

SL(6)494 – Part 2 Code of Practice: General Functions

Background and Purpose

Section 145 of the Social Services and Well-being (Wales) Act 2014 (“the Act”) gives the Welsh Ministers the power to issue, and from time to time revise, one or more codes relating to the exercise of social services functions. A local authority must, when exercising social services functions, act in accordance with any relevant requirements contained in a code, and have regard to any relevant guidelines contained in it.

This Code sets out the requirements and guidelines which local authorities must act in accordance with when exercising their social services functions under Part 2 of the Act. It covers:

- the well-being and overarching duties;
- population needs assessments;
- integrated preventative and early intervention services;
- promoting social enterprises, co-operatives, user-led services and the third sector;
- engagement, voice and co-production;
- information, advice and assistance; and
- registers of sight-impaired, hearing, hearing impaired and other disabled people.

This Code was originally laid on 19 March 2024, but was withdrawn on 18 April 2024 following the circulation of a draft LJC report which identified a number of errors and inconsistencies in the document.

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. In paragraph 5 of the Code, it is stated that requirements are expressed in the Code as “must” or “must not” formatted in bold, and guidelines are expressed as “should”



or “should not” in regular format. However, the phrase “need to” is used in several places in the Code and the context suggests that there could be an intention to place a requirement or give guidelines. In which case, “must”/ “must not” in bold or “should”/ “should not” may have been the correct phrase to use rather than “need to”. For example, in paragraph 44 it states, “Support will need to be appropriate to their age and understanding” and in paragraph 351 it states “Protocols to enable this to happen need to be in place and regularly reviewed”. Is the use of “need to” in this type of context in the Code deliberate because they are not intended to be legal requirements or guidelines?

2. In the Glossary on pages 3 and 4 of the English text, the terms “area” and “region/ regional” are defined in relation to local authorities, local health boards and regional partnership boards in the Code. However, in several places, the term “locality” has also been used in the context of those authorities or boards although it has not been given a meaning in the Code. For example, in paragraph 299 it states that “Local authorities must promote and publicise the service throughout the locality”. It is not clear whether the term “area” or “region” should have been used in those places or whether there is a difference in meaning between “locality” and “area” or “region”. We note that the Welsh text has used the defined term “ardal” (“area”) in the places that correspond to “locality” in the English text.
3. In paragraph 83, there is a difference between the English and Welsh text. In the second sentence of that paragraphs, in the English text, it incorrectly refers to “Chapter 2Bb of this Code”. But in the Welsh text it correctly refers to “Pennod 2B o’r Cod hwn” so that the Chapter numbers differ in the references.
4. In paragraph 230, there is a difference between the English and Welsh text. In the English text, in the final sentence, it states “the different types of organisations and approaches that fall under section 16 of the Act”. But in the Welsh text, the words “and approaches” are missing from the meaning of the sentence.
5. In paragraph 251, there is a difference between the English and Welsh text. In the English text, it states “to reach out, and engage as many and as diverse a range of people as possible”. But, in the Welsh text, the phrase “a chynnwys y bobl hyn” has been used which suggests involving or including other people rather than engagement with them. Elsewhere in the Code, “ymgysylltu” has been used regularly to convey the meaning of “engage” such as in paragraph 253.
6. In paragraph 276, there is a difference between the English and Welsh text. In the English text, it states “(see Chapter 2 of this Code)”. But in the Welsh text the Chapter number is missing so that it only states “(gweler Pennod o’r Cod hwn)” which could be interpreted as meaning “(see a Chapter of this Code)”.



7. In paragraph 283, the phrase “information, advice and assistance service” is used in the provision. However, the defined term “the service” has been used for that phrase from paragraph 275 onwards, including in the paragraphs immediately before and after paragraph 283. Therefore, it is inconsistent with the drafting of the other provisions where the defined term has been used when referring to the same service.
Government response

Welsh Government response

A Welsh Government response is required.

Legal Advisers

Legislation, Justice and Constitution Committee

25 June 2024

