

## **Explanatory Memorandum to the code of practice in relation to part 2 (General Functions) of the code of practice**

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 code of practice under standing order 27.1 and 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 general functions.

I am satisfied that the benefits outweigh any costs.

*Mark Drakeford*

**Minister for Health and Social Services**

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 2** of the Social Services and Well-being (Wales) Act 2014 contains provisions relating to the general functions of a local authority, including assessment of the needs of a population for social care and other services such as those that promote well-being, and the promotion of social enterprises, co-operatives, user led services and the third sector. In addition, this part covers how persons exercising functions under the Act should ensure they meet their duties to promote the well-being of people who need care and support and carers who need support, how local authorities must provide a range of preventative services, and how local authorities should discharge their duties in relation to the provision of a service for providing people with information and advice relating to care and support and with assistance in accessing care and support.

The code applies to local authorities in relation to their social services functions. However there will be implications for partner bodies, including local health boards, the third and independent sectors and for people who need care and support and carers who need support in Wales.

### **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**

There are many pressures on local authority social services departments 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 system is unsustainable and specifically there is a need to simplify and improve service efficiency and effectiveness of the system.

The system is being 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.

Part 2 of the Act contains provisions relating to the general functions of a local authority. The purpose is to:

- Place a duty on any persons exercising functions under the Act to seek to promote the well-being of people who need care and support and carers who need support. The Act sets out the definition of well-being and places a duty on Welsh Ministers to issue a statement of well-being outcomes to be achieved. Well-being relates to all areas of a person's life and many services will help people to secure well-being.
- Specify overarching duties which set out rights for people. This includes duties relating to UN Principles and Conventions.
- Require local authorities and local health boards (LHBs) to jointly carry out an assessment of the needs for care and support and needs of carers for support in a local authority area, and also to map out the assets. This seeks to ensure that local authorities and LHBs jointly produce a clear and specific evidence base in relation to care and support needs and carers' needs for support to inform various planning and operational decisions.

- Require local authorities to provide or arrange preventative services for various purposes, including to seek to prevent or delay the development of needs for care and support, and/or support needs of carers.
- Place a duty on local authorities to promote the development, in their area, of not for private profit organisations to provide care and support and support for carers, and preventative services. These models include social enterprises, co-operative organisations, co-operative arrangements, user led services and the third sector. This includes placing a requirement on local authorities to involve people in the design and operation of services.

Require local authorities to provide people with information and advice relating to care and support, and assistance in accessing care and support. This seeks to provide all people with relevant, accurate, timely information about services which will improve or maintain their independence and wellbeing; and to provide advice and assistance, proportionate to their needs, to help them make the right choices and to access these services. This service will play a crucial role in changing people's perception of social services to a more positive one promoting early intervention and prevention to everyone regardless of age.

## **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 was consulted upon in a 12 week consultation that ran from 6 November 2014 to 2 February 2015.

There were more than 300 substantive written responses to the overall consultation received, from a wide range of individuals, representative groups, duty bearers and professional organisations. Overall response to the consultation was positive and there was a clear level of support in and commitment to the changes we are taking forward. There were a number of common themes – in particular responses referred to co-production, partnership working and technical detail.

Following the consultation, the code was reviewed and amendments were made, where appropriate, to take into account the views of respondents. A summary report of the consultation responses is available on the Welsh Government website:

<http://gov.wales/consultations/healthsocialcare/part2/?status=closed&lang=en>

## 6. Regulatory Impact Assessment

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

A full RIA has been completed for the Regulations under Part 2 of the Act, to consider the impact on costs and benefits of introducing the following regulations:

- The Care and Support (Partnership Arrangements for Population Assessments) (Wales) Regulations 2015
- The Care and Support (Population Assessment) (Wales) Regulations 2015
- (Social Enterprise, Co-operative and Third Sector) (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 2 of the Act.

However, consideration has been given to whether the impact of the code is in any case sufficient to warrant completion of an RIA. The code of practice has been subjected 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 additional regulatory financial burden; therefore an RIA has not been completed.

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 impact assessments are available on the Welsh Government website:  
<http://gov.wales/topics/health/socialcare/well-being/?lang=en>