

Constitutional and Legislative Affairs Committee

CLA532 – The Care and Support (Eligibility) (Wales) Regulations 2015

Procedure: Super Affirmative

The Social Services and Well-being Act 2014 (“the Act”) provides a single Act which brings together local authorities’ duties and functions in relation to improving the well-being of those who need care and support and of carers who need support.

The Regulations set out the test which a local authority must apply to determine whether an individual with needs identified pursuant to an assessment undertaken by the local authority is entitled to have those needs met by the local authority. The Regulations set out the test to be applied in relation to adults, to children and to carers (including a child carer).

1. Technical Scrutiny

No points are identified for reporting under Standing Order 21.2.

2. Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3(ii) in respect of this draft instrument (namely that it is of political importance or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly).

- (i) These Regulations have been made utilising a super affirmative procedure.
- (ii) They place a requirement on local authorities to apply national eligibility criteria to determine their duty to meet identified needs. For adults, this will remove the traditional threshold for access to managed care and support. The Explanatory Memorandum which accompanies the Regulations states that this will ensure a more responsive and bespoke response for each individual.
- (iii) The Act places a requirement on local authorities to apply national eligibility criteria to determine their duty to meet the care and support

needs of children. This contrasts with the approach in the Children Act 1989 which contains a definition of a child in need and requires local authorities to safeguard and promote the welfare of such children. A child's eligibility will flow from the process of assessment.

- (iv) Under the Act, a local authority is under a duty to undertake an assessment of a carer's – including a child carer – needs where it appears to the authority that the carer has needs for support. A local authority will be under a duty to meet the identified needs where they meet the national eligibility criteria.
- (v) Members will wish to note that the Regulations set out the test which a local authority must apply in determining whether or not an individual has needs which must be met. The Regulations will be supplemented by Code of practice issued under section 145 of the Act which encourages local authorities to meet its duties to provide or arrange for the provision of preventative services, promote social enterprises, co-operatives, user-led services and the third sector and to provide information, advice and assistance services so reducing the number of individuals who will require a care and support plan.

3. Government's response

Section 2, para (iii)

The use of the term 'contrasts' could give the impression that the Act and its statutory instruments do not require local authorities to safeguard and promote the welfare of an individual child in need. The Social Services and Well-being (Wales) Act and the regulations strengthen the arrangements for children, including child carers. Local authorities will have a duty to assess the needs of children and to meet those needs where they can be met by care and support.

In respect of safeguarding the Social Service and Well-being (Wales) Act 2014 is clear about the duty to safeguard and the duty does apply to individual children whose needs have been assessed. Specifically, Section 37 (3) requires local authority to meet a child's needs for care and support if it considers it necessary to meet the needs in order to protect the child from abuse or neglect, or a risk of

abuse or neglect, or other harm or a risk of such harm. Furthermore, regulation 4 (1) reinforces this point setting out the needs for care and support which meet the eligibility criteria with reference to children. Further guidance on this is contained in the Code of Practice on Part 3 of the Act.

Duties to safeguard and protect children will be fully met because Section 47 of the Children Act (1989) will remain.

Section 2, para (v)

The paragraph refers to the regulations setting out an eligibility test but not setting out the national eligibility criteria. However, as the Explanatory Note sets out, “regulations 3, 4 and 5 set out the eligibility criteria”. This is further set out in the Code of Practice on Part 4 of the Act. The regulations set out the eligibility criteria by describing those needs which meet those criteria (separately for adults, children and carers). The merits report implies that the actual criteria to be applied have been displaced to the code of practice issued under s.145. This is not the case, the eligibility criteria are the tests set out in these regulations.

The code of practice for Part 2 of the Act will set out how local authorities should meet their duties to provide or arrange for the provision of preventative services, promote social enterprises, co-operatives, user-led services and the third sector and to provide information, advice and assistance services. One effect of the Code of Practice for Part 4: Meeting Needs will be to further encourage local authorities to meet their duties in this respect and thereby reduce the number of individuals who will require a care and support plan.

4. Committee Consideration

The Committee considered the instrument at its meeting on 1 June 2015 and reports to the Assembly in line with the reporting points in section 2 above.

