

REPORT TO THE HEALTH AND SOCIAL CARE COMMITTEE - IMPLEMENTATION OF THE SOCIAL SERVICES AND WELL-BEING (WALES) ACT 2014.

Background

1. The Social Services and Well-being (Wales) Act¹ received Royal Assent on 1st May 2014. Its purpose is to specify the core legislative framework for social services and social care in Wales, giving effect to the policy stated in the White Paper *Sustainable Social Services for Wales: A Framework for Action*². The Act will transform the way social services are delivered through an approach that is focused on achieving the outcomes necessary to promote a person's well-being - as an individual, as part of a family and as part of their community.
2. To do this it requires that people have access to clear information, advice and assistance and that their voice is placed at the centre of decisions about their care and support. The Act introduces a strong statutory framework for the protection of adults, and national leadership arrangements for safeguarding people. It also recognises both the key role played by carers, through giving them rights to support which are equivalent to the rights of those they care for, and also the importance of prevention and early intervention to help people live independently.
3. While the core components of the new legislative framework are set out on the face of the Act, the Act is enabling in nature and will require the Welsh Ministers to make a suite of subordinate legislation, as well as issue codes of practice and guidance, to fill in the details of the new system and support its implementation.
4. Implementation is being taken forward in line with an implementation handling plan, dealing with the approach to consulting upon and laying of regulations and codes of practice, agreed by the Deputy Minister for Social Services. The broad approach was the subject of a Ministerial Statement on 16 July 2014³. Ministers have agreed that the Act should come into force from April 2016.

¹ <http://www.legislation.gov.uk/anaw/2014/4/enacted>

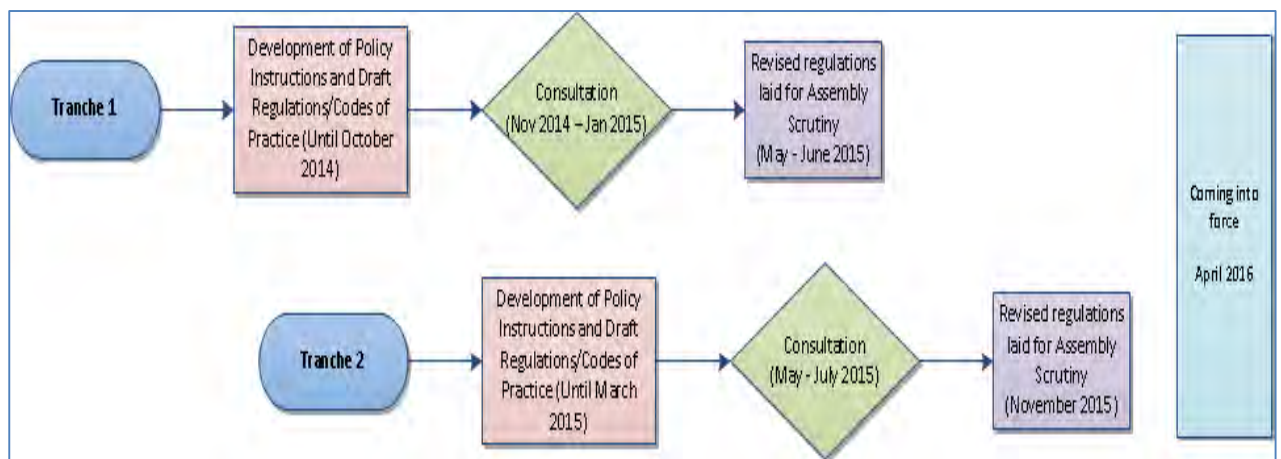
² <http://wales.gov.uk/topics/health/publications/socialcare/guidance1/services/?lang=en>

³ <http://wales.gov.uk/about/cabinet/cabinetstatements/2014/sswellbeing/?lang=en>

Implementation: timetable for subordinate legislation to be made under the Act

5. Laying of the regulations and codes of practice is being phased, with a first tranche of regulations (with their associated codes of practice and/or statutory guidance) to be consulted upon for twelve weeks from November 2014 to January 2015. Two consultation events, one in North Wales and one in South Wales, will take place to support this consultation. The regulations as amended following this consultation will then be laid before the Assembly in May 2015. This tranche includes the regulations on eligibility under section 32 of the Act.
6. A second tranche of regulations will be consulted upon in the summer of 2015, and laid, alongside the full suite of codes, before the Assembly in November 2015.
7. Full explanatory memoranda and regulatory impact assessments will be laid alongside the regulations in their respective tranches.
8. This timetable will deliver full implementation of the Act and allow it to come into force in April 2016.

High Level 'Tranche' Timetable



9. A consolidated statement of policy intent for the major pieces of subordinate legislation under the Act was published on 30 January 2014 and has been used to form the basis of the development of regulations, statutory guidance and codes of practice to underpin the Act.
10. The core provisions within **tranche 1** relate to eligibility, assessment, care and support planning and direct payments in parts 2 to 4 of the Act, together with safeguarding (part 7) and prisoners and ordinary residence in part 11. This tranche consists of 13 sets of regulations

(listed at **annex A**), four codes of practice, and one statutory guidance document. The timings of this tranche have been set to support the making of the legislative framework around these key provisions in summer 2015, thus giving the social care and health sectors time to adjust to the new requirements ahead of implementation in April 2016.

11. **Tranche 2**, dealing principally with the framework for implementing provisions around paying for care in part 5 of the Act, and looked-after and accommodated children in part 6, is to be consulted on in the summer of 2015, with a view to laying the regulations, together with the codes of practice for the whole Act, in November 2015.

Implementation: developing the subordinate legislation to be made under the Act

12. Recognising the importance of the technical expertise of the sector during the development of the Regulations and Codes of Practice for consultation, officials leading the development of policy across tranche 1 established Technical Groups, whilst advisory input in relation to safeguarding was provided by the Safeguarding Advisory Panel⁴. These groups provided the relevant expertise to inform the detailed development of policy instructions for regulations and the content of the Codes of Practice and statutory guidance. Over two hundred people across local government, the NHS, private care providers and the third sector were engaged in this work, with a view to securing a wide spread of engagement and expertise. Copies of the reports of a number of these technical groups can be found on the Welsh Government website⁵.
13. Members of the technical groups were brought together in a stakeholder event, held on 11 September 2014 at the University of Glyndwr, Wrexham. This event looked specifically at the issue of coherence across the developing legislative framework to inform the package put forward for consultation.
14. Officials leading the development of policy across **tranche 2** of the regulations and codes of practice have commenced forming Technical Groups or other engagement mechanisms to inform the development and finalisation of policy.

Integration of Health and Social Services

15. The Act seeks to promote integration between health and social services. It has been developed through close working with NHS colleagues and with the active involvement of the national Partnership Forum and Leadership Group, both of which include representatives of the health sector in Wales.

⁴ <http://wales.gov.uk/topics/health/publications/socialcare/reports/advisory/?lang=en>

⁵ <http://wales.gov.uk/topics/health/socialcare/act/resources/draft-regulations/?lang=en>

16. A focus on integration and joint working is specifically enshrined in Section 165 of the Act, which requires Health Boards and NHS Trusts to cooperate with and provide information to local authorities, when requested, to enable them to exercise their social services functions.
17. In addition, there are a number of duties expressly placed upon Local Health Boards and NHS Trusts by the Act. These relate to fields such as *population and individual assessment and planning*, the *provision of information, advice and assistance*, *safeguarding* and *collaboration and co-operation* itself. These duties are listed at **annex B** to this paper.

Financial implications and support for implementation

18. The Regulatory Impact Assessment (and the Explanatory Memorandum of which it forms part) in relation to the Act was agreed by the previous Deputy Minister for Social Services and the First Minister and published as part of the Explanatory Memorandum on the Bill on introduction on 28 January 2013. A revised version was laid on 28 January 2014, after the conclusion of stage 2. The National Assembly for Wales agreed the Financial Resolution of the Bill on 8 October 2013.
19. The detailed financial implications of implementing the regulations will be set out in the Regulatory Impact Assessments for the individual sets of regulations, developed to support the scrutiny process. This position is consistent with the Explanatory Memorandum as revised at stage 2. We will be seeking information to inform these assessments as part of the consultation process.
20. As outlined in the 29 January Cabinet written statement on implementation⁶, a grant of £1.5 million has been made available to local government and partners including Local Health Boards and the Welsh NHS Confederation to support implementation activity in 2014-15.
21. This grant builds upon that provided in 2013-14 but has been tailored further to drive implementation activity in the regions.
22. The chosen regional delivery footprint for sustainable social services is coterminous with the Local Health Board footprint and is intended to drive collaboration between the Local Health Board and local authorities in its footprint area to achieve the aims of *Sustainable Social Services*. To reinforce this collaboration, the terms of the 2014-15 grant include the requirement to develop regional governance which reflects the national steering and engagement structure⁷ of (political)

⁶ <http://wales.gov.uk/about/cabinet/cabinetstatements/2014/8414016/?lang=en>

⁷ <http://wales.gov.uk/topics/health/socialcare/partnership/?lang=en>

Partnership Forum and (executive) Leadership Group. An operational structure is to be in place by 31 January 2015.

23. A further key deliverable of the regional grant is the development of a comprehensive regional implementation plan by the end of the 2014-15 financial year. These plans will be used alongside the response to the consultation on tranche 1 in order to inform the identification of any additional support needed by the sector to support implementation.
24. Provision is also made for grants at national level to support strategic engagement and enable regional delivery. National grant recipients are the Association of Directors of Social Services Cymru and Welsh NHS Confederation, and (for the first time) the Health and Social Care Alliance and to Care Forum Wales. The latter awards recognise the key contribution of the private and voluntary sectors to successful implementation.

Support for implementation: communications

25. The “Communicating the Changes” project of the Sustainable Social Services for Wales Programme is dedicating a workstream solely to implementation, replacing the former Social Services and Well-being (Wales) Bill workstream.
26. Proposals are being explored and collated for a public information campaign to be delivered during 2015-16, and communications planning for the remainder of this year includes a variety of targeted activity directed at local authority, independent care provider and NHS staff, together with stakeholders and with citizens. The key messages of Sustainable Social Services will continue to be disseminated through the range of existing channels, and those set up as part of the communications project.

Support for implementation: training

27. Training requirements for implementation are being captured under the Strong and Confident Delivery Team (workforce) project within the Sustainable Social Services Programme. A first level training programme for all core staff and partner agencies, including the NHS, involved in delivering the Act is currently being designed. This will be produced as a ready to use ‘pack’, with a framework for delivery, and a programme to train trainers to deliver this pack will be put in place. We expect this first wave of training to commence this financial year, with local authorities having a lead role in planning and delivering the training with their partners in line with the expectations of their role in the Social Care Workforce Development Programme.
28. Alongside this, work is in hand to ensure that current training and qualifications are appropriately aligned to the Act as well as further

development of bespoke training packages to support particular elements of the Act. These will be made available during 2015-16.

29. Officials are progressing this work in full partnership with key stakeholders including Care Council for Wales, university partners and local authorities, supported by the development of an overall plan to co-ordinate this activity.

The implementation project: governance

30. An Implementation Project and Board have been set up under the Sustainable Social Services for Wales programme to steer implementation-related activity within the Welsh Government. The project focuses on managing the development, consultation upon, and enactment of the package of subordinate legislation and supporting Codes of Practice arising from the Act and maintains links with key implementation-related activity being led elsewhere in the Programme.

Annex A

Making of the legislative framework under the Social Services and Well-being (Wales) Act 2014 – Tranche 1

Tranche 1 Key Timings

Consultation	November 2014 for 12 weeks
Regulations laid before the NAFW	May 2015
Plenary debates on affirmative regulations	June-July 2015
CIF	April 2016

Type of instrument	Relevant Part of Act	Section issued under	Subject	Title (proposed)	Procedure
Regulations	2 <i>(General Functions)</i>	14	Assessment of needs for care, and support for carers and preventative services	The Care and Support (population assessment (Wales) Regulations 2015	Negative
Regulations	2	16	Promoting social enterprises	The Social Services and Well-being (Wales) Act 2014 (Social Enterprise, Co-operative and Third Sector) (Wales) Regulations 2015	Affirmative
Code of practice	2	145	Well-being, Population Assessment, Prevention, Promotion of Social Enterprises and Provision of Information, Advice and Assistance	Code of Practice and guidance on the exercise of social services functions and partnership arrangements in relation to part 2 (General Functions) of the Social Services and Well-being (Wales) Act 2014	As set out in S.146 (special)
Regulations	3 <i>(Assessing the needs of individuals)</i>	30	Regulations about assessment	The Care and Support (Assessment) (Wales) Regulations 2015	Negative

Code of practice	3	145	Assessing the needs of individuals	Code of Practice on the exercise of social services functions in relation to part 3 (Assessing the needs of individuals) of the Social Services and Well-being (Wales) Act 2014	As set out in S.146 (special)
Regulations	4 <i>(Meeting needs)</i>	32	Determination of eligibility and consideration of what to do to meet needs	The Care and Support (Eligibility) (Wales) Regulations 2015	Super Affirmative
Regulations	4	50,51,52,53	Direct Payments	The Care and Support (Direct Payments) (Wales) Regulations 2015	Negative
Regulations	4	54(5) and 55	Care and support plans and support plans	The Care and Support (Care Planning) (Wales) Regulations 2015	Negative
Code of practice	4	145	<i>eligibility, care and support planning and direct payments</i>	Code of Practice on the exercise of social services functions in relation to part 4 (Meeting needs) of the Social Services and Well-being (Wales) Act 2014	As set out in S.146 (special)
Regulations	7 <i>(Safeguarding)</i>	127(9)	Officers authorised to apply for Adult Protection and Support Orders	The Adult Protection and Support Orders (Authorised Officer) (Wales) Regulations 2015	Affirmative
Regulations	7	133	Regulations about the National Board	National Independent Safeguarding Board Regulations 2015	Negative
Regulations	7	134(1), (3) and (6) 135(4), 136(3), 138 and 139	Prescribing areas for new Safeguarding Boards and related matters concerning Board operations	The Safeguarding Boards (Functions and Procedures) (Wales) Regulations 2015 The Safeguarding Boards (General) (Wales) Regulations 2015	Negative 135(4) - Affirmative
Statutory Guidance	7	131 and 139	Adult Protection and Support Orders, the duty to report and enquire, Safeguarding Boards and the National	Statutory guidance in relation to part 7 (Safeguarding) of the Social Services and Well-being (Wales) Act 2014	None (Requirement to consult Secretary of State in relation to guidance given under s.131)

			Independent Safeguarding Board		
Regulations	9 <i>(Co-operation and partnership)</i>	166	Partnership arrangements	The Care and Support (Partnership arrangement for population assessments (Wales) Regulations 2015	Affirmative
Regulations	11 <i>(Miscellaneous and General)</i>	194 and 195	Ordinary residence and disputes about ordinary residence	The Care and Support (Ordinary Residence) (Specified Accommodation) (Wales) Regulations 2015 The Care and Support (Disputes about Ordinary Residence, etc.) (Wales) Regulations 2015	Negative
Code of practice	11	145	Adults and Children in prison, youth detention accommodation and bail accommodation, and Ordinary Residence	Code of Practice on the exercise of social services functions in relation to part 11 (Miscellaneous and General) of the Social Services and Well-being (Wales) Act	As set out in S.146 (special)

IMPLICATIONS OF THE SOCIAL SERVICES AND WELL-BEING (WALES) ACT FOR THE NHS IN WALES



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The key elements of the Social Services and Well-being (Wales) Act which relate to health or the provision of healthcare are set out in the following paragraphs.

Section 14: The assessment of needs for care and support, support for carers and preventative services

This requires respective local authorities and Local Health Boards to jointly assess the extent to which there are people who need care and support, or carers who need support. They should also assess the extent to which needs are not being met, and the range and level of services required to meet need.

This section also ensures that this population assessment is taken into account as part of broader integrated planning frameworks.

Section 15: Preventative services

This requires local authorities to provide services designed to prevent, delay or reduce needs for care and support. Local Health Boards are required to have regard to the importance of achieving these preventative purposes when exercising their functions.

Section 17: Provision of information, advice and assistance

A Local Health Board or an NHS trust is required to provide the local authority with information about the care and support it provides in the respective local authority area.

Section 29: Combining needs assessments and other assessments

A local authority may carry out a needs assessment for a person at the same time as it, or another body, carries out another assessment. The local authority may carry out the other assessment on behalf of, or jointly with, another body (for example the Local Health Board or NHS trust).

Section 47: Exception for provision of health services

This section specifies that local authorities cannot provide or arrange services or facilities that would be required under the NHS (Wales) 2006 Act or the NHS Act 2006, unless doing so would be incidental or ancillary to other actions within the local authority's powers.

Section 128 and 130: Duty to report adults or children at risk

This section requires Local Health Boards and NHS trusts (as relevant partners) to inform local authorities if they have reasonable cause to suspect an adult or child is at risk.

Section 134: Safeguarding Children Boards and Safeguarding Adults Boards

This section relates to the establishment of Safeguarding Children Boards and Safeguarding Adults Boards. Regulations

will set out those areas in Wales where there will be Safeguarding Boards and the respective Local Health Boards and NHS trusts will be partners and therefore will have representatives on the Boards.

Sections 162-169: Co-operation, integration of care and support and partnership arrangements

Part 9 of the Act relates to co-operation and partnership. Section 162 requires local authorities to make arrangements with their respective partners, which include Health Boards and NHS trusts, to promote co-operation. This co-operation is required in relation to adults with needs for care and support, and adults who are carers. This includes improving well-being, quality of care and support and protecting adults at risk of abuse or neglect.

Section 163 makes amendments to the Children Act 2004 and sets out arrangements for the local authority to promote co-operation with their relevant partners, including Health Boards and NHS trusts. This includes improving well-being, quality of care and support and protecting children at risk of abuse, neglect or other kinds of harm.

Section 164 requires Health Boards and NHS trusts to cooperate with and provide information to local authorities, when requested, to enable them to exercise their social services functions.

Section 166 enables regulations to be developed to specify the partnership arrangements between local authorities and Health Boards. Regulations will make provision to specify which local authorities and Health Boards should have partnership arrangements, the form of the partnership arrangements and the operation and management of these arrangements, including information sharing.

Section 167 provides for regulation to enable local authorities and Health Boards to pay towards any expenditure incurred in relation to partnership arrangements under section 166. This could include making

payments directly or by contributing to a pooled fund. A local authority and a Health Board may also provide staff, goods, services, accommodation or other resources in connection with partnership arrangements. Regulations can make provisions which require a pooled fund to be established, for determining the contributions to be made by partners to the pooled fund, for expenditure in relation to posts, services, administration or any other costs related to partnership arrangements.

Section 168 provides regulation making power to establish partnership boards, in relation to partnership arrangements. The regulations make provision to specify the membership of partnership boards (including Health Boards), the objectives, functions and procedures, the form of reports, their content, timing and publication.

Section 169 requires Welsh Ministers to issue and periodically revise guidance about partnership working in relation to section 166. This will apply to partners, which includes local authorities and Health Boards. The guidance will also apply to a team or person carrying out partnership arrangements and any partnership boards established under section 168.

Section 171: Complaints about social services

Section 171 allows for regulations to make provision for the consideration of complaints relating to services provided by local authorities. This includes services under section 33 of the National Health Services (Wales) Act 2006 or section 75 of the National Health Service Act 2006.

Section 180: Independent advocacy services for complaints about palliative care

Section 180 makes amendments to section 187 of the National Health Service (Wales) Act 2006 to include reference to independent advocacy services for palliative care.