

The Social Services and Well-being (Wales) Act 2014: A review

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Introduction (1)

- SSWA 2014 – gave effect to key recommendations of Law Commission report on Adult Social Care (2011)
- Materially different to English equivalent – Care Act 2014
 - Applicable to all people “in need” of any age and their carers
- Came into force on 6 April 2016
- Transitional provisions now ended:
 - Children: 1 October 2016
 - Adults: 31 March 2017

Introduction (2)

- Repeals and consolidates previous “patchwork quilt” of social care legislation
- Fundamental principles:
 - **Voice and control** – putting the individual and their needs, at the centre of their care, and giving them a voice in, and control over reaching the outcomes that help them achieve well-being.
 - **Prevention and early intervention** – increasing preventative services within the community to minimise the escalation of critical need.
 - **Well-being** – supporting people to achieve their own well-being and measuring the success of care and support.
 - **Co-production** – encouraging individuals to become more involved in the design and delivery of services.
- Promote accessibility and clarity of law
- Create sustainable social services

Structure of the Act

- Eleven Parts to the Act
 1. Introduction
 2. General functions
 3. Assessing the needs of individuals
 4. Meeting needs
 5. Charging and financial assessment
 6. Looked After and Accommodated Children
 7. Safeguarding
 8. Social Services Functions
 9. Co-operation and Partnership
 10. Complaints and Advocacy
 11. Miscellaneous and General

Regulations and Guidance

- Regulations
- Code of Guidance for each Part
- Part 7 (Safeguarding) – statutory guidance
- <https://socialcare.wales/hub/sswbact>

Well-being (ss.2 and 5)

- General duty: person exercising functions under the Act must seek to promote well-being of people in need and of carers (s.5)
- “Well-being” in relation to any person, means well-being in relation to any of the “well-being outcomes” listed in s.2(2)
- Child – “well-being” also includes:
 - Physical, intellectual, emotional, social and behavioural development;
 - “welfare” as interpreted for the purposes of the Children Act 1989
- Adult – “well-being” also includes:
 - Control over day to day life;
 - Participation in work

Overarching duties (s.7)

- Persons exercising functions under the Act must have “due regard” to:
 - UN Principles for Older Persons (1991)
 - UN Convention on the Rights of the Child
- Code of Practice on Part 2 – due regard to UNCRPD
- “Due regard” considered by the courts to be more onerous than simply “having regard”

Preventative services (s.15)

- Strategic and practical duty
- LA must ensure a range and level of preventative services which:
 - Help, prevent, delay or reduce needs for care and support
 - Minimise effect of people's disabilities
 - Help prevent abuse or neglect
 - Enable people to live as independently as possible
 - Reduce the need for: care or supervision orders; criminal proceedings against children; taking children into local authority care or secure accommodation
- LHBs must also take a preventative approach that helps to achieve these aims
- Compatible/realistic with austerity?

Promoting social enterprises (s.16)

- Distinctive, innovative provision. Prioritise support of ‘social enterprise’ care
 - The Social Services and Well-being (Wales) Act 2014 (Social Enterprise, Co-operative and Third Sector (Wales) Regs 2015)
 - Part 2 Code of Practice
- General duty on LA to promote:
 - development of social enterprises / co-operatives / third sector to provide care and support and preventative services
 - Care and support and preventative services that involve service users in design and running of services
- Compare to England (Care Act 2014 – enables delegation of functions to private sector, e.g. s.79)
- Empty aspiration without additional funding?



Guildhall

CHAMBERS

Statement of outcomes (s.8)

- August 2016 – Welsh ministers issued statement of outcomes: Well-being statement for people who need care and support and carers who need support
 - Strategic planning tool used to assess whether lives of people “in need” in Wales are being materially improved by new legislative framework
 - *Recording measurement of personal outcomes guidance* (Nov 2016) - fit for purpose?
- Duty on LAs and LHBs to complete local “population assessment” (s.14) to identify care and support needs in area
- Must now publish an “area plan” (s14A) (Wellbeing of Future Generations Act (Wales) 2015)

Annual reports (s.144A)

- Regulation and Inspection of Social Care (Wales) Act 2016 inserted s.144A
- LA must complete annual report in respect of social services functions as soon as practicable after end of financial year:
 - The Local Authority Social Services Annual Reports (Prescribed Form) (Wales) Regulations 2017:
 - comply with the new reporting requirements in regulations, codes of practice and statutory guidance;
 - promote best practice in the standard of reporting and in the carrying out of authorities' social services functions

Duty to assess

- Specific duty to assess if “it appears” to a LA that a person “may” have a need for care and support – low threshold
 - Adults (s.19)
 - Children (s.21)
 - Carer – may have needs for support (s.24)
- Part 3 Code of Practice (assessing the needs of individuals): LA must identify all presenting needs including ‘those would be deemed as eligible if carer was not meeting those needs’ (para 80)
- Duty to involve carers ‘so far as is feasible’
- Irrespective of level of need or financial resources

Eligibility criteria (1)

- Once assessment commenced, LA duty to consider whether person's needs meet eligibility criteria (ss.32-33)
 - Care and Support (Eligibility)(Wales) Regs 2015
 - Part 3 Code of Practice (Assessing the Needs of Individuals)
- Regs create four stage process:
 1. Need arises for specified reason (i.e. disability / caring)
 2. Need relates to certain key activities ('outcomes')
 3. Person (or if a child, their parent(s)) is unable to meet that need even with available support from others / community
 4. Need cannot be met without the LA providing / arranging support services or Direct Payments
- Overly complex and/or unintelligible?

Eligibility criteria (2)

- Significant criticism of eligibility criteria – suggestive of “can and can only” test?
- Part 4 Code (Meeting Needs): *“the eligibility criteria must not be used as a tool to require individuals to demonstrate they have exhausted every other possible avenue of support before becoming eligible for local authority assistance”* (para 32)

Looked after children (ss. 74-125)

- Part 6 of the Act largely re-enacts provisions of Part 3 of Children Act relating to ‘looked after and accommodated children’
- Concern raised about possible impact
 - Abolishes understood, established concepts – e.g. child “in need” (s.17 CA 1989)
 - Children’s Commissioner for Wales felt the Act did not recognise “the distinct circumstances of children and young people” (Annual Report 2014)

NHS Continuing Care (s.47)

- Exception for NHS Continuing Care (s.47)
 - Boundary between social care and health care responsibilities remains unclear
 - Ambiguous whether *Coughlan* criteria still apply:
 - LAs can fund nursing care if:
 1. Merely 'ancillary or incidental' to social care support; and
 2. Of a 'nature' that expect social services to provide
 - Act currently contains no prohibition on second criteria
 - Significant problems identified with LHB practice in Wales (e.g. Wales Audit Office reports)

Duty to provide care and support

- Adults in need (s.35)
 - Individual is ordinarily resident in LA area; and
 - Has eligible needs; and
 - finances below maximum allowance;
 - if above maximum allowance, they want LA to provide
- Children in need (ss.37-39)
 - Complexities re duties to meet needs of children
 - Replicates s.17 of Children Act 1989
 - Does NOT apply to looked after children (Part 6)
- Carers (ss.40-45)
- Act is not prescriptive about ways in which needs must be met – illustrative list only (s.34)

Charging (ss.59-73)

- 10 April 2017: Amendments to Regulations and Codes of Practice: The Care and Support (Choice of Accommodation, Charging and Financial Assessment) (Miscellaneous Amendments) (Wales) Regulations 2017:
 - Duty to provide choice of accommodation not applicable where person's need for accommodation is short term (i.e. not exceeding 8 weeks)
 - establishes two different capital limit levels for charging: (i) non-residential care - £24,000; (ii) residential care increased to £30,000 (phased aim to uplift to £50,000 – *Taking Wales Forward*);
 - Uplifts max. charge applicable to non-residential care to £70 p/w;
- Regressive charging mechanism for community support – reduces charges for wealthiest

Safeguarding (ss.126-142)

- Adults at risk (s.126)
- Children at risk (s.130)
- Statutory definition of “abuse” and “neglect” (s.197)
- Establishes National Independent Safeguarding Board for adults and children (s.132)
- Power to enter property for adult “at risk” – Adult Protection and Support Orders (s.127)
- Statutory guidance now issued:
<https://socialcare.wales/hub/sswbact-codes>

Human rights protection

- Act does not disturb human rights protection where care or support is:
 - arranged by a local authority for an adult or carer
 - paid for (indirectly or directly, in full or part) by authority
 - Provided by registered care provider
- Protection extends to people in their own home as well as to those in a care home
- Care provider is deemed to be a public authority for the purposes of the HRA 1998 (s.73(1)(b) Care Act 2014)

Some provisional conclusions

- *“Flawed legislation... but it is entirely remedial”*
Prof. Luke Clements (keynote at BASW Cymru Conference, June 2017)
- Has generated unnecessary and cumbersome organisational change
- Need to simplify eligibility criteria regs and measurement of personal outcomes
- Clarification of health care / social care boundary
- Strengthen development of social enterprise by introducing public procurement duty

Questions?