

Explanatory Memorandum to:

Part 8 Code of Practice – Role of Director of Social Services

The Local Authority Social Services Annual Reports (Prescribed Form) (Wales) (Amendment and Transitional Provision) Regulations 2023

This Explanatory Memorandum has been prepared by the Department of Health and Social Services and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Part 8 Code of Practice – Role of Director of Social Services and the Local Authority Social Services Annual Reports (Prescribed Form) (Wales) (Amendment and Transitional Provision) Regulations 2023. I am satisfied that the benefits justify the likely costs.

Julie Morgan MS

Deputy Minister for Health and Social Services

14 December 2023

PART 1

1. Description

The Local Authority Social Services Annual Reports (Prescribed Form) (Wales) Regulations 2017 (“the 2017 Regulations”) were enacted to set out the specific information to be included in the annual reports of local authorities relating to their social services functions, and headings under which the information required was to be included.

The Part 8 Code of Practice – Role of Director of Social Services (“the Part 8 Code”) issued under Part 8, section 145(1) of the Social Services and Well-being (Wales) Act 2014 (“the 2014 Act”) sets out the various requirements for the annual report. Section 145(3) of the 2014 Act requires local authorities to act in accordance with any relevant requirements contained in a code issued under section 145(1) and to have regard to any guidelines contained in it.

In 2020, the Welsh Government issued the Code of Practice in relation to the performance and improvement of social services in Wales. This code created a requirement for local authorities to provide activity and performance data, undertake activities to understand people’s experiences and use the evidence to drive improvement.

Since issuing the Code of Practice in relation to the performance and improvement of social services in Wales, local authorities have been providing annual data returns. In order to report against the other two requirements (understanding experiences and using evidence for improvement), the existing Part 8 Code, issued on the 16 March 2016, is being revised to account for the requirements under the Code of Practice in relation to the performance and improvement of social services in Wales. The revised Part 8 Code will replace the code issued in March 2016.

The revision to the Part 8 Code allows the opportunity to issue new guidance to local authorities in preparing their annual reports to bring them in line with the corporate self-assessment report required under the Local Government and Elections (Wales) Act 2021 (the “2021 Act”).

The Local Authority Social Services Annual Reports (Prescribed Form) (Wales) (Amendment and Transitional Provision) Regulations 2023 (“the 2023 Regulations”) amend the 2017 Regulations to update the information that must be included in annual reports and headings under which the information required is to be provided. This will align with the requirements of the revised Part 8 Code.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

None.

3. Legislative background

Introduced on 4 September 2017 by the commencement of section 56(1) of the Regulation and Inspection of Social Care (Wales) Act 2016, section 144A of the 2014 Act makes provision in relation to annual reports by local authorities about the exercise of their social services functions, including provision in relation to the content and form of those reports.

The annual report must include details of how the authority has exercised its social services functions during the financial year including details of the extent to which it has acted in accordance with requirements imposed on local authorities by a code issued under section 145 of the 2014 Act (codes about the exercise of social services functions) and such other information as may be prescribed by regulations.

The 2023 Regulations

The 2023 Regulations are made pursuant to the Welsh Ministers' powers in section 144A(4) of the 2014 Act.

Procedure

Section 196(4) of the 2014 Act sets out that a statutory instrument containing regulations made by the Welsh Ministers under the Act is subject to annulment in pursuance of a resolution of the National Assembly for Wales (to which all references made under the 2014 Act now refer to Senedd Cymru by virtue of section 150A(2) of the Government of Wales Act 2006). Subject to no such resolution being made by Senedd Cymru, the 2023 Regulations will come into force on 1 April 2024.

The revised Part 8 Code and Appointed Day Order

Section 145 of the 2014 Act sets out the general power of the Welsh Ministers to issue, and from time to time revise, one or more codes on the exercise of social services functions. It provides that:

- A code may impose requirements, and may include guidelines setting out aims, objectives and other matters.
- A local authority must, when exercising local authority functions act in accordance with any relevant requirements contained in a code (subject to section 147 (departure from requirements in codes) and have regard to any relevant guidelines contained in it.
- A code may specify that section 147 does not apply to a requirement contained in the code.
- The Welsh Ministers must publish each code for the time being in force on their website and make available to the public codes that have been replaced or revoked (whether on their website or otherwise).

Section 146(4)(b) of the 2014 Act provides the vires to revise the existing Part 8 Code and for its coming into force by appointed day order, provided the procedure set out below is met.

Procedure

Section 146 of 2014 Act provides that before issuing or revising a code under section 145, the Welsh Ministers must:

- consult such persons as they think fit on a draft of the code (or revised code); and
- lay a copy of the draft before Senedd Cymru.

If, before the end of the 40-day period, Senedd Cymru resolves not to approve the draft, the Welsh Ministers must not issue the code (or revised code) in the form of the draft. If no such resolution is made before the end of that period, Welsh Ministers must issue the code in the form of the draft and the code (or revised code) comes into force on the date appointed by order of the Welsh Ministers.

If no resolution is made by Senedd Cymru and the draft Part 8 Code is issued, the Revised Code of Practice on the Role of the Director of Social Services (Social Services Functions) (Appointed Day) (Wales) Order 2024 will be made to bring the revised code into force on 1 April 2024.

This Appointed Day Order is not subject to a Senedd scrutiny procedure, nor required to be laid before the Senedd.

4. Purpose and intended effect of the legislation

The 2023 Regulations

The purpose of the 2023 Regulations is to amend the existing 2017 Regulations, to update the information that must be included in annual reports and headings under which the information required is to be provided. This is to ensure alignment with the requirements of the revised Part 8 Code.

The Part 8 Code

While the Part 8 Code covers the full role of Director of Social Services, the proposed changes being made relate specifically to section 5 and the preparation of the annual reports.

The purpose of section 5 of the Part 8 Code is to define the expectations regarding the preparation of the annual reports for local authority social services. The Part 8 Code states how the annual report should be presented in such a way as to set out how the local authority has achieved the eight quality standards in relation to well-being outcomes as described in the Code of Practice in relation to the performance and improvement of social services in Wales, issued under section 145 of the 2014 Act.

Section 5 of the Code of Practice deals with the Annual Report, this has been revised to align with the Performance and Improvement Framework and the new guidance, particularly setting out the purpose of the report, which is to:

- Set out a local authority's improvement journey in providing services to people who access information, advice and assistance and individuals receiving care and support and carers receiving support.
- Use information obtained from the code of practice in relation to the performance and improvement of social services in Wales and other

sources to demonstrate how local authorities have promoted well-being and accounted for the delivery of quality standards.

- Evidence progress against the eight quality standards and to inform decisions on how to respond from the perspective of the social services function at a corporate, organisational level.
- Evidence how the standards and principles in the National Framework for Commissioning Care and Support are making a contribution to meeting the needs of people receiving care and support from social services and improving well-being outcomes.
- Enable the Welsh Government to collate, analyse and understand data and evidence in the delivery of care, and support for carers in Wales

The annual report must also set out how the local authority has met relevant requirements contained in the Codes of Practice relating to other parts of the 2014 Act, such as assessing the needs of an individual in accordance with Part 3, meeting needs under Part 4 and effective commissioning arrangements under Part 8 of the National Framework for Commissioning Care and Support.

In order to assist in the preparation of the annual reports, additional guidance has been prepared. This guidance describes the expectations for what is to be included in the annual report in more detail. It also provides a template for the annual reports to assist in drafting.

It is intended that this revised Part 8 Code will come into force on 1 April 2024. This will align with the coming into force of the 2023 Regulations.

The 2023 Regulations contain a transitional provision to make it clear and unambiguous to local authorities that:

- the 2017 Regulations apply to annual reports prepared for the 2023/24 financial year; and
- the 2023 Regulations will apply to annual reports prepared from and including the 2024/25 financial year onwards.

Power to make transitional provision is provided under section 196(2)(c) of the 2014 Act.

Financial year has the meaning given at section 144A(6) of the 2014 Act being the period of one year beginning on 1 April and ending on 31 March.

The revised Part 8 Code contains a statement confirming that it replaces the Part 8 Code issued on 16 March 2016.

5. Consultation

Section 146(1) of the 2014 Act states that before issuing or revising a code under section 145, Welsh Ministers must consult on a draft code with such persons as they think fit. Prior to formal consultation the supporting technical guidance was developed and tested in by Practice Solutions in close collaboration with a wide

range of stakeholder groups who met regularly from December 2021 – June 2022.

The Part 8 Code, together with the draft technical guidance that support the Performance and Improvement Framework, were consulted upon in a 12-week consultation that ran from 22 May to 14 August 2023. This Part 8 Code was part of a wider consultation document, covering the Rebalancing Care and Support Programme. The section of the consultation relating to this code received 27 responses from local authorities, third sector organisations and individuals.

Following the consultation, the Part 8 Code, the 2023 Regulations and guidance were reviewed, and amendments made where appropriate, to take into account the views of respondents. Respondents agreed that the Annual Report guidance adds benefits, and it will be helpful for the sector moving forward. In response to the feedback received:

- The new guidance for Local Authority Social Services Annual Reports will take effect from 1st April 2024, but due to the transition period reports written concerning the 2024/25 financial year will be the first reports based on the new guidance.
- Recommend that local authorities provide a short, public-facing summary of the reports as a separate standalone document.
- Welsh Government will supplement the new guidance with the production of a toolkit, which will include templates, design options and a FAQ document.
- There will be a network of local authority staff who are involved in the production of the annual reports established.
- From this network, a group of volunteers will be sought to act as a working group to draft the first versions of the toolkit.
- Welsh Government will seek to make further use and analysis of the submitted reports to produce a 'State of the Nation' report, which summarises the findings from the Annual Reports, supplemented by data from the Performance and Improvement Framework activity and performance data collection.

A consultation summary report together with a list of respondents was published on the Welsh Government's website in on 28th November 2023¹.

¹ Consultation Document relating to Code of Practice on the Role of the Director of Social Services (Social Services Functions): [Rebalancing care and support programme | GOV.WALES](#)

6. Regulatory Impact Assessment

The production of the local authority social services annual report is a statutory requirement. Regulations made under primary legislation specify the form that reports are required to take including the information that is to be included and the headings under which information is to be provided. This form reflects the template report appearing on the WG website.

The guidance first took effect from the reporting year 2017-18. The proposal is based on the need to revisit the current reporting requirements to reflect key developments since then including, but not limited to:

- the experience of local authorities, their partners, those using services and carers, private and third sector stakeholders in working with the existing guidance
- A Healthier Wales
- any emerging policy thinking and developments within Welsh Government
- *“The Code of Practice in relation to the performance and improvement of Social services in Wales”*
- *The Performance and Improvement Framework for Social Services: Measuring Activity and Performance Guidance 2020-21* (launched in April 2020)
- lessons learned from operating under Covid 19 restrictions and any enduring changes of practice arising
- the four quality standards in page 8 of the Code of Practice referred to above
- the views and findings of the regulators and the statutory Commissioners
- relevant research findings and recommendations
- lessons learned from elsewhere in the United Kingdom
- any new opportunities afforded by developments in information technology and digital platforms

It was envisaged that a new guidance document would bring together new statutory reporting requirements along with extensive guidance to support the production and use of the annual report and its dissemination. If the existing guidance was deemed to need changing, to do this in a consolidated way, changes to the Part 8 Code are required and as a direct consequence to the revisions to the code, the prescribed regulation also require amendment.

There are four options considered:

1. Do nothing

This option involves not making any changes and leaving the guidance as set out in the Part 8 Code of Practice issued in 2016

2. Do minimum

In this option, the Code of Practice and Regulations would remain the same, but a supplementary additional guidance document, along with tools and templates to aid completion of the annual reports, would be published on the Welsh Government website. These would be optional tools. It is expected that this would

not impact the cost to the local authorities in completing the annual reports but may improve the consistency and quality of the annual reports.

3. New guidance

To account for the new legislation and policies relating to social services performance and activity, the existing Part 8 Code of Practice and Regulations would need to be changed. They currently requiring local authorities to provide content in the annual reports which is no longer suitable.

In order to support local authorities with the change to the Code of Practice, a new guidance document would be needed. This would set out the expectations in more detail and would allow local authorities to produce annual reports in line with the revised Code of Practice.

Before developing the new guidance, a contractor would be procured to work with stakeholders and local authorities. This would allow for an independent expert input into the development of the guidance, and make sure that the outputs were of sufficient quality and met the needs of stakeholders, local authorities and Welsh Government.

Any change to the Codes of Practice or Regulations requires a consultation period, prior to being laid before the Senedd Cymru and brought into force.

4. Prescriptive templates

This option would go one step further than Option 3, and instead of issuing guidance to local authorities, the Code of Practice and Regulations would specify prescriptive templates for which all local authorities would need to complete in their annual report. This would mean all local authorities provide the same evidence and content for a standardised template.

The recommended approach is Option 3, and the Integrated Impact Assessment has been based on this recommendation.

This recommendation is based on this being the most cost effective means of bringing the requirements under the Part 8 Code of Practice with the requirements placed on local authorities by the Code of Practice in relation to the performance and improvement of Social services in Wales and Local Government and Elections (Wales) Act 2021. It will allow for a flexible but consistent approach to the Local Authority Social Services Annual Reports, which is not overly prescriptive or places an excessive burden on staff to complete.

Competition filter test

The competition filter test has been completed and the Part 8 Code/Regulations are not expected to impact on competition in Wales or the competitiveness of Welsh businesses.

The Part 8 Code has been subject to a full Integrated Impact Assessment (IIA). The IIA has shown that there are no significant negative impacts on any of the

areas under consideration. A summary of the IIA will be available on the Welsh Government website when published.