

SL(6)435 – Part 8 Code of Practice – Role of Director of Social Services

Background and Purpose

The Local Authority Social Services Annual Reports (Prescribed Form) (Wales) Regulations 2017 (“the 2017 Regulations”) were enacted to set out the specific information to be included in the annual reports of local authorities relating to their social services functions, and headings under which the information required was to be included.

The Part 8 Code of Practice – Role of Director of Social Services (“the Part 8 Code”) issued under Part 8, section 145(1) of the Social Services and Well-being (Wales) Act 2014 (“the 2014 Act”) sets out the power to issue codes. Section 145(3) of the 2014 Act requires local authorities to act in accordance with any relevant requirements contained in a code issued under section 145(1) and to have regard to any guidelines contained in it.

The revision to the Part 8 Code allows the opportunity to issue new guidance to local authorities in preparing their annual reports to bring them in line with the corporate self-assessment report required under the Local Government and Elections (Wales) Act 2021.

The Local Authority Social Services Annual Reports (Prescribed Form) (Wales) (Amendment and Transitional Provision) Regulations 2023 amend the 2017 Regulations to update the information that must be included in annual reports and headings under which the information required is to be provided. This will align with the requirements of the revised Part 8 Code.

Procedure

Draft Negative

The Welsh Ministers have laid a draft of the Code before the Senedd. If, within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the draft being laid, the Senedd resolves not to approve the draft Code then the Welsh Ministers must not issue the Code.

If no such resolution is made, the Welsh Ministers must issue the Code (in the form of the draft) and the Code comes into force on a day specified in an order made by the Welsh Ministers.

Scrutiny under Standing Order 21.7

The following points are identified for reporting under Standing Order 21.7 in respect of this code.

1. At the beginning of the Code, there is a statement stating that this Code revokes the Part 8 Code that was issued according to the English text “in March 2016”. However, in



the Welsh text, it states that the previous Code was issued “ym **16** mis Mawrth 2016” which includes an additional “16” but does not make grammatical sense. Therefore, there is a difference between the English and Welsh texts due to the additional “16” in the translation.

2. The Welsh Government’s website states that the published Code was first published and last updated on 24 May 2019, so there is some confusion when identifying the version of the Code for revocation. In this regard, it is the convention to include all the necessary details including the publication date, version and ISBN that will help identify publications such as a Code.
3. In the preamble, in paragraph 1, the Social Services and Well-being (Wales) Act 2014 is defined as “the Act”. However, in paragraphs 2 and 3 of the Code, and the heading of Chapter 3 of the Code, the definition is not always used but the title of that Act is repeated in full.
4. In the English text, the title of the Act is incorrect in paragraph 1 as there should be a hyphen in the spelling of “Wellbeing”. In both language texts, the title of the Act is also stated incorrectly in the first sentence of paragraph 2 as the year “2014” is missing (although the definition should be used in paragraph 2 on each occasion).
5. In paragraph 4, there is a reference to “Section 147” but it does not identify where that provision is found by using the words “of the Act” afterwards. Elsewhere, the references do include those words or the full title of an Act in the paragraph when identifying the specific act where a section is found, e.g., “section 8 **of the Act**” in paragraph 15, and “section 27 **of the Children Act 2004**” in paragraph 49.
6. In paragraph 9, the English text refers to “a code of practice **issued** under section 145 of the Act”. In the Welsh text, “issued” has been translated as “a gyflwynir” which suggests the meaning of “presented” or “submitted” rather than “issued”. Previously, in the revocation statement at the beginning of the Code and in paragraphs 1 and 6, the word “gyhoeddwyd” or a grammatical variant “Cyhoeddir” has been used as the translation of “issued” in the same context which does convey the meaning of “issue” (as would “dyroddir” which is used in the Act). Therefore, the translation of “issued” in paragraph 9 is also inconsistent with that found in those earlier paragraphs in the Welsh text of the Code or found in the Act. The same problem occurs later in paragraphs 15, 41, 43, 52 and 82 of the Code in similar contexts.
7. In paragraph 15 and elsewhere in the Code, in the Welsh text, “role” has been translated as “swyddogaeth” when referring to “the role of the director of social services”. However, “role” has previously been translated as “rôl” in the title of this Code and in the previous Code along with the associated Appointed Day Order for that Code– SI



2016/414 (W. 132). Therefore, the choice of word is inconsistent with that found in the Welsh text of the title of both the present and previous Codes. It is true that "swyddogaeth" can convey the meaning of "role" as noted in Geiriadur Prifysgol Cymru, but it is also used as the translation of "function(s)" in the Welsh text of the Code. As a result, it means that it is more difficult to distinguish between "role" and "function" in the Welsh text of the Code. Consequently, it would seem preferable if "rôl" was used as the translation of "role" in this context in the Code.

8. In paragraph 45(d), the English text states "experiencing abuse **of** neglect" but in the Welsh text it has been translated as meaning "experiencing abuse **or** neglect". Therefore, there is a difference in meaning between the English and Welsh text. The drafting of other provisions in the English text such as paragraph 45(c) suggest that the Welsh text is correct.
9. In paragraphs 81, 85 and in Annex 2, the term "well-being" has been translated as "lles" in the Welsh text. However, "llesiant" is the word that is used as the translation for "well-being" in the Welsh text of the Social Services and Well-being (Wales) Act 2014, and elsewhere in this Code. Therefore, it is inconsistent with the terminology of the Act and of the rest of the Code. In addition, it is also potentially confusing for the reader of the Welsh text because "lles" is used as the translation of "welfare" in other places in this Code such as the entries in Annex 1 under the Mental Health Act 1983, the Mental Health (Scotland) Act 1984 and the Children Act 1989, and in Annex 2 in the entry for "Well-being".
10. In Annex 1, in the first column under "Enactment", specific provisions of the enactment are noted or the phrase "The whole Act" is used. However, in the entries for "Adoption Act 1976" and "Adoption and Children Act 2002" no specific sections are noted and the phrase "The whole Act" is not used, so it is unclear whether the functions are found in the whole of those Acts or any specific provisions in them.
11. In Annex 1, in the first or second column, the phrase "the Act" is used in the entries for the "Children Act 1989", "Education Act 1996" and "Mental Capacity Act 2005" when appearing to refer to those particular Acts. However, the term "the Act" has previously been defined as meaning the Social Services and Well-being (Wales) Act 2014 in paragraph 1 of this Code. Therefore, the use of the phrase "the Act" could be the cause of potential confusion in these entries in Annex 1 as it is already a defined term for a different Act.
12. In Annex 1, in the first column, there is an entry noted as "**This** Act" which appears to be referring to the Social Services and Well-being (Wales) Act 2014. However, the Social Services and Well-being (Wales) Act 2014 has already been defined as "**the** Act" in paragraph 1 of this Code. Therefore, the defined term "**The** Act" should be used in the



first column of the entry rather than "**This** Act". In addition, "this Act" has also been used in the second column of the entry for "Public Health (Control of Disease) Act 1984" when appearing to refer to that Act rather than to the Social Services and Well-being (Wales) Act 2014 which adds to the confusion.

13. In Annex 1, in the second column for the entry "Mental Health Act 1983", there is a slight difference between the English and Welsh text. The English text refers to "approved mental health **professionals**" but the translation of that term does not include a word that corresponds to "professionals" in the Welsh text.
14. The Explanatory Memorandum states "*The Part 8 Code of Practice – Role of Director of Social Services ("the Part 8 Code") issued under Part 8, section 145(1) of the Social Services and Well-being (Wales) Act 2014 ("the 2014 Act") sets out the various requirements for the annual report.*" This may cause confusion for the reader as section 145 of the 2014 Act sets out the power to issue codes and it is section 144A of the 2014 Act that sets out the requirements for the annual report.

Government response

A Welsh Government response is required.

Legal Advisers

Legislation, Justice and Constitution Committee

17 January 2024

