

Explanatory Memorandum to the Care Planning, Placement and Case Review (Wales) Regulations 2015

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 subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Care Planning, Placement and Case Review (Wales) Regulations 2015. I am satisfied that the benefits outweigh any costs.

Mark Drakeford
Minister for Health and Social Services

21 October 2015

Part 1 – OVERVIEW

1. Description

The Social Services and Well-being (Wales) Act 2014 provides a single Act that 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. The Act provides the statutory framework to deliver the Welsh Government's commitment to integrate social services to support people of all ages, and support people as part of families and communities.

The Care Planning, Placement and Case Review (Wales) Regulations 2015 make provision about care planning for children who are looked after by a local authority, whether or not they are in the care of the local authority by virtue of a care order. They also deal with care planning and placement decisions and the review of a looked after child's case.

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

No specific matters identified.

3. Legislative background

The powers enabling these Regulations to be made are contained in Part 6 of the Social Services and Well-being (Wales) Act 2014. The Act remakes provisions for looked after and accommodated children that currently exist in Part 3 of and Schedule 2 to the Children Act 1989 with the exception of the "*provision of services for children in need and their families*", which are covered in Parts 3 and 4 of the Act, and the sections 26ZB and 26A of the Children Act 1989 covering *representations: further considerations (Wales)* and *advocacy services*, which are contained in Part 10 of our Act, Complaints, Representations and Advocacy. This explanatory memorandum should be read in conjunction with the Care Leavers (Wales) Regulations 2015 and the Visits to Children in Detention (Wales) Regulations 2015 which complement these Regulations.

This instrument is subject to the annulment procedure by the National Assembly for Wales (the negative procedure). The Regulations will come into force in April 2016.

Current legislation

Regulations supporting Part 3 of, and Schedule 2 to, the Children Act 1989 specify the circumstances where a child who is in the care of a local authority must be looked after by that local authority.

Proposed Legislation

The statutory framework will consist of three main elements, the Act itself, Regulations made under the Act, and codes of practice/statutory guidance. These three elements work together to form the framework within which social services will operate from April 2016.

The Social Services and Well-being (Wales) Act 2014 (“the Act”) will ensure that all children, who are looked after or accommodated by their local authority receive, as a minimum, the same standards of care and support as they currently experience under the Children Act 1989; the Regulations and code of practice enhance and strengthen current Regulations where consideration has been given to improving outcomes for this group of vulnerable children and young people.

The Regulations support both the Act and the provisions within the Children Act 1989 (excluding Part 3 of and Schedule 2 to that Act, which no longer apply in relation to Wales).

Purpose and intended effect of the legislation

Purpose

The purpose of Part 6 of the Act is to remake the provisions in Part 3 of, and Schedule 2 of, the Children Act 1989 that set out the duties on local authorities to maintain and support looked after and accommodated children.

The Care Planning, Placement and Review of Cases (Wales) Regulations 2015 cover:

- arrangements for looking after a child
- placements – general provisions
- provision for different types of placement:
 - placement of a child with parents
 - placement with local authority foster parents
 - other arrangements
- visits by the responsible local authority’s representative etc.
- reviews of the child’s case
- arrangements made by the responsible local authority for ceasing to look after a child
- independent reviewing officers and independent visitors; and
- application of the Regulations with modifications to children who are on remand or who are detained
- the provision of short breaks for looked after children.

Arrangements for looking after a child

This section covers the care and support plan under Part 6 of the Act for a child, what it is to contain including the plan for the child’s permanence, their education and meeting their health needs, how the Regulations supporting the requirements for a care and support plan made under Parts 3 and 4 of the Act are superseded once a child becomes looked after, the interface with the requirements for a court care plan under

Part 4 of the Children Act 1989, the specific requirements of the health element of the care plan and arrangements for contact with the child. This latter part would include any contact with parents, siblings and wider family members where it is appropriate.

Placements and provision for different types of placement

These parts contain general provisions about placements of looked after children, including:

- the placement plan which must be prepared by the local authority
- steps to be taken to avoid disruption of a child's education when a local authority is considering changes to a placement
- special provisions about placements outside of Wales, and outside England and Wales
- who needs to be notified of a placement
- the circumstances in which a placement may be terminated.

They also contain provisions about particular types of placement, with parents, connected persons, local authority foster carers, with particular prospective adopters, and in other arrangements. This includes provision about temporary approval of such persons as local authority foster parents where necessary.

Visits by the responsible local authority's representative etc.

This part specifies the arrangements to be made for a child to be visited by a local authority representative, the frequency, circumstances and consequences of such visits, and the advice and other support that must be made available to the child between such visits. It also sets out the considerations a local authority must have in mind when deciding whether to appoint an independent visitor for a looked after child.

Reviews of the child's case

This part includes the local authority's general duty to review the child's case, the timing of such reviews, the requirement for each local authority to have a written policy on its review mechanism, considerations to which the local authority must have regard, the role of the independent reviewing officer (IRO), the arrangements for implementing decisions arising out of reviews and the records they must keep of reviews.

Arrangements made by the local authority for ceasing to look after a child

This part of the Regulations sets out the arrangements to be made when the local authority makes the decision to stop looking after a child. It defines what characterises a category 1 young person (a child aged 16 or 17 who is still being looked after by a local authority) and specifies the period a child must be looked after and the age a child must have reached for those periods to have counted. It also includes a general duty to assess the child's needs and prepare a pathway plan. It explains what should be considered when assessing the child's needs including the child's views, wishes and feelings and the views of a range of other key people including those from education, the IRO, whoever is providing for their health, their personal adviser and any other person the responsible person considers may be relevant. It sets out requirements for a pathway plan to be prepared for each care leaver under 18. The pathway plan should

be prepared prior to the young person ceasing to be a looked after child (i.e. when they are looked after age 16 or 17), and considered at a statutory review chaired by the young person's independent reviewing officer. The child's pathway plan must be prepared as soon as possible after the assessment of the child's needs and include the care and support plan, matters included in Schedule 9 to the Regulations including but not exclusively, the name of the personal adviser, continuing education planning, where they are going to live, how the child will be assisted in finding employment and financial support the local authority will provide. It also deals with the role of the personal adviser who will provide advice and support, participate in the child's reviews liaise with the local authority to implement the pathway plan and coordinate the provision of services and ensure that as far as possible the child makes use of such services.

This part also contains new obligations for a local authority to provide information to various groups of people about the making of post-18 living arrangements, and about the support available to people wishing to enter into such arrangements.

Independent reviewing officers and independent advisers

This part of the Regulations deals with the additional functions of the IRO related to that part of their function covered under 'reviews of the child's case. It deals with the qualifications and experience that an IRO must have and who cannot act as an IRO for a child. It also deals with those matters that relate to independent visitors such as who can, or cannot, be appointed as an independent visitor.

Application of these Regulations with modifications to children on remand and to children who are detained

This part deals with the application of the Regulations (subject to specified modifications) to children who are remanded to local authority or youth detention accommodation, and to children in care who have been convicted of an offence and are detained in prison or youth accommodation or who are required to reside in approved or other specific premises.

Miscellaneous

This part includes the application of the Regulations (subject to specified modifications) to short break placements. It also contains provision for the keeping of records.

Intended effect of the Regulations

The intended effect of the Regulations is to remake, enhance and strengthen the duties on a local authority to care for the children and young people who they look after or accommodate. The Regulations will ensure that there is no diminution

4. Consultation

A 12 week consultation on the Regulations ran between 8 May 2015 and 31 July 2015. Further details on the consultation are set out in the Regulatory Impact Assessment attached at Part 2.

PART 2 – REGULATORY IMPACT ASSESSMENT

This Regulatory Impact Assessment should be read in conjunction with the Care Leavers (Wales) Regulations 2015 and the Visits to Children in Detention (Wales) Regulations 2015 which complement these Regulations.

Options

This section of the Regulatory Impact Assessment presents two different options in relation to the policy objectives of the proposed Regulations. Both of the options are analysed in terms of how far they would achieve the Welsh Government's objectives, along with the risks associated with each. Both options have been explored to identify the costs and benefits. However, it is recognised that there are limitations and challenges with projecting future demand for social care in Wales.

- Option 1: Do the minimum and retain the current approach to assessment.
- Option 2: Create a national system for assessments.

As a basis for making projections about the future expenditure on social care under each option the actual expenditure for 2010/11 (as reported on in the Community Care Statistics report¹) and 2013/14 (most recent data collection) has been used to make estimates on the predicted expenditure for 2030. These projections correspond with baseline projections by the House of Lords Committee on Public Service and Demographic Change². The data contained in the Regulatory Impact Assessment is used for illustrative purposes and offers indicative costings and scenarios, rather than an accurate statement of fact.

This Regulatory Impact Assessment has explored the options and costings. Further details and the analysis of these options are contained in the evidence paper at annex 1.

Option 1: Do the minimum and remake the Regulations to maintain the current approach to care planning, placement and case review

Under this option the current approach to care planning, placement and case review will remain. The Regulations have to be remade as the Act, when it comes into force, will disapply the legislation currently in the Children Act 1989 in Part 3 and Schedule 2 of that Act. The Regulation making powers within the Act afford the opportunity to strengthen and bring together the numerous pieces of legislation and to formalise in Regulations the provision currently made in statutory guidance that has been made over the years to look after this vulnerable group of young people.

¹ Community Care Statistics, Social Care Activity, England, 2013/14 - <http://www.hscic.gov.uk/catalogue/PUB14397>

² Report: Ready for ageing? | Committee on Public Service and Demographic Change | House of Lords - 2012/13

The Act does, however, extend the framework for supporting looked after children and care leavers in certain respects – for example, it allows for placements with prospective adopters, and puts new duties upon local authorities in respect of post-18 living arrangements. If we failed to make new Regulations in respect of these, then the framework envisaged by the Act would be incomplete (and in the case of placements with prospective adopters, probably unworkable).

Costs

The costs of remaking the Regulations in this way add no extra burden to the current expenditure of local authorities. This option is therefore cost neutral.

Benefits

If the system remains the same local authorities will not need to change any of their processes and procedures nor require any further training of staff of those already working in the social care system. No further benefits have been identified under this option.

Risks

The main risk in taking this option is that the Regulations and, therefore the duties on local authorities to the looked after population, will not take account of the overarching 'well being' duty in the Act and link to other elements of the Act which impact on looked after children such as care and support planning under Parts 3 and 4.

Option 2: Remake and enhance the Care Planning, Placement and Case Review Regulations to incorporate the extended duties on local authorities.

Under this option the full range of duties in the Act for looked after children will be implemented together with ensuring that wellbeing outcomes for children and young people are considered throughout the Regulations. Children and young people who are looked after will have their wishes and feelings taken into account when decisions are being made which will impact upon their lives. This will allow them greater voice and control over those decisions whilst also ensuring that they are kept safe.

Costs

Under this option the Welsh Government considers that there will be large parts of the Regulations that are cost neutral as the duties are not dissimilar to those under the Children Act 1989.

The new Regulations in respect of placements with prospective adopters will not have any additional cost implications – prospective adopters will be temporarily approved as foster carers, so the costs will be the same as for any other foster placement.

There will be additional costs to local authorities in implementing the new duties to support post-18 living arrangements (known in Wales as the 'When I am Ready' scheme). However, the additional costs will not be the result of the Regulations, but will

arise directly from implementation of section 108 of the Act, which requires local authorities to ascertain whether a looked after child and his or her parents wish to enter into a post-18 living arrangement, and where they do, to facilitate this. The costs will be payments to 'When I am Ready' carers who enter into such arrangements with their former foster children. 'When I am Ready' was piloted in three local authority areas during 2013-14. Rhondda Cynon Taf (RCT) was asked specifically to consider the financial elements of the scheme. The pilot found that the cost calculations associated with 'When I am Ready' placements are highly complicated, due in part to the impact of individual circumstances. The same is true of other arrangements for leaving care. This made it difficult to compare 'When I am Ready' arrangements with alternative provision, and to calculate the additional costs to local authorities of implementing 'When I am Ready'.

RCT concluded that

- the total anticipated ongoing 'direct' costs of a fully implemented WIR scheme in RCT is approximately £450,000 per annum
- further indirect and consequential costs of a fully implemented WIR scheme is estimated at £180,000 per annum
- the average 'direct' cost per WIR placement per annum is estimated at £10,000
- the total average cost per WIR placement per annum is estimated at £14,000.

An additional piece of work to look at identifying the potential cost of implementing WIR across Wales was considered by WLGA and ADSS Cymru. However, it was concluded, for the reasons given above, that at this stage it was not possible to undertake this on an all-Wales basis.

The Regulations place additional duties on local authorities to provide information about 'When I am Ready'. There may be some additional costs associated with producing this information, but as local authorities already have to produce information for young people and foster carers on a range of post-18 options anyway, any additional costs will be minimal. The Welsh Government has commissioned a good practice guide and materials which local authorities can use with young people and foster carers, and which they should be able to adapt at minimal expense. Making these Regulations should therefore be cost neutral.

Benefits

Option 2 allows for greater integration of the whole Act into the care and support being offered to looked after children under Part 6 of the Act.

Local authorities will need to set up 'When I am Ready' schemes, to meet their new duties under section 108 of the Act. The Regulations should help them to discharge that duty more efficiently, by specifying which groups of people need information about the scheme, and what information is to be provided. Providing children and young people, and their foster carers, with suitable information will enable them to make an informed choice as to whether to enter into such arrangements and what support will be available to them if they do. This will help ensure that those entering into post-18 arrangements have realistic expectations of what is expected of them, and that they work effectively.

Risks

The proposals under Option 2, particularly in respect of post 18 placement with former foster carers, are based on a new model of social care, for which there is no precedent. This includes assumptions which are based on data that has not been fully tested. The risk is that potential outcomes may differ from those that have been predicted. We do not know, at this point, how many young people will want to pursue the option to remain with their former foster carers. If take up is higher than currently predicted this may have an adverse effect on the numbers of foster carers available to look after new entrants into the care system. However, these risks arise from the implementation of section 108 of the Act, not from the Regulations, which only cover the provision of information.

Summary and preferred option

Welsh Government considers that Option 1 - retaining the current model, is not sustainable. Whilst Part 6 has to be sympathetic to those parts of the Children Act 1989 which are not being disapplied in relation to Wales it also has to meet with the overarching tenets of the Social Services and Wellbeing (Wales) Act which puts the citizen and their voice at the heart of the system.

The Welsh Government considers Option 2 to be the preferred option to ensure that greater clarity, consistency and quality of care and support for children and young people who are being looked after. The introduction of the Regulations will ensure that the Act is applied in its entirety for looked after and accommodated children, is appropriate to the needs of the individual, and considers the individual's circumstances.

The proposed model will also ensure individuals are able to live their lives independently and are provided with a stronger voice and control over the decision that affect them. Option 2 is also consistent with case for change as set out in the Explanatory Memorandum.

Consultation

The Welsh Government undertook a 12 week consultation on the Regulations between 4 May 2015 and 31 July 2015. Two consultation events were held as part of the consultation process attracting over 200 attendees representing a range of organisations. Attendees were asked to participate in discussions on the implementation of the Regulations, and to share information from the events with their wider networks to provoke deeper engagement with the proposals and a wider span of consultation responses.

There were 45 responses received from a variety of stakeholders, including the Welsh Local Government Association (WLGA), the Children's Commissioner, Local Government representatives and Third Sector Organisations.

There was general support for the proposed system change to an outcomes-based approach with a simplified assessment and care planning process and greater integration of services.

The consultation responses identified a need to ensure that the Code of Practice provided a clear explanation of the process of assessment and determination of eligibility. In response to points raised during the consultation process, amendments were made to the Regulations, and the codes of practice were re-drafted to ensure that the process for assessment is clear to follow.

A priority from many responders is to reallocate resources to staff training and workforce development. The Care Council for Wales, as the lead body for workforce development, has been commissioned to lead on the development and implementation of a national learning and development strategy. The strategy is critical to the implementation of the Act and will need sustained, deliberate and high-profile leadership, which can reach out across a wide range of organisations and partners beyond the boundaries of the traditional social care sector.

A detailed consultation response report has been published on the Welsh Government's website.

Competition Assessment

Competition Filter Test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new Regulations do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisations?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

The filter test shows that it is not likely that the Regulation will have any detrimental effect on competition; therefore a detailed assessment has not been conducted.

Post implementation review

The Social Services and Well-being (Wales) Act 2014 contains provisions to allow for Ministers to monitor functions of the Act carried out by local authorities and other bodies. Ministers may require these bodies to report on their duties in implementing these regulations.

The Welsh Government intends to commission an evaluation to enable the impact of the new national model of assessment and eligibility to be considered.

Additionally, the Welsh Government will continue to monitor the impact of the regulation on areas such as the Welsh language, the UN rights of the child and Older People and Equality.