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Regulations and Code of Practice in Relation to Part 3 and 4 of the Act

Consultation Response from
ADSS Cymru and WLGA

February 2015

Consultation Response Form

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Introductory Comments:

This is a joint response on behalf of ADSS CYMRU and WLGA to the consultation on the regulations and code of practice in relation to the Social Services and Well-being (Wales) Act.

The WLGA and ADSS Cymru have previously communicated our broad support for the Act's vision and the ambitious principles that it sets out. We welcome its timely nature in the face of increasing pressures on social care services, both within local government and across our partners in NHS and the third sector. We also recognise and appreciate the fact that Welsh Government has worked with all stakeholders to influence the development of the draft codes of practice and regulations.

In responding to the current consultations a number of key themes have been identified and these need to be considered with the proposals set out in the codes of practice and regulations. These themes include:

Financial - We recognise that resources are limited and there is potential for some efficiencies to be achieved as the Act is implemented. However it is also inevitable that the Act will increase pressure on local authorities, for example through increased responsibilities around supporting the needs of carers. There is a need for some 'invest to save' funds and short term resources to allow for new services to be developed, whilst some current services are kept in place and the Delivering Transformation Grant has provided a welcome opportunity to start some of this work. Welsh Government has already recognised that there are some elements that will have clear cost implications for local authorities, e.g. assessing and meeting the care and support needs of prisoners, however the codes of practice and regulations also place a number of other additional burdens on local authorities, e.g. around IAA services, population assessments and meeting the support needs of carers all of which need careful deliberation. Alongside those factors are the increased pressures as a result of existing budget cuts, welfare reform and increasing demand and expectation. Following the publication of the Welsh Government Budget, local councils are warning that funding for local services will fall by £154m, and if local government continues to bear the brunt of austerity, some local services will disappear, for example preventative services. Indications suggest that local government will need to make up a shortfall of up to £900m by 2018, as a result of which many of the services, that communities rely upon, are expected to become unaffordable in the future. While council leaders understand the pressures being placed on the overall Welsh budget, there is a need to acknowledge that continued funding reductions on this scale will have a huge impact on local services. Councils will have no option other than to look seriously at extending their charging regimes, along with different models of delivery, in addition to those expected from the Act. Many of the services, that communities have been able to take for granted and upon which they have relied, are now at risk, including leisure centres, libraries, community facilities and opportunities for day activities.

Implementation - The Act is vast in scope, and whilst we have supported the move to legislate in key areas such as wellbeing, safeguarding and integration, we support the need for a sequential approach to implementation to ensure deliverability. Many elements of the Act will take time to implement in full, with clear training needs for staff or additional resources required. Whilst local authorities are working on the development of IAA services, promotion of social enterprises and an increasing focus on outcomes, experience has taught us that we need to allow time for their proper and healthy development. As such we need to be clear about the expectations for services to be in place from April 2016 and be realistic in agreeing what is achievable in this timeframe.

Preventative Services - The context of increasing demand for services, in part due to well evidenced demographic changes, increase the importance of developing more preventative activities that offer much earlier intervention, with the aim of holding off more costly and potentially intrusive interventions at a later stage. Current austerity measures, particularly affecting local authority budgets, are putting some preventative services and facilities at risk, e.g. closure of leisure centres, reduced hours for day activities, closure of community hubs and meeting places. In addition the potential uncertainty of grant funding, for example Families First and Flying Start, hampers the development and consolidation of key preventative services for children and families. WLGA and ADSS Cymru believe that discretionary services like leisure and culture, are an essential part of local facilities that harness and enhance people's opportunities to 'look after' themselves and promote well-being. Their reduction and in some cases disappearance creates a

barrier to participation and accessibility within communities. Raising the profile of prevention and early intervention is critical to meeting the aspirations of the Act, but with the lack of any significant investment accompanying the Act, local authorities will struggle to give it the priority necessary and will be unable to invest in developing the capacity of neighbourhoods to offer the kind of creative offer that will make a difference to people's lives.

Roles and Responsibilities of Partners – The Codes of Practice and Regulations identify a number of new responsibilities for local authorities and similarly promote amongst partner agencies, in particular LHBs, a sense and duty of shared responsibility, since promoting well-being requires action by all agencies at all levels. The Codes of Practice and Regulations should be strengthened by being explicit in the expectations on partner organisations and specifically identifying sanctions for non-compliance by any of the partner agencies. In addition the Act requires a new way of working and thinking that encourages and requires people to take action to support their own well-being. This needs to be clearly communicated to the public so that a wider dialogue takes place, to ensure that the ideas and facilities develop through co-production.

Training – The workforce will be fundamental to the successful implementation of the Act, a workforce that is multi-agency and multi-disciplinary. The Act requires a very different way of working, particularly around the new approaches to assessment and eligibility. These new approaches will not be simple to apply and will challenge some of the existing practice and training. It will be key to get staff training and development right, in order to support staff to be able to meet the expectations set out in the Act. Time will also be required for this training to ensure that the changes become embedded into people's everyday practice. Some of this work has already started, for example local authorities having an increasing focus on outcomes, however the size of the changes required and the new expectations cannot be under-estimated.

Children's Services – The vision of the Act is welcomed, however it needs to be recognised that it appears to be more easily related to Adult Services and therefore Children's Services face particular challenges in meeting its aspirations. There is a danger that the current strengths of Children's Services are forced to fit into a comprehensive approach when they would work well, as now, in an aligned approach – in particular provisions under Section 17 of the Children Act still have a place under the Social Services and Well-being Act.

The Commission on Public Service Delivery and Governance – The Codes of Practice and Regulations prescribe and recommend different partnership footprints which in itself may cause some confusion due to the inconsistent approach adopted - from the LHB footprint for population assessments, to the public services footprint for Safeguarding Boards and national collaboration for some elements of the IAA Services. We would not to get too caught up on the potential implications falling out as a result of the Commission's work, as these are still unclear, however it is important to raise that there will inevitably be implications for local authorities, how they look in the future and what structures will be in place, which will impact on implementation of the Act.

Both the WLGA and ADSS Cymru welcome the opportunity to be involved in future debates about the issues considered in the consultation papers and remain committed to working with Welsh Government on Tranche 2 of the Act and its implementation.

Assessing and meeting needs

1. To what extent do you agree that the approach to eligibility, assessment and care planning is clear and simple to apply?

Agree <input type="checkbox"/>	Tend to agree <input checked="" type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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We agree that the approach is simpler than the current assessment arrangements for adults and children. The examples provided in the code of practice to illustrate how to focus on outcomes during an assessment are helpful and show the benefit of working at offering clear and unambiguous guidance about how to present the new approach to users and carers. More guidance, with a similar approach, will be necessary in any training materials being developed for front line workers. This is a fundamental part of the Act and of the new approach promoted and hence training and staff development are fundamental to its successful implementation.

A single assessment process for everyone, children and adults, is a major shift, but one to be welcomed. There is reference throughout the guidance to the special and different considerations to be given to children and adults and that is helpful. We do believe that more work needs to take place to ensure that the tools that currently support assessment in both children's and adult services are tailored to meet the aspirations of the Act, if possible, without imposing additional burdens on front-line workers to abandon what currently works well.

It is important that the intervention at the assessment stage requires 'a respectful conversation about the person's well-being and how they want to exercise control in their decisions about care and support'. This gives a clear message about the approach required from all professionals, identifying 'what matters to people'.

The aim to reduce bureaucracy is welcome, but that will need energy and resources devoted to tackling the inevitable complexity associated with a much easier and simpler process for 'consented' sharing of information, not the least of which will be ensuring that IT systems make this possible.

The minimum data set is a welcome characteristic of the new approach to assessment, as well as the requirement for a lead professional to coordinate any other contributors to someone's comprehensive/complex assessment, without leading to the person having to repeat their story on multiple occasions, as at present.

We are less sure about whether the approach will be simple to apply, as it requires a very different approach and thereby challenges some of the practice that has inevitably become embedded in people's daily work. Once again it highlights to need for careful, yet robust training and staff development, so that no-one is left in any doubt about the expectations for a fundamental change in the nature of the relationship between users/carers and the workers who are leading and/or involved in their assessment.

The term 'care and support' appears to be used inter-changeability which can cause confusion - care and support is used both *generically* to describe all aspects of the Act (including information, prevention and support after assessment, and *specifically* to describe assistance needed to meet outcomes beyond the eligibility tests. Further it is a term more usually linked to adult social care and so does not resonate fully with children's services. A simpler *lexicon* of terms would help clarify roles and expectations.

It is not clear where the concepts of *simple*, *more complex* and *integrated assessments* have come from, as they have not previously featured.

Determining when needs can be met by universal or targeted services rather than by a care and support plan will need careful procedures and monitoring.

2. To what extent do you agree that the terms and definitions of the 5 Elements of Assessment set out in the Annex to the code on Part 3 (assessment) are clear?

Agree <input checked="" type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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Please explain

These are helpfully set out and the annex to the code of practice uses language that demonstrates how different the encounter between worker and user/carer should be and this could be used as one of the tools for training and staff development.

Important to note the significance of well-being for an individual child / young person as against the well-being of a family and the adults within that family – this again highlights the need to ensure that the Act and the codes of practice are not experienced as adult-centric.

3. To what extent do you agree that the assessment model enables an integrated approach with other service providers providing support i.e. health, children and families, housing, mental health services?

Agree <input type="checkbox"/>	Tend to agree <input checked="" type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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The model implies an integrated approach between all workers and agencies involved in a person's care and support. This will often be reflected in how people have worked for a number of years, although this should be an opportunity to insist that we avoid people having to go through, what can feel like, a number of assessment processes when different professionals become involved in determining how best to offer care and support. The integrated assessment framework for older people should be used by all professionals since its introduction and to build on that principle, every effort should be put into requiring that all people, children and adults, only have to tell their story once.

4. To what extent do you agree that the eligibility test set out in regulations and the code of practice on Part 4 (meeting needs) supports consistent delivery across Wales to ensure a national threshold?

Agree <input type="checkbox"/>	Tend to agree <input checked="" type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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What will further support this?

The eligibility test is yet another significant change, away from eligibility criteria being used predominantly to gatekeep and 'say no'. The 'can and can only' test is not a simple and unambiguous test, as, inevitably and appropriately, it leaves space for professional judgment to be exercised, leading to potentially different interpretations being made. Whilst professional judgment will and should always be a consideration, the search for consistency may be a difficult objective to achieve and this may need more thought and testing out with users and carers in particular.

Our response to Part 2 of the Act in relation to prevention highlights the very real challenges being faced in providing preventative services – if the necessary preventative services are not available, and in fact face being cut, then this is likely to have a detrimental impact on social services as an increasing number of people will become eligible for a care and support plan with lower needs than would have been previously seen as the necessary services are not available in the area.

There are important issues for children's services here. The framework for assessment was launched to do this and has worked well. It would be disruptive to drop it, simply to harmonise an approach with adult services and again this needs careful consideration.

5. To what extent do you agree that the roles of assessment coordinators and care coordinators should be reserved for specified practitioners?

Agree <input checked="" type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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We do agree that the worker coordinating someone's assessment and their care and support needs to be confident and competent, as in some circumstances, that worker will be negotiating with other professionals, possibly on behalf of the user/carer. The professional discipline is likely to be less relevant than their confidence and competence. In some circumstances we believe that it may be appropriate for an unqualified worker to carry out the role, where they have received in-house training and are offered good coaching and support.

The Act provides an opportunity to rethink the skill mix and address the social work task in children's and adult services. There does need to be a consistent message from Welsh Government and CSSIW on standards and expectations

6. To what extent do you agree that the regulations and codes of practice on Parts 3 and 4 provide a framework for meeting the needs of children?

Agree <input type="checkbox"/>	Tend to agree <input checked="" type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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It is important to further test out the efficacy of the codes and the regulations for meeting the needs of children, as the Act does have a much stronger focus for adult services than children's services. We welcome bringing together assessment and meeting need of children and adults into one system, but we would be keen to see further testing of the tools available and used for children and their families, to ensure their compatibility with the Act and its aspirations.

7. To what extent do you agree that the code and regulations on Part 4 will enable more people to have greater control over their care and support through direct payments?

Agree <input type="checkbox"/>	Tend to agree <input checked="" type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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What will further support this?

The regulations extend the availability of direct payments for services and people previously ineligible. That should mean that more people will be encouraged to consider direct payments, particularly to offer greater control for the user. Also the guidance makes it clear that the offer of direct payments should be 'upfront' rather a secondary consideration by the worker.

It would be positive to see an expectation on local authorities to demonstrate how direct payments have been encouraged and promoted. This could be done through the Annual Report of the Director of Social Services, with examination and reporting

on the take up of direct payments amongst different groups of people and proposals made for how take up can be increased.

Whilst direct payments are only one of the ways that people can use to achieve more control over their care and support, it is a significant step for the user to recognize that she/he can exercise considerable choice about the nature of the care and support that they believe will make a difference to their life.

It will enable people to identify support from other than traditional sources, e.g. current provider agencies, and whilst that could help deal with shortages from traditional supply sources, users will need support to exercise caution and care when choosing support workers/personal assistants.

8. To what extent do you agree that the code and regulations on Part 4 support people to employ close relatives to manage or provide their care and support?

Agree <input checked="" type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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This is another welcome change and it should be promoted without assuming that it will inevitably result in increased costs, as direct payments should replace provided services and hence the associated costs be transferred. There is an element of contradiction with the rest of the Act which seeks to encourage to use their personal resources to support them rather than rely on provision of care and support from the local authority and so the use of the local authority's discretion will be important here. There should be some caution about close relatives in view of the increase in abuse of older people by their partners and close relatives.

9. To what extent do you agree that the Codes issued for Part 3 and 4 support local authorities to ensure people are full partners in the design and delivery of care and support?

Agree <input checked="" type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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The codes lay the foundations for this to be the case but, on their own, will not ensure that people are full partners in the design and delivery of their care and support. Yet again training and staff development feature as critical ingredients in making this happen. In addition we believe that there is a need for a public campaign to help people understand the expectations on them to play a full and different part in designing and delivering care and support, as a cultural change is required. It will need workers to offer different support to make that happen, as a good deal of professional practice has started from the position that 'the professional knows best' and this principle challenges that.

Other
<p>The Welsh Government is interested in understanding whether the proposals in this consultation document regarding part 3: assessing needs and part 4: meeting needs will have an impact on groups with protected characteristics. Protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, and sexual orientation.</p> <p>10. Do you think that the proposals in this consultation will have any positive impacts on groups with protected characteristics? If so, which and why/why not?</p> <p>As with all parts of the Act, there should be positive impact on people who ordinarily may be marginalized. Extending the scope of direct payments should widen the groups for whom this is seen as appropriate and also increase numbers, but there has to be a strong belief amongst frontline workers and managers of the advantages that direct payments will bring to people's lives. Other aspects of these parts of Act, reducing bureaucracy and making assessment more simple and accessible, should have the effect of widening people's opportunities to play a critical part in their own care and support and determining the outcome of any assessment being made.</p> <p>Local government is committed to human rights and along with the NHS has general duties to promote equality which underpins all of our work.</p> <p>11. Do you think that the proposals in this consultation will have any negative impacts on groups with protected characteristics? If so, which and why/why not?</p> <p>No, although it remains important that all workers understand the impact of discrimination and how it can interfere with people's expectations about their entitlements and consequently their self esteem.</p>

12. Re-balancing the care and support system to deliver the new legal framework will require reprioritisation of resources. What are the key actions that need to be taken to achieve this?

1. There needs to be absolute clarity about the future use of the eligibility framework to enable people to hold conversations about what will make a difference to their lives, rather than focus on whether they are eligible for care and support
2. The resource base for the rebalanced system has to reflect the fact that people's well-being goes beyond the traditional social services responsibilities. Primary and community health care play a critical part in supporting well-being and hence bringing resources together will make much better use of existing resources and enable better targeting and that should also be reflected in a whole system approach in local authorities by bringing together resources and expertise in social services, education, lifelong learning and leisure
3. There will need to be a focus on preventative services – this will require a whole local authority approach, in partnership with key stakeholders. The prudent health and social care test will be helpful, i.e. if something is doing harm to people or not making a positive difference to people's lives, remove it and do more of what makes a positive difference.

13. We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to tell us about them.

N/A

Responses to consultations may be made public – on the internet or in a report. If you would prefer your response to be kept confidential, please enter YES in the box.