

Explanatory Memorandum to the draft 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 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 27.14.

Deputy 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.

[DEPUTY MINISTER FOR HEALTH & SOCIAL SERVICES]
[6 November 2019]

PART 1

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 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 revised code of practice (code). There is a requirement under Section 146 (1) for Welsh Government to consult with such persons as they (Welsh Ministers) think fit on a draft code (or revised code).

The Welsh Government has sought to support the drafting of the revised code through a process that engages our stakeholders by convening a Technical Group made up of key advocacy stakeholders with the relevant expertise, technical knowledge and practical experience to work with officials on the detailed policy necessary to revise the code of practice which in turn will deliver the policy aspirations underpinning the Act. This revised code is an outcome of this exercise of co-production.

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 requires the Welsh Ministers to lay a copy of the draft Code before the Assembly. They may issue the code, in the form of that draft, if the Assembly does not resolve not to approve the draft within 40 sitting days.

4. Purpose and intended effect of the legislation

The code sets out the requirements that local authorities:-

- a) ensure that access to advocacy services and support is available to enable individuals to engage and participate when local authorities are exercising statutory duties in relation to them and
- b) to arrange an independent professional advocate to facilitate the involvement of individuals 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 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 support 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 peoples' need for advocacy
- the circumstances when it is inappropriate for certain people to advocate
- the arrangements for publicising advocacy services.

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

It is intended that this 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 to 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.

The key changes to the Part 10 Code of Practice include:-

- refining the definition of an Independent Professional Advocate (IPA) under the Social Services and Well-being (Wales) Act 2014
- taking account of the standards for regulated advocacy services under the Regulation and Inspection of Social Care (Wales) Act 2016 (RISCA)
- updating and providing clarity in the section relating to advocacy for looked after and other entitled children and young people
- the inclusion of a section on choosing an advocate for children and young people
- the inclusion of a section on the National Approach to Statutory Advocacy for Children and Young People
- the inclusion of a section on Complaints and Representations for children
- refinement to the Annex relating to the local authority role in supporting the advocate
- the inclusion of a separate Annex as to functions local authorities must consider as set out in part 2 General function of Social Services and Well-being (Wales) Act 2014
- the inclusion of an Annex providing advice as to other statutory advocacy duties.

5. Consultation

Section 146(1) of the Act states that before issuing or revising a code under section 145, Welsh Ministers must consult with such persons as they (Welsh Ministers) think fit on a draft code (or revised code).

Between March and June 2017, a 12 week consultation was held on the National Standards and Outcomes Framework for Children & Young People (NSOF). In total there were 35 responses received to the consultation, primarily from organisations with an interest in children and young people's advocacy services and also from groups of young people themselves.

A summary report of the consultation responses and recommendations is available on the Welsh Government website at <https://gov.wales/national-standards-and-outcomes-framework-children-and-young-people>

The refreshed NSOF was published on the Welsh Government website on the 20th August 2019.

The Welsh Government convened a Technical Group to support the revision of the Code this took account of the NSOF consultation. The Technical Group was made up of key stakeholders who represented a wide range of perspectives. The Group worked with Welsh Government officials in revising and up-dating the Code by providing advice based on relevant expertise, technical knowledge and practical experience therefore delivering realistic and practical support in the development of sustainable options.

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.