

Explanatory Memorandum to the code of practice on the exercise of social services functions in relation to advocacy under part 10 and related parts of the Social Services and Well-being (Wales) Act 2014

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 in accordance with 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 advocacy under Part 10 and related parts 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

16 October 2015

Part 1 – 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 10, Chapter 1 of the Act, contains provisions relating to complaints about social services and assistance for making complaints; for certain, specified children to make representations and to be provided with assistance about how a local authority is discharging specified functions in relation to them under the Act, the Children Act 1989 or the Adoption and Children Act 2002.

Part 10, Chapter 2 of the Act contains provisions relating to complaints about private social care and palliative care. Finally, Part 10, Chapter 3 of the Act contains provisions about the provision and publicity of advocacy services, subject to a number of exemptions.

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 (code). This draft code of practice was subjected to a 12 week public consultation as required by section 146. This draft code will be laid before the National Assembly for 40 days, after which time, if no resolutions are made, Welsh Ministers must issue the code.

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 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 code specifies that local authorities have to:-

- a). ensure that access to advocacy services and support is available to enable individuals to participate fully when local authorities are exercising statutory functions under the Act in relation to them; and
- b). to arrange an independent professional advocate to facilitate the involvement of an individual in certain circumstances.

To enable local authorities to effectively provide and secure appropriate advocacy support the code reinforces the overarching duties under the act requiring a person exercising functions under the Act to as far as reasonably practicable, to ascertain and have regard to the individual's views, wishes and feelings; and have regard to the importance of providing appropriate to enable the individual to participate in decisions that affect him or her to the extent that is appropriate in the circumstances, particularly where the individual's ability to communicate is limited. The code therefore sets out:

- people's choice to have someone to act as an advocate for them
- a clear framework to support and empower individuals to make positive informed choices
- a clear recognition of the benefits of advocacy
- the range of advocacy available to people
- the key points when people's need for advocacy must be assessed
- when independent advocacy must be provided
- the circumstances that impact on people's need for advocacy
- the circumstances when it is inappropriate for certain people to advocate
- the arrangements for publicising advocacy services
- charging

To further the commitment to voice and control it remains open to any individual to exercise choice and to invite any advocate to support them in expressing their views, wishes and feelings.

It is intended that the code should be read in conjunction with all relevant codes of practice issued under the Act to require local authorities to consider people's needs for advocacy where a local authority exercises a specific function in relation to that person. Specific regard should be

given when exercising functions under Part 2 (general functions); Part 3 (assessing the needs of individuals); Part 4 (meeting needs); Part 5 (charging and financial assessment) as well as statutory guidance issued under Part 7 (safeguarding) and Part 9 (co-operation and partnership) of the Act.

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 8 May 2015 to 31 July 2015.

Prior to going to formal consultation the code was developed through the establishment of technical groups made up of representatives with the relevant expertise, technical knowledge and practical experience to work with officials on the detailed policy necessary to develop the code.

There were 81 substantive written responses to the consultation, from a wide range of individuals, representative groups, duty bearers and professional organisations. Overall response to the consultation was positive and there was support for having a stronger legal position through a dedicated Code of Practice for Advocacy being in place. A number of common themes became apparent – the need for more recognition of children and young people’s existing statutory and non-statutory entitlements; more information on publicity of advocacy; and further definition of those to whom advocacy must be provided and those able to act as their advocate support ; and clarification on independence of the advocate.

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/part10/?status=closed&lang=en>.

6. Regulatory Impact Assessment (RIA)

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

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 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. Therefore a full 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 will be available on the Welsh Government website www.wales.gov.uk