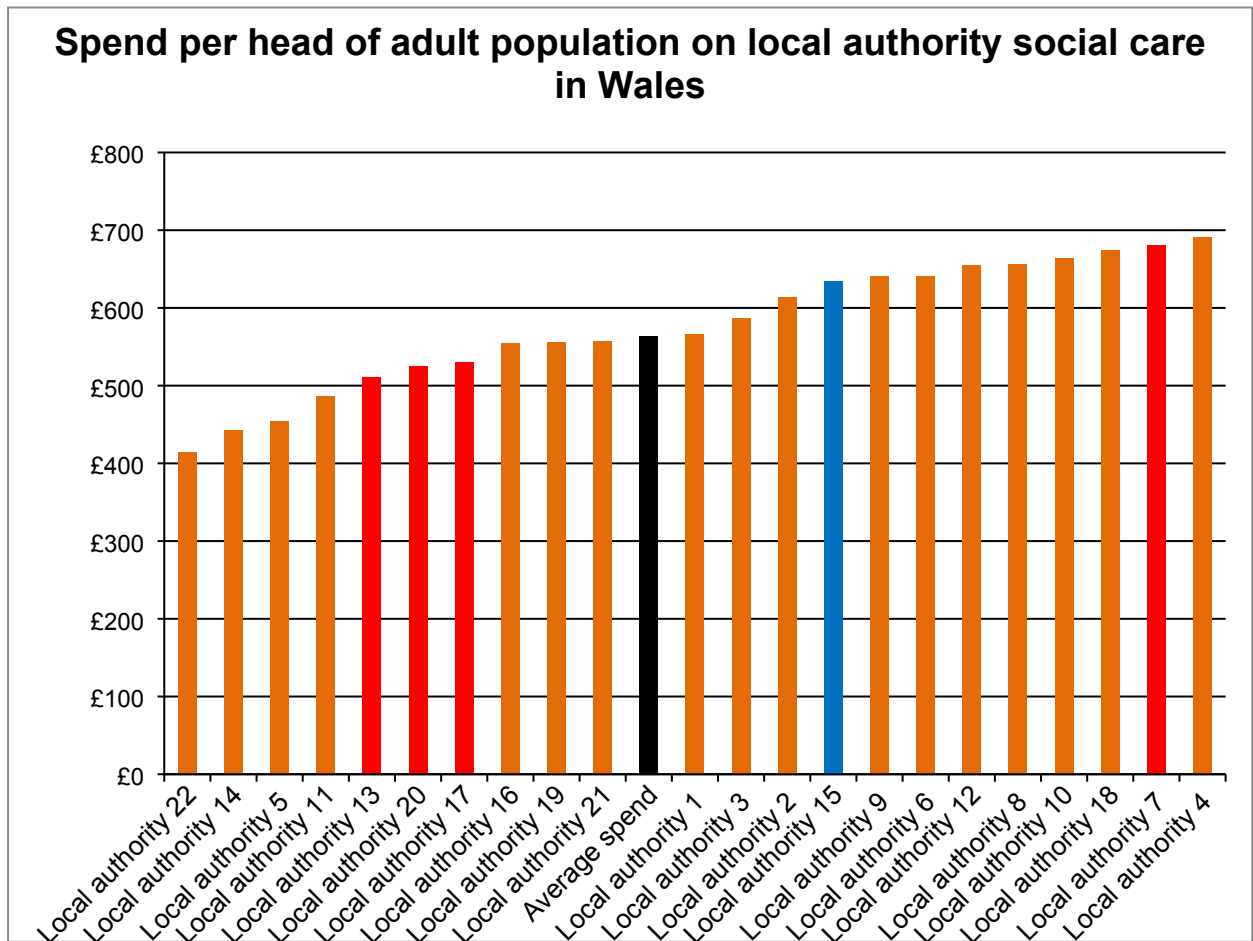
Both of the graphs show the four local authorities who have set their threshold at moderate, highlighted in red. In both cases the average unit spend per head for these local authorities is spread across the chart.

Graph one shows that three of these local authorities are providing social care at a lower than the averages spend per head, and one at a higher than average spend per head. Graph 2 shows a greater spread of those local authorities across the graph with two of the local authorities providing social care at a lower than average spend per head and two at a higher spend per head. This demonstrates that there is little correlation between the level at which the local authority sets its threshold and the average cost per head of providing social care.

Graph 1: Spend per head on adults receiving local authority social care services in Wales



Graph 2: Spend per head of adult population on local authority social care in Wales



This option was recommend in the Eligibility Technical Group report.

Annex 1 – Doc 1

Report of the Eligibility Technical Group

Options for the Eligibility Framework for Care & Support under Regulations stemming from the Social Services and Well-being (Wales) Act 2014

See:

<http://gov.wales/topics/health/socialcare/act/resources/draft-regulations/?lang=en>

Annex 2

Consultation Summary

**Regulatory Impact Assessment
The Care and Support (Eligibility) (Wales) Regulations 2015
Annex 2. Consultation Summary**

Section 33 of the Social Services and Well-being (Wales) Act 2014 sets out that before making regulations under section 32(3) or (4) Welsh Ministers must consult:

- such persons as appear to them likely to be affected by the regulations,
- such organisations as appear to them to represent the interests of persons likely to be affected by the regulations, and
- such other persons as they consider appropriate, on the proposed draft regulations.

Welsh Government officials undertook a 12 week consultation on the regulations between 6 November 2014 and 2 February 2015. The consultation on parts 3 and 4 covered assessing the Needs of individuals, eligibility, direct payments and care planning.

As well as being made available to the wider public via the Welsh Government internet pages, the consultation was distributed to:

- Welsh Local Government Association (WLGA)
- The Children's Commissioner
- The Older People's Commissioner
- Social Services Improvement Agency (SSIA)
- Local Government representatives
- Third Sector Organisations
- Care Council for Wales

The consultation was also distributed more widely through our communications network to ensure full scale coverage of stakeholder and partner organisations. This extensive network includes:

- Local Authorities
- Association of Directors for Social Services Cymru
- Care Council for Wales
- Care and Social Service Inspectorate Wales
- Wales Council for Voluntary Action
- Welsh Local Government Association
- Children in Wales
- Social Services Improvement Agency
- Care Forum Wales

The consultation and engagement process was underpinned from the start by a commitment to working with people to help shape the implementation and deliver the practice and culture change being driven forward through the Act. Many people helped to develop the policy instructions, regulations and codes of practice on the Social Services and Well-being (Wales) Act. Technical groups were established to discuss and debate and work with Welsh Government to help shape this work. The composition of these groups spanned the care sector, and beyond to encompass local authorities,

health, voluntary and independent sector, user led organisations, banks, and youth justice to name just a few.

Discussions were held with the “Alliance of Alliances” – voluntary sector organisations brought together and supported by the WCVA – about the best way to get citizens directly involved to present their views. Officials worked with a broad range of organisations to help bring together people who use services and carers to get their views first hand about what mattered to them and what needed to change.

As well as formal consultation, using various formats, Welsh Government officials gave presentations to groups, held discussions, attended one to one meetings, encouraged people to invite them to their existing meetings, and wrote articles and gave them to our partners to use within their networks. Stakeholders were asked to share information with their networks and feed back to Welsh Government and open offers were made to work directly with people.

The National Social Services Citizen Panel was asked to consider the consultation as individuals within their own networks, but also together as a Panel, where they produced reports to inform the consultation on integration, safeguarding, direct payments and paying for care.

Focus groups were held, with invaluable support from many organisations who brought people together to share their views. These included WCVA, County Voluntary Councils, Children in Wales, Voices from Care, and Community Lives amongst others. Officials spoke about the Act, the Regulations, and the Codes of Practice at meetings and events – for example with local authority social services, health, prisoners and their families, and housing.

As well as key contacts being encouraged to disseminate the consultation documents amongst their networks, to support wider engagement, Easy Read and children and young-people friendly versions were also produced and disseminated.

There were 103 responses received from a variety of stakeholders, a list of respondents is attached at Document 1

A detailed consultation response report will be published on the Welsh Government’s website.

Two consultation events were held as part of the consultation process. The purpose was to promote engagement with the consultation and provide a base level of understanding of the areas we were consulting on to key stakeholder groups

Overall the uptake of spaces for the events was positive with capacity reached at both. There were approximately 170 attendees at the event in South Wales and 90 attendees in the North Wales. Document 2 indicates the range of stakeholders represented at these events.

Workshops were held at the events on each of the parts out to consultation. The content of the workshops was varied and tailored to suit the subject matter, but at the core of each was a presentation from officials and group discussions and activities.

In the responses there was general support for the proposed system change to an outcomes-based approach with a simplified assessment and care planning process and greater integration of services. In particular, there is clear support from our statutory partners. The responses flagged some potential changes to regulations and also outlined some areas of broader concern. These have been addressed through re-drafting of the codes of practice and amendments to regulations. The key changes made to the regulations as a result of the consultation are set out below. A more detailed report on the differences between the draft regulations consulted on under subsection (2) of section 33 of the Act and the draft regulations laid under subsection (4) is attached as Annex 3

Key Changes to the Regulations

The following key amendments were made to the Care and Support (Eligibility) (Wales) Regulations 2015, informed by analysis of the consultation responses.

1. In the regulation regarding needs which meet the eligibility criteria for children the reference to “other persons caring for the child” was amended to refer to “persons acting in the parental role”. Not to make this change would require local authorities to make all children eligible for care and support where that child is receiving care from a family member.
2. Respondents questioned why the specified outcomes were different from the personal well-being outcomes referred to in the codes and in the Act. Respondents felt this caused confusion. The regulations were amended to remove the references to specified outcomes in preference to setting out the things that a need must relate to.

The needs for adults, children and carers are now detailed as needs that may relate to:

- ability to carry out self-care or domestic routines;
- ability to communicate;
- protection from abuse or neglect;
- involvement in work, education, learning or in leisure activities;
- maintenance or development of family or other significant personal relationships;
- development and maintenance of social relationships and involvement in the community;

In addition:

- a. for adults the need may relate to the fulfilment of caring responsibilities for a child.
- b. for children the need may relate to achieving developmental goals;
- c. for carers the need may relate to:

- in the case of an adult carer, fulfilment of caring responsibilities for a child; and
 - in the case of a child carer, achieving developmental goals.
3. Respondents criticised the use of the terms 'basic' in the references to self care, domestic routines and daily life. These terms were not seen as enabling or to fit with the ethos of enablement that is within the Act. Respondents advised that reablement services did not operate at such a low level and the definition was considered to disadvantage people with Mental Health problems. The term 'basic' has been removed from the references to self care.
 4. The ability to communicate has been included in the regulations as something to which an eligible need may relate.
 5. Respondents noted a drafting error in regulation 7- the word 'likely' was used instead of 'unlikely'. This was corrected.
 6. The view was expressed in the consultation responses that references in the Regulations to people not being able to undertake daily living activities and self care should be enhanced by an understanding that people should be able to undertake such tasks without pain, distress, or anxiety and undertaking such tasks should not endanger the health of self or others, or take significantly longer than would be expected of someone who would not have needs that arise as set out in regulation 3.

A regulation was added to set out that for the purposes of determining eligibility a person who is able to meet the need, alone or with the assistance of others is to be regarded as unable to meet the need if doing so—

- a. causes significant pain, anxiety or distress to that person;
 - b. endangers or is likely to endanger the health or safety of that person or another person;
 - c. takes that person significantly longer than would normally be expected.
7. The analysis of the consultation responses with respect to the draft regulations on eligibility revealed that respondents perceived a contradiction between draft regulation 3 (c) (ii) and draft regulation 7 (2) (a).

Regulation 3 (c) (ii) referred to the 'ineligibility' of a need which can be met with the support of others who are willing to provide that support – this links to the requirement in the assessment process for the assessment to seek ways, other than through a care and support plan, to help someone meet their objectives.

Regulation 7 (2) (a) referred to the need to disregard any care given by a carer when determining eligibility.

Respondents considered that regulation 3(c) (ii) implied that someone with the support of others would not be eligible.

The aim of the provision is to ensure that in the event that a carer wished to, or needed to, stop providing care then the cared for person would instantly have their needs

recognised as eligible without having to wait for a re-assessment. This is notwithstanding the recognition that needs are likely to have changed in the time between the assessment and the date at which the carer is unable to continue giving care.

The new definition of Carers introduced by the Act removes the 'Regular and Substantial' test from the definition of a carer and whilst the assessment process should identify whether someone can achieve their outcomes either alone or with the help of others (and therefore would not need to be 'eligible' with respect to that identified need), where that "help of others" constitutes the provision of care, the person providing that care will meet the new definition of a carer – even if this help comes from someone who may not be regarded as the main carer but who contributes help on an occasional basis or help that takes place outside the home.

Therefore regulation 7 (on the exclusion of care provided by carers when making an eligibility determination) has been removed from the regulations. The code of practice for Part 3: Assessing the Needs of Individuals requires that local authorities must identify people who do not meet the eligibility criteria because of the care (not care and support) provided by a carer

As a consequence of this amendment the reference to the need being such that an adult or child is not able to meet it without the support of others who are willing to provide that support has been changed to a reference to the need being such that an adult or child is not able to meet it without the care and support of others who are willing to provide that care and support.

Doc.1 - List of respondents

No	Confidential Y / N	Name	Organisation/On behalf of
1.	<input type="checkbox"/>		
2.	<input type="checkbox"/>	Fiona Wilke	Individual
3.	<input type="checkbox"/>	Ms Maxine Norrish	Cardiff University RTP student
4.	<input type="checkbox"/>	Gillian Cooper	Cardiff University
5.	<input type="checkbox"/>		
6.	<input type="checkbox"/>	Laura Tuckley	Individual
7.	<input type="checkbox"/>	Charlotte Beare-on behalf of the Hywel Dda Health Board by Dr Phil Kloer	Hywel Dda Health Board
8.	<input type="checkbox"/>	Cheryl Bulman	Individual
9.	<input type="checkbox"/>	Dr Aideen Naughton	Public Health Wales
10.	<input type="checkbox"/>	Ruth Northway	Learning disability advisory group
11.	<input type="checkbox"/>	Zoë Williams	Direct Payments Overview Group
12.	<input type="checkbox"/>	Zoë Williams	All Wales Direct Payments Forum
13.	<input type="checkbox"/>	Beth Evans	Carers Wales
14.	<input type="checkbox"/>		
15.	<input type="checkbox"/>	Gareth Cooke	Torfaen Social Care and Housing
16.	<input type="checkbox"/>	Lynne Doyle -	Neath Port Talbot CBC
17.	<input type="checkbox"/>	Mike Mainwaring	Neath Port Talbot Council for Voluntary Service
18.	<input type="checkbox"/>	Dr Catrin Mair Edwards	SeNSE Cymru
19.	<input type="checkbox"/>	Vin West-	Arfon Access Group
20.	<input type="checkbox"/>	Eve Parkinson -	Welsh Therapy Advisory Committee
21.	<input type="checkbox"/>	Colin Hopwood	Individual
22.	<input type="checkbox"/>	Simon Legg	Spinal Injuries Association
23.	<input type="checkbox"/>	Rachel Williams	Parkinson's UK Cymru
24.	<input type="checkbox"/>		
25.	<input type="checkbox"/>	Ann Acock	Welsh Physiotherapy Leaders Advisory Group
26.	<input type="checkbox"/>		
27.	<input type="checkbox"/>	n/a (Nigel champ - e-mail)	the Chair of the Welsh Medical Committee
28.	<input type="checkbox"/>	Joe Powell	All Wales People First
29.	<input type="checkbox"/>	Hannah Isaacson	Powys Association of Voluntary Organisations
30.	<input type="checkbox"/>	Peter Jones	Guide Dogs Cymru and Blind Children UK Cymru
31.	<input type="checkbox"/>	Natasha Wynne	Marie Curie
32.	<input type="checkbox"/>	Cecile Gwilym	NSPCC Cymru

33.	<input type="checkbox"/>	Peter Martin	Hafal
34.	<input type="checkbox"/>	Meleri Thomas	National Autistic Society Cymru
35.	<input type="checkbox"/>	Tess Saunders,	RNIB CYMRU
36.	<input type="checkbox"/>	Laura Cook	Alzheimer's Society
37.	<input type="checkbox"/>	Liz Majer	Blaenau Gwent County Borough Council
38.	<input type="checkbox"/>	DEBBIE POWELL	SOCIAL CARE IN PARTNERSHIP – SOUTH EAST (SCiPse)
39.	<input type="checkbox"/>	Edwin Jones	LDAG Subgroup - Transforming Care in Wales for people with learning disabilities and challenging behaviour
40.	<input type="checkbox"/>	James Crowe	Learning Disability Wales
41.	<input type="checkbox"/>	Lynne Hughes	MS Society Cymru
42.	<input type="checkbox"/>	Paul Swann / Rick Wilson	Disability Wales / Wales Alliance for Citizen Directed Support Provider Network
43.	<input type="checkbox"/>	Kelly Ball	Newport People First
44.	<input type="checkbox"/>	Alex Perry	Newport People First (trustee)
45.	<input type="checkbox"/>	Allan	Member of Newport People First
46.	<input type="checkbox"/>	Zarah Kaleem	Trustee of Newport People First
47.	<input type="checkbox"/>	Deborah Driffield	City & County of Swansea Social Services
48.	<input type="checkbox"/>	Lola Richards	Cyngor Sir Ynys Mon
49.	<input type="checkbox"/>	No Name	Cyngor Sir Ynys Mon
50.	<input type="checkbox"/>	Jacqueline Davies	CYPP
51.	<input type="checkbox"/>	Ruth Crowder	College of Occupational Therapists
52.	<input type="checkbox"/>	Kieron Rees	Carers Trust Wales
53.	<input type="checkbox"/>	Ruth Crowder	Welsh Reablement Alliance
54.	<input type="checkbox"/>	Ann James	Care Council for Wales
55.	<input type="checkbox"/>	Robin moulster	BASW Cymru
56.	<input type="checkbox"/>	Ruth Coombs	Mind Cymru
57.	<input type="checkbox"/>		
58.	<input type="checkbox"/>	Hywel Ap Dafydd	Children's Commissioner for Wales
59.	<input type="checkbox"/>	Dr Sam Clutton	Barnardos Cymru
60.	<input type="checkbox"/>		
61.	<input type="checkbox"/>	Caroline Hawkings	Scope Cymru
62.	<input type="checkbox"/>	Judith Brooks	Bridgend County Borough Council
63.	<input type="checkbox"/>	Catherine Manning	British Red Cross
64.	<input type="checkbox"/>	Philippa Ford	CSP
65.	<input type="checkbox"/>	Holly Towell	Headway
66.	<input type="checkbox"/>	Bethan Jones Edwards	North Wales Social Services Improvement Collaborative
67.	<input type="checkbox"/>	Alice Southern	Alzheimer's Society
68.	<input type="checkbox"/>	Dusty Kennedy	Youth Justice Board
69.	<input type="checkbox"/>	Ian Thomas	Citizens Advice Cymru
70.	<input type="checkbox"/>	Nicola Evans	Older People's Commissioner for Wales

71.		<input type="checkbox"/>	Jenny Williams	Conwy County Borough Council
72.		<input type="checkbox"/>	Catherine Poulter	Carmarthenshire County Council
73.		<input type="checkbox"/>	Ele Hicks	Diverse Cymru
74.		<input type="checkbox"/>	Erin Rodgers	The Disabilities Trust
75.		<input type="checkbox"/>	Giovanni Isingrini	ADSS Cymru
76.		<input type="checkbox"/>	Sue O'Grady	Powys CC
77.		<input type="checkbox"/>	Paul Apreda	FNF Both Parents Matter Cymru
78.		<input type="checkbox"/>	Suzanne Griffiths	National Adoption Service
79.		<input type="checkbox"/>	Catherine Lewis	North Wales Disabled Children Social Services Mangers Network
80.	<input type="checkbox"/>			
81.		<input type="checkbox"/>	Dominic Carter	UK Homecare Association
82.		<input type="checkbox"/>	Catherine Lewis	North Wales Disabled Children Social Services Mangers Network
83.		<input type="checkbox"/>	Sian Walker, Tony Young	Cardiff Council
84.	<input type="checkbox"/>			
85.		<input type="checkbox"/>	Martyn Palfreman	Mid and West Wales Health and Social Care Collaborative
86.		<input type="checkbox"/>	Rosanne Palmer	Age Cymru
87.		<input type="checkbox"/>	Gill Paul	Gwynedd Council
88.		<input type="checkbox"/>	Michael Nicholson	Newport County Council
89.		<input type="checkbox"/>	Mair Kromei	Hywel Dda Health Board
90.		<input type="checkbox"/>	Iola Richards	Cyngor Sir Ynys Môn
91.		<input type="checkbox"/>	Judith Brooks	Bridgend County Borough Council
92.		<input type="checkbox"/>	Phil Evans	Vale of Glamorgan
93.		<input type="checkbox"/>	Owen Williams	Wales Council of the Blind
94.		<input type="checkbox"/>	Judith Hall	CSSIW - National Advisory Board
95.		<input type="checkbox"/>	Sara Harvey	Western Bay Programme
96.		<input type="checkbox"/>		Voices from Care Cymru
97.		<input type="checkbox"/>	Roger Bishop	All Wales Children and Young Persons Advocacy Providers Group
98.		<input type="checkbox"/>	Katie Dalton	Gofal
99.		<input type="checkbox"/>	Marshall Phillips	Wales Sub -Committee of Association of HM District Judges
100.		<input type="checkbox"/>	Bobby Bolt	Aneurin Bevan University Health Board
101.		<input type="checkbox"/>	Catrin Edwards	Sense Cymru
102.		<input type="checkbox"/>		Carers Wales
103.		<input type="checkbox"/>	Anselm Benedict	Law Society

Doc.2 - List of stakeholders at consultation events

No	Name		Organisation/On behalf of
1	Bryony	Hughes	
2	Lewis	Rachel	Age Alliance Wales
3	Palmer	Rosanne	Age Alliance Wales
4	Young	Kate	All Wales Forum of Parents and Carers of People with Learning Disabilities (AWF)
5	Pearse	John	All Wales People First
6	Slater	Lin	Aneurin Bevan University Health Board
7	Southern	Tim	Ategi - Shared Lives Services
8	Lesley	Cotter	Betsi Cadwaladr University Health Board
9	Michelle	Denwood	Betsi Cadwaladr University Health Board
10	Wendy	Hooson	Betsi Cadwaladr University Health Board
11	Eleri	Lloyd-Burns	Betsi Cadwaladr University Health Board
12	David	O'Brien	Betsi Cadwaladr University Health Board
13	Sue	Owen	Betsi Cadwaladr University Health Board
14	Barry	Starter	Betsi Cadwaladr University Health Board
15	Diamond	Phil	Blaenau Gwent County Borough Council
16	Evans	Tanya	Blaenau Gwent County Borough Council
17	Hoskins	Alyson	Blaenau Gwent County Borough Council
18	Jones	Sarah	Blaenau Gwent County Borough Council
19	Tyrrell	Heather	Blaenau Gwent County Borough Council
20	Bowen	Fay	Bridgend County Borough Council
21	Bracey	Avril	Bridgend County Borough Council

22	Bradshaw	Adrian	Bridgend County Borough Council
23	Donovan	Carmel	Bridgend County Borough Council
24	Harris	Mike	Bridgend County Borough Council
25	Hughes	Tracy	Bridgend County Borough Council
26	Hutchinson	Jane	Bridgend County Borough Council
27	Morgan	Jaci	Bridgend County Borough Council
28	Morgan	Louise	Bridgend County Borough Council
29	Owen	Carol	Bridgend County Borough Council
30	Pickrell	Scott	Bridgend County Borough Council
31	Roche	Emma-Jayne	Bridgend County Borough Council
32	Silcox	Natalie	Bridgend County Borough Council
33	Warrilow	Terri	Bridgend County Borough Council
34	Wyatt	Tony	Bridgend County Borough Council
35	Fowler-Powe	Michelle	British Deaf Association
36	Blake	Tina	Caerphilly County Borough Council
37	Davies	Carol A	Caerphilly County Borough Council
38	Davies	Denise	Caerphilly County Borough Council
39	Daye	Viv	Caerphilly County Borough Council
40	Edwards	Janine	Caerphilly County Borough Council
41	Howells	Stephen	Caerphilly County Borough Council
42	Lock	Sion	Caerphilly County Borough Council

43	Powell	Karen	Caerphilly County Borough Council
44	Rogers	Michaela	Caerphilly County Borough Council
45	Street	Dave	Caerphilly County Borough Council
46	Thomas	Dave	Caerphilly County Borough Council
47	White	Deborah	Caerphilly County Borough Council
48	Williams	Steph	Caerphilly County Borough Council
49	Wright	Sue	Caerphilly County Borough Council
50	Morris	Cerys	Cambian Healthcare
51	Martin	Christine	Cardiff Metropolitan University
52	Roberta	Hayes	Care Council for Wales
53	Sheila	Lyons	Care Council for Wales
54	Ian	Thomas	Care Council for Wales
55	Ceri	Williams	Care Council for Wales
56	Griffith	Stephanie	Care Council for Wales
57	Wakelin	Karen	Care Council for Wales
58	Rees	Kieron	Carers Trust Wales
59	Bowen	Keith	Carers Wales
60	Edwards	Neil	Carmarthenshire County Council
61	Jackman	Noreen	Carmarthenshire County Council
62	James	Bethan T	Carmarthenshire County Council
63	Meredith	Jayne	Carmarthenshire County Council
64	Smith	Stefan	Carmarthenshire County Council
65	Thomas	Noeline	Carmarthenshire County Council
66	Thomas	Jayne	Carmarthenshire County Council
67	Sian	Howys	Ceredigion County Borough Council

68	Carys	James	Ceredigion County Borough Council
69	Amanda	Jones	Ceredigion County Borough Council
70	O'Rourke	Judi	Ceredigion County Borough Council
71	Lewis	Catherine	Children in Wales
72	Martin	Cheryl	Children in Wales
73	Curtis	Emma	City and County of Swansea
74	Williams	Allison	City and County of Swansea
75	Denise	Moriarty	City of Cardiff Council
76	Bourge	Angela	City of Cardiff Council
77	Cole	Andy	City of Cardiff Council
78	David	Geraldine	City of Cardiff Council
79	Felvus	Jan	City of Cardiff Council
80	Finch	Jo	City of Cardiff Council
81	George	Ceri	City of Cardiff Council
82	Griffiths	Menai	City of Cardiff Council
83	Hoey	Jane	City of Cardiff Council
84	James	Natasha	City of Cardiff Council
85	Madell	Finn	City of Cardiff Council
86	Miller	Sharon	City of Cardiff Council
87	Osbourne	Matt	City of Cardiff Council
88	Reed	Julie	City of Cardiff Council
89	Schelewa	Susan	City of Cardiff Council
90	Teague	Siobhan	City of Cardiff Council
91	Tonkinson	Ceri	City of Cardiff Council
92	Westwell	Sally	City of Cardiff Council
93	Crowder	Ruth	College of Occupational Therapists
94	Kate	Davenport	Conwy County Borough Council
95	Anne	Flanagan	Conwy County Borough Council
96	Hannah	Fleck	Conwy County Borough Council
97	Tesni	Hadwin	Conwy County Borough Council
98	Marian	Hankin	Conwy County Borough Council

99	Marie	Jones	Conwy County Borough Council
100	Claire	Lister	Conwy County Borough Council
101	Jenny	Williams	Conwy County Borough Council
102	Erica	Wynn Roberts	Conwy County Borough Council
103	Jennie	Lewis	CSSIW
104	Vicky	Poole	CSSIW
105	Marc	Roberts	CSSIW
106	Davies	Donna	CSSIW
107	Glynn Jones	Sarah	CSSIW
108	Huws-John	Gill	CSSIW
109	Redman	Ken	CSSIW
110	Young	Katie	CSSIW
111	Lewis	Lyndon	Cym Taf YOS
112	Townsend	Oliver	Cymorth Cymru
113	Gareth	Llwyd	Cyngor Sir Ynys Mon
1	Vicky	Allen	Denbighshire County Council
2	Maria	Bell	Denbighshire County Council
3	Cathy	Curtis-Nelson	Denbighshire County Council
4	Joanna	Driver	Denbighshire County Council
5	Melanie	Evans	Denbighshire County Council
6	Phil	Gilroy	Denbighshire County Council
7	Gwynfor	Griffiths	Denbighshire County Council
8	Vanessa	Kyte	Denbighshire County Council
9	Sandra	Naughton	Denbighshire County Council
10	Stephanie	O'Donnell	Denbighshire County Council
11	Alaw	Pierce	Denbighshire County Council
12	Bethan	Wyn Roberts	Denbighshire County Council
13	Swann	Paul	Disability Wales

14	Ffion	Alun	Estyn Llaw
15	Christine	Duffy	Flintshire County Council
16	Susie	Lunt	Flintshire County Council
17	Saunders	Lisette	G4S Custodial & detention Services, YMP & YOI Parc
18	David	Nulty	Glyndwr University
19	Dalton	Katie	Gofal
20	Laurent	Louisa	Greater Gwent Transformation Project
21	Sara	Lloyd Evans	Gwynedd & Anglesey Local Safeguarding Children's Board
22	Stephen	Wood	Gwynedd Mon YJS
23	Morwena	Edwards	Gwynedd CBC
24	Olwen	Ellis Jones	Gwynedd CBC
25	Nerys	Evans	Gwynedd CBC
26	Iona	Griffith	Gwynedd CBC
27	Meilys	Heulfryn Smith	Gwynedd CBC
28	Marian	Hughes	Gwynedd CBC
29	Glenda	Lloyd Evans	Gwynedd CBC
30	Gwenno	Williams	Gwynedd CBC
31	Martin	Peter	Hafal
32	Maggs	Dave	Headway
33	Phillips	Marie	HMP Swansea
34	Toohy	Karen	Hywel Dda Health Board
35	Dawson	Rhian	Hywel Dda UHB/ Carmar CC
36	Iola	Richards	Isle Of Anglesey County Council
37	Sian	Owen	Learning Disability Wales
38	Kevin	Sibbons	Learning Disability Wales
39	Karen	Warner	Learning Disability Wales
40	Sutherns	Alan	Learning Disability Wales
41	Allen	Angela	Merthyr Tydfil CBC
42	Anderton	Mark	Merthyr Tydfil CBC
43	Beckham	Alex	Merthyr Tydfil CBC
44	Bow	Jill	Merthyr Tydfil CBC
45	Cawley	Mike	Merthyr Tydfil CBC
46	Davies	Jonathan	Merthyr Tydfil CBC
47	Edevane	Angela	Merthyr Tydfil CBC
48	Eyre	Jon	Merthyr Tydfil CBC
49	Hughes	Sue	Merthyr Tydfil CBC
50	Jayne	Michelle	Merthyr Tydfil CBC
51	Jones	Alyson	Merthyr Tydfil CBC

52	Lipian	Pauline	Merthyr Tydfil CBC
53	O'Keefe	Kathryne	Merthyr Tydfil CBC
54	Powell	Gareth	Merthyr Tydfil CBC
55	Preece	Sue	Merthyr Tydfil CBC
56	Rees	Lowri	Merthyr Tydfil CBC
57	Rush	Christina	Merthyr Tydfil CBC
58	Owen	Arabella	Mid and West Wales Health and Social Care Collaborative
59	Palfreman	Martyn	Mid and West Wales Health and Social Care Collaborative
60	Smith	Sarah	Ministry of Justice
61	Carter	Joseph	MS Society Cymru
62	Pearce	Rebecca	MS Society Cymru
63	Andy	Jones	National Probation Service - Wales
64	Donovan	Bethan	Neath Port Talbot CBC
65	Doyle	Lynne	Neath Port Talbot CBC
66	Hinton	Amanda	Neath Port Talbot CBC
67	Kneath	Jayne	Neath Port Talbot CBC
68	Marchant	Claire	Neath Port Talbot CBC
69	Williams	Pauline	Neath Port Talbot CBC
70	Bowler	Peter	Newport City Council
71	Close	Tracey	Newport City Council
72	Davies	Ceri	Newport City Council
73	Davies	Julie	Newport City Council
74	Hughes	Nicola	Newport City Council
75	Jenkins	Sally	Newport City Council
76	Richardson	Katrina	Newport City Council
77	Taylor	Amii	Newport City Council
78	Thomas	Julia	Newport City Council
79	Jones	Elfed	NOMS HMP Prison Service
80	Gawthorpe	Aine	NOMS in Wales
81	Graham	Opie	North Wales Police
82	Gabrielle	Heeney	North Wales Social Services Improvement Collaborative
83	Bethan	Jones Edwards	North Wales Social Services Improvement Collaborative
84	Bartley	Stephen	Older People's Commissioner for Wales

85	Evans O'Brien	Catherine	Older People's Commissioner for Wales
86	Ruth	Ingram	Powys County Council
87	Anderson	Lee	Powys County Council
88	Jeffreys	Jen	Powys County Council
89	Jukes	Hazel	Powys County Council
90	Self	Keith	Powys County Council
91	Pauline	Galluccio	Powys Teaching Health Board
92	Day	Sarah	Practice Solutions
93	Kate	McDonald	Public Health Wales
94	Rachel	Shaw	Public Health Wales
95	Angela	Tinkler	Public Health Wales
96	Evans	Janet	Public Health Wales
97	Smith	Gloria	Public Health Wales
98	Bately	Ann	Rhondda Cynon Taf CBC
99	Bridgman	Luisa	Rhondda Cynon Taf CBC
100	Clark	Julie	Rhondda Cynon Taf CBC
101	Gatis	Bob	Rhondda Cynon Taf CBC
102	Harris	Mark	Rhondda Cynon Taf CBC
103	Holloman	Gail	Rhondda Cynon Taf CBC
104	Jones	Gail	Rhondda Cynon Taf CBC
105	Neale	Jackie	Rhondda Cynon Taf CBC
106	Nichols	Sara	Rhondda Cynon Taf CBC
107	Pearce	Liz	Rhondda Cynon Taf CBC
108	Preston	Jayne	Rhondda Cynon Taf CBC
109	Williams	Alexis	Rhondda Cynon Taf CBC
110	Williams	Claire	Rhondda Cynon Taf CBC
111	Saunders	Tess	RNIB Cymru
112	Ian	Bottrill	Safeguarding Advisory Board
113	Edwards	Catrin	Sense Cymru
114	Hayes	Melanie	Shine Cymru
115	Cooke	Catherine	South Wales Police
116	Penhale	Lian	South Wales Police
117	Baker	Melanie	Torfaen County Borough Council
118	Davies	Kevin	Torfaen County Borough Council
119	Eva	Catherine	Torfaen County Borough Council
120	Evans	Maria	Torfaen County Borough Council

121	Hopkins	Howard	Torfaen County Borough Council
122	Jones	Eunice	Torfaen County Borough Council
123	Newman	Joanne	Torfaen County Borough Council
124	Orford	Peter	Torfaen County Borough Council
125	Thole	Adrian	Torfaen County Borough Council
126	Watkins	James	Torfaen County Borough Council
127	Williams	Zoe	Torfaen County Borough Council
128	Williams	Richard	Torfaen County Borough Council
129	Jenny	Burgess	Unique Transgender Network
130	Dominic	Carter	United Kingdom Home Care Association
131	Randell	Peter	United Kingdom Home Care Association
132	Betteridge	Joanne	Vale of Glamorgan Council
133	Evans	Rachel	Vale of Glamorgan Council
134	Jones	Gaynor	Vale of Glamorgan Council
135	Poole	Nichola	Vale of Glamorgan Council
136	Vin	West	Wales Alliance for Citizen Direct Support
137	Rob	Wilson	Wales Alliance for Citizen Direct Support (The Rowan Organisation)
138	Meloy	Ceri	Wales Alliance for Citizen Directed Support
139	Judith	Magaw	Wales Community Rehabilitation Company
140	Magaw	Judith	Wales Community Rehabilitation Company
141	Owen	Williams	Wales Council for the Blind
142	Elizabeth	Thornburn	Wales Council for Voluntary Action
143	Davies	Alison	Welsh Ambulance Service
144	Tim	Griffiths	Welsh Ambulance Services NHS Trust
145	Hewitt	Gareth	Welsh Government

146	Sarah	Laing	Welsh Government:
147	Williams	Hannah	Welsh Government: Children, Young People and Families
148	Temple-Williams	Heather	Welsh Government: Community Safety Division
149	Gear	Stephen	Welsh Government: Dept for Education & Skills
150	Sharples	Jacqui	Welsh Government: Dept for Education & Skills
151	Gareth	John	Welsh Government: DHSS
152	Evans	Nicola	Welsh Government: DHSS
153	Owen	Rob	Welsh Government: Housing and Regeneration
154	Prothero	Simon	Welsh Government: Housing and Regeneration
155	Alleyne	Naomi	Welsh Local Government Association (WLGA)
156	Blythe	Stewart	Welsh Local Government Association (WLGA)
157	Elaine	Blease	Wrexham CBC
158	Ann	Chadd	Wrexham CBC
159	Ruth	Davies	Wrexham CBC
160	Sheila	Finnigan-Jones	Wrexham CBC
161	Annette	Green	Wrexham CBC
162	Mark	Jones	Wrexham CBC
163	Margaret	Sloan	Wrexham CBC
164	Cressida	Travis	Wrexham CBC
165	Charlotte	Walton	Wrexham CBC
166	Jo	Ward	Wrexham CBC
167	Steve	Williams	Wrexham CBC
168	Cooper	Sarah	Youth Justice Board Cymru

Annex 3

Statement setting out the amendments made to the
Draft Care and Support (Eligibility) (Wales)
Regulations following consultation

Statement setting out the amendments made to the Draft Care and Support (Eligibility) (Wales) Regulations following consultation

A copy of the consultation draft is annexed to this statement

Preamble

1. The preamble is amended to recite compliance with the requirement in section 33(2) and (3) for the regulations to be the subject of consultation. Reference to section 196(6) is added as the source of the requirement that the regulations be approved by a resolution of the National Assembly for Wales.

Section 1

2. The coming into force date has been added.

3. The definition of “specified outcomes” has been removed. This phrase is not used in the regulations. Feedback from the consultation was that it was confusing to include reference to both “personal outcomes” and “specified outcomes”.

4. A definition of “self-care” is added. This was in regulation 6 which was removed. The word “basic” which was used to qualify self-care is removed to avoid an inference that a person with care and support needs would only have a need recognised at that level. This is a change in response to consultation feedback.

Section 2

5. Footnotes have been added in relation to the meanings of “child” and “care and support” to assist the reader. In each of the paragraphs of the regulation wording has been added to make reference to the section of the Act under which an adult, a child and a carer are assessed. This is a drafting improvement for greater accuracy.

Section 3

6. The introductory phrase of the regulations is amended to make clear that the provision of this regulation refers to adults who have been the subject of assessment under section 19 of the Act. This is a drafting improvement.

7. Reference to “specified outcomes” is removed from paragraph (b). Instead the factors which were listed in regulation 6 are listed in regulation 3 itself. There is one addition to the list – (ii) ability to communicate. This is included in response to consultation feedback and views that it was of sufficient significance in this context to be included expressly.

8. In paragraph (c), the word “care” is added so that care provided by a carer is also taken into account as a factor in determining whether a person’s need is eligible for the purposes of the regulations. This is an amendment linked to the removal of regulation 7 of the consultation draft.

9. In paragraph (d) “their” is replaced by “the adult’s” to be more grammatically correct. Reference to “the specified outcomes” is removed. This makes the drafting simpler and removes a duplication because the outcomes are already built in to regulation 3 at an earlier point through the requirement in paragraph (b).

Section 4

10. The introductory phrase of the regulations is amended to make clear that the provision of this regulation refers to children who have been the subject of assessment under section 21 of the Act. This is a drafting improvement.

11. Reference to “specified outcomes” is removed from paragraph (b). Instead the factors which were listed in regulation 6 are listed in regulation 4 itself. There is one addition to the list – (ii) ability to communicate. This is included in response to consultation feedback and views that it was of sufficient significance in this context to be included expressly.

12. In paragraph (c), the word “care” is added so that care provided by a carer is also taken into account as a factor in determining whether a person’s need is eligible for the purposes of the regulations. This is an amendment linked to the removal of regulation 7 of the consultation draft.

13. In sub-paragraph (c)(iii), the word “child “ is added to reflect the fact that in many cases children, particularly older children, will have an independent ability to access services available in the community.

14. In the same sub-paragraph, the phrase “other persons caring for the child” is replaced by the phrase “other persons in a parental role”. The purpose of this is to avoid confusion with the concept of “carers”. Under the Act a person is a carer for a child who is disabled. A parent caring for a child who is not disabled is not a carer for the purposes of the Act.

15. The wording in the definition of “relative” is amended to reflect the fact that the definition is not a complete definition but is limited to what the word means in relation to a child.

16. In paragraph (d) Reference to “the specified outcomes” is removed. This makes the drafting simpler and removes a duplication because the outcomes are already built in to regulation 4 at an earlier point through the requirement in paragraph (b).

Section 5

17. The introductory phrase of the regulations is amended to make clear that the provision of this regulation refers to carers who have been the subject of assessment under section 24 of the Act. This is a drafting improvement.

18. Subparagraph (a)(i) is amended to clarify that the person for whom a carer provides care must have needs which relate to the factors set out in paragraph (b) of regulation 3.

19. A footnote is added in relation to the definition of “disabled” to assist the reader.

20. Reference to “specified outcomes” is removed from paragraph (b). Instead the factors which were listed in regulation 6 are listed in regulation 5 itself. There is one addition to the list – (ii) ability to communicate. This is included in response to consultation feedback and views that it was of sufficient significance in this context to be included expressly.

21. In paragraph (d) reference to “the specified outcomes” is removed. This makes the drafting simpler and removes a duplication because the outcomes are already built in to regulation 3 at an earlier point through the requirement in paragraph (b).

Regulation 6

22. This is a new regulation added in response to consultation feedback. In regulations 3, 4 and 5, eligibility is dependent on a person being unable to meet needs. This regulation provides that a person will be regarded as unable to do something even when they can but only with a greater level of difficulty than would normally be expected.

Removal of Regulation 6 of consultation draft

23. This regulation has been removed in response to consultation feedback that the concept of “specified outcomes” alongside “personal outcomes” was confusing. The different sorts of outcomes are instead inserted into each of regulation 3, 4 and 5.

Removal of Regulation 7 of consultation draft

24. Regulation 7 of the consultation draft was included to tie in with section 35(6) and section 37(5) of the Act. The purpose of these provisions was that a local authority would not have a duty to meet need so long as a carer was meeting the need in question but that, in the event that a carer declined to continue in a caring role, the local authority would instantly be under a duty to provide care and support itself. The intention of regulation 7 was to ensure that the effect of regulations 3(c), 4(c) and 5(c) did not obstruct the effect of that provision.

25. Consultation feedback was that the provision was complicated and difficult to understand. The conclusion reached is that it is unnecessary in any event. Where a carer declines to continue in a caring role, the effect of the test in regulations 3(c), 4(c) and 5(c) will be different in any event. A need which was not eligible because it was being met by a carer would become eligible if the carer no longer wished to provide that care. The effect of sections 35(6) and 37(5) will therefore be kept intact. The regulation has therefore been removed.

**Y Pwyllgor Iechyd a Gofal Cymdeithasol
Health and Social Care Committee**

Cynulliad
Cenedlaethol
Cymru
National
Assembly for
Wales

Mark Drakeford AM

Minister for Health and Social Services



15 May 2015

Dear Mark,

The Care and Support (Eligibility) (Wales) Regulations 2015

In accordance with Standing Order 27.8, I am writing to inform you of the Health and Social Care Committee's intention to consider the draft Care and Support (Eligibility) (Wales) Regulations 2015.

You will be aware that the Committee concluded in its Stage 1 report on the Social Services and Well-being Bill that the regulations on eligibility criteria made under that Act should be subject to robust scrutiny. The Committee has noted its intention to consider these important Regulations on several occasions.

An invitation to submit written evidence has been issued to interested stakeholders and oral evidence will be gathered at our meeting on 11 June. You have indicated your intention to arrange a debate on the draft Regulations before the summer recess, so I will ensure that the Committee's conclusions are available to inform all Members ahead of that debate.

I am copying this letter to the Chairs of the Constitutional and Legislative Affairs and Children, Young People and Education Committees.

Yours sincerely,

David Rees AM

Chair, Health and Social Care Committee

Bae Caerdydd
Cardiff Bay
CF99 1NA

Ffôn / Tel: 0300 200 6354

E-bost / Email: SeneddIechyd@Cynulliad.Cymru /
SeneddHealth@Assembly.Wales

Trydar / Twitter: [@seneddiechyd](https://twitter.com/seneddiechyd) / [@seneddhealth](https://twitter.com/seneddhealth)

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Jocelyn Davies AM
Chair
Finance Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

Your ref:
Our ref: PO1008/RB/ER

19 May 2015

Dear Jocelyn

Thank you for your correspondence dated 5 May in relation to preparations within the Assembly for the devolution of fiscal powers.

I would like to take this opportunity to thank the Committee for its extensive work in this area; in particular the two reports on Best Practice Budget process. I appreciate the Committee's recognition of the Assembly's role in this area, and both reports have been extremely helpful in setting the direction for this work.

Complete readiness for the new challenges of the Fifth Assembly is one of the Commission's five strategic priorities. We recognise the importance of our readiness for the exercise of our new powers and responsibilities. As your recommendations highlight, this means:

- having the right capacity, understanding and expertise in place so that Members' can perform their role effectively and with confidence; and
- a new budget procedure which is the model of best practice that you have identified to effectively scrutinise the application of the Welsh Government's tax and borrowing powers.

Croesewir gohebiaeth yn y Gymraeg a'r Saesneg/We welcome correspondence in both English and Welsh

Cynulliad Cenedlaethol Cymru
Bae Caerdydd, Caerdydd CF99 1NA
Swyddfa.Breifat@cymru.gov.uk
www.cynulliadcymru.org
T +44 (0)29 2089 8230

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National Assembly for Wales
Cardiff Bay, Cardiff CF99 1NA
Private.Office@wales.gov.uk
www.assemblywales.org
T +44 (0)29 2089 8230



Thus, preparing for the fiscal devolution contained in the Wales Act 2014 is a priority area of ongoing work. The following provides an update in relation to each of these areas of work.

Development and implementation of new budget procedures.

As recognised by the Committee, and by the Minister for Finance and Government Business, collaborative working and continued co-operation between the Welsh Government and Assembly Commission is essential in taking this work forward, to ensure that the resulting budget procedures are fit for purpose for both the Welsh Government and the Assembly. I welcome the continued commitment from the Minister to work collaboratively with the Assembly.

Regular meetings between officials from the Welsh Government and Assembly are ongoing, and are proving helpful in developing our thinking on moving towards a new budget procedure in time for the tax powers going live in the 2018-19 budget round. Such discussions are following up on the Committee's reports, which are proving to be fundamental to this process.

We are confident that this will aid us in reaching a common agreement on a future budget procedure and associated safeguards, which allows the Welsh Government to meet its responsibilities and also provides for adequate scrutiny of the public finances, in time for summer 2017 and the preparations for the 2018-19 budget round.

As well as the Finance Committee, the Business Committee, as the committee with responsibility for Assembly procedures, will be instrumental in agreeing a future budget process. Commission staff will ensure that all are kept informed as this work progresses.

In taking the work on developing a new budget procedure forwards, all relevant Commission staff – including the Clerk of the Finance Committee – are working in a coordinated manner to ensure that there are clear lines of communication for all involved. They are supported in this work by an external expert advisor, Ian Summers.



Readiness for change – capacity planning

The Wales Act 2014 carries two main implications for the scrutiny work conducted by the Assembly. First, the need for scrutiny of fiscal legislation and, second, an expansion of its general financial and budget scrutiny to cover taxation and borrowing, in addition to public spending.

The Silk Commission in their Part 1 report (November 2012) recognised that: *‘The National Assembly for Wales Commission may wish to consider building up of capacity and expertise for financial scrutiny through the training of Members and through research and committee support that Members receive.’* Since that time, work has been underway in the Assembly to improve our expertise in this area.

In principle, the scrutiny of tax legislation is no different to that of other legislation – the legislative process remains the same. However, there is clearly a need to build internal skills and knowledge in relation to taxation and to draw in external expertise. In relation to the latter, committees are already free to appoint expert advisors and I trust that this will continue. But should we need to make changes to these arrangements in order to access the scale and level of advice required, I will be supportive. My priority is to ensure that the Assembly, and its committees, can access the expertise that it needs in order to meet fully its enhanced fiscal responsibilities.

As for our internal expertise, the Assembly already has a programme of financial scrutiny development in place for Members and their staff, organised by the Members’ Liaison and Professional Development team, in conjunction with an external provider. A review of the continuing professional development programme is planned in the next few months, to ensure that it is fit for purpose and reflects our new fiscal powers. A revised programme will be in place by the beginning of the Fifth Assembly, in time for the commencement of the new budget process in autumn 2017.

A programme of development for Commission staff supporting Committee scrutiny is underway, which aims to build our internal knowledge base. We are also tapping into good practice and experience from other Parliaments, such as the Scottish Parliament which has recently scrutinised a similar suite of tax legislation, following on from powers granted under the Scotland Act 2012.



Llywydd
Presiding Officer



The Research Service is in the process of expanding the team responsible for financial scrutiny through the recruitment of an additional senior research officer.

I hope this update reassures the Committee that preparedness for the devolution of fiscal powers is a priority within the Assembly and that work is underway to ensure that we are on course to meet the challenges ahead.

In keeping with your original request, I am copying this response to Jane Hutt AM, Minister for Finance and Government Business, and David Melding AM, Chair of the Constitutional and Legislative Affairs Committee, as well as members of the Business Committee.

A handwritten signature in cursive script that reads "Rosemary".

Dame Rosemary Butler AM
Presiding Officer

Agenda Item 6.2

By virtue of paragraph(s) vi of Standing Order 17.42

Document is Restricted