

Explanatory Memorandum to the code of practice in relation to Part 11 (Miscellaneous and General) of the Social Services and Well-being (Wales) Act 2014.

This Explanatory Memorandum has been prepared by the Health and Social Services Group and is laid before the National Assembly for Wales in conjunction with the above code of practice in accordance with Standing Order 27.1 and Standing Order 27.14

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the code of practice in relation to Part 11 (Miscellaneous and General) of the Social Services and Well-being (Wales) Act 2014. I am satisfied that the benefits outweigh any costs.

Mark Drakeford

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

16 October 2015

Part 2 – 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 in a single Act. The Act provides the statutory framework to deliver the Welsh Government’s commitment to focus on well-being, rights and responsibilities.

People, their families and their communities are rich assets and are at the centre of this legal framework. Everyone, adult or child, has a right to be heard as an individual, to shape the decisions that affect them, and to have control over their day to day lives.

Part 11 of the Social Services and Well-being (Wales) Act 2014 contains:

- provisions in relation to adults in prison, youth detention accommodation, approved premises and bail accommodation and children in youth detention accommodation, prison and bail accommodation;
- ordinary residency and
- disputes about ordinary residency.

The code of practice sets out how local authorities should implement their care and support duties for those adults in the secure estate in Wales and for children and young people in the secure estate in England or Wales.

For adults in the secure estate in Wales with care and support needs the responsibility falls to the local authority with a prison within its boundaries. [For Welsh adults in the secure estate in England their care and support needs are met under the Care Act 2014].

For Welsh children and young people the responsibility falls to the individual’s home Welsh local authority whether they are accommodated in the secure estate in England or Wales.

The code of practice also sets out requirements and guidelines on determining ordinary residence in relation to assessment and meeting eligible care and support needs; determining ordinary residence when an adult moves into certain types of accommodation out of area; and disputes between authorities about a person’s ordinary residence and portability of care and support, and the process for seeking a determination by the Welsh Ministers or appointed person.

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

Section 146 of the Act lays down the procedure to be followed before issuing and approving this code of practice. As set out in section 146 the draft code of practice was subjected to a 12 week public consultation. The code of practice will be laid before the National Assembly for 40 days, after which time, if no resolutions are made, Welsh Ministers must issue the code of practice.

There are no other matters the Minister wishes to bring to the Committee's attention.

3. Legislative background

The powers enabling the making of this code are contained in Sections 145 and 146 of the Act. Section 145 of the Act permits Welsh Ministers to issue, and from time to time revise, one or more codes of practice on the exercise of social services functions. Section 146 of the Act lays down the procedure to be followed when issuing or revising a code under Section 145.

4. Purpose and intended effect of the legislation

The Law Commissioners report in May 2011 called for the removal of ambiguity regarding adult prisoners' eligibility for social care. In response to this both England and Wales addressed the matter through their forthcoming legislation. In Wales the legislation also covers children and young people in the secure estate as well as adults.

The intention of the Act is to ensure greater continuity of care and support to individuals:

- before they enter the secure estate
- while they are in custody
- to help them plan for resettlement; and
- to support them on release.

The new system will deliver better integration and improved collaboration between all partner organisations, and will play its part in seeking to reduce reoffending. The code of practice sets out the duties on local authorities and how they should meet the care and support needs of those in the secure estate.

In relation to ordinary residency the code of practice sets out which local authority has responsibility for meeting the care and support needs of an adult who has been placed in a care home in another local authority area – i.e. that responsibility continues to rest with the placing authority rather than the authority in whose area the care home is situated.

In relation to disputes about ordinary residency the code of practice sets out how the resolution of disputes between local authorities about where a person is ordinarily resident in Wales for the purposes of the Social Services and Well-being (Wales) Act 2014 and for the purposes of section 117(3) of the Mental Health Act 1983 is managed.

The code of practice clarifies:

- which authority is responsible for meeting an individual's needs until the dispute is resolved
- the steps to be taken by local authorities to try to resolve the dispute prior to referring it for determination by the Welsh Ministers under section 195 of the Act
- the documentation that is to be supplied by local authorities when making a referral
- the process for seeking a review of determinations; and
- the arrangements for reimbursement between authorities when the effect of a revised determination following a review is that sums paid under a previous determination were not owed.

5. Consultation

Section 146 (1) of the Act states that before issuing or revising a code under section 145 Welsh Ministers must consult on a draft code. The code of practice for Part 11 was consulted on for 12 weeks from 6 November 2014 to 2 February 2015.

The policy, regulations and code of practice have gone through extensive development stages, reviews and consultation. The Welsh Government has sought to support implementation through a process that fully engages our stakeholders. Assembly members, stakeholders, service professionals, the voluntary and independent sectors and more importantly, those using care and support services, and carers, have all contributed to the development of the regulations, and the development of the code practice.

The Welsh Government received 63 responses to the consultation from a wide range of stakeholders. The overall response was positive and there was clear support for and commitment to the proposals. The responses were carefully considered and led to a range of changes to strengthen and improve both the regulations and code. The Welsh Government response on the consultation exercise can be found at:

<http://gov.wales/consultations/healthsocialcare/part11/?lang=en>

6. Regulatory Impact Assessment

In relation to the implementation of the full statutory framework, there may be associated implementation costs for local authorities and other bodies in the form of training and preparedness requirements. Financial support is being made available to local authorities and supporting partners to support implementation. In 2013-14 and 2014-15, a Delivering Transformation grant of £1.5 million per annum 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. This funding has been increased to £3m in 2015-16.

The code is not subordinate legislation made by statutory instrument and for that reason an RIA is not required under section 4.2 of the Welsh Ministers' Regulatory Impact Assessment Code.

A full RIA has been completed for the Regulations under Part 11 of the Act, to consider the impact on costs and benefits of introducing the following regulations:

- Care and Support (Ordinary Residence) (Specified Accommodation) (Wales) Regulations 2015
- The Care and Support (Disputes about Ordinary Residence etc) (Wales) Regulations 2015

The regulatory impact assessments are part of the Explanatory Memoranda that accompanies the regulations. The code of practice provides further detail and guidance for interested bodies on procedures covered by the regulations under part 11 of the Act and provides detail and guidance on other duties conferred under that part.

The code of practice has been subject to a broad spectrum of impact assessments including:

- Equality Impact Assessment;
- Welsh Language Impact Assessment; and
- Children's Rights Impact Assessment.

These impact assessments have shown that there are no significant negative impacts on any of the areas under consideration. Additionally, the code does not create any significant regulatory burden; therefore a full RIA has not been completed. The impact assessments are available on the Welsh Government website: <http://gov.wales/topics/health/socialcare/act/?lang=en>