

The Social Services & Well-being (Wales) Act 2014

A brief overview of the key provisions of the Act as they relate to carers.

For a more comprehensive overview please go to <http://www.lukeclements.co.uk/wp-content/uploads/2014/06/Social-Services-Well-being-Wales-Act-2014-briefing.pdf>.

With thanks to Luke Clements

Background

The Social Services and Wellbeing (Wales) Act received Royal Assent on 1st May 2014 and will be implemented in April 2016. Until then the existing legislation remains in place, whilst the Welsh Government drafts the Regulations, guidance and Code of Practice for the new Act.

There is different legislation, the Care Act 2014, covering England which is expected to come into force in 2015. For the first time there will be completely separate social care legislation for Wales and England. Both Acts introduce important new rights for carers.

Legislation to be repealed

The Act repeals the majority of existing Community Care legislation and repeals and consolidates all existing carers legislation:

- The Carers (Recognition and Services) Act 1995
- The Carers and Disabled Children Act 2000
- The Carers (Equal Opportunities) Act 2004
- The Carers Strategies (Wales) Measure 2010

as well as the

- National Assistance Act 1948
- Health Services & Public Health Act 1968
- Chronically Sick and Disabled Persons Act 1970
- Health & Social Services & Social Security Adjudications Act 1983
- Disabled Persons (Services, Consultation and Representation) Act 1986
- NHS & Community Care Act 1990
- Health & Social Care Act 2001 (DPs)

Definitions (sections 2- 4)

Carers Wales welcomes the new definition of a carer in the Act; “a person who provides or intends to provide care for an adult or disabled child (but excludes paid carers etc)” which removes the requirement that carers must be providing “a substantial amount of care on a regular basis”.

Disability will have the same meaning as in the Equality Act 2010.

Repeal of the Carers Strategies Wales Measure 2010

Local Health Boards and Trusts will no longer be the lead authority for strategic planning for carers when the Measure is repealed in 2016. Instead the Act introduces an ambiguous duty on LHBs to submit to the Welsh Government any part of the Health and Wellbeing strategies which relates to carers. Carers Wales are concerned that this will weaken the statutory duty on LHBs for carers and will be pressing for more detail on exactly what LHBs will be responsible for reporting on in the regulations for the Act.

Underpinning principles: Wellbeing (section 4)

Carers Wales welcomes the emphasis on well-being and prevention in the Act which aims to delay the development of people’s needs for care and support. There will be a duty on Local Authorities and Local Health Boards to promote an individual’s well-being, including children, adults in need and carers.

The definition of wellbeing includes: physical and mental health and emotional well-being, protection from abuse and neglect, education, training or recreation, domestic, family and personal relationships, contribution made to society, securing rights and entitlements, social and economic well-being and suitability of living accommodation. For adults it also includes control over day to day life and participation in work.

Population assessments and Prevention (sections 14 - 15)

Local Authorities and LHBs will have a strategic duty to assess the need for care and support in their area, the needs of carers and whether those needs are being met (sec.14). Local Authorities will also have a duty to provide a range of preventative services in their area (sec.15). It will be vital that any preventative services reflect the needs of carers.

Information (section 17)

The Welsh Government has stressed the importance of information and advice at every stage of the process and section 17 outlines the duty to make available a service to provide adults in need and carers with information about care and support. This includes:

- how the Local Authority care system operates;
- the choice of types of care and support, and the choice of providers in the local authority's area,
- how to access the care and support that is available;
- how to raise concerns about safety /well-being of an adult who has needs for care and support

Assessment of adults and children in need (sections 19 + 21)

The Act places specific duties on Local Authorities to assess the needs of adults and children in need. The arrangements for adults (sec.19) mirror the duties under existing legislation including a duty to consult carers 'so far as is feasible'.

The duties for children are more specific than under the current s17 of the Children Act 1989, however Carers Wales is concerned that the new Act could weaken disabled children's right to be seen as a child in need, with possible adverse effects for families of disabled children.

Carers Assessments (section 24)

This section combines the provisions made in the existing three Carers Acts but drops the 'regular & substantial' requirement as well as the requirement to 'request' an assessment.

The assessments apply to carers of any age and must include:

- whether the carer able / willing
- the outcomes the carer wishes in day-to-day life,
- whether the carer works or wishes to (and / or) to participate in education, training or recreation

Combined assessments of carer and cared for person (section 28 and 29)

The Act provides for possible combined assessments subject to relevant consents. This may be sensible in some cases but it will be important that carers receive a clear and distinct assessment in their own right.

Eligibility criteria (section 32 - 33)

National eligibility criteria will be detailed in regulations for the Act, although the Welsh Government has made it clear that the intention is for more people to be supported outside the eligibility framework. The national eligibility framework regulations and code of practice will determine at which level an individual (including carers) will have an enforceable right to support from the local authority. This will also define the point at which the local authority will have a legal duty to provide, or arrange the provision of care and support. The draft regulations and code of practice are expected to be issued for further consultation this Autumn.

Duty to provide care & support for individuals in need (section 32)

If a local authority determines that a person's needs meet the eligibility criteria then the authority must:

- a.** consider what could be done to meet those needs;
- b.** consider whether it would impose a charge for doing those things, and if so, determine the amount of that charge.

This duty applies to adults (sec.35), to disabled children (sec.37), and to carers whether they are adults (sec.40) or a child (sec.42).

A local authority must also consider whether a person would benefit from the provision of preventative services (sec.15) or information, advice and assistance (sec.17) or anything else that may be available in the community.

The Act also places a general duty on local authorities (sec.16) to promote:

- the development of social enterprises / co-ops / third sector organisations to provide care and support and preventative services;
- care and support and preventative services that involve service users in the design and running of services;

It will be imperative that local authorities map current services and identify shortfalls in their own regions. Carers Wales would like to see a dialogue between the local authority, service users and carers to identify what sort of services are valued and what could be developed to meet their needs.

Care and support (section 34)

This section gives examples of ways that a local authority can meet needs either themselves or through other means. It can also provide something to a person other than the person with the needs for care and support, this would include services for carers. Examples given of what may be provided include:

1. accommodation in a care home, children's home or in premises of some other type;
2. care and support at home or in the community;
3. services, goods and facilities;
4. information and advice.
5. counselling and advocacy;
6. social work;
7. payments (including direct payments);
8. aids and adaptations;
9. occupational therapy.

Care & support plans (section 54 - 55)

These sections are similar to the current law and outline local authorities' duties to produce and review care and support plans.

Continuity of care (portability) (sections 56)

It is important to note that carers are not included in the provisions for the portability sections. Once an individual informs the local authority that they are moving, that local authority notifies the new authority. Once the move has taken place, if the new authority has not assessed the individual, that authority must meet the same assessed needs in the care plan until it has re-assessed and produced a revised care plan.

Direct Payments (sections 50 - 53)

In many ways little has changed in these sections from existing legislation on direct payments, although the Welsh Government has stated a preference for greater use of direct payments across Wales. In England it is expected that these will be extended to cover residential care costs – it is unclear if this is being proposed in Wales.

Charging (section 59 - 73)

Local Authorities can charge for care and support provided under sections 35 - 45 to meet a person's needs (including carers) but only 'the cost that the local authority incurs in meeting the needs to which the charge applies' (section 59(2)). The Act also requires that the charge imposed be no more than is 'reasonably practicable for the person to pay' (sec 66).

The arrangements for financial assessments are covered in sections 63-68.

Carers Wales are concerned that last minute amendments to the Act under section 40-43 "Meeting support needs of a carer", have introduced a set of complicated sub-clauses relating to financial assessment and charging. It will therefore be essential that regulation and guidance provides clarity on these issues to avoid confusion and unnecessary charges on carers when the Act comes into force in 2016.

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