

Explanatory Memorandum to the Care and Support (Eligibility) (Wales) Regulations 2015

This Explanatory Memorandum has been prepared by the Department for Health and Social Services and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Care and Support (Eligibility) (Wales) Regulations 2015. I am satisfied that the benefits outweigh any costs.

Mark Drakeford

Minister for Health and Social Services

6 May 2015

Part 1 – OVERVIEW

1. Description

The Social Services and Well-being (Wales) Act 2014 provides a single Act that 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. The Act provides the statutory framework to deliver the Welsh Government's commitment to integrate social services to support people of all ages, and support people as part of families and communities.

These regulations set out the test which a local authority must apply to determine whether or not an individual with needs identified in an assessment under section 19, 21 or 24 of the Act is entitled to have those needs met by a local authority. The regulations set out the test to be applied in relation to adults, to children and to carers.

This Explanatory Memorandum should be read in conjunction with the Explanatory Memorandum to the Care and Support (Assessment) (Wales) Regulations 2015.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

No specific matters identified.

3. Legislative background

The powers enabling these Regulations to be made are contained in sections 32(3) (4) and (5) of the Social Services and Well-being (Wales) Act 2014.

This instrument is subject to consideration by the National Assembly for Wales under a special procedure as set out in Section 33 of the Social Services and Well-being (Wales) Act 2014 (the super-affirmative procedure).

The Regulations will come into force in **April 2016**

Current legislation

The current legislative framework is complex and the provision of social care is currently found within a broad array of Acts, which legislate separately for children and adults.

Adults

Section 47 (1) (b) of the NHS and Community Care Act 1990 places a duty on local authorities to decide whether, following assessment, an adult's needs require a service to be provided. The basis for that decision is provided in Statutory Guidance only. In Wales, this was through *the Creating a Unified and Fair System for Assessing and*

*Managing Care*¹. This provides a standardised framework within which local authorities should decide local criteria about which needs should be met. This guidance sets out four bands of need; critical, substantial, moderate and low. Each band describes the extent of risk to independence if needs and issues are not addressed. Local authorities are entitled to set their eligibility threshold at any band within this framework.

The duty to meet eligible need is absolute, regardless of available resources within social services funds.

Children

There is no comparable determination of eligibility used in children's services. However under Section 17 (10) of the Children Act 1989, a child is a Child in Need if:

- He/she is unlikely to achieve or maintain, or have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him/her of services by a local authority;
- His/her health or development is likely to be significantly impaired, or further impaired, without the provision for him/her of such services; or
- He/she is a Disabled Child.

Carers

There are three Acts of Parliament and a Welsh Measure under the National Assembly for Wales, which are directly concerned with the needs of carers. These are:

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

In addition, Disabled Persons (Services, Consultation and Representation) Act 1986 Section 8 requires that during an assessment of a disabled person the views of Carers who 'provide a substantial amount of care on a regular basis' should be taken into account. There is no definition of "substantial amount of care on a regular basis".

Each of these pieces of legislation place duties on local authorities with respect to the right of carers to an assessment of their needs. However, there are no current statutory duties to provide services to carers, although there are powers to provide services which a) the local authority sees fit to provide and b) will in the local authority's view help the carer care for the person cared for (section 2 of the Carers and Disabled Children Act 2000) which cover all carers and disabled children aged 16-17 years. In exercising this power, local authorities can, but are not required to, apply an eligibility framework and criteria.

¹ Creating a Unified and Fair System for Assessing and Managing Care – Welsh Assembly Government - 2002

Local authorities have a duty to inform carers of their right to request an assessment, where the local authority believes there is an entitlement under either the Carers (Recognition and Services) Act 1995, the Carers Strategies (Wales) Measure 2010 or the Carers and Disabled Children Act 2000. Currently only carers providing a substantial amount of care on a regular basis are entitled to a carer's assessment (2000 Act) and a carer's assessment could only be undertaken if requested by a carer (1995 Act). There is no definition of 'a substantial amount of care on a regular basis' therefore the definition is open to determination by the local authority. There is also no legislative requirement on local authorities to take actions to meet those assessed needs.

Proposed legislation

The statutory framework will consist of three main elements, the Act itself, regulations made under the Act, and codes of practice/statutory guidance. These three elements work together to form the framework within which social services will operate from April 2016.

The new legislation will introduce greater consistency of practice across Wales by introducing changes to the current eligibility framework. Through the introduction of these Regulations, the new national eligibility criteria will remove, for adults, the traditional threshold for access to managed care and support, and replace it with a more responsive model that considers a bespoke response for each individual. Eligibility will flow from the assessment process.

The Social Services and Well-being (Wales) Act 2014 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 is in contrast to the approach under 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. The proposed Regulations and Codes of Practice place requirements on local authorities with respect to the criteria for, and process of, that determination. The proposed approach is parallel to that described for adults in that the determination of eligibility will flow from the process of assessment.

The Act 2014 sets a duty on local authorities to undertake a carer's assessment where it appears to the authority that the carer has needs for support. The person no longer needs to be providing 'a substantial amount of care on a regular basis' to be deemed to be a carer - it is sufficient only that the person provides, or intends to provide, care for an adult or disabled child. The Act also places a duty on a local authority to meet the support needs of a carer where those needs meet the national criteria for eligibility.

4. Purpose and intended effect of the legislation

- Option 1: No national criteria
- Option 2: Eligibility based on need
- Option 3: Eligibility based on a judgment that encompasses needs, outcomes, barriers, risks and resources

The Regulatory Impact Assessment (Part 2) and the evidence paper (Annex 1) will explore these options in more detail.

The case for change is further set out in the report *“Better Support at Lower Cost: Improving efficiency and effectiveness in services for older people in Wales²”*. The report identified that the single biggest challenge which many Welsh local authorities face is changing the prevailing culture within adult social care. The report recognised that a further culture shift was needed to create a service which offers real opportunity to help people become more independent, both in the way they live their lives, and how flexibly they can use services.

The current system can be confusing, with the main focus on the process instead of the outcome. The proposed new system will place greater focus on early intervention and prevention and build on people’s strengths to enable them to exercise voice and control over what matters to them, having regard to their needs and well-being outcomes. The new system will ensure that people are able to receive help to meet their care and support needs whether they are deemed eligible or not. Eligibility will mean that the individual requires a care and support plan to access and manage ways to meet their care and support needs; but those that are not eligible will still receive help and will be signposted to preventative well-being services in their community and encouraged to build on their own strengths and those within their network to meet their needs. This will mean that more people will be supported earlier through preventative measures irrespective of whether or not the eligibility criteria have been met. When this approach to determining eligibility is applied nationally it will provide a consistent response across Wales.

Currently, Intervention is often not triggered until the point of crisis, and there is little early intervention or prevention in place. The Act will encourage a renewed focus on prevention and early intervention. The Social Services Improvement Agency (SSIA) report emphasises the need for early intervention and prevention and states that such services will help local authorities to meet their savings targets whilst improving outcomes for individuals.

Increasing demands on social services have been evident throughout Wales. It is likely the demands will continue to increase in the future. The pressures on local authority social services departments relate to many factors including, but not limited to:

- People are living longer. Projections show that by 2030 there will be twice the number of people aged over 85 than there are currently. The associated costs to social care are explored further in the attached Regulatory Impact Assessment;
- Changing behaviours and expectations; and
- An increase in people with long standing and complex disabilities.

Although demands on social services are increasing, there is no commensurate increase in routine funding to support service delivery. The current financial settlement for 2015/16 has been decreased by 3.4% compared to 2014/15, as a consequence of the large scale budget reductions by the UK Government.

Due to this increase in demand it is essential that the future delivery of social care is transformed as the current system is unsustainable. Specifically there is a need to

² Better Support at Lower Cost: Improving efficiency and effectiveness in services for older people in Wales - ADSS Cymru – April 2011

simplify and improve service efficiency and effectiveness of the system. The system must be improved to deliver better integration, improved collaboration, a stronger workforce, and to provide people with a greater voice and control over their services and well-being.

Intended effect of the Regulations

The primary objective of the policy is to promote an individuals' independence and ensure they have a stronger voice and control over their care and support services. The proposed changes are crucial to enable current and future generations to live their lives independently, providing the correct level of support to maintain their independence and wellbeing. A 2011 report published by the Social Services Improvement Agency: *Better Support at Lower Cost: Improving efficiency and effectiveness in services for older people in Wales*³ notes that there are examples where local authorities have already started to reshape their services for older people, with evidence of a shift towards a re-ablement approach to care.

The proposed model of determining eligibility through assessment ensures a national framework that will be consistently applied across Wales. It will generate a uniform and consistent approach by which each local authority will identify those needs an individual has which must be met through the planning and delivery of a care and support plan. The individual's needs will become 'eligible' for social care and support if an assessment establishes that they need the local authority to develop and deliver a 'care and support plan' in order to overcome the barriers to achieving their outcomes.

The first part of the eligibility process is to assess if care and support intervention can address the need, risk or barrier, or enhance the resources that will enable the individual to achieve their personal well-being outcomes. The second part of the process is the determination that the individual's well-being outcomes cannot be met, or cannot be sufficiently met, solely through care and support co-ordinated by themselves, their family or carer, or others. If this is the case, the individual requires support through a care and support plan, to co-ordinate their care and support or to manage it completely.

The current approaches to eligibility and to assessment are different for children and adults, and there is inconsistency across Wales. The new model is designed to bring these processes under one framework.

The current framework for assessing and meeting the social care needs of adults is set out in the *Fairer Access to Care (FACS)*⁴ guidance that was published in 2002, and the current *Framework for the Assessment of Children in Need and their Families*,⁵ which was issued as guidance under the Children Act 1989, provides a systematic basis for collecting and analysing information to support professional judgements about how to help children and families in the best interests of the child.,

The new approach will reduce the number of people who require a care and support plan by introducing opportunities to help people retain independence, and access early

3 http://www.ssiacymru.org.uk/home.php?page_id=7067

4 Creating a Unified and Fair System for Assessing and Managing Care – Welsh Assembly Government – April 2002

5 <https://www.wales.nhs.uk/sites3/docmetadata.cfm?orgid=441&id=76272>

intervention and prevention services without the need for a formal plan, whether these are adults, children or carers. This approach is informed by the understanding that intervening in the right way, at the right time can lead to many older people being supported in the community outside the formal social care system, and families can be supported to stay together.

A recent report⁶ on access to care and well-being in Wales published by the Social Services Improvement Agency identified three key concerns with the current system which were identified consistently by participants from across children and adult services. The report identified:

1. That there is too little early intervention and prevention;
2. Too much time and too many skills and resources are going in to over-elaborate assessment activities which do not help individuals to address their concerns or achieve desired outcomes; and
3. Inconsistent approaches to eligibility applied across different groups of citizens within the population.

The proposed model of eligibility will address these concerns by introducing regulations that promote a much more consistent approach and equality of access to meeting the social care needs of the population. The regulations will provide individuals who have an assessed need for care and support with an enforceable right to care and support from the local authority where that cannot otherwise be provided. The local authority will have a corresponding legal duty to provide, or arrange that care and support (support in the case of carers).

Consultation

A 12 week consultation on these Regulations ran between 6 November 2014 and 2 February 2015. Further details on the consultation process are set out in the Regulatory Impact Assessment in Part 2.

⁶ Access to Care and Wellbeing in Wales Report - SSIA - 2013

PART 2 – REGULATORY IMPACT ASSESSMENT

This Regulatory Impact Assessment should be read in conjunction with the Regulatory Impact Assessment for the Care and Support (Assessment) (Wales) Regulations 2015.

The argument set out in this paper states that there is no correlation between the point at which local authorities set their eligibility thresholds, and the cost per head of providing adult social care.

The conclusion therefore is that the eligibility criterion is not the primary determinate of the cost per head of adult social care.

The two graphs below show how the local authority average spend per head is spread across the local authorities.

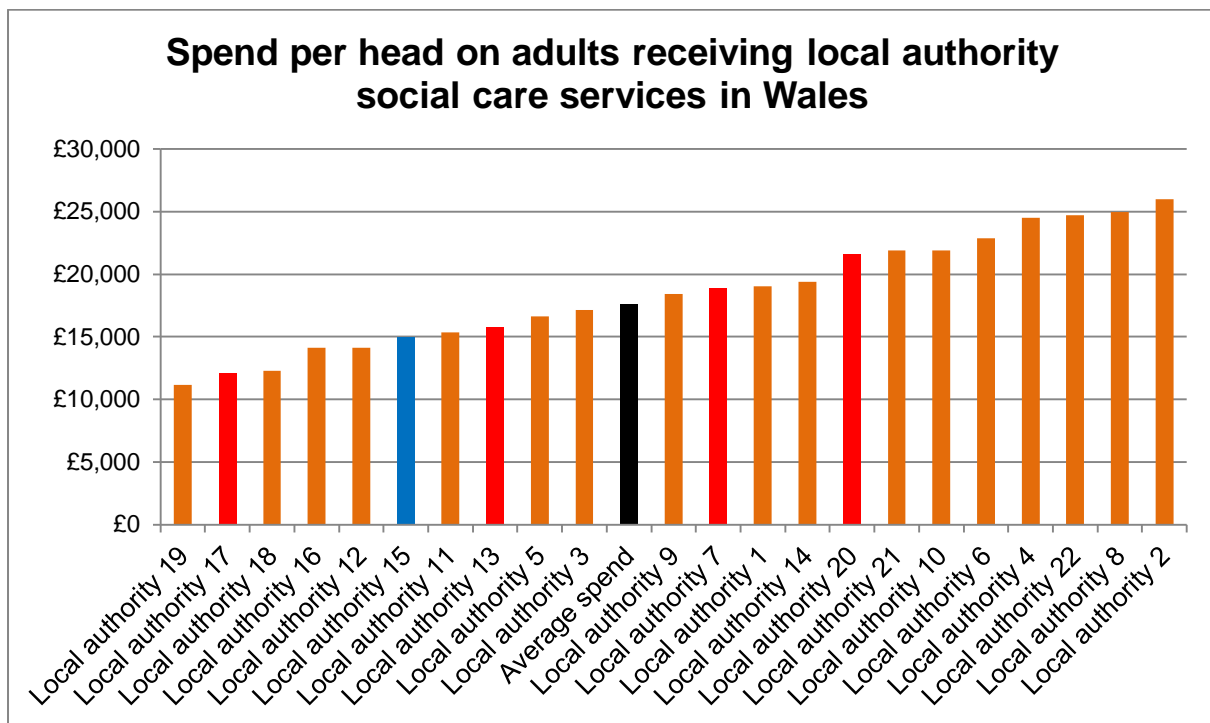
Graph 1 shows the spend per head on adults receiving local authority social care services in Wales; and

Graph 2 shows the spend per head of adult population on local authority social care in Wales.

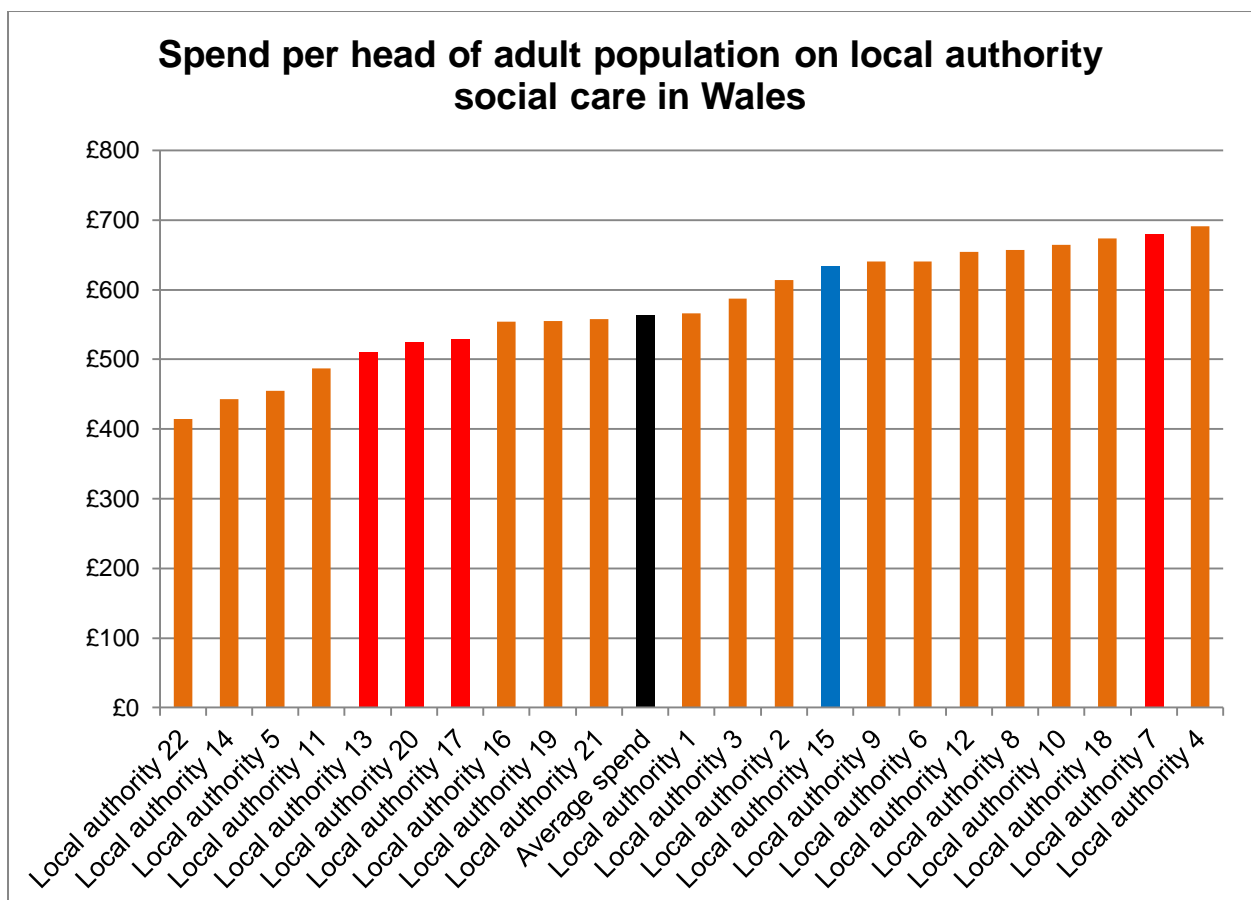
Each graph shows how the 22 local authorities in Wales set their eligibility criteria:

- The blue bar shows the authority that is currently working to a low threshold.
- The black bar shows the average spend per head across all authorities.
- The red bars show the four authorities who have set their threshold at moderate.
- The orange bars show the seventeen authorities who have set their threshold at substantial.

Graph 1. Spend per head on adults receiving local authority social care services in Wales



Graph 2: Spend per head of adult population on local authority social care in Wales



Overall both graphs show how the local authority average spend per head is spread across the local authorities.

Those four authorities (shown by the red bars) which are operating at 'moderate' on the threshold of eligibility for adult services show that costs for this group are spread across the chart. Both of the graphs show the four local authorities who have set their threshold at moderate, highlighted in red. In both cases three of these local authorities are providing social care at a lower than the estimated average spend per head, and one at a higher than the average spend per head. This further demonstrates that there is little correlation between the levels at which a local authority sets its threshold and the average cost per head of providing social care.

If the system remains the same the projected increase in the number of adults receiving social care in Wales is likely to rise by around 47,000 people between 2013 and 2030 (table 2 in annex 1).

As evidenced in table 8 of annex 1, if the average cost per head was spent on these additional adults the cost to the Welsh social care system is predicted to be an additional £600m by 2030. This is not sustainable, and this provides strong evidence of the need to change the system.

The strength of introducing the proposed new national eligibility criteria is that it removes the inconsistent application of setting local thresholds and creates national criteria for all local authorities to apply. At the same time, the proposed approach supports the delivery of early intervention and prevention, without the need for formal care and support plans in all cases, and this will enable more people to access and meet their wellbeing outcomes.

Options

This section of the Regulatory Impact Assessment presents three different options in relation to the policy objectives of the proposed Regulations. These options are consistent with those that were identified through the Eligibility Technical Group. The Technical Group was established by the former Deputy Minister for Social Services to advise the Welsh Government on producing Regulations and a Code of Practice. The Technical Group's report⁷, which outlines proposed options for the design of national eligibility criteria for Wales, can be found at document 1 of annex 1 (the evidence report).

All three of the options have been analysed in terms of how far they would achieve the Welsh Government's objectives, as set in the Sustainable social services for Wales framework⁸, along with the risks associated with each. All three options have been explored and the costs and benefits of each have been identified. However, it is recognised that there are limitations and challenges with projecting future demand for social care in Wales.

7 Options for the Eligibility Framework for Care & Support under Regulations stemming from the Social Services and Well-being (Wales) Act 2014 – Institute of Public Care – June 2014

8 Sustainable social services for Wales: a framework for action – Welsh Government - 2011

The options are as follows:

- Option 1: No national criteria specified
- Option 2: Create a national model setting the criterion at critical and substantial needs only
- Option 3: Create a consistent approach to meeting the social care needs of all of the population by setting an eligibility framework that will apply to all people.

As a basis for making projections on the future expenditure on social care under each option, the actual expenditure for 2010/11 (as reported on in the Community Care Statistics report⁹) and 2013/14 (most recent data collection) have been used to make estimates on the predicted expenditure for 2030. These estimates correspond with baseline projections by the House of Lords Committee on Public Service and Demographic Change.¹⁰ The data contained in the Regulatory Impact Assessment is based on current data and projections and provides indicative costings and scenarios.

This Regulatory Impact Assessment has explored the options and costings, and these are explored further in the evidence paper at annex 1.

Option 1: No national criteria specified

Option 1, as detailed in the report of the Eligibility Technical Group, is one where no national criteria would be specified. There would be no national criteria upon which to draw when making a judgement about whether an individual, and/or their family or carer, should receive social care and support to secure the solutions they need, this would be left to professional discretion and local criteria.

This is not a viable option as the Social Services and Well-being (Wales) Act 2014 requires Welsh Ministers to make regulations on how local authorities must determine whether needs meet an eligibility criteria. With no eligibility criteria set, Welsh Ministers would not be able to meet their duties under the Act.

Cost

The current estimated average cost of providing adult social care is estimated at £1,436m at 2013. This is predicted to rise to £2,043m by 2030, an increase of £607m over this period (table 9 in annex 1).

The main reason for this predicted rise in the cost of providing social care is the estimated rise of 44% between 2013 and 2030 in the number of those aged 85 years and over who are expected to receive a local authority service.

9 Community Care Statistics, Social Services Activity, England - 2013-14

10 <http://www.parliament.uk/business/committees/committees-a-z/lords-select/public-services-committee/report-ready-for-ageing/overview/>

Annex 1 shows that 11.1% of gross expenditure on adult social care is spent on assessment and care management (table 5). In Wales, this equates to £153m annually. However, given the projected increase in the population of those aged 85 years and over, it is likely, if the system remains the same that more funding will be required to keep pace with the demands for social care.

Annex 1 shows that the current system for determining eligibility for children is unlikely to alter significantly, and that this will not therefore impact on the costs of providing social care to children and young people.

The conclusion is that the projected rise in numbers of those needing to receive social care, particularly attributable to the rise in the population of those 85 years and over, and with the budgetary constraints in future years, is likely to cause local authorities to tighten their thresholds, and possibly screen more individuals out of the social care system. For children the level of provision may remain the same but overall the increases in demand are likely to result in resources being focused on people whose needs are substantial or critical to the detriment of those with low to moderate needs. This will mean that many people will not have their wellbeing outcomes met until they reach a substantial or critical level of need. Annex 1 (table 8) shows that providing social care at the critical and substantial level is far more expensive than at the moderate and low level.

Benefits

There are no extensive benefits under Option 1, other than if local authorities are not required to operate to a regulated framework for eligibility, they would be free to maintain their current eligibility systems and the processes associated with the assessment of needs. Staff will have experience of operating the system and there will be no immediate costs related to the re-training – although the prevalence of different systems will continue to mean added costs to local authorities with respect to re-training staff who have transferred in from elsewhere.

Risks

Option 1 was not recommended by the Eligibility Technical Group.

Without a more nationally consistent model of analysing eligibility in Wales, the future projections suggest that costs will be intensified and local authorities are likely to raise their thresholds as financial demands increase. This will mean an increase in the numbers of people who are not eligible for care until they reach a substantial /critical level. In turn this will introduce additional demands on the social care system.

Under Option 1 local authorities will continue to have the ability to adjust their local eligibility criteria, and they could operate at critical only if they chose to do so. However, there will be no requirement for any criteria to be consistently applied by all authorities and there is no evidence that the thresholds applied will effectively ration the services effectively.

The Care and Social Services Inspectorate (CSSIW)¹¹ reported this trend in a review of access and eligibility criteria in adult social care. The CSSIW reported that the current system is a potential barrier to individuals receiving services and screened individuals out of eligibility.

This approach does not fit with existing requirements about having clear eligibility criteria for access to social care and support set out in the regulations.

11 National Review of Commissioning for Social Services in Wales - CSSIW - 2014

Option 2: Create a National model setting the criterion at critical and substantial needs only

Option 2, as detailed in the report of the Eligibility Technical Group, is one where a national eligibility criterion would operate at substantial and critical only.

Option 2 is similar to the current system in operation in Wales because the majority of local authorities in Wales operate at critical and substantial. Annex 1 shows that 17 local authorities are currently working to this model, 4 local authorities are working at critical, substantial and moderate and only 1 local authority is applying their criteria at all 4 levels (annex 1, table 6).

The Social Services and Well-being (Wales) Act 2014 requires Welsh Ministers to make regulations on how local authorities must determine whether needs meet eligibility criteria. Option 2 could, therefore, be a practical option to introduce.

Costs

As 17 out of 22 local authorities are already operating this model, there are unlikely to be any additional costing associated with the adoption of this approach. However, the same projections in growth of the population, particularly those aged 85 years and over, do impact on the feasibility of this model in the longer-term (as set out in Option 1 above).

Many of the costs associated with Option 1 also apply. The current cost of providing adult social care is estimated at £1,436m at 2013. This is predicted to rise to £2,043m by 2030, an increase of £607m over this period (table 7 in annex 1).

The main reason for this predicted rise in the cost of providing social care is the estimated rise in the number of those aged 85 years and over who are expected to receive a local authority service.

Annex 1 shows that 11.1% of gross expenditure on adult social care is spent on assessment and care management (table 5). In Wales this equates to £153m annually. However, given the projected increase in the population of those aged 85 years and over, it is likely, if the system remains the same that more funding will be required to keep pace with the demands for social care.

Annex 1 shows that the current system for determining eligibility for children is unlikely to alter significantly and that this will not impact on the costs of providing social care to children and young people.

The conclusion is that the projected rise in numbers of those needing to receive social care, particularly attributable to the rise in the population of those 85 years and over, will result in higher demand for local authority social care services. Under Option 2 local authorities must provide care at both substantial and critical level. . Applying Option 2 is likely to have little impact on those that have low to moderate needs and they are likely to continue to have unmet needs until they reach these or the stated threshold level and

the Graphs in annex 1 demonstrate that there is little correlation between the level at which the local authority sets its eligibility threshold, and the average unit cost per adult receiving local authority social care services or the average cost of local authority social care per head of the adult population

Benefits

Some 17 of the 22 local authorities are already operating this model and therefore this will require little or moderate change to implement. Staff will already be familiar with the approach and will not have to learn new arrangements.

There is anecdotal evidence that the structure of the Unified Assessment Process (UAP) framework has raised the standard of social care assessments, so keeping the approach would be beneficial. However, there is no identified objective measurement and the evidence suggests there is no consistent approach to decision making. For example, a recent survey of Fair Access to Care Services (FACS) in England (Fernandez & Snell 2012)¹², found significant variability between care managers in the assignment of people's needs to the four categories: low, moderate, substantial and critical; with the inference that the current system is not fair and consistently applied.

Slasberg¹³ argues that what happens in practice derives from the over riding imperative to ensure that spend matches budget. Once the budget is set, spend is matched to it by the definition of an 'eligible' need expanding or contracting according to budget availability. The eligibility threshold is used as little more than a crude signal as to relative generosity or tightness of the allocation of resources. One of the benefits of adopting Option 2 is that this is likely to result in local authorities' spend matching their budget in any given year but this is not necessarily the same as being able to address the needs of their population.

The Graphs in Annex 1 have been produced following a survey of local authority eligibility thresholds in Wales. The graphs show that there is no correlation between the threshold set for eligibility and the average cost per adult receiving care services. There is also no correlation between that threshold and the spend per head of the local authority population. The figures cast severe doubt on the viability of a needs-based eligibility threshold as a mechanism for managing demand for local authority social care services.

Just as with Option 1, there are no extensive benefits under Option 2, apart from if system remains the same local authorities will not be required to make any amendments to their current eligibility systems nor with the processes associated with the assessment of needs. There will be no costs related to the re-training of staff already working in the social care system.

12 Fernandez & Snell: Survey of Fair Access to Care Services (FACS) Assessment criteria among local authorities in England (ESHCRU) <http://eprints.lse.ac.uk/44404/>

13 Colin Slasberg: Toward a new eligibility framework that serves the interests of both service users and councils. Journal of Research, Policy and Planning Vol. 29 No. 1 © Social Services Research Group 2011/12

Risks

Option 2 was not recommended by the Eligibility Technical Group.

The eligibility threshold is a framework enabling local authorities to prioritise the use of adult social care resources, such that social care can be provided to those with the highest need i.e. substantial and critical, often to the exclusion of those with low to moderate needs. However, if low level needs are not met in a timely manner they are likely to escalate into higher level needs which in turn are more expensive to address. If these low level social care needs are not met, then there is a likelihood that the impact on the NHS in Wales is likely to increase, particular in respect of older people.¹⁴

Although Option 2 offers a set criterion of just substantial and critical, these would still not necessarily be applied consistently across Wales. The future projections on demographic changes suggest that costs will be intensified and local authorities are likely to raise their thresholds as financial demands increase. Just with Option 1, this is likely to mean that more people will not be eligible for care until they reach a substantial /critical level. In turn this will introduce additional demands on the social care system.

Under Option 2 local authorities will not have the ability to adjust their local eligibility criteria, and they must operate at both substantial and critical levels. However, without any way of ensuring this is consistently applied across all Welsh authorities this is unlikely to see any major change.

While this approach does meet the existing commitments about having clear eligibility criteria for access to social care and support set out in the regulations, it is likely that those with low to moderate needs are likely to continue to go unmet.

Any needs-based approach can only focus on a very limited proportion of the full range of factors which might have an impact on the final judgement about the kind of support which might be right for a specific individual and/or their family or carer – they centre on inability or deficits and the risks this poses. There is no mention of the strengths and capacity which a person might bring to bear to their situation, nor the outcomes they look to achieve – this does not fit for example with the Disability Wales Toolkit “Transforming Social Services; Towards and Enabling Wales” which was developed with the Welsh Government to inform policy makers, and others, as they develop guidance to underpin the Act.

¹⁴ Integrated Assessment, planning and review Arrangements for Older People, Dec 2013.

Option 3: Create a consistent approach to meeting the social care needs of all of the population by setting an eligibility framework that will apply to all people.

Option 3, as detailed in the report of the Eligibility Technical Group, is one where new national eligibility criteria would operate.

Of the three proposed options, Option 3 represents the greatest change and therefore the greatest risk. However, this is considered to be the only sustainable option that will deliver the commitments as set out in the White Paper: *'Sustainable Social Services for Wales: A Framework for Action'*¹⁵

Option 3 is very different from the current system in operation in Wales because it provides an opportunity to create a consistent approach to meeting the social care needs of all people and supports the concept of early intervention and prevention as being beneficial.

Under this option the traditional threshold for access to managed care and support will be replaced by a more responsive model. The process for establishing an individual's eligibility will be simplified, and will be based on the needs of the individual. The changes will bring clarity, transparency and consistency for those who deliver care, those who receive it, their carers and families.

In the report to the Welsh Local Government Association and NHS Confederation on the transitional and longer-term implications of the Social Services and Well-being (Wales) Bill 2013 it was observed that: "There has long been a call for eligibility to be aligned with the service user's needs, rather than as a tool to ration resources, and critics would argue that this has been how eligibility criteria have often been used in practice".

The proposed new system will ensure that people are able to receive help to meet their care and support needs whether they are deemed eligible or not – eligibility will mean that the individual requires a care and support plan to access and manage ways to meet their care and support needs; but those that are not eligible will still receive help and will be signposted to preventative well-being services in their community and encouraged to build on their own strengths, and those their network, to meet their needs. This will mean that more people will be supported earlier through preventative measures irrespective of whether or not the eligibility criteria has been met, and applied nationally. It will provide a consistent response across Wales. This option will create eligibility criteria based on a comprehensive set of five inter-related elements to ensure that local authorities consider a person's circumstances in the round.

The report of the Independent Commission on Social Services in Wales¹⁶ highlighted children in need and carers as particular areas where more timely, flexible responses are needed.

The Eligibility Technical Group recommended the eligibility framework that these regulations introduce as one that recognises the differences in the basis for care and support required by people at different stages of their life, and is sensitive to the

¹⁵ Sustainable Social Services for Wales: A Framework for Action – Welsh Government -2011

¹⁶ The report of the independent commission on social services in Wales – November 2010

differing needs, context and outcomes for children, adults and carers. Carers groups have told us that carers want to be recognised for their contribution, and to be able to access timely advice and support to help them care and to support their own well-being.

The second report of Professor Eileen Munro's¹⁷ review of Child protection, considered the child's journey through the child protection system – from needing to receiving help – to show how the system could be improved. It concluded that instead of “doing things right” (i.e. following procedures) the system needed to be focused on doing the right thing (i.e. checking whether children and young people are being helped). Professor Munro argued that: “Services have become so standardised that they do not provide the required range of responses to the variety of need that is presented. This review recommends a radical reduction in the amount of central prescription to help professionals move from a compliance culture to a learning culture, where they have more freedom to use their expertise in assessing need and providing the right help.”¹⁸

The rate of ‘Looked After’ Children per 10,000 under 18 years has risen steadily in Wales in the last ten years and is around 50% higher than the rate in England. Looked After status is not the best pathway for children to achieve the best developmental outcomes and a better assessment process linked to a different understanding of eligibility has the potential to reduce these numbers

The Munro review recommended that Government place a duty on local authorities and their statutory partners to secure the sufficient provision of local early help services for children, young people and families. This should lead to the identification of the early help that is needed by a particular child and their family, and to the provision of an offer of help where their needs do not match the criteria for receiving children's social care services.

The approach to eligibility set out in Option 3 is consistent with that analysis in that determining eligibility is not about giving a right to any one service, it is about guaranteeing access to care and support where without it well-being outcomes could not be met.

The Social Services and Well-being (Wales) Act 2014 requires Welsh Ministers to make regulations on how local authorities must determine whether needs meet an eligibility criteria. Option 3 could be a practical option to introduce.

Costs

Cost savings will be inherited from the assessment process. These are laid out in the Regulatory Impact Assessment for the Care and Support (Assessment) (Wales) Regulations 2015.

Welsh Government does not foresee any significant cost implications in removing the current eligibility threshold. The proposed approach to determining eligibility will

17 The Munro Review of Child Protection Interim Report: The Child's Journey Professor Eileen Munro –Department of Education - 2011

18 The Munro Review of Child Protection: Final Report A child-centred system Professor Eileen Munro – Department of Education - 2011

encourage local authorities to assist individuals to access local services themselves or support people to develop the skills and confidence they need.

Annex 1 demonstrates the cost savings that could be reached if local authorities reduced the expenditure on assessment and care management to 8% to match some local authorities in England (table 5). If these efficiencies can be met, they could represent savings amounting to £43m (based on 2013/14 figures) and these costs could be reallocated to be used for service delivery.

Annex 1 also shows there is little correlation between the level at which the local authority sets its threshold and the average cost per head of providing social care (both with regard to spend per head of the adult population and the spend per head of all adults receiving local authority social care services in Wales). Although there are four authorities in Wales that are operating at moderate level, their average unit cost per adult are very different.

There is one authority in Wales which is operating closely to the way on which the new proposed model would work (blue bar, Graphs 1 & 2). These graphs show that the average cost per head in this authority is below many of those currently operating at critical and substantial only. This is also borne out in Annex 1 (table 6) which shows that the average costs of meeting low needs could be significantly lower (almost a third) than the cost of meeting critical needs.

The conclusion is that if the eligibility thresholds are removed, and replaced with a more flexible interpretation of individuals' needs, this does not mean that costs will rise.

Benefits

This option was recommended by the Eligibility Technical Group as the sustainable option for the delivery of social care and support over the long term.

As noted above, there is little correlation between the level at which a local authority sets its eligibility threshold, and the average cost per head of providing social care. The model of eligibility proposed through Option 3 will establish a national framework for eligibility for social services that enables more proportionate responses. This will help an individual to meet their personal well-being outcomes at a much earlier stage, and will deliver more effective and citizen-directed care and support through a system that is less complex and more cost efficient.

The projections on demographic changes state that by 2030 the numbers of those aged 85 years and over, receiving social care will rise significantly. Annex 1 (table 2) shows the population projections based on age groups in Wales, 48% of those aged 85 years and over are estimated to receive local authority social care services; the highest proportion of any age group. So the overall rise in the number of those aged 85 years and over by 2030 is likely to place a significant demand on the social care system in Wales. It is estimated that, compared to 2015, by 2030 the social care system is going to have to address the needs of an additional 32,000 people in that age group (table 2). Option 3 will enable local authorities to meet this increased level of demand with a more flexible and responsive approach.

In September 2010 the Care and Social Services Inspectorate Wales (CSSIW) undertook a review of access and eligibility in adult social care¹⁹. The report concluded that the current system has become focused on screening people out of eligibility and is acting as a barrier that is stopping individuals from accessing services. As result, there is a growing section of the population with unmet need.

The strength of introducing the proposed new national eligibility criteria is that it removes the inconsistent application of setting local thresholds and creates national criteria for all local authorities to apply. At the same time, the proposed approach supports the delivery of early intervention and prevention, without the need for formal care and support plans in all cases, to enable more people to access and meet their wellbeing outcomes.

If low level needs are not met in a timely manner they are likely to escalate into higher level needs which in turn are more expensive to address. If, these low level social care needs are met before they escalate the cost of meeting these needs is substantially lower than meeting higher level needs (annex 1, table 6). In addition, the intention is that this approach will reduce the impact on the NHS in Wales, in particular in respect of older people, keeping individuals living independently in the community.²⁰

This framework for eligibility supports and encourages the cultural change to a different way of working that is introduced through the Act. It prioritises early intervention and prevention, and supports a shift in from a 'service-led' to 'citizen-directed' approach, which implies a shift away from the 'cliff-face' response to eligibility that FACS promotes.

The proposed system will provide clarity and consistency for a holistic approach, bringing together assessment and eligibility.

The proposed model has been subjected to a substantial design process through a programme of stakeholder engagement which will need to be followed by a comprehensive training and awareness raising exercise.

Risks

Of the three, Option 3 represents the greatest change and therefore the greatest risk. However, this is considered to be the only sustainable option that will deliver the commitments as set out in the 'Sustainable Social Services for Wales: A Framework for Action'²¹

This was the preferred option of the Eligibility Technical Group, which advised Welsh Government on producing Regulations and a Code of Practice on the determination of eligibility for care and support services under the Act.

¹⁹ National Review of Access and Eligibility Criteria in Adult Social Care – Care and Social Services Inspectorate for Wales - September 2010.

²⁰ Integrated Assessment, planning and review Arrangements for Older People, Dec 2013.

²¹ Sustainable Social Services for Wales: A Framework for Action – Welsh Government -2011

The evidence, as set out in annex 1, is based on data that has not been fully tested. There is no precedent for the proposed new model. The draft regulations and code of practice have not been delivered before in the UK. However the likely demand on the social care system as a result of the population projections, against a backdrop of limited financial resources means that the current system is unsustainable. Therefore a new model is required.

Unless the workforce and population is adequately supported in making a smooth transition from the existing to the new system, Option 3 is not likely to meet its full potential. To militate against the risk Welsh Government has commissioned the Care Council for Wales to lead on the development and implementation of a national learning and development strategy.

This strategy is critical to the implementation of the Act and will need sustained, deliberate and high-profile leadership, which can reach out across a wide range of organisations and partners beyond the boundaries of the traditional social care sector.

The Care Council has developed this work with key stakeholders to ensure they have a strategy which covers all of those involved in the provision of social care, together with their key partners, and that it is delivered jointly and in collaboration with those partners.

The strategy includes a training deployment plan and a one-stop-shop resource hub, playing a key supporting role for the sector in ensuring its own readiness for the changes the Act and its regulations will bring into force. The Care Council for Wales will also update, publish on line and promote basic awareness raising material as a common tool for use across partners and support, encourage and monitor delivery. The resources and material developed by the Care Council will be made available free of charge to all organisations.

This work has been supported by £1m in 2015/16 from the Social Care Workforce Development Programme (SCWDP). A further £7.1m from the programme, together with the local authority match funding, making a total of some £11m will support the development and implementation of cross-sector regional training plans, which align with both the national strategy and regional implementation plans.

There will need to be a change in the structures and processes administered by local authorities to ensure that Option 3 is implemented effectively to support this change. A Delivering Transformation Grant was made available to the six regional partnerships in 2013/14 and 2014/15. Funding has doubled to £3m in 2015/16. This is in addition to the £20m already announced this year to carry on the work of projects funded through the Intermediate Care Fund and the £10m increase in the Revenue Support Grant for Social Services purposes. To ensure that the proposed new system continues to be embedded post April 2016 a further £3m in grant funding will be made available in 2016/17, subject to budgetary decisions.

Consultation

Welsh Government officials undertook a 12 week consultation on the regulations between 6 November 2014 and 2 February 2015. The consultation on parts 3 and 4 covered assessing the Needs of individuals, eligibility, direct payments and care planning.

There were 103 responses received from a variety of stakeholders, including the Welsh Local Government Association (WLGA), The Childrens Commissioner, The Older People's Commissioner, Social Services Improvement Agency (SSIA), Local Government representatives and Third Sector Organisations

There was general support for the proposed system change to an outcomes-based approach with a simplified assessment and care planning process and greater integration of services.

The responses flagged some potential changes to regulations and also outlined some areas of broader concern. These have been addressed through re-drafting of the codes of practice and amendments to regulations.

The priority from many responders is to reallocate resources to staff training and workforce development. The Care Council for Wales, as the lead body for workforce development, has been commissioned to lead on the development and implementation of a national learning and development strategy. The strategy is critical to the implementation of the Act and will need sustained, deliberate and high-profile leadership, which can reach out across a wide range of organisations and partners beyond the boundaries of the traditional social care sector.

Further detail on the consultation process can be found in the document at annex 2.

A detailed consultation response report has been published on the Welsh Government's website.

Competition Assessment

Competition Filter Test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulations do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisations?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

The filter test shows that it is not likely that the regulation will have any detrimental effect on competition; therefore a detailed assessment has not been conducted.

Post implementation review

The Social Services and Well-being (Wales) Act 2014 contains provisions to allow for Ministers to monitor functions of the Act carried out by local authorities and other bodies. Ministers may require these bodies to report on their duties in implementing these regulations.

As set out under option 3 there is a considerable amount of work required both in the run up to and post implementation should the regulation be agreed.

The Welsh Government intends to commission an evaluation to enable the impact of the new national model of assessment and eligibility to be considered. Additionally, officials will continue to monitor the impact of the regulation on areas such as the Welsh language, the United Nations Convention on the Rights of the Child (UNCRC), The United Nations Principles for Older Persons and Equality.

Annex 1

Evidence Paper

Regulatory Impact Assessment

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

Annex 1. Evidence Paper

The Regulatory Impact Assessment presents three different options in relation to the policy objectives of the proposed Regulations. These options are consistent with those that were identified through the Eligibility Technical Group, which advised the Welsh Government on producing Regulations and a Code of Practice on the determination of eligibility for care and support services under the Social Services and Well-being (Wales) Act 2014. The Technical Group identified three options for the way in which national criteria might be formulated to inform a judgement about eligibility. The full report, which outlines the options for the design of national eligibility criteria for Wales, can be found at document 1.

All three of the options are analysed in terms of how far they would achieve the Welsh Government's objectives, along with the risks associated with each. The options have been explored to identify the costs and benefits. However, it is recognised that there are limitations and challenges to projecting future demand for social care in Wales.

- Option 1: No national criteria specified.
- Option 2: Create a national model setting the criterion at critical and substantial needs only.
- Option 3: Create a consistent approach to meeting the social care needs of all of the population by setting an eligibility framework that will apply to all people.

Option 1: No national criteria specified

As set out in Option 1 in the report of the Eligibility Technical Group, no national criteria would be specified upon which to draw when making a judgement about whether an individual, and/or their family or carer, should receive social care and support to secure the solutions they need; this would be left to professional discretion and local criteria. The Social Services and Well-being (Wales) Act 2014 requires Welsh Ministers to make regulations on how local authorities must determine whether needs meet the eligibility criteria. This is not, therefore considered a realistic option with respect to the intent of the legislation.

Option 2: Create a National model setting the criterion at critical and substantial needs only

As set out under Option 2 of the Eligibility Technical Group Report, this option will introduce an eligibility model based on the level of need. With this option the traditional threshold for access to managed care and support will be replaced by a National Eligibility Framework set at a level equivalent to bands designated as 'Critical' and 'Substantial' in the statutory guidance: *'Creating a Unified and Fair System for Assessing and Managing Care'*.²²

²² Creating a unified and fair system for assessing and managing care (Welsh Assembly Government 2002)

Option 3: Create a consistent approach to meeting the social care needs of all of the population by setting an eligibility framework that will apply to all people.

As set out under Option 3 of the Eligibility Technical Group Report this option will create eligibility criteria based on a comprehensive set of 5 inter-related factors to ensure that local authorities consider a person's circumstances in the round. Under this option the traditional threshold for access to managed care and support will be replaced by a more responsive model. The process for establishing an individual's eligibility will be simplified, and will be based on the needs of the individual. The changes will bring clarity, transparency and consistency for those who deliver care, those who receive it, and their carers and families.

Baseline Evidence and Projections

Although demands on social services are increasing, there is no commensurate increase in the routine funding to support service delivery. The current financial settlement for 2015/16 has decreased by 3.4% compared to 2014/15, as a consequence of the large scale budget reductions.

A 2011 report commissioned by the Social Services Improvement Agency (SSIA)²³ outlined the challenges in projecting future demand for social care in Wales. The report recognised the complexities within the process and recognised that the projections may be affected, in part, by the way in which local authorities shape their services. The report also suggested that building a care and support system that focuses on keeping older people out of residential care, and using re-ablement models of care, may assist not only in achieving better outcomes for individuals, but also in reducing demand for services.

A report by the Institute for Fiscal Studies²⁴ summarised the challenges in predicting the allocation of funding for social care. The report outlined that there is substantial uncertainty about how much the Welsh Government will have to spend over the next 12 years. The most optimistic scenario is that the Welsh block grant will only be around 8% higher in real terms in 2025/26 than in 2010/11: this represents an annual average growth rate of just 0.5%. Given population growth, the block grant available per person would be just 1% higher per person than 15 years earlier. With regard to social care, the projections are subject to wide margins of error, reflecting uncertainty about future demands for health and social care, and the future costs of providing these services. Whilst the past is not necessarily a guide to the future, recent experience suggests that baseline projections may have overstated demand.

It is recognised, therefore, that making assumptions for the future delivery of social care is complex on multiple levels. However, as a basis for making projections about the future expenditure of social care under each option, the actual expenditure for 2010/11 (as reported on in the Community Care Statistics report²⁵) and 2013/14 (most recent data collection) have been used to make estimates on the predicted expenditure for

23 Better Support at Lower Cost: Improving efficiency and effectiveness in services for older people in Wales - SSIA – April 2011

24 Scenarios for the Welsh Government, Budget to 2025-26, Institute for Fiscal Studies

25 Community Care Statistics, Social Services Activity, England - 2013-14

2030. These projections correspond with baseline projections by House of Lords Committee on Public Service and Demographic Change²⁶.

To date, England and Wales have used the same legislation and virtually the same model for assessments in social care. Based on these similarities, and for the purposes of illustrating cost savings and expenses, assumptions have been based on Welsh figures wherever possible. Where these figures are not available, the most comparable English data sets have been used.

Calculations have been based on data provided by StatsWales²⁷, Health and Social Care Information Centre (HSCIC)²⁸, and on direct comparisons to calculations made for the Care Act 2014 in England, much of which have been based on HSCIC data. Information based on the existing Fairer Access to Care (FACS) model has also been used.

The following sections convey the population projections, which have been used to make assumptions on expenditure for both Options 1, 2 and 3.

Population Projections for Wales

Projections²⁹ show that by 2030 there will be twice as many people aged over 65 years living in England as there were in 2010. If existing rates of prevalence for various health conditions and care needs are applied to this changing demographic structure, then this implies that there will be significant increases in need for social care services in future. However, improvements in health and care services, including better prevention, could play a role in counteracting some of these pressures³⁰.

The census collection for Wales was reported upon in 2011 and the population projections for 2013 and 2030 have been used to make assumptions about the population.

26 <http://www.parliament.uk/business/committees/committees-a-z/lords-select/public-services-committee/report-ready-for-ageing/overview/>

27 Welsh Government's online repository for detailed statistical data for Wales. The data is updated by the Knowledge and Analytic Services (KAS), Welsh Government.

28 Health and Social Care Information Centre (HSCIC - The national provider of information, data and IT systems for health and social care in England

29 Lord Filkin, chairman of the Lords Committee on Public Service and Demographic Change

30 Future of Paying for Social Care in Wales – LE Wales – April 2014

Table 1: Population projections for Wales (Adults)

	2011 ³¹	2012	2013	2014	2015	2030 (Estimated)
Number of adults aged 18-64 living in Wales	1,867,505	1,857,283	1,853,049	1,851,715	1,852,593	1,814,014
Number of adults aged 65 – 74 living in Wales	300,550	318,140	329,161	337,726	345,293	380,617
Number of adults aged 75 – 84 living in Wales	187,434	190,806	193,832	197,447	200,549	286,975
Number of adults aged over 85 living in Wales	74,560	76,932	77,332	78,952	80,972	141,037
Total	2,430,049	2,443,161	2,453,374	2,465,840	2,479,407	2,622,643

The figures in table 1 demonstrate that there is expected to be a 55% rise in those aged over 65 years living in Wales from 2011 to 2030. These estimates are consistent with the projections for England, where there is a predicted 50% increase of those aged over the age of 65 years living in England.

The predictions also show that there is likely to be a slight decline (-3%) in the number of adults aged 18 - 65 years living in Wales between 2011 and 2030.

On average, about 1.5% of adults aged 18-64 years, and about 14% of over 65s in Wales receive local authority social care services. For the group of people aged 65 years and over there is significant variation across age bands in the proportion of individuals receiving local authority social care services: the ratio share of the population aged 65-74, 75-84 and 85+ years is around 5%, 16% and 48% respectively. These ratios have stayed broadly constant over the last six or seven years.³²

Table 2 has used these average projections to work out the percentage of the population who are likely to receive a local authority social care service between 2011 and 2015, and then used these figures to estimate the proportion of population receiving local authority social care services in 2030

³¹ StatsWales: 2011 Census: Usual resident population by single year of age and sex, Wales

³² Future of Paying for Social Care in Wales – LE Wales – April 2014

Table 2: Proportion of the adult population receiving local authority social care services by age

	2011 ³³	2012	2013	2014	2015	2030 (Estimated)
Number of adults aged 18-64 living in Wales (1.5% of population)	28,013	27,859	27,796	27,776	27,789	27,210
Number of adults aged 65 – 74 living in Wales (0.5% of population)	15,028	15,907	16,458	16,886	17,265	19,031
Number of adults aged 75 – 84 living in Wales (16% of population)	29,989	30,529	31,013	31,592	32,088	45,916
Number of adults aged over 85 living in Wales (48% of population)	35,789	36,927	37,119	37,897	38,867	67,698
Actual total number of adults receiving local authority social care services:	109,334	111,810	110,895	110,415	Not known	Not known
Total predicted number of adults receiving local authority social care services	108,818	111,223	112,386	114,151	116,008	159,855

If the current model of social care remains, overall there is likely to be a 45% increase in those receiving local authority social care services between 2011 and 2030 (as noted in table 2).

The table reflects the actual number of adults receiving local authority social care services in the years between 2011 and 2014³⁴. When the percentages of those who are predicted to use local authority social care services in the future, are applied to the population projections, they are broadly consistent with the number of those who actually received services. Therefore, the estimates of the population which is likely to receive local authority social care services have been used to illustrate the variations of expenditure when the options are applied in practice. These variations have been used throughout the Regulatory Impact Assessment to provide estimates of the cost effectiveness of the proposed options.

³³ StatsWales: 2011 Census: Usual resident population by single year of age and sex, Wales

³⁴ StatsWales: CARE0005: Adults receiving services – 2013/14

Table 3 - Population projections for Wales (Children)

	2011 ³⁵	2012	2013	2014 ³⁶	2015	2030 (Estimated)
Number of children aged 0-18 living in Wales (Mid-Year)	632,433	630,906	630,211	629,235	627,758	652,571

The figures in table 3 demonstrate that there is expected to be a 3% rise in those aged under 18 years living in Wales between 2011 to 2030.

Table 4: The rate of looked after children per 10,000 under 18 years in England and Wales

	Wales	England
<u>2003</u>	64	Not known
<u>2004</u>	66	Not known
<u>2005</u>	67	Not known
<u>2006</u>	70	Not known
<u>2007</u>	72	Not known
<u>2008</u>	72	Not known
<u>2009</u>	73	54
<u>2010</u>	81	57
<u>2011</u>	85	58
<u>2012</u>	90	59
<u>2013</u>	91	60
2014 (As of 31 March 2014)	91	60

Table 4 demonstrates that the rate of 'Looked After' children per 10,000 under 18 years has risen steadily in Wales in the last 10 years, and is around 50% higher than the rate in England³⁷.

35 StatsWales: National level population estimates by year, age and UK country – Mid Year

Mid-Year population estimates (1991 onwards), by Welsh local authorities, English regions and UK countries, for single year of age and gender (2011, 2102 and 2013 data)

36 StatsWales: Population projections - 2012-based national population projections for Wales, 2012-2037

37 British Association for Adoption and Fostering (BAFF) - <http://www.baaf.org.uk/res/stats>

Assessment and Care Management Expenditure

Based on evidence from the Audit Commission (2012)³⁸ report: 'Value for money in assessments and reviews', spending on assessment and care management in English local authorities represented an average of 12% of gross spending on adult social services. It further stated that this varied across local authorities, with local authorities spending between 8% and 17% of their gross expenditure on adult social care on assessment and care management.

Using data provided by StatsWales the following table 5 explores the different levels that local authorities could work towards in Wales. On average Welsh local authorities currently spend 11.1% of their gross adult social care budget on assessment and care management, at £153,000,000 per authority annually.

Table 5: Gross Social Services expenditure³⁹ in Wales 2013 /14: £1,380,000,000

Total cost of assessment and care management ⁴⁰ at:	
8% of expenditure	£110,000,000
10% of expenditure	£138,000,000
11.1% of expenditure (current position in Wales)	£153,000,000
12% of expenditure	£166,000,000
17 % of expenditure	£235,000,000

Eligibility Criteria

Currently local authorities have the discretion to set their eligibility threshold at differing levels within a set framework. This results in a variation across Wales with regard to where local authorities place their thresholds. However, it is important to note that a report by the Care and Social Services Inspectorate Wales⁴¹ found that it was difficult to define what a particular threshold means in practice, and so there is uncertainty if the criteria are applied consistently across client groups.

The table below shows how thresholds are set in Wales⁴²:

Table 6: Local authority thresholds

Threshold for access to care and support	Number of local authorities setting their threshold at that criterion
Critical, Substantial, Moderate and Low	1
Critical, Substantial and Moderate	4
Critical and Substantial	17

38 Value for money in assessments and reviews - Audit Commission –August 2012

39 StatsWales – Revenue outturn expenditure: Social Services

40 StatsWales - LGFS0015: Social services revenue expenditure by client group (£ thousand)

41 CSSIW – National review of access & eligibility in adult social care – Overview Report September 2010

42 Future paying for Social Care in Wales – LE Wales – April 2014

One local authority in Wales places their threshold at a point that encompasses Critical, Substantial, Moderate and Low; which is an approach to eligibility for social care that has similarities to the model that the proposed regulations, informed by the recommendations of the Eligibility Technical Group (Option 3), would introduce. The four local authorities that set their threshold at a level that encompasses Critical, Substantial and Moderate have also made progress to implement the principles set out within the proposed regulations.

Table 7 highlights the differing criteria that local authorities have set as their thresholds. The table shows two methods of illustrating the estimated cost of applying eligibility thresholds. The first approach sets a cost of eligibility for the whole adult population by sharing the total social adult social services expenditure⁴³ equally amongst the population of Wales⁴⁴. The second method uses a similar approach but divides the total social adult social services expenditure by all adults who receive local authority social services⁴⁵.

43 StatsWales: Gross Social Services Expenditure 2013/14

44 StatsWales: Census 2011 - Usual resident population by broad age group and local authority

45 StatsWales: Number of adults receiving a service in 2013/14

Table 7: The distribution of Eligibility threshold in Wales

	Critical	Substantial	Moderate	Low	Average cost per head of total population	Average cost per head of people receiving a service
Local Authority 1	✓	✓			£566	£19,035
Local Authority 2	✓	✓			£614	£25,992
Local Authority 3	✓	✓			£587	£17,148
Local Authority 4	✓	✓			£691	£24,507
Local Authority 5	✓	✓			£455	£16,643
Local Authority 6	✓	✓			£641	£22,854
Local Authority 7	✓	✓	✓		£680	£18,895
Local Authority 8	✓	✓			£657	£24,966
Local Authority 9	✓	✓			£640	£18,420
Local Authority 10	✓	✓			£664	£21,917
Local Authority 11	✓	✓			£487	£15,350
Local Authority 12	✓	✓			£654	£14,138
Local Authority 13	✓	✓	✓		£511	£15,802
Local Authority 14	✓	✓			£443	£19,384
Local Authority 15	✓	✓	✓	✓	£634	£14,988
Local Authority 16	✓	✓			£554	£14,116
Local Authority 17	✓	✓	✓		£530	£12,089
Local Authority 18	✓	✓			£674	£12,291
Local Authority 19	✓	✓			£555	£11,177
Local Authority 20	✓	✓	✓		£525	£21,620
Local Authority 21	✓	✓			£557	£21,886
Local Authority 22	✓	✓			£415	£24,687
Average spend per head					£563	£17,674

The local authority that sets its threshold at low is highlighted in blue and those who set their threshold at moderate are highlighted in red. Through analysis of this data, it is evidenced that there is no consistency with regard to spend per head between local authorities with the same thresholds even when population and budgets are taken into account.

In summary, table 7 demonstrates that the eligibility criterion is not the primary determinant of cost per head of adult social care. The figures do not appear to convey a correlation between the point at which local authorities set their threshold and the cost per head of providing adult social care. This is true whether the eligibility criterion is matched with the cost per head of the adult population or only the cost per head of

those receiving social care services. This is also consistent with the findings of the recent Social Services Improvement Agency (SSIA) report 'Better Support at Lower Cost'⁴⁶.

However, this data does not provide any information about the level of need of the individuals for whom eligibility has been determined and a service is being provided. The data only shows that their needs are above the threshold set by the local authority in question. It has not been possible to identify, at scale, the spread of needs (critical, substantial, moderate or low) that occur within the set of those people who have met the authority's threshold for eligibility. Therefore English data, provided by the Personal Social Services Research Unit has been used to illustrate the estimated cost of providing services at each threshold. PSSRU recently produced a report⁴⁷ to investigate the operation of the current Fair Access to Care Services (FACS) system; in particular in relation to how care managers allocate different people to the different needs groups defined by FACS. The report also identifies whether the care managers agree in the decisions that they make about these ratings, and in deciding whether an individual is eligible for services.

Table 8 provides an approximation of expenditure per individual on the basis of reported spend per category of need and service user group, as reported by local authorities in England, and referenced in the Survey of FACS assessment criteria. When averaged out the expenditure⁴⁸ per threshold is noted in the table below.

Table 8: The distribution of Eligibility threshold in England

	Older People	Physical disabilities	Learning disabilities	Mental health	Other	Average
Critical	£15,483	£20,163	£47,860	£19,829	£12,669	£23,200.80
Substantial	£9,052	£9,738	£34,640	£9,839	£8,883	£14,430.40
Moderate	£6,298	£7,699	£23,518	£7,619	£1,790	£9,384.80
Low	£6,483	£3,722	£13,564	£9,818	£4,333	£7,584

As discussed, the data collected for Wales has not been able to provide the average spend per threshold or service provision group. However, the identified average estimated cost per head for social services in Wales is £12,781 (as identified in table 7). Using table 8 this can be seen as a level of spending per head that sits between the costs of meeting those needs identified as either 'moderate' or 'substantial'.

This will reinforce the view that the majority of local authorities in Wales are indeed currently meeting needs at the substantial threshold and above. However, it should be noted that the level of the threshold is not the only factor in the wider context of how the eligibility model operates.

46 Social Services Improvement Agency - Better Support at Lower Cost - Improving efficiency and effectiveness in services for older people in Wales – 2011

47 Survey of Fair Access to Care Services (FACS) assessment criteria amount local authorities

48 Figures are based on the same sample when comparing across FACS groups

Option 1 –No national criteria specified

Under this option Welsh Government considers that the costs of meeting the demand for social services will continue to rise and will become financially unsustainable. The cost of doing nothing is likely to extend and intensify the financial pressures that challenge the current model of social care.

In the last decade the gross expenditure of adult social services has risen by 53%. There is no additional funding available to meet this predicted rise in expenditure should this trend continue.

The current model for eligibility places its focus on intervention at the point of crisis rather than helping individuals to postpone or prevent the onset of illness or loss of independence. Table 6 shows that 17 (77%) local authorities in Wales currently set their eligibility criteria threshold at 'substantial and critical'. Therefore a high percentage of local authorities in Wales only provide support to individuals who are assessed as having high level needs. Only one local authority in Wales currently provides support to individuals with low level needs, and thereby provides individuals with early support in the planning of their care needs. The Social Services Improvement Agency (SSIA)⁴⁹ analysis supports an emphasis early intervention and prevention, acknowledging that it improves outcomes for individuals.

In the short term this option would avoid additional costs associated with implementing a new system i.e. training costs. However, in the longer term costs may be incurred by the local authority as they are likely to have to raise their thresholds in order to meet increases in demand.

As illustrated in tables 1 and 2 there is predicted to be a significant rise in the population of those who will receive local authority social care services by 2030. The population is rising, particularly in relation to the age group of over 85s. It is crucial that local authority social care services become more efficient to ensure that all those who require services are provided with good quality services. The cost of providing these services to the growing population is too great. It is evident that a transformation in the delivery of health and social care services is required to meet the needs of the ageing population and to respond to the changing burden of rising public expectations.

⁴⁹ Social Services Improvement Agency – Better Support at Lower Cost - Improving efficiency and effectiveness in services - for older people in Wales - 2011

Table 9: The estimated cost implications of providing local authority adult social care services

	Total predicted number of adults receiving local authority social care services	Total cost – using an average estimated cost of £12,781 (as detailed in table 2).
2011	108,818	£1,390,802,858
2012	111,223	£1,421,541,163
2013	112,386	£1,436,405,466
2014	114,151	£1,458,963,931
2015	116,008	£1,482,698,248
2030(estimated)	159,855	£2,043,106,755

Currently the estimated average cost of providing services to the adult population who require a service is estimated at £1,436 as at 2013. By 2030 this cost is likely to rise to £2,043m.

As illustrated in the calculations above the estimated cost of the total amount of assessments for all adults is likely to increase by £607m between 2013 and 2030.

Table 5 shows that on average 11.1% of gross expenditure on adult social services expenditure is spent on assessment and care management. However, given the predicted large increase in the population of those over the age of 85 years, there is likely to be a larger proportion of the overall social services budget needing to be spent on assessment and care management in the future. On this basis, if the current approach social care remains, local authorities may need to use larger proportions of their budget in order to provide services to all those that require them, with consequent budgetary pressures elsewhere in the system..

There is a funding gap for local authorities in England. The funding gap for councils in England between March 2014 and the end of 2015/16 will be £5.8 billion, it is noted that The gap is the disparity between the total money local authorities will have next year (£46.3 billion) and the amount of money they would need to maintain 2013/14 levels of service. The Local Government Association estimated this spending gap in the budgeted for adult social care of 29% by 2019-20⁵⁰.

There is an absence of statistics relating to any funding gap for councils in Wales, however, applying the 29% spending gap to Welsh figures would represent a shortfall of £44m.

Population Projections

As evidenced in table 2, the population is rising, particularly in relation to the age group of over 65s. It is crucial that local authority social care services become more efficient to ensure that all those who require services are provided with good quality services.

The cost of providing these services to the growing population is too great. It is evident that a transformation in the delivery of health and social care services is required to meet the needs of the ageing population and to respond to the changing burden of rising public expectations.

Due to the complexities of predicting the future budget for social care, it has been assumed that the average cost per head of an individual receiving a service will remain at £12,975. If this figure is applied to all individuals expected to receive a service in the given year, a total cost can be estimated as set out in table 9.

Table 10: The estimated cost implications of providing local authority social care services

	Total predicted number of adults receiving local authority social care services	Total cost – using an average estimated cost of £12,781 (as detailed in table 2).
2011	108,818	£1,390,802,858
2012	111,223	£1,421,541,163
2013	112,386	£1,436,405,466
2014	114,151	£1,458,963,931
2015	116,008	£1,482,698,248
2030(estimated)	159,855	£2,043,106,755

Currently the estimated average cost of providing services to the adult population who require a service is estimated at £1,436m. By 2030 this cost is likely to rise to £2,043m.

Based on these calculations, it can be estimated that the total cost of providing local authority social care services is likely to increase by £607m.

Additionally, as evidenced in the report by the Institute for Fiscal Studies⁵¹ it is difficult to predict an increase in this expenditure. If it is assumed that there will be no significant changes to the adult social services budget in Wales, there would need to be a decrease in the estimated spend per head of adults receiving local authority social care services – if no other changes in service design or provision are effected.

If the gross adult social services expenditure was to remain at £1,380,515,630, with the service model unchanged, the average spend per head would need to be reduced to £8,636.05 (£1,380,515,630/ 159,855) in 2030, for the budget available to meet the predicted number of adults needing to receive local authority social care services.

The unintended consequence of the reduction in the average cost per head of providing local authority social care services is likely to cause local authorities to tighten their thresholds, and possibly screen more individuals out of the social care system. This will result in resources being focused on people whose needs are substantial or even critical only.

⁵¹ Scenarios for the Welsh Government , Budget to 2025-26, Institute for Fiscal Studies

The lack of support being offered to those with low or moderate level needs will only speed up the rate at which those needs move from low/moderate to critical/substantial, accelerating the pressures on the system and increasing the level of demand for services to meet substantial and critical needs to the extent that they too become unsustainable.

The use of a needs-based 'cliff-face' approach to eligibility is a crude, short term attempt to limit demand but it is not an effective way to manage demand over time – if anything it is an approach that is likely to feed the demand for care and support in the long term.

As evidenced in table 5, 17 out of the 22 local authorities in Wales currently set their threshold at substantial and critical. This suggests that investment in some local authorities is not focused on providing for individuals with low level needs. This lack of investment in prevention for those with low level needs could contribute to poorer health and wellbeing outcomes for individuals at higher unit costs. As illustrated in table 8, the costs of providing services for those with critical needs are far higher than providing services for those with low level needs.

Carers

Table 2, showing the proportion of the population receiving local authority social care services by age, is understood as not including those people who receive support services solely as a carer. The current legal situation is that local authorities are required to assess the needs of carers, but there is no commensurate legal requirement to meet those identified needs. It is therefore unlikely that the amount of the population predicted to receive local authority social care services, as summarised in table 2, has included any increase in demand as a result of carers requesting assessments.

Irrespective of the regulations for assessment being introduced, a new duty to provide services for the needs of a carer support will be placed upon local authorities. The duty is comparable to that for the people they support and has removed the existing requirement that the carer must be providing “a substantial amount of care on a regular basis”, providing all carers with access to an assessment. Therefore the approach to determining eligibility and providing support for carers will need to mirror the approach used for determining eligibility and meeting needs for those they care for.

In Wales there are 30,000 individuals providing unpaid care.⁵² In 2001 it was estimated that the care that unpaid carers provide would cost £5.69 billion per year to deliver using paid support⁵³. If the process for meeting carers needs is to remain the same, with no preventative work put in place, it is probable that an unintended consequence of this is likely to be that many of the individuals providing care, without any support in place, will have possible social care needs themselves in the future.

The impact of the approach to eligibility will be affected by the number of carers requiring an assessment as a result of:

⁵² Office for National Statistics - 2011 Census: Provision of unpaid care
⁵³ Carers, Employment and Services in Wales - Carers UK - 2011

- (1) the new definition of a carer and
- (2) the awareness of carer's new rights to services.

However we are unable to quantify these effects other than to note that following the introduction of the Carers Strategies (Wales) Measure in 2010/11 there was an increase in the number of carers requesting an assessment - presumably due to a sharp rise in people's awareness of their rights as carers. There was, however, a significant decrease in the numbers the following year after the first 'wave' of assessment requests had subsided. It is reasonable to assume that the same pattern will occur with the implementation of the Act.

Children

For children the process of assessment has been developed through guidance under the Children Act 1989 and is set out in the associated statutory guidance: *The Framework for the Assessment of Children in Need and their Families*. The Munro report⁵⁴ endorsed the "excellent principles" of that framework but observed that "it has become clear that they have become linked with specific theories, recording forms and processes. evidence to the review has clearly indicated that professionals too often feel they must complete a form before a child is eligible to receive support, instead of responding to obvious or urgent needs while carrying out the assessment process".

Although the Act will impact on the process of assessment for children, it is considered that the determination of eligibility in practice will not alter so greatly as to have significant impact on costs. Although no negative impacts are anticipated, it is not possible for Welsh Government to quantify any positive financial impact.

Table 11: The estimated cost implications of providing local authority social care services, for those ages under the age of 18

	Total number of children in need	Percentage increase/decrease from previous year
2010	18,865	
2011	19,710	4%
2012	20,240	3%
2013	19,920	-2%
2014	20,145	1%

⁵⁴ The Munro Review of Child Protection: Final Report A child-centred system - Professor Eileen Munro – Department of Education - 2011

Although the terminology of 'Children in Need' is likely to change the model does not anticipate any immediate impact on the numbers of children who have needs for care and support. A more preventative and community based early intervention approach to working with families as set out under part 2 of the Act is likely to have a positive impact over time on the percentage of children who have needs for care and support, but this is not of itself a result of changes to the model of eligibility and no attempt has been made to quantify that impact here.

Transitional Costs

Retaining the current system would avoid any transition costs associated with implementing a new social services system.

Option 2: Create a national model setting the criterion at critical and substantial needs only

Most local authorities in Wales (17) are already working to this model. Therefore there is unlikely to be any additional costs other than those detailed for option 1.

However possible cost implications have been explored further in options 1 and 3.

This option was also not recommended within the Eligibility Technical Group report.

Option 3: Create a consistent approach to meeting the social care needs of all of the population by setting an eligibility framework that will apply to all people.

Cost savings will be inherited from the assessment process. These are laid out in the Regulatory Impact Assessment for the Care and Support (Assessment) (Wales) Regulations 2015.

The Welsh Government does not foresee any significant cost implications in removing the existing eligibility threshold. At present The Fair Access to Care Services (FACS) framework sets out eligibility criteria against which local authorities assess an individual's needs. Local authorities set their own eligibility thresholds. This results in a variation across Wales with regard to where local authorities place their thresholds as we have shown in table 7 above.⁵⁵

The proposed approach to determining eligibility will encourage local authorities to assist individuals to access local services themselves or support people to develop the skills and confidence they need.

Assessment and Care Management Expenditure

The data provided in Table 5 demonstrates the cost savings that could be reached if local authorities reduced the expenditure on assessment and care management to 8% to match some local authorities in England. If these efficiencies can be met, they could

⁵⁵ Future paying for Social Care in Wales 70– LE Wales – April 2014

represent savings amounting to £43m, and these costs could be reallocated to be used for service delivery.

As evidenced by the Social Services Improvement Agency (SSIA)⁵⁶ early intervention and prevention helps local authorities to meet their savings targets whilst improving outcomes for individuals. The introduction of the regulations will assist local authorities in this agenda, with the likelihood that the spending on Assessment and Care Management will move closer to 8%.

Population Projections

As evidenced in table 2, the population is rising, particularly in relation to the age group of over 65s. It is crucial that local authority social care services become more efficient to ensure that all those who require services are provided with good quality services. The cost of providing these services to the growing population with the current model is too great. It is evident that a transformation in the delivery of health and social care services is required to meet the needs of the ageing population and to respond to rising public expectations. Improvements in health and care services, including better prevention, could play a role in counteracting some of these pressures⁵⁷.

The rate of 'Looked After' children per 10,000 under 18 years has risen steadily in Wales in the last 10 years, and is around 50% higher than the rate in England⁵⁸.

The introduction of the Act encourages local authorities to deliver a whole system change, and to encourage early intervention and investment in preventative services. The Social Care Institute for Excellence (SCIE) supports a whole system change to prevention, reablement and universal services⁵⁹.

The Social Services Improvement Agency (SSIA)⁶⁰ report supports early intervention and prevention and identifies that the delivery of preventative services should reduce demand for longer term care. As evidenced in table 8, it is more cost effective to assist individuals with low level needs than it is when they reach a critical level of need.

Eligibility criteria

As evidenced in table 6, one local authority in Wales currently sets its threshold at a low threshold, and so is already in line with the proposed model set out in the regulations. Table 7 shows that this local authority, as highlighted in blue, is providing services at a comparable cost to other local authorities.

To further convey this, the graphs. Graph 1 shows the average spend per head on adults receiving local authority social care services in Wales and Graph 2 shows the spend per head of adult population on local authority social care in Wales. Both graphs

56 Social Services Improvement Agency – Better Support at Lower Cost - Improving efficiency and effectiveness in services - for older people in Wales - 2011

57 Future of Paying for Social Care in Wales – LE Wales – April 2014

58 British Association for Adoption and Fostering (BAFF) - <http://www.baaf.org.uk/res/stats>

59 Crossing the threshold: The implications of the Dilnot Commission and Law Commission reports for eligibility and assessment in care and support - SCIE

60 Social Services Improvement Agency – Better Support at Lower Cost - Improving efficiency and effectiveness in services - for older people in Wales - 2011

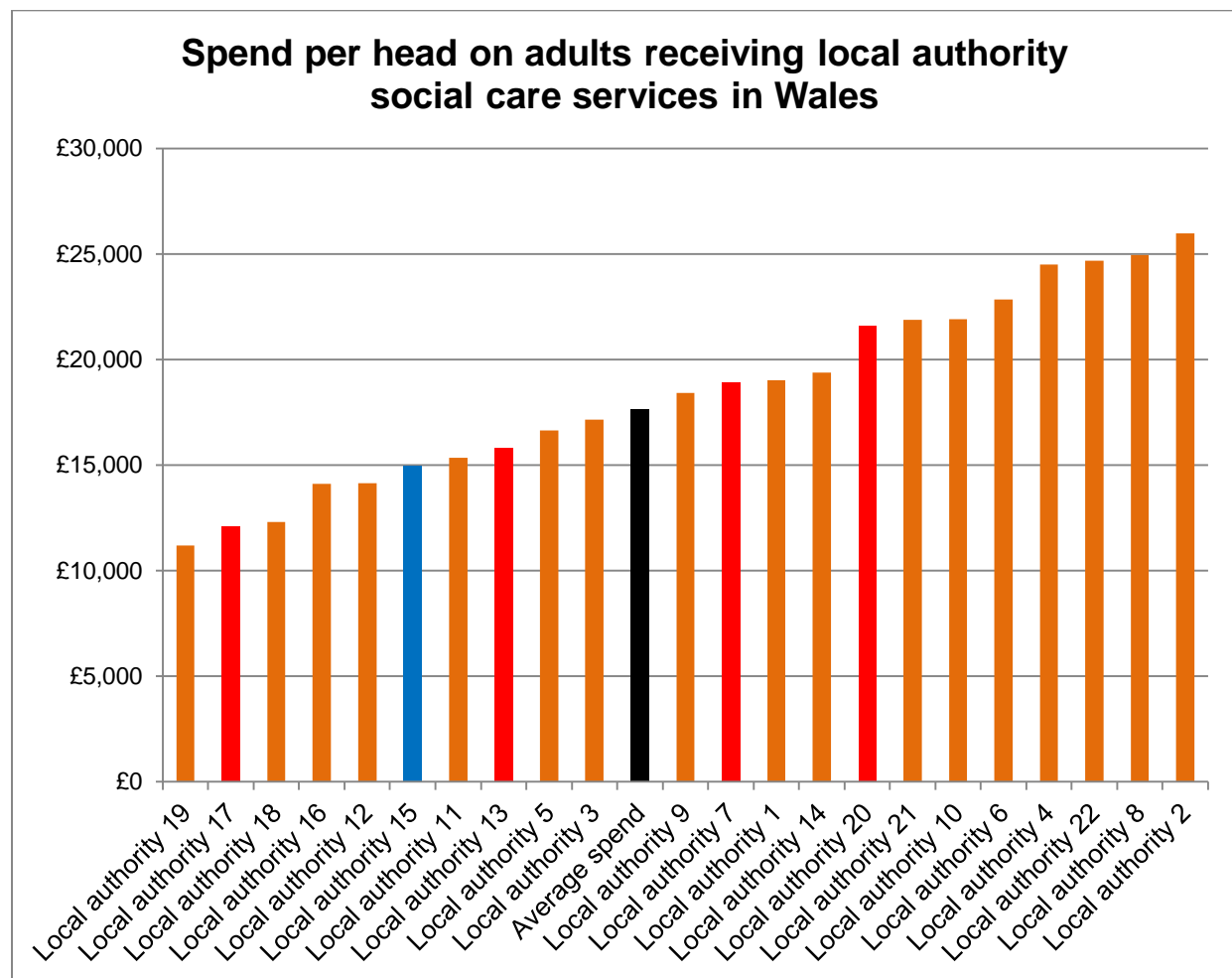
show how the local authority average unit cost per head is spread across the local authorities.

The bar in black shows the average spend per head for Wales, and the bar in blue shows the figure for authority that is currently working to a low threshold. The red bars show the four authorities who have set their threshold at moderate. The orange bars show the seventeen authorities who have set their threshold at substantial.

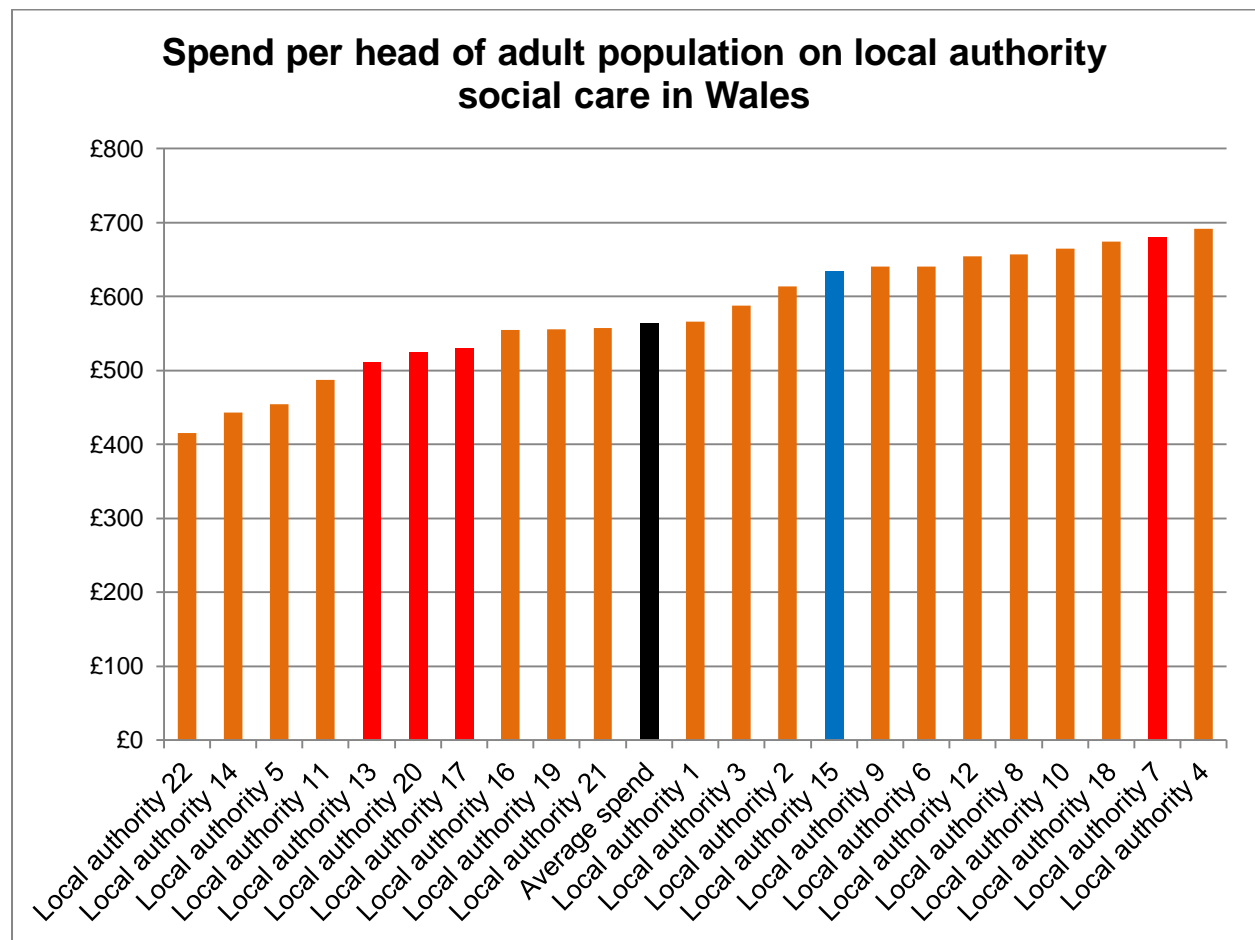
Both of the graphs show the four local authorities who have set their threshold at moderate, highlighted in red. In both cases the average unit spend per head for these local authorities is spread across the chart.

Graph one shows that three of these local authorities are providing social care at a lower than the averages spend per head, and one at a higher than average spend per head. Graph 2 shows a greater spread of those local authorities across the graph with two of the local authorities providing social care at a lower than average spend per head and two at a higher spend per head. This demonstrates that there is little correlation between the level at which the local authority sets its threshold and the average cost per head of providing social care.

Graph 1: Spend per head on adults receiving local authority social care services in Wales



Graph 2: Spend per head of adult population on local authority social care in Wales



This option was recommend in the Eligibility Technical Group report.

Annex 1 – Doc 1

Report of the Eligibility Technical Group

Options for the Eligibility Framework for Care & Support under Regulations stemming from the Social Services and Well-being (Wales) Act 2014

See:

<http://gov.wales/topics/health/socialcare/act/resources/draft-regulations/?lang=en>

Annex 2

Consultation Summary

Regulatory Impact Assessment
The Care and Support (Eligibility) (Wales) Regulations 2015
Annex 2. Consultation Summary

Section 33 of the Social Services and Well-being (Wales) Act 2014 sets out that before making regulations under section 32(3) or (4) Welsh Ministers must consult:

- such persons as appear to them likely to be affected by the regulations,
- such organisations as appear to them to represent the interests of persons likely to be affected by the regulations, and
- such other persons as they consider appropriate, on the proposed draft regulations.

Welsh Government officials undertook a 12 week consultation on the regulations between 6 November 2014 and 2 February 2015. The consultation on parts 3 and 4 covered assessing the Needs of individuals, eligibility, direct payments and care planning.

As well as being made available to the wider public via the Welsh Government internet pages, the consultation was distributed to:

- Welsh Local Government Association (WLGA)
- The Children's Commissioner
- The Older People's Commissioner
- Social Services Improvement Agency (SSIA)
- Local Government representatives
- Third Sector Organisations
- Care Council for Wales

The consultation was also distributed more widely through our communications network to ensure full scale coverage of stakeholder and partner organisations. This extensive network includes:

- Local Authorities
- Association of Directors for Social Services Cymru
- Care Council for Wales
- Care and Social Service Inspectorate Wales
- Wales Council for Voluntary Action
- Welsh Local Government Association
- Children in Wales
- Social Services Improvement Agency
- Care Forum Wales

The consultation and engagement process was underpinned from the start by a commitment to working with people to help shape the implementation and deliver the practice and culture change being driven forward through the Act. Many people helped to develop the policy instructions, regulations and codes of practice on the Social Services and Well-being (Wales) Act. Technical groups were established to discuss and debate and work with Welsh Government to help shape this work. The composition of these groups spanned the care sector, and beyond to encompass local authorities,

health, voluntary and independent sector, user led organisations, banks, and youth justice to name just a few.

Discussions were held with the “Alliance of Alliances” – voluntary sector organisations brought together and supported by the WCVA – about the best way to get citizens directly involved to present their views. Officials worked with a broad range of organisations to help bring together people who use services and carers to get their views first hand about what mattered to them and what needed to change.

As well as formal consultation, using various formats, Welsh Government officials gave presentations to groups, held discussions, attended one to one meetings, encouraged people to invite them to their existing meetings, and wrote articles and gave them to our partners to use within their networks. Stakeholders were asked to share information with their networks and feed back to Welsh Government and open offers were made to work directly with people.

The National Social Services Citizen Panel was asked to consider the consultation as individuals within their own networks, but also together as a Panel, where they produced reports to inform the consultation on integration, safeguarding, direct payments and paying for care.

Focus groups were held, with invaluable support from many organisations who brought people together to share their views. These included WCVA, County Voluntary Councils, Children in Wales, Voices from Care, and Community Lives amongst others. Officials spoke about the Act, the Regulations, and the Codes of Practice at meetings and events – for example with local authority social services, health, prisoners and their families, and housing.

As well as key contacts being encouraged to disseminate the consultation documents amongst their networks, to support wider engagement, Easy Read and children and young-people friendly versions were also produced and disseminated.

There were 103 responses received from a variety of stakeholders, a list of respondents is attached at Document 1

A detailed consultation response report will be published on the Welsh Government's website.

Two consultation events were held as part of the consultation process. The purpose was to promote engagement with the consultation and provide a base level of understanding of the areas we were consulting on to key stakeholder groups

Overall the uptake of spaces for the events was positive with capacity reached at both. There were approximately 170 attendees at the event in South Wales and 90 attendees in the North Wales. Document 2 indicates the range of stakeholders represented at these events.

Workshops were held at the events on each of the parts out to consultation. The content of the workshops was varied and tailored to suit the subject matter, but at the core of each was a presentation from officials and group discussions and activities.

In the responses there was general support for the proposed system change to an outcomes-based approach with a simplified assessment and care planning process and greater integration of services. In particular, there is clear support from our statutory partners. The responses flagged some potential changes to regulations and also outlined some areas of broader concern. These have been addressed through re-drafting of the codes of practice and amendments to regulations. The key changes made to the regulations as a result of the consultation are set out below. A more detailed report on the differences between the draft regulations consulted on under subsection (2) of section 33 of the Act and the draft regulations laid under subsection (4) is attached as Annex 3

Key Changes to the Regulations

The following key amendments were made to the Care and Support (Eligibility) (Wales) Regulations 2015, informed by analysis of the consultation responses.

1. In the regulation regarding needs which meet the eligibility criteria for children the reference to “other persons caring for the child” was amended to refer to “persons acting in the parental role”. Not to make this change would require local authorities to make all children eligible for care and support where that child is receiving care from a family member.
2. Respondents questioned why the specified outcomes were different from the personal well-being outcomes referred to in the codes and in the Act. Respondents felt this caused confusion. The regulations were amended to remove the references to specified outcomes in preference to setting out the things that a need must relate to.

The needs for adults, children and carers are now detailed as needs that may relate to:

- ability to carry out self-care or domestic routines;
- ability to communicate;
- protection from abuse or neglect;
- involvement in work, education, learning or in leisure activities;
- maintenance or development of family or other significant personal relationships;
- development and maintenance of social relationships and involvement in the community;

In addition:

- a. for adults the need may relate to the fulfilment of caring responsibilities for a child.
- b. for children the need may relate to achieving developmental goals;
- c. for carers the need may relate to:

- in the case of an adult carer, fulfilment of caring responsibilities for a child; and
 - in the case of a child carer, achieving developmental goals.
3. Respondents criticised the use of the terms 'basic' in the references to self care, domestic routines and daily life. These terms were not seen as enabling or to fit with the ethos of enablement that is within the Act. Respondents advised that reablement services did not operate at such a low level and the definition was considered to disadvantage people with Mental Health problems. The term 'basic' has been removed from the references to self care.
 4. The ability to communicate has been included in the regulations as something to which an eligible need may relate.
 5. Respondents noted a drafting error in regulation 7- the word 'likely' was used instead of 'unlikely'. This was corrected.
 6. The view was expressed in the consultation responses that references in the Regulations to people not being able to undertake daily living activities and self care should be enhanced by an understanding that people should be able to undertake such tasks without pain, distress, or anxiety and undertaking such tasks should not endanger the health of self or others, or take significantly longer than would be expected of someone who would not have needs that arise as set out in regulation 3.

A regulation was added to set out that for the purposes of determining eligibility a person who is able to meet the need, alone or with the assistance of others is to be regarded as unable to meet the need if doing so—

- a. causes significant pain, anxiety or distress to that person;
 - b. endangers or is likely to endanger the health or safety of that person or another person;
 - c. takes that person significantly longer than would normally be expected.
7. The analysis of the consultation responses with respect to the draft regulations on eligibility revealed that respondents perceived a contradiction between draft regulation 3 (c) (ii) and draft regulation 7 (2) (a).

Regulation 3 (c) (ii) referred to the 'ineligibility' of a need which can be met with the support of others who are willing to provide that support – this links to the requirement in the assessment process for the assessment to seek ways, other than through a care and support plan, to help someone meet their objectives.

Regulation 7 (2) (a) referred to the need to disregard any care given by a carer when determining eligibility.

Respondents considered that regulation 3(c) (ii) implied that someone with the support of others would not be eligible.

The aim of the provision is to ensure that in the event that a carer wished to, or needed to, stop providing care then the cared for person would instantly have their needs

recognised as eligible without having to wait for a re-assessment. This is notwithstanding the recognition that needs are likely to have changed in the time between the assessment and the date at which the carer is unable to continue giving care.

The new definition of Carers introduced by the Act removes the 'Regular and Substantial' test from the definition of a carer and whilst the assessment process should identify whether someone can achieve their outcomes either alone or with the help of others (and therefore would not need to be 'eligible' with respect to that identified need), where that "help of others" constitutes the provision of care, the person providing that care will meet the new definition of a carer – even if this help comes from someone who may not be regarded as the main carer but who contributes help on an occasional basis or help that takes place outside the home.

Therefore regulation 7 (on the exclusion of care provided by carers when making an eligibility determination) has been removed from the regulations. The code of practice for Part 3: Assessing the Needs of Individuals requires that local authorities must identify people who do not meet the eligibility criteria because of the care (not care and support) provided by a carer

As a consequence of this amendment the reference to the need being such that an adult or child is not able to meet it without the support of others who are willing to provide that support has been changed to a reference to the need being such that an adult or child is not able to meet it without the care and support of others who are willing to provide that care and support.

Doc.1 - List of respondents

No	Confidential Y / N	Name	Organisation/On behalf of
1.	<input type="checkbox"/>		
2.	<input type="checkbox"/>	Fiona Wilke	Individual
3.	<input type="checkbox"/>	Ms Maxine Norrish	Cardiff University RTP student
4.	<input type="checkbox"/>	Gillian Cooper	Cardiff University
5.	<input type="checkbox"/>		
6.	<input type="checkbox"/>	Laura Tuckley	Individual
7.	<input type="checkbox"/>	Charlotte Beare-on behalf of the Hywel Dda Health Board by Dr Phil Kloer	Hywel Dda Health Board
8.	<input type="checkbox"/>	Cheryl Bulman	Individual
9.	<input type="checkbox"/>	Dr Aideen Naughton	Public Health Wales
10.	<input type="checkbox"/>	Ruth Northway	Learning disability advisory group
11.	<input type="checkbox"/>	Zoë Williams	Direct Payments Overview Group
12.	<input type="checkbox"/>	Zoë Williams	All Wales Direct Payments Forum
13.	<input type="checkbox"/>	Beth Evans	Carers Wales
14.	<input type="checkbox"/>		
15.	<input type="checkbox"/>	Gareth Cooke	Torfaen Social Care and Housing
16.	<input type="checkbox"/>	Lynne Doyle -	Neath Port Talbot CBC
17.	<input type="checkbox"/>	Mike Mainwaring	Neath Port Talbot Council for Voluntary Service
18.	<input type="checkbox"/>	Dr Catrin Mair Edwards	SeNSE Cymru
19.	<input type="checkbox"/>	Vin West-	Arfon Access Group
20.	<input type="checkbox"/>	Eve Parkinson -	Welsh Therapy Advisory Committee
21.	<input type="checkbox"/>	Colin Hopwood	Individual
22.	<input type="checkbox"/>	Simon Legg	Spinal Injuries Association
23.	<input type="checkbox"/>	Rachel Williams	Parkinson's UK Cymru
24.	<input type="checkbox"/>		
25.	<input type="checkbox"/>	Ann Acock	Welsh Physiotherapy Leaders Advisory Group
26.	<input type="checkbox"/>		
27.	<input type="checkbox"/>	n/a (Nigel champ - e-mail)	the Chair of the Welsh Medical Committee
28.	<input type="checkbox"/>	Joe Powell	All Wales People First
29.	<input type="checkbox"/>	Hannah Isaacson	Powys Association of Voluntary Organisations
30.	<input type="checkbox"/>	Peter Jones	Guide Dogs Cymru and Blind Children UK Cymru
31.	<input type="checkbox"/>	Natasha Wynne	Marie Curie
32.	<input type="checkbox"/>	Cecile Gwilym	NSPCC Cymru

33.		<input type="checkbox"/>	Peter Martin	Hafal
34.		<input type="checkbox"/>	Meleri Thomas	National Autistic Society Cymru
35.		<input type="checkbox"/>	Tess Saunders,	RNIB CYMRU
36.		<input type="checkbox"/>	Laura Cook	Alzheimer's Society
37.		<input type="checkbox"/>	Liz Majer	Blaenau Gwent County Borough Council
38.		<input type="checkbox"/>	DEBBIE POWELL	SOCIAL CARE IN PARTNERSHIP – SOUTH EAST (SCiPse)
39.		<input type="checkbox"/>	Edwin Jones	LDAG Subgroup - Transforming Care in Wales for people with learning disabilities and challenging behaviour
40.		<input type="checkbox"/>	James Crowe	Learning Disability Wales
41.		<input type="checkbox"/>	Lynne Hughes	<u>MS Society Cymru</u>
42.		<input type="checkbox"/>	Paul Swann / Rick Wilson	Disability Wales / Wales Alliance for Citizen Directed Support Provider Network
43.		<input type="checkbox"/>	Kelly Ball	Newport People First
44.		<input type="checkbox"/>	Alex Perry	Newport People First (trustee)
45.		<input type="checkbox"/>	Allan	Member of Newport People First
46.		<input type="checkbox"/>	Zarah Kaleem	Trustee of Newport People First
47.		<input type="checkbox"/>	Deborah Driffield	City & County of Swansea Social Services
48.		<input type="checkbox"/>	Lola Richards	Cyngor Sir Ynys Mon
49.		<input type="checkbox"/>	No Name	Cyngor Sir Ynys Mon
50.		<input type="checkbox"/>	Jacqueline Davies	CYPP
51.		<input type="checkbox"/>	Ruth Crowder	College of Occupational Therapists
52.		<input type="checkbox"/>	Kieron Rees	Carers Trust Wales
53.		<input type="checkbox"/>	Ruth Crowder	Welsh Reablement Alliance
54.		<input type="checkbox"/>	Ann James	Care Council for Wales
55.		<input type="checkbox"/>	Robin moulster	BASW Cymru
56.		<input type="checkbox"/>	Ruth Coombs	Mind Cymru
57.	<input type="checkbox"/>			
58.		<input type="checkbox"/>	Hywel Ap Dafydd	Children's Commissioner for Wales
59.		<input type="checkbox"/>	Dr Sam Clutton	Barnardos Cymru
60.	<input type="checkbox"/>			
61.		<input type="checkbox"/>	Caroline Hawkings	Scope Cymru
62.		<input type="checkbox"/>	Judith Brooks	Bridgend County Borough Council
63.		<input type="checkbox"/>	Catherine Manning	British Red Cross
64.		<input type="checkbox"/>	Philippa Ford	CSP
65.		<input type="checkbox"/>	Holly Towell	Headway
66.		<input type="checkbox"/>	Bethan Jones Edwards	North Wales Social Services Improvement Collaborative
67.		<input type="checkbox"/>	Alice Southern	Alzheimer's Society
68.		<input type="checkbox"/>	Dusty Kennedy	Youth Justice Board
69.		<input type="checkbox"/>	Ian Thomas	Citizens Advice Cymru
70.		<input type="checkbox"/>	Nicola Evans	Older People's Commissioner for Wales

71.		<input type="checkbox"/>	Jenny Williams	Conwy County Borough Council
72.		<input type="checkbox"/>	Catherine Poulter	Carmarthenshire County Council
73.		<input type="checkbox"/>	Ele Hicks	Diverse Cymru
74.		<input type="checkbox"/>	Erin Rodgers	The Disabilities Trust
75.		<input type="checkbox"/>	Giovanni Isingrini	ADSS Cymru
76.		<input type="checkbox"/>	Sue O'Grady	Powys CC
77.		<input type="checkbox"/>	Paul Apreda	FNF Both Parents Matter Cymru
78.		<input type="checkbox"/>	Suzanne Griffiths	National Adoption Service
79.		<input type="checkbox"/>	Catherine Lewis	North Wales Disabled Children Social Services Mangers Network
80.	<input type="checkbox"/>			
81.		<input type="checkbox"/>	Dominic Carter	UK Homecare Association
82.		<input type="checkbox"/>	Catherine Lewis	North Wales Disabled Children Social Services Mangers Network
83.		<input type="checkbox"/>	Sian Walker, Tony Young	Cardiff Council
84.	<input type="checkbox"/>			
85.		<input type="checkbox"/>	Martyn Palfreman	Mid and West Wales Health and Social Care Collaborative
86.		<input type="checkbox"/>	Rosanne Palmer	Age Cymru
87.		<input type="checkbox"/>	Gill Paul	Gwynedd Council
88.		<input type="checkbox"/>	Michael Nicholson	Newport County Council
89.		<input type="checkbox"/>	Mair Kromei	Hywel Dda Health Board
90.		<input type="checkbox"/>	Iola Richards	Cyngor Sir Ynys Môn
91.		<input type="checkbox"/>	Judith Brooks	Bridgend County Borough Council
92.		<input type="checkbox"/>	Phil Evans	Vale of Glamorgan
93.		<input type="checkbox"/>	Owen Williams	Wales Council of the Blind
94.		<input type="checkbox"/>	Judith Hall	CSSIW - National Advisory Board
95.		<input type="checkbox"/>	Sara Harvey	Western Bay Programme
96.		<input type="checkbox"/>		Voices from Care Cymru
97.		<input type="checkbox"/>	Roger Bishop	All Wales Children and Young Persons Advocacy Providers Group
98.		<input type="checkbox"/>	Katie Dalton	Gofal
99.		<input type="checkbox"/>	Marshall Phillips	Wales Sub -Committee of Association of HM District Judges
100.		<input type="checkbox"/>	Bobby Bolt	Aneurin Bevan University Health Board
101.		<input type="checkbox"/>	Catrin Edwards	Sense Cymru
102.		<input type="checkbox"/>		Carers Wales
103.		<input type="checkbox"/>	Anselm Benedict	Law Society

Doc.2 - List of stakeholders at consultation events

No	Name		Organisation/On behalf of
1	Bryony	Hughes	
2	Lewis	Rachel	Age Alliance Wales
3	Palmer	Rosanne	Age Alliance Wales
4	Young	Kate	All Wales Forum of Parents and Carers of People with Learning Disabilities (AWF)
5	Pearse	John	All Wales People First
6	Slater	Lin	Aneurin Bevan University Health Board
7	Southern	Tim	Ategi - Shared Lives Services
8	Lesley	Cotter	Betsi Cadwaladr University Health Board
9	Michelle	Denwood	Betsi Cadwaladr University Health Board
10	Wendy	Hooson	Betsi Cadwaladr University Health Board
11	Eleri	Lloyd-Burns	Betsi Cadwaladr University Health Board
12	David	O'Brien	Betsi Cadwaladr University Health Board
13	Sue	Owen	Betsi Cadwaladr University Health Board
14	Barry	Starter	Betsi Cadwaladr University Health Board
15	Diamond	Phil	Blaenau Gwent County Borough Council
16	Evans	Tanya	Blaenau Gwent County Borough Council
17	Hoskins	Alyson	Blaenau Gwent County Borough Council
18	Jones	Sarah	Blaenau Gwent County Borough Council
19	Tyrrell	Heather	Blaenau Gwent County Borough Council
20	Bowen	Fay	Bridgend County Borough Council
21	Bracey	Avril	Bridgend County Borough Council

22	Bradshaw	Adrian	Bridgend County Borough Council
23	Donovan	Carmel	Bridgend County Borough Council
24	Harris	Mike	Bridgend County Borough Council
25	Hughes	Tracy	Bridgend County Borough Council
26	Hutchinson	Jane	Bridgend County Borough Council
27	Morgan	Jaci	Bridgend County Borough Council
28	Morgan	Louise	Bridgend County Borough Council
29	Owen	Carol	Bridgend County Borough Council
30	Pickrell	Scott	Bridgend County Borough Council
31	Roche	Emma-Jayne	Bridgend County Borough Council
32	Silcox	Natalie	Bridgend County Borough Council
33	Warrilow	Terri	Bridgend County Borough Council
34	Wyatt	Tony	Bridgend County Borough Council
35	Fowler-Powe	Michelle	British Deaf Association
36	Blake	Tina	Caerphilly County Borough Council
37	Davies	Carol A	Caerphilly County Borough Council
38	Davies	Denise	Caerphilly County Borough Council
39	Daye	Viv	Caerphilly County Borough Council
40	Edwards	Janine	Caerphilly County Borough Council
41	Howells	Stephen	Caerphilly County Borough Council
42	Lock	Sion	Caerphilly County Borough Council

43	Powell	Karen	Caerphilly County Borough Council
44	Rogers	Michaela	Caerphilly County Borough Council
45	Street	Dave	Caerphilly County Borough Council
46	Thomas	Dave	Caerphilly County Borough Council
47	White	Deborah	Caerphilly County Borough Council
48	Williams	Steph	Caerphilly County Borough Council
49	Wright	Sue	Caerphilly County Borough Council
50	Morris	Cerys	Cambian Healthcare
51	Martin	Christine	Cardiff Metropolitan University
52	Roberta	Hayes	Care Council for Wales
53	Sheila	Lyons	Care Council for Wales
54	Ian	Thomas	Care Council for Wales
55	Ceri	Williams	Care Council for Wales
56	Griffith	Stephanie	Care Council for Wales
57	Wakelin	Karen	Care Council for Wales
58	Rees	Kieron	Carers Trust Wales
59	Bowen	Keith	Carers Wales
60	Edwards	Neil	Carmarthenshire County Council
61	Jackman	Noreen	Carmarthenshire County Council
62	James	Bethan T	Carmarthenshire County Council
63	Meredith	Jayne	Carmarthenshire County Council
64	Smith	Stefan	Carmarthenshire County Council
65	Thomas	Noeline	Carmarthenshire County Council
66	Thomas	Jayne	Carmarthenshire County Council
67	Sian	Howys	Ceredigion County Borough Council

68	Carys	James	Ceredigion County Borough Council
69	Amanda	Jones	Ceredigion County Borough Council
70	O'Rourke	Judi	Ceredigion County Borough Council
71	Lewis	Catherine	Children in Wales
72	Martin	Cheryl	Children in Wales
73	Curtis	Emma	City and County of Swansea
74	Williams	Allison	City and County of Swansea
75	Denise	Moriarty	City of Cardiff Council
76	Bourge	Angela	City of Cardiff Council
77	Cole	Andy	City of Cardiff Council
78	David	Geraldine	City of Cardiff Council
79	Felvus	Jan	City of Cardiff Council
80	Finch	Jo	City of Cardiff Council
81	George	Ceri	City of Cardiff Council
82	Griffiths	Menai	City of Cardiff Council
83	Hoey	Jane	City of Cardiff Council
84	James	Natasha	City of Cardiff Council
85	Madell	Finn	City of Cardiff Council
86	Miller	Sharon	City of Cardiff Council
87	Osbourne	Matt	City of Cardiff Council
88	Reed	Julie	City of Cardiff Council
89	Schelewa	Susan	City of Cardiff Council
90	Teague	Siobhan	City of Cardiff Council
91	Tonkinson	Ceri	City of Cardiff Council
92	Westwell	Sally	City of Cardiff Council
93	Crowder	Ruth	College of Occupational Therapists
94	Kate	Davenport	Conwy County Borough Council
95	Anne	Flanagan	Conwy County Borough Council
96	Hannah	Fleck	Conwy County Borough Council
97	Tesni	Hadwin	Conwy County Borough Council
98	Marian	Hankin	Conwy County Borough Council

99	Marie	Jones	Conwy County Borough Council
100	Claire	Lister	Conwy County Borough Council
101	Jenny	Williams	Conwy County Borough Council
102	Erica	Wynn Roberts	Conwy County Borough Council
103	Jennie	Lewis	CSSIW
104	Vicky	Poole	CSSIW
105	Marc	Roberts	CSSIW
106	Davies	Donna	CSSIW
107	Glynn Jones	Sarah	CSSIW
108	Huws-John	Gill	CSSIW
109	Redman	Ken	CSSIW
110	Young	Katie	CSSIW
111	Lewis	Lyndon	Cym Taf YOS
112	Townsend	Oliver	Cymorth Cymru
113	Gareth	Llwyd	Cyngor Sir Ynys Mon
1	Vicky	Allen	Denbighshire County Council
2	Maria	Bell	Denbighshire County Council
3	Cathy	Curtis-Nelson	Denbighshire County Council
4	Joanna	Driver	Denbighshire County Council
5	Melanie	Evans	Denbighshire County Council
6	Phil	Gilroy	Denbighshire County Council
7	Gwynfor	Griffiths	Denbighshire County Council
8	Vanessa	Kyte	Denbighshire County Council
9	Sandra	Naughton	Denbighshire County Council
10	Stephanie	O'Donnell	Denbighshire County Council
11	Alaw	Pierce	Denbighshire County Council
12	Bethan	Wyn Roberts	Denbighshire County Council
13	Swann	Paul	Disability Wales

14	Ffion	Alun	Estyn Llaw
15	Christine	Duffy	Flintshire County Council
16	Susie	Lunt	Flintshire County Council
17	Saunders	Lisette	G4S Custodial & detention Services, YMP & YOI Parc
18	David	Nulty	Glyndwr University
19	Dalton	Katie	Gofal
20	Laurent	Louisa	Greater Gwent Transformation Project
21	Sara	Lloyd Evans	Gwynedd & Anglesey Local Safeguarding Children's Board
22	Stephen	Wood	Gwynedd Mon YJS
23	Morwena	Edwards	Gwynedd CBC
24	Olwen	Ellis Jones	Gwynedd CBC
25	Nerys	Evans	Gwynedd CBC
26	Iona	Griffith	Gwynedd CBC
27	Meilys	Heulfryn Smith	Gwynedd CBC
28	Marian	Hughes	Gwynedd CBC
29	Glenda	Lloyd Evans	Gwynedd CBC
30	Gwenno	Williams	Gwynedd CBC
31	Martin	Peter	Hafal
32	Maggs	Dave	Headway
33	Phillips	Marie	HMP Swansea
34	Toohey	Karen	Hywel Dda Health Board
35	Dawson	Rhian	Hywel Dda UHB/ Carmar CC
36	Iola	Richards	Isle Of Anglesey County Council
37	Sian	Owen	Learning Disability Wales
38	Kevin	Sibbons	Learning Disability Wales
39	Karen	Warner	Learning Disability Wales
40	Sutherns	Alan	Learning Disability Wales
41	Allen	Angela	Merthyr Tydfil CBC
42	Anderton	Mark	Merthyr Tydfil CBC
43	Beckham	Alex	Merthyr Tydfil CBC
44	Bow	Jill	Merthyr Tydfil CBC
45	Cawley	Mike	Merthyr Tydfil CBC
46	Davies	Jonathan	Merthyr Tydfil CBC
47	Edevane	Angela	Merthyr Tydfil CBC
48	Eyre	Jon	Merthyr Tydfil CBC
49	Hughes	Sue	Merthyr Tydfil CBC
50	Jayne	Michelle	Merthyr Tydfil CBC
51	Jones	Alyson	Merthyr Tydfil CBC

52	Lipian	Pauline	Merthyr Tydfil CBC
53	O'Keefe	Kathryne	Merthyr Tydfil CBC
54	Powell	Gareth	Merthyr Tydfil CBC
55	Preece	Sue	Merthyr Tydfil CBC
56	Rees	Lowri	Merthyr Tydfil CBC
57	Rush	Christina	Merthyr Tydfil CBC
58	Owen	Arabella	Mid and West Wales Health and Social Care Collaborative
59	Palfreman	Martyn	Mid and West Wales Health and Social Care Collaborative
60	Smith	Sarah	Ministry of Justice
61	Carter	Joseph	MS Society Cymru
62	Pearce	Rebecca	MS Society Cymru
63	Andy	Jones	National Probation Service - Wales
64	Donovan	Bethan	Neath Port Talbot CBC
65	Doyle	Lynne	Neath Port Talbot CBC
66	Hinton	Amanda	Neath Port Talbot CBC
67	Kneath	Jayne	Neath Port Talbot CBC
68	Marchant	Claire	Neath Port Talbot CBC
69	Williams	Pauline	Neath Port Talbot CBC
70	Bowler	Peter	Newport City Council
71	Close	Tracey	Newport City Council
72	Davies	Ceri	Newport City Council
73	Davies	Julie	Newport City Council
74	Hughes	Nicola	Newport City Council
75	Jenkins	Sally	Newport City Council
76	Richardson	Katrina	Newport City Council
77	Taylor	Amii	Newport City Council
78	Thomas	Julia	Newport City Council
79	Jones	Elfed	NOMS HMP Prison Service
80	Gawthorpe	Aine	NOMS in Wales
81	Graham	Opie	North Wales Police
82	Gabrielle	Heeney	North Wales Social Services Improvement Collaborative
83	Bethan	Jones Edwards	North Wales Social Services Improvement Collaborative
84	Bartley	Stephen	Older People's Commissioner for Wales

85	Evans O'Brien	Catherine	Older People's Commissioner for Wales
86	Ruth	Ingram	Powys County Council
87	Anderson	Lee	Powys County Council
88	Jeffreys	Jen	Powys County Council
89	Jukes	Hazel	Powys County Council
90	Self	Keith	Powys County Council
91	Pauline	Galluccio	Powys Teaching Health Board
92	Day	Sarah	Practice Solutions
93	Kate	McDonald	Public Health Wales
94	Rachel	Shaw	Public Health Wales
95	Angela	Tinkler	Public Health Wales
96	Evans	Janet	Public Health Wales
97	Smith	Gloria	Public Health Wales
98	Bately	Ann	Rhondda Cynon Taf CBC
99	Bridgman	Luisa	Rhondda Cynon Taf CBC
100	Clark	Julie	Rhondda Cynon Taf CBC
101	Gatis	Bob	Rhondda Cynon Taf CBC
102	Harris	Mark	Rhondda Cynon Taf CBC
103	Holloman	Gail	Rhondda Cynon Taf CBC
104	Jones	Gail	Rhondda Cynon Taf CBC
105	Neale	Jackie	Rhondda Cynon Taf CBC
106	Nichols	Sara	Rhondda Cynon Taf CBC
107	Pearce	Liz	Rhondda Cynon Taf CBC
108	Preston	Jayne	Rhondda Cynon Taf CBC
109	Williams	Alexis	Rhondda Cynon Taf CBC
110	Williams	Claire	Rhondda Cynon Taf CBC
111	Saunders	Tess	RNIB Cymru
112	Ian	Bottrill	Safeguarding Advisory Board
113	Edwards	Catrin	Sense Cymru
114	Hayes	Melanie	Shine Cymru
115	Cooke	Catherine	South Wales Police
116	Penhale	Lian	South Wales Police
117	Baker	Melanie	Torfaen County Borough Council
118	Davies	Kevin	Torfaen County Borough Council
119	Eva	Catherine	Torfaen County Borough Council
120	Evans	Maria	Torfaen County Borough Council

121	Hopkins	Howard	Torfaen County Borough Council
122	Jones	Eunice	Torfaen County Borough Council
123	Newman	Joanne	Torfaen County Borough Council
124	Orford	Peter	Torfaen County Borough Council
125	Thole	Adrian	Torfaen County Borough Council
126	Watkins	James	Torfaen County Borough Council
127	Williams	Zoe	Torfaen County Borough Council
128	Williams	Richard	Torfaen County Borough Council
129	Jenny	Burgess	Unique Transgender Network
130	Dominic	Carter	United Kingdom Home Care Association
131	Randell	Peter	United Kingdom Home Care Association
132	Betteridge	Joanne	Vale of Glamorgan Council
133	Evans	Rachel	Vale of Glamorgan Council
134	Jones	Gaynor	Vale of Glamorgan Council
135	Poole	Nichola	Vale of Glamorgan Council
136	Vin	West	Wales Alliance for Citizen Direct Support
137	Rob	Wilson	Wales Alliance for Citizen Direct Support (The Rowan Organisation)
138	Meloy	Ceri	Wales Alliance for Citizen Directed Support
139	Judith	Magaw	Wales Community Rehabilitation Company
140	Magaw	Judith	Wales Community Rehabilitation Company
141	Owen	Williams	Wales Council for the Blind
142	Elizabeth	Thornburn	Wales Council for Voluntary Action
143	Davies	Alison	Welsh Ambulance Service
144	Tim	Griffiths	Welsh Ambulance Services NHS Trust
145	Hewitt	Gareth	Welsh Government

146	Sarah	Laing	Welsh Government:
147	Williams	Hannah	Welsh Government: Children, Young People and Families
148	Temple-Williams	Heather	Welsh Government: Community Safety Division
149	Gear	Stephen	Welsh Government: Dept for Education & Skills
150	Sharples	Jacqui	Welsh Government: Dept for Education & Skills
151	Gareth	John	Welsh Government: DHSS
152	Evans	Nicola	Welsh Government: DHSS
153	Owen	Rob	Welsh Government: Housing and Regeneration
154	Prothero	Simon	Welsh Government: Housing and Regeneration
155	Alleyne	Naomi	Welsh Local Government Association (WLGA)
156	Blythe	Stewart	Welsh Local Government Association (WLGA)
157	Elaine	Blease	Wrexham CBC
158	Ann	Chadd	Wrexham CBC
159	Ruth	Davies	Wrexham CBC
160	Sheila	Finnigan-Jones	Wrexham CBC
161	Annette	Green	Wrexham CBC
162	Mark	Jones	Wrexham CBC
163	Margaret	Sloan	Wrexham CBC
164	Cressida	Travis	Wrexham CBC
165	Charlotte	Walton	Wrexham CBC
166	Jo	Ward	Wrexham CBC
167	Steve	Williams	Wrexham CBC
168	Cooper	Sarah	Youth Justice Board Cymru

Annex 3

Statement setting out the amendments made to the
Draft Care and Support (Eligibility) (Wales)
Regulations following consultation

Statement setting out the amendments made to the Draft Care and Support (Eligibility) (Wales) Regulations following consultation

A copy of the consultation draft is annexed to this statement

Preamble

1. The preamble is amended to recite compliance with the requirement in section 33(2) and (3) for the regulations to be the subject of consultation. Reference to section 196(6) is added as the source of the requirement that the regulations be approved by a resolution of the National Assembly for Wales.

Section 1

2. The coming into force date has been added.

3. The definition of “specified outcomes” has been removed. This phrase is not used in the regulations. Feedback from the consultation was that it was confusing to include reference to both “personal outcomes” and “specified outcomes”.

4. A definition of “self-care” is added. This was in regulation 6 which was removed. The word “basic” which was used to qualify self-care is removed to avoid an inference that a person with care and support needs would only have a need recognised at that level. This is a change in response to consultation feedback.

Section 2

5. Footnotes have been added in relation to the meanings of “child” and “care and support” to assist the reader. In each of the paragraphs of the regulation wording has been added to make reference to the section of the Act under which an adult, a child and a carer are assessed. This is a drafting improvement for greater accuracy.

Section 3

6. The introductory phrase of the regulations is amended to make clear that the provision of this regulation refers to adults who have been the subject of assessment under section 19 of the Act. This is a drafting improvement.

7. Reference to “specified outcomes” is removed from paragraph (b). Instead the factors which were listed in regulation 6 are listed in regulation 3 itself. There is one addition to the list – (ii) ability to communicate. This is included in response to consultation feedback and views that it was of sufficient significance in this context to be included expressly.

8. In paragraph (c), the word “care” is added so that care provided by a carer is also taken into account as a factor in determining whether a person’s need is eligible for the purposes of the regulations. This is an amendment linked to the removal of regulation 7 of the consultation draft.

9. In paragraph (d) “their” is replaced by “the adult’s” to be more grammatically correct. Reference to “the specified outcomes” is removed. This makes the drafting simpler and removes a duplication because the outcomes are already built in to regulation 3 at an earlier point through the requirement in paragraph (b).

Section 4

10. The introductory phrase of the regulations is amended to make clear that the provision of this regulation refers to children who have been the subject of assessment under section 21 of the Act. This is a drafting improvement.

11. Reference to “specified outcomes” is removed from paragraph (b). Instead the factors which were listed in regulation 6 are listed in regulation 4 itself. There is one addition to the list – (ii) ability to communicate. This is included in response to consultation feedback and views that it was of sufficient significance in this context to be included expressly.

12. In paragraph (c), the word “care” is added so that care provided by a carer is also taken into account as a factor in determining whether a person’s need is eligible for the purposes of the regulations. This is an amendment linked to the removal of regulation 7 of the consultation draft.

13. In sub-paragraph (c)(iii), the word “child “ is added to reflect the fact that in many cases children, particularly older children, will have an independent ability to access services available in the community.

14. In the same sub-paragraph, the phrase “other persons caring for the child” is replaced by the phrase “other persons in a parental role”. The purpose of this is to avoid confusion with the concept of “carers”. Under the Act a person is a carer for a child who is disabled. A parent caring for a child who is not disabled is not a carer for the purposes of the Act.

15. The wording in the definition of “relative” is amended to reflect the fact that the definition is not a complete definition but is limited to what the word means in relation to a child.

16. In paragraph (d) Reference to “the specified outcomes” is removed. This makes the drafting simpler and removes a duplication because the outcomes are already built in to regulation 4 at an earlier point through the requirement in paragraph (b).

Section 5

17. The introductory phrase of the regulations is amended to make clear that the provision of this regulation refers to carers who have been the subject of assessment under section 24 of the Act. This is a drafting improvement.

18. Subparagraph (a)(i) is amended to clarify that the person for whom a carer provides care must have needs which relate to the factors set out in paragraph (b) of regulation 3.

19. A footnote is added in relation to the definition of “disabled” to assist the reader.

20. Reference to “specified outcomes” is removed from paragraph (b). Instead the factors which were listed in regulation 6 are listed in regulation 5 itself. There is one addition to the list – (ii) ability to communicate. This is included in response to consultation feedback and views that it was of sufficient significance in this context to be included expressly.

21. In paragraph (d) reference to “the specified outcomes” is removed. This makes the drafting simpler and removes a duplication because the outcomes are already built in to regulation 3 at an earlier point through the requirement in paragraph (b).

Regulation 6

22. This is a new regulation added in response to consultation feedback. In regulations 3, 4 and 5, eligibility is dependent on a person being unable to meet needs. This regulation provides that a person will be regarded as unable to do something even when they can but only with a greater level of difficulty than would normally be expected.

Removal of Regulation 6 of consultation draft

23. This regulation has been removed in response to consultation feedback that the concept of “specified outcomes” alongside “personal outcomes” was confusing. The different sorts of outcomes are instead inserted into each of regulation 3, 4 and 5.

Removal of Regulation 7 of consultation draft

24. Regulation 7 of the consultation draft was included to tie in with section 35(6) and section 37(5) of the Act. The purpose of these provisions was that a local authority would not have a duty to meet need so long as a carer was meeting the need in question but that, in the event that a carer declined to continue in a caring role, the local authority would instantly be under a duty to provide care and support itself. The intention of regulation 7 was to ensure that the effect of regulations 3(c), 4(c) and 5(c) did not obstruct the effect of that provision.

25. Consultation feedback was that the provision was complicated and difficult to understand. The conclusion reached is that it is unnecessary in any event. Where a carer declines to continue in a caring role, the effect of the test in regulations 3(c), 4(c) and 5(c) will be different in any event. A need which was not eligible because it was being met by a carer would become eligible if the carer no longer wished to provide that care. The effect of sections 35(6) and 37(5) will therefore be kept intact. The regulation has therefore been removed.

Draft Regulations laid before the National Assembly for Wales under section 33 of the Social Services and Well-being (Wales) Act 2014 Act, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2015 No. (W.)

SOCIAL CARE, WALES

**The Care and Support (Eligibility)
(Wales) Regulations 2015**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These regulations set out the test which a local authority must apply to determine whether or not an individual with needs identified in an assessment under section 19, 21 or 24 of the Social Services and Well-being (Wales) Act 2014 is entitled to have those needs met by a local authority. The regulations set out the tests to be applied in relation to adults, to children and to carers.

Where needs do meet these eligibility criteria then section 32 requires a local authority to consider what could be done to meet those needs and whether it should impose a charge in accordance with Part 5 of the Social Services and Wellbeing (Wales) Act 2014.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained at

Draft Regulations laid before the National Assembly for Wales under section 33 of the Social Services and Well-being (Wales) Act 2014 Act, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2015 No. (W.)

SOCIAL CARE, WALES

**The Care and Support (Eligibility)
(Wales) Regulations 2015**

Laid before the National Assembly for Wales

Coming into force ***

The Welsh Ministers, in exercise of the powers conferred by sections 32(3)(4) and (5) of the Social Services and Well-being (Wales) Act 2014⁽¹⁾, make the following Regulations.

A draft of these Regulations was laid before the National Assembly for Wales under section 33 of that Act and has been approved by a resolution of the National Assembly for Wales.

Title, commencement, application and interpretation

—(1) The title of these Regulations is The Care and Support (Eligibility) (Wales) Regulations 2015.

These Regulations come into force on XXXXXXXX and apply in relation to Wales.

In these Regulations—

“the Act” means the Social Services and Well-being (Wales) Act 2014;

“carer” has the meaning given in section 3 of the Act;

“eligibility determination” means a determination under section 32(1)(a) of the Act;

(1) 2014 anaw 4.

“personal outcomes” means the outcomes which have been identified in relation to a person by an assessment under sections 19, 21, or 24 of the Act;
“specified outcomes” means the outcomes specified in regulation 6.

Eligibility determinations

—(2) When the local authority is making an eligibility determination in relation to an adult who has been assessed as having one or more needs for care and support, any one of those needs meets the eligibility criteria if it is of a description specified in regulation 3.

When a local authority is making an eligibility determination in relation to a child who has been assessed as having one or more needs for care and support, any one of those needs meets the eligibility criteria if it is of a description specified in regulation 4.

When a local authority is making an eligibility determination in relation to a carer who has been assessed as having one or more needs for support, any one of those needs meet the eligibility criteria if it is of a description specified in regulation 5.

Needs which meet the eligibility criteria – adults with needs for care and support

The need meets the eligibility criteria if—

- the need arises from the adult’s physical or mental ill-health, age, disability, dependence on alcohol or drugs, or other similar circumstances;

- the need relates to one or more of the specified outcomes;

- the need is such that the adult is not able to meet that need, either—

- alone,

- with the support of others who are willing to provide that support, or

- with the assistance of services in the community to which the adult has access; and

- the adult is unlikely to achieve one or more of their personal outcomes which relate to one or more of the specified outcomes unless—

- the local authority provides or arranges care and support to meet the need; or

- the local authority enables the need to be met by making direct payments.

Needs which meet the eligibility criteria – children with needs for care and support

—(3) The needs meet the eligibility criteria if—
either—

the need arises from the child’s physical or mental ill-health, age, disability, dependence on alcohol or drugs, or other similar circumstances; or

the need is one that if unmet is likely to have an adverse effect on the child’s development;

the need relates to one or more of the specified outcomes;

the need is one that neither the child, the child’s parents nor other persons caring for the child are able to meet, either—

alone or together,

with the support of others who are willing to provide that support, or

with the assistance of services in the community to which the parents or other persons caring for the child have access; and

the child is unlikely to achieve one or more of their personal outcomes which relate to one or more of the specified outcomes unless—

the local authority provides or arranges care and support to meet the need; or

the local authority enables the need to be met by making direct payments.

In this regulation—

references to a child’s development include the physical, intellectual, emotional, social and behavioural development of that child;

“other persons caring for the child” includes persons with parental responsibility⁽¹⁾ or relatives who have a role in providing care for the child;

“relative” is defined in section 197 of the Act.

Needs which meet the eligibility criteria - carers with needs for support

—(4) The needs meet the eligibility criteria if—

the need arises as a result of providing care for either—

(1) “Parental responsibility” is defined in section 3 of the Children Act 1989 (c.41).

an adult who has needs which fall within Regulation 3 (a) and which relate to one or more of the specified outcomes, or a disabled child;

the carer cannot meet the need whether—

alone;

with the support of others who are willing to provide that support; or

with the assistance of services in the community to which the carer has access; and

the carer is unlikely to achieve one or more of their personal outcomes which relate to the specified outcomes unless—

(i) the local authority provides or arranges support to the carer to meet the carer's needs;

the local authority provides or arranges care and support to the person for whom the carer provides care, in order to meet the carer's needs; or

the local authority enables the needs to be met by making direct payments.

Outcomes to which needs for care and support must relate

—(5) For the purposes of regulations 3(b) and 4(b), the outcomes to which a need must relate are—

ability to carry out basic self-care or domestic routines;

protection from abuse or neglect;

involvement in work, education, learning or in leisure activities;

maintenance or development of family or other significant personal relationships;

development and maintenance of social relationships and involvement in the community;

in the case of an adult, fulfilment of caring responsibilities for a child; or

in the case of a child, achieving developmental goals.

In this regulation “basic self-care” means essential tasks that a person carries out as part of normal daily life including—

eating and drinking;

maintaining personal hygiene;

getting up and getting dressed;

moving around the home;

preparing meals;
keeping the home clean, safe and hygienic.

Exclusion of care provided by carers when making an eligibility determination

- (6) When a local authority considers whether—
- in accordance with regulation 3(c)(ii), an adult is able to meet a need with the support of others;
 - in accordance with regulation 3(d), an adult is likely to achieve one or more of their personal outcomes without the intervention of the local authority;
 - in accordance with regulation 4(c)(ii), a child's needs can be met with the support of others; or
 - in accordance with regulation 4(d), a child is unlikely to achieve one or more of their personal outcomes without the intervention of the local authority,
- a local authority must disregard the matters set out in paragraph (2).

The matters to be disregarded in the circumstances set out in paragraph (1) are—

- in the case of an adult, any care given to the adult by a carer; and
- in the case of a child, care provided to that child by the child's family or a carer.⁽¹⁾

Mark Drakeford

Minister for Health and Social Services, one of the Welsh Ministers

Date

(1) But note section 35(6) of the Act which provides that the duty on a local authority to meet an adult's needs for care and support does not apply where the local authority is satisfied that the needs are being met by a carer and section 37(5) of the Act which provides that the duty on a local authority to meet a child's needs for care and support does not apply where the local authority is satisfied that the needs are being met by the child's family or a carer.