



Llywodraeth Cymru  
Welsh Government

# **SOCIAL SERVICES AND WELL-BEING (WALES) BILL**

**Explanatory Memorandum**  
incorporating the  
Regulatory Impact Assessment  
and Explanatory Notes

January 2013

# **Social Services and Well-being (Wales) Bill**

## **Explanatory Memorandum**

This Explanatory Memorandum has been prepared by the Department for Health, Social Services and Children of the Welsh Government and is laid before the National Assembly for Wales.

### **Member's Declaration**

In my view the provisions of the Social Services and Well-being (Wales) Bill, introduced by me on the 28 January 2013, would be within the legislative competence of the National Assembly for Wales.

### **Gwenda Thomas AM**

Deputy Minister for Children and Social Services  
Assembly Member in charge of the Bill.

28 January 2013

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## **1. Description**

1. The Social Services and Well-being (Wales) Bill provides for a single Act for Wales 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 Bill 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.
2. It will transform the way social services are delivered, primarily through promoting people's independence to give them stronger voice and control. Integration and simplification of the law for people will also provide greater consistency and clarity to people who use social services, their carers, local authority staff and their partner organisations, the courts and the judiciary. The Bill will promote equality, improve the quality of services and the provision of information people receive, as well as ensuring the right incentives for commissioners to achieve a shared focus on prevention and early intervention.

## 2. Legislative Background

3. The National Assembly for Wales has the legislative competence to make the provisions in the Social Services and Well-being (Wales) Bill under Part 4 of the Government of Wales Act 2006 (GOWA 2006)
4. The relevant provisions of GOWA 2006 are set out in section 108 and Schedule 7.
5. Paragraph 15 of Part 1 of Schedule 7 sets out the following subjects on which the Assembly may legislate, under the heading “Social Welfare”:

”Social welfare including social services. Protection and well-being of children (including adoption and fostering) and of young adults. Care of children, young adults, vulnerable persons and older persons; including care standards. Badges for display on motor vehicles used by disabled persons.”

6. Paragraph 14 of Part 1 of Schedule 7 sets out the following subjects on which the Assembly may legislate, under the heading “Public administration”:

“Public Services Ombudsman for Wales. Auditor General for Wales. Audit, examination, regulation and inspection of auditable public authorities. Inquiries in respect of matters in relation to which the Welsh Ministers, the First Minister or the Counsel General exercise functions. Equal opportunities in relation to equal opportunities for public authorities. Access to information held by open access public authorities”. The paragraph then defines “auditable public authorities” and “equal opportunity public authorities”.

7. Paragraph 9 of Part 1 of Schedule 7 sets out the following subjects on which the Assembly may legislate, under the heading “Health and health services”:

“Promotion of Health. Prevention, treatment and alleviation of disease, illness, injury, disability and mental disorder. Control of disease. Family planning. Provision of health services, including medical, dental, ophthalmic, pharmaceutical and ancillary services and facilities. Clinical governance and standards of health care. Organisation and funding of national health service.

8. Paragraph 12 of Part 1 of Schedule 7 sets out the following subjects on which the Assembly may legislate, under the heading “Local government”:

“Constitution, structure and areas of local authorities. Electoral arrangements for local authorities. Powers and duties of local authorities and their members and officers. Local government finance.”

9. The provisions in the Social Services and Well-being (Wales) Bill are within the legislative competence of the Assembly as they relate to one of more of these subjects and do not fall within any of the exceptions specified in Part 1 of Schedule 7.
10. The reference to paragraph 9 of Part 1 of Schedule 7 is relevant to proposals to amend the National Health Service (Wales) Act 2006 and to proposals to impose new duties on Local Health Boards and NHS Trusts.
11. The reference to paragraph 14 of Part 1 of Schedule 7 is relevant to proposals to amend the Public Services Ombudsman (Wales) Act 2005.
12. The reference to paragraph 12 of Part 1 of Schedule 7 is relevant to proposals to impose new powers and duties on local authorities.

### 3. Purpose and intended effect of the legislation

#### Purpose

13. The purpose of the Social Services and Well-being (Wales) Bill ('the Bill') is to specify the core legislative framework for social services and social care in Wales. It gives effect to the policy stated in the White Paper *Sustainable Social Services for Wales: A Framework for Action*<sup>1</sup>, which set out the Welsh Government's response to the significant challenges that face social services as a result of increased and changing societal expectations, demographic change and a difficult resource environment.
14. *Sustainable Social Services: A Framework for Action* sets out the framework and priority areas for transformation towards better supporting people who need care in Wales. The Bill will provide the architecture to enable local authorities with their partners to meet the challenges and to begin the process of change through a shared responsibility to promote the well-being of people.
15. The Bill affords enhanced duties on local authorities and Local Health Boards to take steps to prevent and reduce the needs for care and support of people in their area. These "preventative" services would be available not only to people who are currently eligible to receive social care services – provided to a cohort of around 150,000 to 200,000 – but also potentially to the population of 3 million in Wales. It also introduces for the first time a statutory framework for the protection of 'Adults at Risk' and simplifies the current Safeguarding Board arrangements.
16. In contrast to the Department of Health's draft Care and Support Bill, the Welsh Bill will cover social care services for children, adults and their carers and will, as far as it is possible, integrate and align arrangements so that there is a common set of processes, **for people**. The Bill will also, with the exception of provisions for portability, provide equivalent rights for carers, putting them on a similar legal footing as the people they care for. All other UK statutes continue to treat these groups of people separately.
17. In addition, the Bill will strengthen collaboration, provide a framework for integration of key services (to be specified by Welsh Ministers) and place new duties on local authorities, LHBs and other public bodies to improve the well-being of people (at population and individual level) with care and support needs. It also provides for Ministers to prescribe a new national outcomes framework and to intervene in the exercise of social services functions by a local authority following the issue of a warning notice.

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<sup>1</sup> *Sustainable Social Services for Wales: A Framework for Action* (Welsh Government, February 2011)  
<http://wales.gov.uk/topics/health/publications/socialcare/guidance1/services/?lang=en>

18. The Bill comprises 11 Parts as set out below:

- 1) Introduction
- 2) General functions
- 3) Assessing the needs of individuals
- 4) Meeting needs
- 5) Charging and financial assessment
- 6) Looked after and accommodated children
- 7) Safeguarding
- 8) Social services functions
- 9) Well-being outcomes, co-operation and partnership
- 10) Complaints and representations
- 11) Supplementary and general

### Overview of main provisions in each Part of the Bill

#### Part 1 - Introduction

19. This Part provides an overview of the Bill; a provision on interpretation; and provides a new, broader definition of well-being than those used in existing legislation.

#### Part 2 – General functions

##### *Well-being*

20. This Part includes overarching well-being duties on persons exercising functions under the Bill to seek to promote the well-being of people who need care and support, and carers who need support.

21. The Bill imposes general and strategic duties on local authorities and Local Health Boards (LHBs) to gain a better understanding of the characteristics and needs of their local population of people who need care and support and carers who need support. Such services are to be accessible within the community as part of a spectrum of universal provision for well-being so as to reduce, prevent or delay the development of eligible needs for care and support. These duties will also require local authorities and local health boards to take their local needs assessment into account when preparing and making arrangements to publish their Health, Social Care and Well-being Strategy.

##### *Social enterprises*

22. This Part also includes new duties on local authorities to promote the development of new models of delivery in local authority areas through social enterprises, co-operatives, user-led and third sector services. This could include the local authority assisting in the setting up of a new business which can be categorised as a social enterprise or supporting service users setting up a co-operative arrangement for helping each other with low level day-to-day needs. New duties also require the local authority

to promote the availability of preventative services from the third sector in the arrangements it makes for providing care and support, and informing people in its area about what services are available.

*Information, advice and assistance*

23. The Bill introduces a duty for local authorities, facilitated by LHBs, to provide information, advice and assistance to help people understand how the care and support system works, what services are available locally, and how to access the services they need now and in the future. In certain cases local authorities must also assist persons in accessing/securing care and support.

Part 3 – Assessing the needs of individuals

24. Across the ‘spine of the Bill’ the provisions are designed to promote an individual’s voice and control in relation to access, assessment and eligibility for services.

*Individual right to assessment*

25. The Bill provides a single right to assessment (including an assessment of the outcomes the individual person wishes to achieve) for adults and children (and their families) where it appears to the local authority that the individual has needs for care and support. However, differing emphases will be applied in each case. For example, for a child the focus is on their physical, intellectual, emotional and social development; their parents’ capacity to care; and other circumstances affecting their well-being. With adults, the emphasis would be on the outcome that the adult wishes to achieve in their day-to-day life.
26. The Bill also creates a single duty for local authorities to undertake a ‘carer’s assessment’. The Bill will apply to young carers and parent carers.
27. This replaces the existing law, and removes the requirement that the carer must be providing “a substantial amount of care on a regular basis”. This will mean more carers are able to access an assessment, and that the duty is comparable to that for the people they support. This will also replace the existing law which applies to young carers and parent carers.
28. The Bill also provides for refusal of assessment, but equally prescribes the circumstances in which a refusal is to be disregarded. The local authority’s duty would not be discharged, for example, where there is a risk of abuse or neglect. It also provides for the combining of different assessments (to better support the integration of assessments required across a number of other statutes/ programmes e.g. mental health, special education needs) and creates regulation-making powers for Welsh Ministers to provide greater detail in relation to assessments.

## Part 4 – Meeting needs

### *Eligibility*

29. If after carrying out a needs assessment a local authority concludes that the person has a need for care and support, it must then conduct an eligibility assessment to determine whether it is an 'eligible need' and therefore whether there is a duty to meet that need. A national eligibility framework will be developed to provide clarity through Regulations on what constitutes an 'eligible need'.
30. Preservation of existing duties and entitlements will be afforded to those who are deemed to be at risk or in need of protection; or children who need to be looked after.

### *Duties to meet needs - adults*

31. As recommended by the Law Commission, there will be a single duty to meet "eligible needs", although there will be an overriding duty to meet those needs which the local authority considers it necessary to meet in order to protect an adult from abuse or neglect.
32. If the person is going to receive a type of care and support which is provided free of charge, then there are no more requirements, and the adult is entitled to have their needs met in this way.
33. If, however, the adult is going to receive one or more types of care and support for which the local authority does make a charge, then one of three conditions also needs to be satisfied. These are set out in the Bill.

### *Duties to meet needs - children*

34. The Bill will place a similar obligation on local authorities to meet the eligible needs of children. As is the case with adults, there will be an overriding duty to meet the needs of children who are at risk of abuse or neglect or any other harm. Existing duties in relation to looked after children are also preserved in Part 6 of the Bill.

### *Duties to meet needs - carers*

35. The purpose of the Bill is to simplify the law relating to carers and have it all in one place (and in bilingual form). It provides for carers to be treated in the same way as persons in need of care and support i.e. they are wholly integrated into the social services system.
36. When the carers' assessment is complete, the local authority must determine what their support needs are and whether those needs are 'eligible' for support. The local authority must use an eligibility framework, to be set out in regulations. These regulations will provide a new

framework for determining eligible needs for carers, alongside the approach for the people they care for.

37. The Bill makes a distinction between adult and child carers to take account of particular issues raised by children acting as carers.

#### *Powers to meet needs*

38. Discretionary powers are also provided to enable local authorities to meet the care and support needs of an individual irrespective of the eligibility determination. These powers will also enable local authorities to respond to urgent need, or to act to protect a person without the need for first completing an assessment or determining eligibility.
39. This Part also clarifies the limits on a local authority's powers and duties to meet a person's assessed needs for care and support, because the responsibility rests elsewhere; for example, with the NHS or in accordance with the local authority's obligations under the Housing Act 1996.

#### *Direct payments*

40. The Bill outlines the framework within which local authorities may be allowed or required to make payments to a person (including carers) towards the cost of meeting needs for care and support (or support in the case of carers). This Part includes powers for Welsh Ministers to make further provisions in relation to a range of other matters including the manner in which amounts are to be determined and conditions which local authorities may or must attach to any payments. Further details are set out in the Explanatory Notes.

#### *Right to a care and support plan and review of plans*

41. Local authorities will have a duty to provide and to keep under review *care and support plans for people* (children and adults) who have 'eligible needs' or fall into one of the 'passport' categories e.g. looked after child.
42. Local authorities will also have duties to provide and keep under review *support plans for carers* whose needs are 'eligible'. This is in order to promote consistency between plans for carers and treat carers in the same way as people with needs for care and support.
43. The local authority will also have a duty to carry out further assessments and revise the plan if there has been a change in the person's circumstances
44. Regulations will provide for the detailed arrangements about plans including how they are to be prepared, what they are to contain and about their review. This could include provision about the proportionality of plans.

45. The Bill will also confer powers on the local authority to coordinate the preparation and review of plans where another body is preparing a relevant plan at the same time.

*Portability of prescribed care and support plans*

46. Care and support plans for people (but not carers), where the authority has a duty to provide care and support will be portable across Welsh local authority boundaries. Duties on the 'sending authority' will require them to notify the 'receiving authority' when an individual has informed them that they will be moving to the other area. The receiving authority must then put transitional arrangements in place for care and support to continue until it (the new) authority carries out a review / re-assessment of the person's care and support needs.
47. These portability arrangements will not apply to care and support plans for people whose plans are provided under the local authorities' discretionary power. In such cases there will be not be a duty on the new authority to put in place transitional arrangements. The intention is to prescribe (within regulations) the core information to be contained within a care and support plan.

*Meeting people's preferences for particular accommodation*

48. Provisions in the Bill will enable regulations to be made which will set out similar provisions to those currently contained in law, except that the entitlement will be extended to accommodation provided to meet the eligible needs of an adult, child or carer.

*Protection of property*

49. Provisions in the Bill will preserve the effect of section 48 NA 1948 but extend the powers of the local authority to children over the age of 16, who may also have moveable property which may need to be protected when they are admitted to hospital or are provided with accommodation by a local authority.

Part 5 – Charging and financial assessment

50. Provision is made to allow local authorities to impose charges for providing or arranging a service where appropriate. Local authorities will no longer be required to charge for residential accommodation as they are currently under section 22 of the NA 1948.
51. Powers in the Bill provide for regulations to create a framework for charges and matters to be taken in account in determining a person's ability to pay and a system for review of a local authority's determination in this respect.
52. This Part also places duties on local authorities to undertake financial assessments in certain circumstances, the detailed arrangements for

which are intended to be prescribed by Welsh Ministers through regulations.

53. The Bill makes separate provision for charging for preventative services and for the provision of information, advice and assistance. Regulations will provide for the circumstances in which local authorities may or may not charge for such provision and the circumstances in and extent to which local authorities are to be required to take account of a person's ability to pay when determining the amount of the charge.
54. The Bill also makes provision in relation to deferred payment agreements which largely corresponds to the provision currently made by section 55 of the Health and Social Care Act 2001 but extends this to include where services are provided to carers and to children aged 16 or 17.
55. The Bill also makes other provision in relation to the recovery of charges and interest, including where a person has transferred assets to avoid charges. This makes provision analogous to the current powers under sections 21 to 24 of the Health and Social Services and Social Security Adjudications Act 1983 (HASSASSA 1983). Provision is also made for recovery in cases of misrepresentation or non-disclosure which replicates the effect of section 45 of the NA 1948.

#### Part 6 - Looked after and accommodated children

##### *Looked after children and care leavers*

56. The obligations and duties of local authorities (and LHBs) currently in provisions within Part 3 of the Children Act 1989 have been included in this Part. The provisions have been updated and clarified but do not in essence change the obligations and duties towards these groups of children and young people. The provisions of this Part deal with the duties and responsibilities of local authorities (and LHBs) in relation to "looked after", care leavers and accommodated children. Looked after children include those children who are cared for by a local authority and who are not the subject of a formal care order (which bestows shared parental responsibility upon the local authority), and those for whom they provide care under such an order of the court), and also children who are placed in or remanded to a secure care setting. Accommodated children include children who are notified to local authorities as being in a hospital or other relevant setting within their area for a period of three or more months. Local authorities will have a duty to meet the care and support needs of these defined categories of children and young persons.
57. The provisions also set out the duties owed to these children in relation to local authorities' duties and functions for their placement; accommodation (including ensuring that there is sufficient accommodation in their area); education; health; contact with family; independent visits; maintenance and regulations about the approval of foster carers etc. The Bill simplifies (but does not change the effect of) the complex provisions within Part 3 of

the Children Act 1989 which describe the different categories of young persons who constitute “care leavers” and seeks to clarify the local authority’s often different obligations and duties towards each category of young person who qualifies as a “care leaver”.

58. However, the Bill will not stand in isolation of other statutes and local authorities will still have duties owed to children under the Children Act 1989 and the Adoption and Children Act 2002.

### Part 7 – Safeguarding

59. This Part deals with the safeguarding provisions which are:

the development of a coherent legal framework for adult protection  
the establishment of a National Independent Safeguarding Board  
the establishment of Safeguarding Boards for children and adults

#### *Legal framework for adult at risk*

60. “Adult safeguarding” is the term that describes the function of protecting adults from abuse or neglect. This is an important shared priority of many public services, and a key responsibility of local authorities.

61. Safeguarding relates to the need to protect certain people who may be in vulnerable circumstances. These are adults in need of care and support who may be at risk of abuse or neglect, due to the actions (or lack of action) of another person. In these cases, it is critical that local services work together to identify people at risk, and put in place interventions to help prevent abuse or neglect, and to protect people.

62. Although protecting adults from abuse and neglect has been a priority for local authorities for many years, there has never been a legal framework for adult safeguarding. This has led to an unclear picture as to the roles and responsibilities of individuals and organisations working in adult safeguarding. New legislation is needed to provide a clear framework for organisations and to set out their responsibilities for adult safeguarding.

63. The provisions in this part of the Bill will require local authorities to make enquiries, or to ask others to make enquiries, where they reasonably suspect that an adult in their area with care and support needs is at risk of abuse or neglect. The purpose of the enquiry is to establish what, if any, action is required in relation to the case.

64. The Bill also provides for authorised officers of a local authority to apply to the court for an “adult protection and support order”. Such an order will confer a power of entry to facilitate practitioners in speaking to an adult suspected of being at risk in private and enable them to ascertain whether that person is making decisions freely.

65. This part of the Bill also includes duties on relevant partners to report to the local authority when it suspects that a person may be an adult at risk. It is envisaged that this duty would likely lead to increased reporting and would often act as a trigger mechanism to the duty to investigate.
66. Provisions in Part 9 of the Bill also impose a duty on relevant partners (including the health service) to cooperate and provide information when requested by a local authority in the exercise of its social services functions and this includes its functions of carrying out an investigation under this Part
67. The Bill provides for the repeal of the compulsory removal power under section 47 NA 1948.

#### *National Independent Safeguarding Board*

68. The Bill includes provisions (including regulation making powers) to establish a new Board which will provide national leadership to this agenda; advise Ministers on the adequacy and effectiveness of safeguarding arrangements; and advice on action to help strengthen policy and improve practice.

#### *Safeguarding and Protection Boards*

69. Provisions provide for the creation of new Safeguarding Children Boards and the establishment of new Safeguarding Adults Boards. . Board areas and lead partners of the Boards are to be prescribed through regulations. The Boards are intended to promote partnership working between relevant partners (such as the chief officer of police, NHS bodies and local authorities) and additional Board partners can be prescribed. In the case of Safeguarding Children Boards, their objectives are to protect children who are at risk of abuse, neglect or other harm and to prevent them becoming at risk of such harm. In the case of Adult Safeguarding Boards the objectives of the Boards are to protect adults in the Board's area who have needs for care and support and are experiencing or at risk of neglect and to prevent adults who have needs for care and support from becoming at risk of abuse or neglect. The Safeguarding Board's functions can be extended. The Bill includes power for adults' and children's boards to merge by order. There will be a relationship between the Safeguarding Boards and the newly created National Board.

#### Part 8 – Social services functions

70. This Part covers social services functions; directors of social services; powers for Welsh Ministers to issue Codes; and includes a coherent and simplified set of powers for intervention.

### *Social Services Functions*

71. The Bill will repeal Schedule 1 to the Local Authority Social Services Act 1970 (LASSA 1970) (which sets out a list of social services functions for the purpose of that Act) and replace it with a new Schedule of social services functions for the purposes of the Bill.

### *Directors of Social Services*

72. The Bill will repeal section 6 of LASSA 1970 and replace it with a new section in the Bill. This is mainly a restatement of the current law but there will be a new requirement on Welsh Ministers to specify the competencies which a person must be able to demonstrate before a local authority can appoint them as director of social services.
73. The Director of Social Services will be responsible for the exercise of the local authority's social services functions, which will include the new functions under the Bill.

### *Codes*

74. The Law Commission recommended that the Government should issue a code of practice to provide guidance for social services authorities on the exercise of their social services functions. The Law Commission also recommended that there should be a requirement to consult with concerned bodies and other persons before any such code is prepared or revised and that the making of the code should be subject to the negative resolution procedure in the Assembly.
75. The Bill contains provisions which will implement these recommendations.
76. In addition, the opportunity has been taken to clarify the status of the guidance in the code and to make provision for the circumstances in which a local authority may depart from requirements in a code. The Bill also sets out the circumstances in which the Welsh Ministers may give directions to local authorities to require compliance with a requirement in the code.

### *Intervention by central Government*

77. The Bill provides powers for the Welsh Ministers to intervene in the exercise of social services functions by a local authority on certain grounds, specified in the Bill; and where appropriate to issue directions. This set of powers is mainly a restatement of the current law, but with drafting improvements to make the law easier to understand; some rationalisation of the provisions; and specification of the fair process requirements for exercise of the powers.

## Part 9 – Well-being outcomes, co-operation and partnership

### *Well-being outcomes*

78. This Part includes a duty on Welsh Ministers to publish a statement of the outcomes to be achieved in terms of the well-being of people who need care and support and carers who need support.
79. These national outcomes statements will apply not only to care and support provided by local authorities but also to care and support provided by others.
80. The Welsh Ministers will also have powers to issue a Code to help achieve the outcomes. The code may impose requirements on local authorities and give guidance both to local authorities and to other providers of care and support

### *Co-operation*

81. The Bill provides that local authorities must make arrangements to promote co-operation with partner bodies to improve the well-being of adults with needs for care and support and carers with needs for support, and to improve the quality of care and support for people. Its effect in relation to children will be achieved through an amendment to current cooperation duties under section 25 of the Children Act 2004.
82. The partners that must co-operate with the local authority are listed on the face of the Bill.
83. This Part also includes provision requiring local authority partners to cooperate with the local authority when it requests assistance in specific cases or requires information. This is in line with the Law Commission's recommendations in relation to an "enhanced duty to cooperate". These duties will replace the current duties under section 27 of the Children Act 1989 and extend these duties to all social services functions, including the function of carrying out an investigation in cases of suspected adult abuse.

### *Promoting integration*

84. Also within this Part are requirements on local authorities to promote the integration of care and support with health and health-related provision, with a view to improving well-being, prevention and raising quality.

### *Partnership*

85. Provision is made for partnership arrangements to be prescribed through regulations both between local authorities and between local authorities and local health boards. The framework is sufficiently flexible to enable the Welsh Ministers to prescribe new integrated ways of working in particular areas or across services. This will include making provision in regulations

for the establishment, functions and operation of integrated family support teams. This will replace the provision which is currently made in part 3 of the Children and Families (Wales) Measure 2010.

### *Adoption*

86. This Part also includes powers for Welsh Ministers to direct local authorities to enter into joint arrangements in relation to their functions for the maintenance and operation of adoption services. It enables the Welsh Ministers to deliver their policy ambitions in relation to a national adoption support service.

## Part 10 – Complaints and representations

### *Complaints and representations about social services*

87. A new framework is provided for local authorities duties in respect of their consideration of representation and complaints from people about social services functions. It preserves the general and specific duties currently within Part 2 and Chapter 9 of the Health and Social Care (Community Health Standards) Act 2003 and those under part III of the Children Act 1989 for children in need, looked after children and care leavers. The provisions about social services complaints are essentially a re-statement of the current law. The framework in the Bill retains the current flexibility to specify how complaints should be dealt with in regulations but introduces greater parity between provisions about specified children's complaints and other social services complaints. For example, the Bill re-states the local authority duty to provide assistance to persons making representations about particular children/young person related complaints. It also introduces a new power to enable regulations to prescribe the assistance a local authority must provide for a person making a complaint about social services more generally. These broad powers ensure that the Bill is future proofed to respond to future policies; for example, if Welsh Ministers wanted to extend assistance (including by way of representation) to a greater number of people with care and support needs.

### *Complaints about private social care and palliative care*

88. This Part also provides for additional categories of complaints to be considered by the Public Service Ombudsman for Wales and extends Welsh Ministers' advocacy duties under section 187 of the National Health Service (Wales) Act 2006.
89. The Public Services Ombudsman for Wales ("the Ombudsman") currently operates by virtue of powers conferred by the Public Services Ombudsman (Wales) Act 2005 ("the 2005 Act"). The Ombudsman has powers to consider complaints about local authorities and NHS bodies and can therefore consider complaints relating to care homes, domiciliary care agencies and palliative care services that are commissioned by such bodies. The Ombudsman does not currently have the power to consider

complaints about care homes, domiciliary care agencies and palliative care services if they are privately commissioned. In order to remove this inequity, the Bill inserts new Parts 2A and 2B into the 2005 Act (by Schedule 3 of the Bill). The new Parts to the 2005 Act will permit the Ombudsman to consider complaints about private care homes, private domiciliary care services and private palliative care services. The new Parts follow the same approach as currently set out in the 2005 Act.

90. Section 187 of the National Health Service (Wales) Act 2006 imposes a duty on Welsh Ministers to arrange (to such extent as they consider necessary to meet all reasonable requirements) for the provision of independent advocacy services. Independent advocacy services are services providing assistance to individuals making or intending to make a complaint about certain health bodies. The Bill seeks to amend section 187 to extend the Welsh Ministers' duty to provide advocacy support to cover complaints to the Ombudsman about independent palliative care services. This corresponds with the Ombudsman's new power to consider complaints about independent palliative care services.

#### Part 11 – Supplementary and general

91. This Part deals with supplementary and general provisions including ordinary residence, general interpretations, orders, regulations and powers to make consequential arrangements.

Schedule 1 - Contributions towards maintenance of looked after children.

Schedule 2 - Social services functions.

Schedule 3 - Investigation of complaints about privately arranged or funded social care and palliative care.

#### Problem/Issue that the Bill is seeking to address - Rationale for reform of the current system

*'... our society is changing, and as society changes so must social services. Unsurprisingly, what we all expect of public services today is very different from a decade ago. There is a need to re-shape and re-focus.'*<sup>2</sup>

92. Social care services are rooted in the social fabric of Wales and are at the heart of public life. They support 150,000<sup>3</sup> young, old and disabled people every year to achieve their potential and help make them safe. They also have a unique corporate parenting role to over 5,725<sup>4</sup> children they look after, just over 4,430<sup>5</sup> of whom are in foster care. Many of the services are delivered in partnership with Housing, Health and Education services and

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<sup>2</sup> *Ibid*

<sup>3</sup> *Ibid.*

<sup>4</sup> [http://statswales1.wales.gov.uk/ReportFolders/ReportFolders.aspx?CS\\_referer=&CS\\_ChosenLang=en](http://statswales1.wales.gov.uk/ReportFolders/ReportFolders.aspx?CS_referer=&CS_ChosenLang=en) StatsWales, 2012

<sup>5</sup> *Ibid.*

with the Third and Independent sectors. During 2011-12 there were 46,000<sup>6</sup> referrals concerning children and young people and 86,000<sup>7</sup> assessments of need for adults. Each year, services are provided to around 84,200<sup>8</sup> physically and sensory disabled adults, to 9,300<sup>9</sup> people with a Learning Disability and to around 83,000<sup>10</sup> older people.

93. The net expenditure on social services in 2011-12 was £1.4 billion<sup>11</sup>, with services being delivered by over 70,000<sup>12</sup> people. Some 24,700<sup>13</sup> people are employed by social services; this excludes staff employed by the Third and Independent sectors that also have a significant role in the delivery of services to children, families, adults and their carers. There are around 1,800<sup>14</sup> regulated care settings and in the past 12 months over 12 million care<sup>15</sup> hours were provided to older people. Whilst most social care in Wales is provided by Third sector and Independent sector organisations it is, on the whole, funded through the public purse and aims to meet public needs.

94. While the current financial settlement (2011-2014) is intended to provide some protection to social services, there are current pressures including demographic challenges which are impacting on the demand for social services. This requires a radical change in the future delivery of social services.

95. People are living longer sometimes within complex family structures and behaviours and expectations are changing. People expect to be in control of decisions made about them and to have a say in how services are delivered. The consequences of addressing the social care needs of an ageing population, including increases in the numbers of people with long standing and complex disabilities are already being felt by social services. The impact will only increase in the future as the number of people requiring support in our society increases. For example:

- a. projections show that by 2030 there will be twice the number of people aged over 85 than there were in 2011-12 whilst the number of centenarians will quadruple<sup>16</sup>;
- b. the number of adults with Learning Disabilities who require support is projected to increase between 3.2% and 7.9% per year<sup>17</sup>;

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<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> *Local Government Settlement (Welsh Government, 2011)*

<sup>12</sup> *Sustainable Social Services for Wales: A Framework for Action (Welsh Government, February 2011)*

<sup>13</sup> *SDR 181/2012 National Statistics for Social Services Staff Numbers (Welsh Government, 2012)*

<sup>14</sup> *Sustainable Social Services for Wales: A Framework for Action (Welsh Government, February 2011)*

<sup>15</sup> *Ibid.*

<sup>16</sup> *Office for National Statistics, 2012*

- c. there has been a 24% increase in the number of children looked after in the five years up to 2011-12<sup>18</sup>; and
- d. parental substance misuse, domestic violence and mental health issues account for around 55% of referrals per annum made to Children's social services about children in need<sup>19</sup>.

96. There are also significant changes in expectations across all parts of society as people expect to be able to have greater control over their lives. People will expect services to be flexible and of a high standard to enable them to maximise well-being. Meeting these expectations will require a greater focus on supporting an individual's care.

97. The high level of prescription<sup>20</sup> and multiplicity of regulation, policy and tools for social workers, while intended to improve the quality of practice, has created an imbalance in the system that distorts practice, and hampers the professional judgement and responsiveness of social workers and others. It also creates some degree of inefficiency.

98. Commentators also say that the current system has not done enough to promote people's independence and empower them to take control of their lives.

99. Some of the planned changes to the tax credits and the welfare benefits system at a UK level, will undoubtedly impact on Welsh households where 66% of people in Wales are in receipt of some level of benefits compared with 61% in England<sup>21</sup>. Against this background the future welfare reforms and squeeze on public spending will significantly impact the financial landscape over the next decade.

100. The Welsh Government believes that these changes cannot be met without a radical change in the way social services are delivered.

#### Policy objectives of the Bill

101. The Welsh Government's primary policy objectives in relation to the Bill are to:

- a. improve the well-being outcomes for people who need care and support and carers who need support; and
- b. to reform social services law.

102. The Welsh Government intends to achieve these objectives through:

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<sup>17</sup> [http://statswales1.wales.gov.uk/ReportFolders/ReportFolders.aspx?CS\\_referer=&CS\\_ChosenLang=en](http://statswales1.wales.gov.uk/ReportFolders/ReportFolders.aspx?CS_referer=&CS_ChosenLang=en) StatsWales, 2012

<sup>18</sup> *Ibid.*

<sup>19</sup> <http://statswales1.wales.gov.uk/TableViewer/tableView.aspx?ReportId=37397> (StatsWales, 2012)

<sup>20</sup> *Munro Review of Child Protection (Department for Education, 2011)*

<http://www.education.gov.uk/munroreview/>

<sup>21</sup> *Welfare Benefits and Working Age People (LE Wales, for the Welsh Government, 2011)*

- a. simplifying the web of legislation that currently regulates social care in Wales;
- b. providing people with a stronger voice and greater control over services they receive;
- c. ensuring people receive the help they need to live fulfilled lives; and
- d. stronger national direction with clear local accountability for delivery.

#### Who is affected by the Bill?

103. The Bill will create duties and provide powers for local authorities (and in some cases Local Health Boards) in the following areas:
- a. to improve the well-being of people and to better understand the characteristics and needs of their local population including of carers who would benefit from a range of preventative services;
  - b. to provide preventative and early intervention services to be accessible within the community;
  - c. to ensure that people can readily access information, advice and assistance on the type of support and services available in their community; and
  - d. to help people understand how the care and support system works.
104. At an individual level, the Bill will provide a person with:
- a. a right to a proportionate assessment of their needs. A local authority's duty to assess will be triggered where it appears that the individual may have care and support needs, or support needs in the case of a carer;
  - b. a right to a service where their need is one that meets with the eligibility conditions set out in regulations; and
  - c. (for those people deemed to be eligible) a care and support plan/support plan that the local authority must regularly review.
105. Local authorities will continue as they do now to have wide discretionary powers to provide services to people irrespective of whether they are assessed as having eligible needs.

#### Implementation and delivery plan

106. The core blocks of the new legislative framework are on the face of the Bill. However the Bill does enable the Welsh Ministers to make a number of items of subordinate legislation. The Welsh Government considers these regulation making powers to be essential in order to "future proof" the legislation as regards to matters of detail which may change from time to time.
107. The powers to make subordinate legislation are summarised in section 5 of this Explanatory Memorandum. It is the Government's intention to

consult on the detail of the key regulation making powers prior to their implementation.

108. The Bill includes provisions for Welsh Ministers to issue Codes and Guidance to support the implementation of the Bill. In relation to Codes, the Bill requires that a draft Code be consulted on and for any draft to be laid before the National Assembly for Wales.
109. The Bill requires local authorities and in certain circumstances other public bodies and their relevant partners, to have regard to Guidance given by the Welsh Ministers in the exercise of their functions.
110. A training programme, funded through the re-direction of existing workforce grants which focus on ensuring staff across social services have the necessary skills and qualifications to deliver their functions, will be devised with input from key stakeholders and in place prior to the commencement of the new “core” arrangements in Parts 3 to 6 of the Bill.

#### Transitional arrangements and funding

111. The Bill is part of a wider transformation programme for social services in Wales. The *Sustainable Social Services for Wales: A Framework for Action* programme is designed to enable the transformational change necessary and the Bill provides for part of that change. Much of the change necessary to support the introduction of the Bill is being driven through this wider programme. Current funding streams, for example, the workforce grant of £8.41 million are already being focussed to support the transition process and underpin implementation.
112. The Welsh Government has recognised this transitional agenda in 2012-13 and increased the funding available for leadership and improvement within the sector itself to approximately £2million. We plan for that transitional support to continue. In addition, the Welsh Government is supporting transformational change through its ‘Invest to Save’ programme. It is currently investing £10 million in projects which have a substantial social services element and is contributing to the overall transformation of social services.

#### Risk if legislation is not made

113. *Sustainable Social Services for Wales: A Framework for Action* made clear that social services needed to transform to ensure that it was able to respond to the challenges of today. Much of the ambition in this document can be achieved without altering legislation, however a number of key areas of action do require amendments to legislation. If the Bill is not made this will have a detrimental effect on the services individuals receive and will not provide the “game-changer” for achieving the improvement in well-being outcomes for people in Wales.

114. The current legislation will not be capable of supporting the service change required and delivery organisations will be locked in to an outdated legislative framework.

115. If the opportunity to reform and rationalise adult social care is not taken there is the risk of losing the benefit of the Law Commission's patient and methodical review of the law in this area.

### Timescales

116. The Bill and subsequent regulations, Codes and Guidance to be made under the Bill will provide the architecture to transform social services. This is a radical Bill, which is seeking to overhaul legislation that dates as far back as 1948 and yet will ensure longevity through the "future proofing" of provisions.

117. Implementation will need to be phased and carefully planned to ensure smooth transition to the new arrangements. Some provisions will be capable of being commenced quickly, for example, those relating to Safeguarding Boards, while others will require further engagement and consultation with stakeholders to ensure that the detail of the new system to be specified through regulations achieves the desired outcomes.

118. The Welsh Government therefore intends that the bulk of the implementation will commence in 2015-16. This assumes Royal Assent is achieved in late 2013-14; with the accompanying subordinate legislation made during 2014-15; and training and transitioning during 2015.

119. Codes will be developed and will need to be in place in respect of core aspects of the system prior to implementation.

## 4. Consultation

120. The First Minister in his Legislative Statement of July 2011 made a commitment to consult appropriately and engage meaningfully with our partners when developing legislation. In keeping with this statement, a 12 week public consultation on the Bill ran from 12 March to 1 June 2012. The consultation set out the key principles of areas for change and sought to gain views of the proposed content of the Bill. 275 written responses were received. The draft proposals for the Bill (which formed the basis of the consultation document) were informed by discussions with key stakeholders, as well as debates in the Assembly and elsewhere, following the publication of *Sustainable Social Services for Wales*. The evidence of the Independent Commission on Social Services in Wales; the Law Commission's review of adult social care legislation; and our own Review of Safeguarding, also provided further evidence to draw upon in the development of those proposals.
121. The draft proposals were presented to stakeholders at three consultation events across Wales. These were attended by approximately 400 interested parties from across the public and voluntary sectors. In addition, the Wales Council for Voluntary Action hosted a special consultation event on the Welsh Government's behalf, which sought the views of voluntary agency workers in particular. Children in Wales also held a similar event for stakeholders working in the children's sector in Wales.
122. A copy of the consultation document (which was also issued in Easy Read and Child-friendly formats) and its accompanying Summary of Responses report were issued via a Written Ministerial Statement from the Deputy Minister for Children and Social Services on 17 October 2012. It has also been circulated to stakeholders and consultation respondents.
123. The Report and a list of respondents can be found at:  
<http://wales.gov.uk/consultations/healthsocialcare/bill/?lang=en&status=closed>

## **5. Power to make subordinate legislation**

124. The Bill makes a range of provisions for subordinate legislation. The following table sets out in relation to each provision:

- the person upon whom, or the body upon which, the power is conferred;
- the form in which the power is to be exercised;
- the appropriateness of the delegated power; and
- the applied procedure (affirmative, negative, no procedure) if any.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
3(6)	Welsh Ministers	Regulations	The definition of “disabled” is set out on the face of the Bill. This provision enables Welsh Ministers to prescribe further what categories of people can or cannot be included under the definition of ‘disabled’ for the purposes of this Act. This is suitable for regulations as it provides flexibility in the event that the definition of “disabled” is considered to be too narrow or too wide.	Negative	The subject matter of these regulations is relatively minor detail in the overall legislative scheme.
5(2)	Welsh Ministers	Regulations	The main duties of local authorities and LHBs are set out on the face of the Bill. This provision enables Welsh Ministers to prescribe further requirements for the carrying out of assessments of needs for care and support and preventative services of an area. Regulations may, for example, provide for the timing and review of assessments. This kind of provision is suitable for regulations.	Negative	The subject matter of these regulations is relatively minor detail in the overall legislative scheme.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
7(3)	Welsh Ministers	Regulations	Definitions of “social enterprise” and “third sector organisation” are set out on the face of the Bill. This provision enables Welsh Ministers to prescribe further what categories of organisations and activities may or may not be included as social enterprises, cooperative organisations or third sector organisations. This is suitable for regulations as it enables clarity to be provided in the event that there is any doubt about the meaning of these terms	Negative	The subject matter of these regulations is relatively minor detail in the overall legislative scheme.
9(3)	Welsh Ministers	Regulations	The main duty on a local authority to establish and maintain registers of people who are blind, deaf and both deaf and blind. This provision enables Welsh Ministers to prescribe further what categories of people may or may not be treated as being deaf, blind or both blind and deaf. This is suitable for regulations as it provides flexibility in the event that it is considered necessary to specify particular categories of people who should be included in a register.	Negative	The subject matter of these regulations is relatively minor detail in the overall legislative scheme.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
18	Welsh Ministers	Regulations	The main duties of local authorities in relation to carrying out needs assessments are set out on the face of the Bill. This provision enables Welsh Ministers to make further provisions about the carrying out of needs assessments. This is suitable for regulations as there will be a need to amend this detail over time and on a regular basis in response to evidence.	Negative	The subject matter of these regulations is relatively minor detail in the overall legislative scheme.
19(3), (4) and (5)	Welsh Ministers	Regulations	This provision enables Welsh Ministers to make provision about the exercise of these duties; and to specify the levels of need at or above which a persons needs meet the eligibility criteria or to provide for the cases or circumstances in which a person's needs are to be regarded as meeting the eligibility criteria. This is suitable for regulations as this will enable the Welsh Ministers to fine tune the detail in response to future evidence.	Affirmative	The duties on local authorities in relation to the determination of eligibility and consideration of what to do to meet needs are set out on the face of the Bill but the regulations will affect the way in which a local authority determines a persons eligibility to have their needs met. This involves considerations of special importance, as the purpose is fixed by the Act but principal substance will be set out in subordinate legislation. Therefore affirmative procedure is appropriate

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
23(1)	Welsh Ministers	Regulations	The principal conditions for the triggering of the duty to meet the care and support needs of a child are set out on the face of the Bill. This provision is suitable for regulations as it enables Welsh Ministers to set additional conditions to take account of future needs and considerations.	Negative	The subject matter of these regulations is relatively minor detail in the overall legislative scheme.
26(1)	Welsh Ministers	Regulations	The principal conditions for triggering the duty to meet the support needs of an adult carer are set out on the face of the Bill. This provision is suitable for regulations as it enables Welsh Ministers to set additional conditions, over and above those currently set out in the Bill, to take account of future needs and considerations.	Negative	The subject matter of these regulations is relatively minor detail in the overall legislative scheme.
27(1)	Welsh Ministers	Regulations	The principal conditions for triggering the duty to meet the support needs of a child carer are set out on the face of the Bill. This provision is suitable for regulations as it enables Welsh Ministers to set additional conditions, over and above those currently set out in the Bill, to take account of future needs and considerations.	Negative	The subject matter of these regulations is relatively minor detail in the overall legislative scheme.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
31(3)	Welsh Ministers	Regulations	The main prohibition on local authorities providing health care services is set out on the face of the Bill. This provision enables Welsh Ministers to alter the scope of this prohibition. This provision is suitable for regulations: If in the future there is evidence of any doubt as to whether local authorities do or do not have powers to provide health care services, these regulations can make this clear.	Negative	The subject matter of these regulations is relatively minor detail in the overall legislative scheme.
31(8)	Welsh Ministers	Regulations	The main duties on Local Health Boards and NHS Trusts to provide health care services are set out in the NHS Acts. This provision enables Welsh Ministers to require local authorities to make arrangements for determining disputes with NHS bodies and to require local authorities to be involved in assessments of needs for healthcare. This is suitable for regulations as these requirements are subsidiary to the main duties.	Negative	The subject matter of these regulations is relatively minor detail in the overall legislative scheme.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
33(1)(d)	Welsh Ministers	Regulations	The circumstances in which it might be appropriate for payments to be made are set out on the face of the Bill. This provision is suitable for regulations because it enables Welsh Ministers to specify additional circumstances in which it might be appropriate for payments to be made to meet needs for care and support.	Negative	The subject matter of these regulations is relatively minor detail in the overall legislative scheme.
33(2)(c)	Welsh Ministers	Regulations	The circumstances in which it might be appropriate for payments to be made are set out on the face of the Bill. This provision is suitable for regulations because it enables Welsh Ministers to specify additional circumstances in which it might be appropriate for payments to be made in the discharge of its duty to provide preventative services.	Negative	The subject matter of these regulations is relatively minor detail in the overall legislative scheme.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
34(1)	Welsh Ministers	Regulations	The power in this section and sections 35 and 36 is linked to the power in section 37. The operation of the section is dependent on regulations being made. The section replicates the approach taken in the Health and Social Care Act 2001. By allowing regulations to determine whether local authorities are obliged or merely permitted to offer direct payments it allows greater flexibility in future policy development. The purpose is for the primary legislation to create a clear framework but allow flexibility in how this is adapted from time to time. This is an appropriate way of ensuring that the legislation does not become outdated or require repeated amendment through subsequent bills.	Negative	The subject matter of these regulations is relatively minor detail in the overall legislative scheme.
35(1)	Welsh Ministers	Regulations	See section 34 above.	Negative	The subject matter of these regulations is relatively minor detail in the overall legislative scheme.
36(1)	Welsh Ministers	Regulations	See section 34 above.	Negative	The subject matter of these regulations is relatively minor detail in the overall legislative scheme.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
37	Welsh Ministers	Regulations	This power allows regulations to be made about a wide range of issues about direct payments which may arise. The detail of how these powers are exercised may change from time to time to allow policy to adapt to a variety of changing circumstances.	Negative	The subject matter of these regulations is relatively minor detail in the overall legislative scheme.
38(4)	Welsh Ministers	Regulations	This power allows regulations to be made to prescribe the matters which must be addressed in a care and support plan or a support plan. The framework established by the section, which allows the detail to be set out in regulations, will permit greater flexibility as different provision can be made for the different classes of person covered by the Bill.	Negative	This regulation-making power will enable detailed provision to be made for the different classes of person who will require a care and support or a support plan. The subject matter of these regulations is relatively minor detail in the overall legislative scheme.
40(6)	Welsh Ministers	Regulations	This section contains a new policy allowing for the portability of care and support assessments and the regulation-making power is necessary to enable the development of exceptions to the general proposition based on the local authority's experience of the operation of the new duties. This regulation-making power aims to avoid any requirement for early amendment of the primary legislation.	Negative	The subject matter of these regulations is relatively minor detail in the overall legislative scheme.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
41	Welsh Ministers	Regulations	This power allows the Welsh Ministers to specify the cases in which and the conditions under which a local authority must provide, or arrange the provision of, preferred accommodation where accommodation is being provided to meet needs under sections 21 to 24 or 26 to 29.	Negative	The subject matter of these regulations is relatively minor detail in the overall legislative scheme.
45	Welsh Ministers	Regulations	This regulation-making power enables Welsh Ministers to make provision for, and in connection with, the exercise of a local authority's power to impose a charge. This will enable the large amount of detail which is not suitable for inclusion on the face of the Bill to be set out clearly and to make such different provision for the different categories of person covered by the Bill. Similar powers are currently contained within the Social Care Charges (Wales) Measure 2010 in relation to non-residential charges for adults.	Negative	The subject matter of these regulations is relatively minor detail in the overall legislative scheme.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
46	Welsh Ministers	Regulations	This regulation-making power will enable the Welsh Ministers to specify the circumstances in which, a local authority's power to impose a charge for services does not apply. Use of a regulation-making power will allow a flexible approach to be adopted and to enable the Welsh Ministers to respond with speed to changing circumstances. Similar powers are currently contained within the Social Care Charges (Wales) Measure 2010 in relation to non-residential charges for adults.	Negative	Regulations made under this power will enable a flexible response to changes in evidence based needs which may change from time to time. The subject matter of these regulations is relatively minor detail in the overall legislative scheme.
48	Welsh Ministers	Regulations	This section permits the making of regulations by the Welsh Ministers to make provision for, and in connection with, carrying out financial assessments for the purposes of the provisions within this Act.	Negative	The subject matter of these regulations is relatively minor detail in the overall legislative scheme.
49	Welsh Ministers	Regulations	Regulations made by the Welsh Ministers under this provision will enable them to set out the circumstances in which the duty under section 46 will not apply. Such a power is required to ensure that a timely and flexible response is possible should changes be required, following implementation of the Bill, given the introduction of the people model within Part 4 of the Bill.	Negative	The subject matter of these regulations is relatively minor detail in the overall legislative scheme.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
50	Welsh Ministers	Regulations	This regulation-making power will enable the Welsh Ministers to make provision about determinations as to the ability of a person to pay charges for care and support services, or support services in the case of a carer. Given the different classes of person covered by these provisions and the myriad of different circumstances that must be covered, it would not be appropriate to set out all the detail in the Bill.	Negative	The subject matter of these regulations is relatively minor detail in the overall legislative scheme.
51	Welsh Ministers	Regulations	This regulation-making power will enable the Welsh Ministers to prescribe the circumstances in which the duty to give effect to a determination under section 50 in imposing a charge under section 43 does not apply; and the date from which such a determination should take effect. Such a power is required to ensure that a timely and flexible response is possible should changes be required following implementation of the Bill given the introduction of the people model within Part 4 of the Bill. Similar powers are currently contained within the Social Care Charges (Wales) Measure 2010 in relation to non-residential charges for adults.	Negative	The subject matter of these regulations is relatively minor detail in the overall legislative scheme.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
52	Welsh Ministers	Regulations	This regulation-making power will enable the Welsh Ministers to prescribe further details for, and in connection with, the review of charging decisions that are made under sections 43 and 50. Similar powers are currently contained within the Social Care Charges (Wales) Measure 2010 in relation to non-residential charges for adults.	Negative	The subject matter of these regulations is relatively minor detail in the overall legislative scheme.
53	Welsh Ministers	Regulations	This regulation-making power will enable the Welsh Ministers to specify the cases in which, the circumstances or conditions in relation to a deferred payment agreement between a local authority and a person.	Negative	The subject matter of these regulations is relatively minor detail in the overall legislative scheme.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
54	Welsh Ministers	Regulations	This regulation-making power will enable the Welsh Ministers to permit the making of charges for preventative services that are provided under section 6; and for information, advice or assistance provided under section 8. However, a charge cannot be imposed by these regulations in cases where a charge has already been imposed under section 43. Regulations are the appropriate way to deal with such provision and will enable the Welsh Ministers to respond in a flexible and timely manner to circumstances arising as a result of the adoption of the people model in Part 4 of the Bill.	Negative	The subject matter of these regulations is relatively minor detail in the overall legislative scheme.
55	Welsh Ministers	Regulations	The regulation-making power will enable Welsh Ministers to specify further details in relation to the recovery of charges and interest owed by a person to a local authority.	Negative	The subject matter of these regulations is relatively minor detail in the overall legislative scheme.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
56(10)	Welsh Ministers	Regulations	This power will enable the Welsh Ministers to specify the rate of interest chargeable by a local authority in relation to a charge over a person's interest in land under subsection (9) of this section. Regulations are the appropriate way to deal with such provision and will enable the Welsh Ministers to respond in a flexible and timely manner to circumstances arising as a result of the adoption of the people model in Part 4 of the Bill.	Negative	These regulations will prescribe technical matters of detail which may change from time to time.
57(7)	Welsh Ministers	Regulations	This power will enable the Welsh Ministers to specify the circumstances in which the liability of a transferee to pay a local authority under subsection (2) does not apply. Regulations are the appropriate way to deal with such provision and will enable the Welsh Ministers to respond in a flexible and timely manner to circumstances arising as a result of the adoption of the people model in Part 4 of the Bill.	Negative	The subject matter of these regulations is relatively minor detail in the overall legislative scheme.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
62(5)	Welsh Ministers	Direction	This power enables a the Welsh Ministers to issue a direction, where they think it is necessary for protecting members of the public from serious injury, to give directions to a local authority with respect to the exercise of the local authority's powers in the case of a child it is looking after.	No procedure	These powers of direction will apply in specified circumstances and where urgent action may be necessary. There is no procedure for the issue of such direction specified in the Bill This accords with the current provision within the Children Act 1989.
67(4)	Welsh Ministers	Regulations	This regulation-making power enables the Welsh Ministers to prescribe how the duty to prepare and maintain care and support plans for children looked after by a local authority under subsections (1) and (2) should be undertaken, and what they should include. Section 68 provides further examples of what may be included in the plans and how they may be undertaken through regulations under the power at section 67.	Negative	The subject matter of these regulations is relatively minor detail in the overall legislative scheme. Negative procedure replicates the procedure currently set out within the Children Act 1989.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
71	Welsh Ministers	Regulations	This regulation-making power enables the Welsh Ministers to make further provisions about children looked after by local authorities. Sections 72 to 78 provide additional details of the types of regulations that may be made under section 71.	Negative	These regulations will prescribe technical matters of detail which may change from time to time. They need to make detailed provision to cover a range of children and young persons with varying circumstances. Negative procedure replicates the procedure currently set out within the Children Act 1989.
81(4)	Welsh Ministers	Regulations	This power will enable the Welsh Ministers to prescribe in regulations the detail about how the local authority's duty to ensure visits to, and contact with, looked after children should be discharged, as set out in subsection (3)(a).	Negative	The subject matter of these regulations is relatively minor detail in the overall legislative scheme. Negative procedure replicates the procedure currently set out within the Children Act 1989.
82(9)	Welsh Ministers	Regulations	This power will enable the Welsh Ministers to prescribe in regulations the circumstances in which a person is to be regarded as independent of the appointing authority for the purposes of independent visitors for children looked after by a local authority under this section.	Negative	The subject matter of these regulations is relatively minor detail in the overall legislative scheme. Negative procedure replicates the procedure currently set out within the Children Act 1989.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
85	Lord Chancellor, with the consent of the Welsh Ministers	Regulations	Suitable for regulations because this provision enables the Lord Chancellor to specify further functions of the Welsh family proceedings officers in relation to children whose cases have been referred under section 84.	Negative	The subject matter of these regulations is relatively minor detail in the overall legislative scheme. The negative procedure is currently applied in relation to the analogous provision made within the Children Act 1989.
86	Welsh Ministers	Regulations	This regulation-making power allows the Welsh Ministers to require the case of each child that is looked after by a local authority to be reviewed; and enables different provision to be made, where appropriate, for the different categories of children and young persons to whom this provision will apply.	Negative	The subject matter of these regulations is relatively minor detail in the overall legislative scheme. Negative procedure replicates the procedure currently set out within the Children Act 1989.
88(7)	Welsh Ministers	Regulations	Welsh Ministers will be able to use this regulation-making to make provision to add additional categories of young persons to whom a local authority will owe a duty; they will detail how the responsible authority would be determined for that category; as well as specifying those who are, or are not, to be treated as falling into a category of young person as per subsection (1) of this section.	Negative	The subject matter of these regulations is relatively minor detail in the overall legislative scheme. Negative procedure, replicates the procedure currently set out within the Children Act 1989.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
90(3)	Welsh Ministers	Regulations	This regulation-making power will enable the Welsh Ministers to prescribe additional functions for personal advisers for young people, in addition to those already specified.	Negative	The subject matter of these regulations is relatively minor detail in the overall legislative scheme. Negative procedure replicates the procedure currently set out within the Children Act 1989.
91(4)(c), (5) and (6)	Welsh Ministers	Regulations	This regulation-making power will enable Welsh Ministers to prescribe the detail of how a pathway assessment and/or plan are to be undertaken and to make detailed and different provision to take account of the different classes of young person for whom such an assessment or plan will be required.	Negative	The subject matter of these regulations is relatively minor detail in the overall legislative scheme. Negative procedure replicates the procedure currently set out within the Children Act 1989.
92(3)	Welsh Ministers	Regulations	This regulation-making power will enable Welsh Ministers to prescribe the definition of 'suitable accommodation' and the suitability of landlords or other providers or accommodation in relation to safeguarding and promoting the well-being of category 2 young people. It will allow a timely and flexible approach to be adopted where it is demonstrated that there is an evidence based need to do so.	Negative	The subject matter of these regulations is relatively minor detail in the overall legislative scheme. Negative procedure replicates the procedure currently set out within the Children Act 1989.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
93(4) and (6)	Welsh Ministers	Regulations	This regulation-making power will enable the Welsh Ministers to prescribe the details of the support to be given to a category 3 young person who pursues higher education. It also allows for the meaning of certain terms under this section to be specified in regulations. The use of regulations will permit a flexible and timely response by Welsh Ministers where there is an evidence-based need for change demonstrated.	Negative	The subject matter of these regulations is relatively minor detail in the overall legislative scheme. Negative procedure replicates the procedure currently set out within the Children Act 1989.
95(3) and (6)	Welsh Ministers	Regulations	This regulation-making power will enable the Welsh Ministers to apply the charging provisions (contained in section 43-57) to support provided for category 2-5 young people (sections 92-94) and to disapply charging for those individuals in receipt of certain benefits.	Negative	The subject matter of these regulations is relatively minor detail in the overall legislative scheme. Negative procedure replicates the procedure currently set out within the Children Act 1989.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
97(2)	Welsh Ministers	Regulations	This regulation-making power enables the Welsh Ministers to prescribe, for the purposes of section 97, the maximum periods that a child may be kept in secure accommodation.	Affirmative	Given the Welsh Minister's adherence to the UNCRC obligations in respect of the Rights of the Child it is considered that notwithstanding that the analogous provision within the Children Act 1989 specifies the negative procedure that these regulations should be subject to the affirmative procedure.
97(7)	Welsh Ministers	Regulations	This regulation-making power will enable the Welsh Ministers to prescribe a description of a child that may or may not be placed in secure accommodation under section 97; and to assist in the determination of such circumstances.	Affirmative	Given the Welsh Minister's adherence to the UNCRC obligations in respect of the Rights of the Child it is considered that notwithstanding that the analogous provision within the Children Act 1989 specifies the negative procedure that these regulations should be subject to the affirmative procedure.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
100(4)	Welsh Ministers	Regulations	This regulation-making power enables the Welsh Ministers to prescribe the arrangements and additional functions of a local authority representative who is visiting a child accommodated by a health authority, education authority, in a care home or independent hospital, for the purposes of the duty under subsection (2).	Negative	The subject matter of these regulations is relatively minor detail in the overall legislative scheme.
105(9)	Welsh Ministers	Regulations	The provisions relating to applications for adult support and protection orders are set out on the face of the Bill. This provision enables Welsh Ministers to place restrictions on the persons who may be an 'authorised officer' for the purposes of applying to a justice of the peace for an adult protection and support order. This is suitable for regulations as these restrictions (such as qualifications or experience) may need to be adjusted according to evidence.	Negative	The subject matter of these regulations is relatively minor detail in the overall legislative scheme.
110	Welsh Ministers	Regulations	Suitable for regulations because this provision enables Welsh Ministers to prescribe further details about the membership, constitution and administration of the National Independent Safeguarding Board.	Negative	The subject matter of these regulations is relatively minor detail in the overall legislative scheme.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
111	Welsh Ministers	Regulations	<p>Suitable for regulations because this provision enables Welsh Ministers to prescribe, in relation to Safeguarding Children and Safeguarding Adults Boards: Safeguarding Board areas; the lead partners for Safeguarding Boards and prescribe any other person or body not listed in the section to be a Safeguarding Board partner. Safeguarding Board areas may change from time to time in line with the public sector footprint.</p> <p>Regulations provide flexibility to change who are lead partners and who could be other Safeguarding Board partners in light of other legislative changes or to take account of new bodies or persons who have an interest in safeguarding and who would be appropriate as partners.</p>	Negative	The subject matter of these regulations is relatively minor detail in the overall legislative scheme.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
112(4)	Welsh Ministers	Regulations	Suitable for regulations because this provision enables Welsh Ministers to prescribe further functions of a Safeguarding Board if this would assist the objectives of the Safeguarding Board. The regulations can prescribe procedures to be followed by Safeguarding Boards and can specify when and how relevant children or adults must be given the opportunity to participate in the Safeguarding Board's work. These regulations will provide sufficient flexibility for Welsh Ministers to respond quickly where it is apparent that safeguarding of adults and children will be improved by the extension of the Safeguarding Board's functions.	Negative	The subject matter of these regulations is relatively minor detail in the overall legislative scheme.
113(3)	Welsh Ministers	Regulations	Suitable for regulations because this provision enables Welsh Ministers to prescribe further details about the making of annual plans and reports by Safeguarding Boards, in addition to those already specified elsewhere in this section. Key dates for making a plan and publishing a report are set out on the face of the Bill and regulations are suitable for more technical details such as the form and content of plans and reports.	Negative	The subject matter of these regulations is relatively minor detail in the overall legislative scheme.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
115(3)	Welsh Ministers	Regulations	Suitable for regulations because this provision enables Welsh Ministers to prescribe that payments be made by a Safeguarding Board partner towards the cost of the operation of the Board on which it is represented; and to provide for how the amount of these payments will be determined. These regulations will provide flexibility to respond swiftly to future evidenced based needs to fund the boards in different ways.	Negative	The subject matter of these regulations is relatively minor detail in the overall legislative scheme.
116(2)	Welsh Ministers	Regulations	Suitable for regulations because this provision enables Welsh Ministers to prescribe the functions of a Safeguarding Board partner in relation to the operation of the Safeguarding Boards on which they are represented. These regulations will provide sufficient flexibility for Welsh Ministers to respond quickly where it is apparent that safeguarding of adults and children will be improved by the extension of the functions of the Safeguarding Board partners (that relate to the Safeguarding Board).	Negative	The subject matter of these regulations is relatively minor detail in the overall legislative scheme.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
117	Welsh Ministers	Order	Suitable for an order as this provision enables Welsh Ministers to provide that in each Safeguarding Board area, the children and adult Safeguarding Boards are to combine to form a single Board per area. It will provide flexibility to combine Boards where evidence suggests that it is appropriate and suitable to do so.	Affirmative	An order under this section could substantially affect the provisions of this part of the Act. The exercise of this power involves considerations of special importance. An order under this provision will result in structural changes to Safeguarding Boards, combining functions of Safeguarding Adults and Safeguarding Children Boards.
119	Welsh Ministers	Order	This order-making power enables Welsh Ministers to add, amend and remove entries in the table of social services functions under Schedule 2 of this Act.	Affirmative	An order under this section could substantially affect the provisions of Schedule 2 of this Act. An Order under this section will determine which functions of a local authority are social services functions. The exercise of this power will therefore involve considerations of special importance.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
120(3)	Welsh Ministers	Regulations	<p>This regulation-making power will enable the Welsh Ministers to specify the competencies that should be met by any local authority Director of Social Services, for the purposes of subsection (2). These may be prescribed in regulations under this power.</p> <p>Alternatively the Welsh Ministers may choose to achieve the same outcome through a code under section 121.</p>	<p>Negative</p> <p>Statutory procedure set out in section 122 of the Bill</p>	<p>The subject matter of these regulations is relatively minor detail in the overall legislative scheme.</p> <p>It is considered appropriate that provisions included in the code should be laid before the National Assembly for Wales. The procedure is set out on the face of the Bill.</p>

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
121(1) 122(7)	Welsh Ministers	Code	These provisions enable the Welsh Ministers to issue, revise or revoke codes to make provision about the exercise of social services functions. Setting out the requirements in a Code rather than on the face of the Bill or in regulations will enable the use of language more readily understood by the interested parties. Provisions will be based on best practice and will be developed over a period of time. A statutory code will enable developments in best practice to be more easily incorporated.	Statutory procedure set out in section 122 of the Bill	It is considered appropriate that provisions included in the code in accordance with which affected bodies must act, should be laid before the National Assembly for Wales. The procedure is set out on the face of the Bill.
		Directions	Section 122(7) specifically provides for revocation of a Code either through making of a new code (see above) or alternatively through directions.	No statutory procedure	These direction powers will apply in specific circumstances and will relate only to the revocation by Welsh Ministers of a code or codes,
125	Welsh Ministers	Direction	This section allows the Welsh Ministers to issue directions requiring compliance by an individual local authority with codes of practice, as and when appropriate.	No statutory procedure	These direction powers will apply to individual authorities and be made in specific circumstances which will require Welsh Ministers to respond quickly where required to do so.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
129	Welsh Ministers	Direction	This power of intervention will allow Welsh Ministers to issue directions, in cases where they have the power to intervene, requiring an individual local authority to obtain advisory services.	No statutory procedure	These direction powers will apply to individual authorities and be made in specific circumstances which may change from time to time. There no statutory procedure for such action to permit the Welsh Ministers to react with urgency where required to intervene in a failing local authority.
130	Welsh Ministers	Direction	Power for the Welsh Ministers to issue directions, in cases where they have the power to intervene, requiring a performance of functions by other persons on behalf of a local authority.	No statutory procedure	These direction powers will apply to individual authorities and be made in specific circumstances which may change from time to time.  There is no statutory procedure for such action to permit the Welsh Ministers to react with urgency where required to intervene in a failing local authority.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
131	Welsh Ministers	Direction	Power for the Welsh Ministers to issue directions, in cases where they have the power to intervene, requiring performance of functions by Welsh Ministers or nominee on behalf of a local authority.	No statutory procedure	<p>These direction powers will apply to individual authorities and be made in specific circumstances which may change from time to time.</p> <p>There is no statutory procedure for such action to permit the Welsh Ministers to react with urgency where required to intervene in a failing local authority.</p>
132	Welsh Ministers	Direction	This provision enables the Welsh Ministers to issue directions, in cases where they have the power to intervene, requiring performance of functions by Welsh Ministers or nominee on behalf of a local authority.	No statutory procedure	<p>These direction powers will apply to individual authorities and be made in specific circumstances which may change from time to time.</p> <p>There no statutory procedure for such action to permit the Welsh Ministers to react with urgency where required to intervene in a failing local authority.</p>

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
133	Welsh Ministers	Direction	This section enables the Welsh Ministers to issue general directions, in cases where they have the power to intervene, to a local authority or any of its officers.	No statutory procedure	<p>These direction powers will apply to individual authorities and be made in specific circumstances which may change from time to time.</p> <p>There no statutory procedure for such action to permit the Welsh Ministers to react with urgency where required to intervene in a failing local authority.</p>
138	Welsh Ministers	Code	This provision enables Welsh Ministers to issue a code to help achieve the outcomes specified in the statement. As the content of the code will depend on the outcomes in the statement, it would not be possible to make provision on the face of the Bill. It is therefore suitable for guidance and requirements to be set out in a code.	Statutory procedure will follow that for other Codes as set out in section 122 of the Bill.	It is considered appropriate that provisions included in the code in accordance with which affected bodies must act, should be laid before the National Assembly for Wales. The procedure is set out on the face of the Bill.
143(3)(h)	Welsh Ministers	Regulations	The “relevant partners” on whom duties are imposed by this section are set out on the face of the Bill. This provision is suitable for regulations because it enables Welsh Ministers to prescribe additional ‘relevant partners’ who must co-operate with the local authority in the making of arrangements under this section.	Affirmative	The imposition of duties to co-operate on other persons has significant policy implications and is appropriate for affirmative procedure.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
144(4)(b)	Welsh Ministers	Regulations	The “relevant partners” on whom duties are imposed by this section are set out on the face of section 25 of the Children Act 2004 This provision is suitable for regulations because this it enables Welsh Ministers to prescribe additional local authority ‘relevant partners’ who must co-operate with the local authority in the making of arrangements under section 25.	Affirmative	The imposition of duties to co-operate on other persons has significant policy implications and is appropriate for affirmative procedure.
147	Welsh Ministers	Regulations	This provision enables Welsh Ministers to specify specific partnership arrangements between local authorities and between local authorities & local health boards. This is suitable for regulations as it provides flexibility to introduce new models of partnership arrangements in response to future evidence.	Affirmative	These regulations will require local authorities and LHBs to enter into specified partnership arrangements. This will involve considerations of special importance as the principal substance of the legislative scheme will be set out in the regulations.
148(3)	Welsh Ministers	Regulations	This provision enables Welsh Ministers to prescribe further detail about the funding of partnership arrangements The making of these regulations is dependent on regulations being made requiring specified partnership arrangements. It is therefore suitable for this provision to be made in regulations as it would not be possible to make provision on the face of the Bill.	Affirmative	These regulations could determine the contributions that local authorities and LHBs are required to make to the funding of partnership arrangements. This has significant policy implications and is therefore appropriate for affirmative procedure.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
149	Welsh Ministers	Regulations	This provision enables Welsh Ministers to prescribe the circumstances in which a Partnership Board should be established and operated, where partnership arrangements have been put in place. The making of these regulations is dependent on regulations being made requiring specified partnership arrangements. It is therefore suitable for this provision to be made in regulations as it would not be possible to make provision on the face of the Bill.	Affirmative	These regulations can require a partnership board to be established and can make provision for the operation of the board. This could have significant policy implications and is therefore appropriate for affirmative procedure.
151	Welsh Ministers	Direction	This power can be exercised flexibly to allow Welsh Ministers to configure the joint arrangements to best respond to the circumstances from time to time. Policy on how to get best advantage from joint arrangements is likely to need to adapt.	Requirement to consult with local authorities affected	The persons most affected by the making of directions will be local authorities. A requirement that they be consulted is appropriate.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
152	Welsh Ministers	Regulations	Suitable for regulations because this provision enables Welsh Ministers to prescribe the circumstances in which a complaint about social services functions may be raised; and who those complaints should be considered by and/or referred to. Section 153 provides further examples of the provisions that may be made in regulations under this section (152). This is suitable for regulations in order that Welsh Ministers can respond quickly and effectively to any evidence supporting a change in how complaints should be handled.	Negative	These powers re-state powers in section 114 and 115 of the Health and Social Care (Community Health and Standards) Act 2003 which are subject to Negative Resolution. The subject matter of these regulations is relatively minor detail in the overall legislative scheme.
153	Welsh Ministers	Regulations	Suitable for regulations because this provision enables Welsh Ministers to prescribe the circumstances in which assistance (by way of representation or otherwise) may be provided to people who make (or intend to make) a complaint under section 152; This is suitable for regulations as it will allow Welsh Ministers to respond swiftly and flexibly in circumstances where future evidence of need for assistance in the making of complaints is identified for certain groups.	Negative	The subject matter of these regulations is relatively minor detail in the overall legislative scheme.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
155(7) and (8)	Welsh Ministers	Regulations	Suitable for regulations because this provision enables Welsh Ministers to add to the requirements for the local authority procedure to be established under section 155. It is suitable for regulations as it will deal with matters of procedural detail.	Negative	This is a re-statement of a provision in part III of the Children Act 1989 which is subject to Negative Resolution. These regulations will prescribe technical matters of detail.
156(2) and (3)	Welsh Ministers	Regulations	Suitable for regulations because this provision enables Welsh Ministers to specify further requirements around the monitoring of steps taken to comply with requirements and regarding time limits. This is suitable for regulations as this provides flexibility to change matters of procedural detail, which may require change from time to time.	Negative	This is a re-statement of 26(4) to (8) in part III of the Children Act 1989 which is subject to Negative Resolution. These regulations will prescribe technical matters of detail.
157(3)	Welsh Ministers	Regulations	Suitable for regulations because this provision enables Welsh Ministers to specify further requirements around the procedure that must be established and the time limits to which the procedure applies.	Negative	This is a re-statement of section 24D in Part III of the Children Act 1989 which is subject to Negative Resolution. These regulations will prescribe technical matters of detail which may change from time to time.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
158	Welsh Ministers	Regulations	Suitable for regulations because this provision enables Welsh Ministers to make provision for further consideration of representations (including complaints). This is suitable for regulations in order that Welsh Ministers can respond quickly and effectively to any evidence supporting a change in how complaints should be handled.	Negative	This is a re-statement of section 26ZB in Part III of the Children Act 1989 which is subject to Negative Resolution. These regulations will prescribe technical matters of detail.
159(4), (5) and (6)	Welsh Ministers	Regulations	Suitable for regulations because this provision enables Welsh Ministers to specify further details about local authority arrangements to provide assistance to specified children and young people in the making of complaints. This is suitable for regulations as it will allow Welsh Ministers to respond swiftly and flexibly to any evidence supporting a change in how assistance for complaints and representations should be handled.	Negative	This is a re-statement of section 26A in Part III of the Children Act 1989 which is subject to Negative Resolution. These regulations will prescribe technical matters of detail.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
163(3) and (4)(e)	Welsh Ministers	Regulations	This regulation-making power will enable the Welsh Ministers to make provision detailing whether a person has needs for care and support which can only be met by the provision of a particular type of accommodation and to specify in additional categories of accommodation periods of residence in which must be disregarded when determining a child's ordinary residence status.	Negative	These regulations will prescribe technical matters of detail which may change from time to time.
164(4)	Welsh Ministers	Regulations	This power to make regulations enables Welsh Ministers to provide further provision regarding determination of ordinary residence.	Negative	These regulations will prescribe technical matters of detail which may change from time to time.
167	Welsh Ministers	Regulations	This enables Welsh Ministers to make regulations which make consequential, transitional and other provision. It is not possible to set all these provisions out on the face of the Bill as it may be that provision can be made in the UK Care and Support Bill, depending on the timing of commencement of the two Bills.	Negative (unless adding to, replacing or omitting any enactment – affirmative)	Affirmative procedure is appropriate where regulations affect primary legislation Negative procedure is appropriate for other regulations which make technical provision only.
168(2)	Welsh Ministers	Order	Suitable for order because this provision enables Welsh Ministers to provide for commencement of the Bill.	No statutory procedure	These orders will be confined to commencement and are technical in nature.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
Schedule 1 (5)	Welsh Ministers	Regulations	Suitable for regulations because this provision enables Welsh Ministers to supplement the arrangements for requiring contributions towards the maintenance of looked after children, in relation to considerations and procedures.	Negative	These regulations will prescribe technical matters of detail which may change from time to time.
Schedule 3, Part 2A, 34A, (3)	Welsh Ministers	Order	Suitable by way of order because this provision enables Welsh Ministers to amend Schedule 3A of the Public Services Ombudsman (Wales) Act 2005 over time to reflect changes in circumstances, to take account of new bodies or changing functions of bodies.	Affirmative	The issue(s) to be addressed under this power potentially introduces an increased burden on the Public Service Ombudsman for Wales by extending the complaints within his or her remit or it may narrow the scope of the Ombudsman's powers by removing his or her ability to consider certain complaints. As such, affirmative procedure is considered appropriate. This follows the approach taken in section 28 of the Public Services Ombudsman (Wales) Act 2005.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
Schedule 3, Part 2B, 34U, (8)	Welsh Ministers	Order	Suitable by way of order because this provision enables Welsh Ministers to add to or remove from the list of ombudsmen over time to reflect changes in circumstances such as new offices being created or functions changing.	Affirmative	The issue(s) to be addressed under this power involves considerations of special importance. It potentially imposes co-operation requirements on the Ombudsman and other bodies. As such affirmative procedure is considered appropriate. This follows the approach currently taken in section 25 of the Public Services Ombudsman (Wales) Act 2005.

## **6. Regulatory Impact Assessment (RIA)**

125. A Regulatory Impact Assessment has been completed in accordance with Standing Order 26.6(vi) for the proposed Bill and follows in Part 2 of this Explanatory Memorandum.

## PART 2 – REGULATORY IMPACT ASSESSMENT

### 7. Options

126. The Bill is creating a new legal framework for social services in Wales. Together, the Parts of the Bill will deliver a new system for accessing care and support. In approaching this RIA, we have considered the Bill as a whole and have sought to examine the impact in terms of the main system changes that underpin the policy objectives of the Bill rather than the individual Parts.

127. Two options have been considered in relation to the main system changes that underpin the policy objectives of the Bill:

**a. Option 1: Do nothing – maintain the status quo**

**b. Option 2: Provide a single unified statute for people (children, adults, and their carers) that enables the transformation of social services to improve the well-being of people with care and support needs, and those who care for them.**

128. Each of the Options is examined in terms of how far they would achieve the Welsh Government's objectives. The costs and benefits of each option are set out in Chapter 8 of this Explanatory Memorandum.

#### **Option 1: Do nothing**

129. This Option would retain the existing law in Wales in relation to social care. At present there is no single unified social care statute to which local authorities and care users can refer to in order to see what services can or should be provided. The complexity of the current legal framework is well documented: evidence suggests that the current complexity impedes the delivery of social care services to the public, a distortion of practice priorities and the implementation of Government's policy intentions<sup>22 23</sup>.

130. The evidence provided in Chapter 3 of this Explanatory Memorandum on the current and projected future demands on the services against a backdrop of constrained public finances means that delivering services in line with current practice will become increasingly unaffordable.

**Option 2: Provide a single unified statute for people (children, adults, and their carers) that enables the transformation of social services to improve the well-being of people with care and support needs, and those who care for them.**

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<sup>22</sup> *Review of Adult Social Care Law in England and Wales (Law Commission, May 2011)*  
<http://lawcommission.justice.gov.uk/publications/1460.htm>

<sup>23</sup> *Munro Review of Child Protection (Department for Education, 2011)*  
<http://www.education.gov.uk/munroreview/>

131. Option 2 is the Welsh Government's preferred option. It will allow for the introduction of the Social Services and Well-being (Wales) Bill that will cover the following:

- a. Reform and integration of social care law in Wales, taking the Law Commission's recommendations into consideration;
- b. The provision of preventative and early intervention services;
- c. Prescribe for the provision of accessible, high quality information for individuals, carers and families;
- d. Create a more nationally consistent system for assessments and eligibility for both users and carers; and
- e. Ensure greater collaboration amongst local authorities and between local authorities and local health boards to ensure there is efficacy in the commissioning and delivery of care

## 8. Costs and Benefits

132. The Bill, and subsequent regulations, orders and Codes of Practice to be made under the Bill will provide the architecture to transform social services. Therefore the accurate predication of the costs and benefits to effect such a major change will be realised over time. The intention is to phase in the implementation of the Bill over three to five years starting in 2015/16. The detailed arrangements for the future system, in particular the operation of local authorities core process for assessments, care management, eligibility and the review system for care and support to people and support to carers, will be set out in regulations that will be subject to a more informed impact assessment of the costs and benefits. In anticipating the impact now therefore, it needs to be recognised that there is a measure of uncertainty about some of the costs and benefits provided in this RIA.

### Costs

#### (A) REFORM AND INTEGRATION OF SOCIAL CARE LAW IN WALES

##### **Option 1: Do nothing – maintain the status quo**

133. There are no additional costs assumed under this Option. The current costs of the existing system would however continue to be incurred, along with the unnecessary costs associated with the inefficient state of the current law in this area.

##### **Option 2: Reform and integration of social care law in Wales**

134. The additional costs of this Option are the costs associated with the reform and integration of social care law in Wales. These will include the costs of:

- a. training social work staff to adopt the new law;*
- b. the costs of disseminating information on the changes; and*
- c. the costs to the Welsh Government resulting from implementing the changes.*

*a. training social work staff to adopt the new law;*

135. Should the Bill be enacted, additional costs will be incurred by local authorities in Wales as their social services workforce will need to be re-trained in the requirements of the new law. This is a transitional (i.e., one-off) cost. There is limited information available on the number of staff that would require retraining at this point. Training costs would however depend on the extent that additional training requirements could be incorporated into existing training regimes within local authorities. In order to provide a guide to the potential cost implications, the assumptions used

in the Law Commission's Impact Assessment for adult social care reform have been adopted to provide an illustrative estimate<sup>24</sup>.

136. The Law Commission assumes an external training cost of £45 per social worker per day. In reality, some training will be undertaken in house by local authorities (potentially at a lower cost); however, given the lack of clarity about training arrangements, it is prudent to assume that all the required training in the new law is provided by an external trainer. The level of training required will also vary according to the responsibilities of the member of social work staff being trained. For example, a social worker might specifically require more in-depth training in the new law than a member of local authority staff who provides a supporting or administrative role in the provision of services.
137. The latest data on local authority social care reports that staff classed as '*Team Managers and social workers*' and '*Social work trainees/assistants*' total 4,200<sup>25</sup>. It would seem reasonable to assume that at least this number of staff would require some re-training in the new law. When local authority social care staff listed as '*Central management and support*' are also added to this figure, the total number of staff that may require re-training rises to approximately 9,000. Both numbers are assumed to provide a sensible conservative range upon which to base an appropriate assessment of the training cost implications of the proposed legislation.
138. The Law Commission assume a maximum training requirement of 6 days; spread over the first two years following changes to the law (split 4 days in year one and two days in the following year). The level of training will vary according to staff responsibilities, however, again it is sensible to adopt a conservative approach and assume that all staff require 6 days training at £45 per worker per day.
139. Using the aforementioned staff numbers to provide a range, the implementation of the Bill is estimated to impose a transitional **training cost of between £1.1 to £2.4 million upon local authorities. A midpoint of £1.8 million is assumed as a best estimate.** This cost will be incurred during the first two years following the introduction of the Bill. From then onwards, normal continuing training requirements would fulfil any ongoing need<sup>26</sup>.
140. In addition to the above transitional training cost, there will also be an opportunity cost in terms of the time that local authority social work staff have to spend away from their desks whilst receiving the training required by the Bill. This represents a real resource cost to local authorities. Again,

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<sup>24</sup> *Review of Adult Social Care Law in England and Wales (Law Commission, May 2011)*  
<http://lawcommission.justice.gov.uk/publications/1460.htm>

<sup>25</sup> *Local Authority Social Services Staff Numbers, 31 March 2012,*  
<http://wales.gov.uk/topics/statistics/headlines/health2012/1210241/?lang=en>

<sup>26</sup> *The Law Commission also suggest that a simpler legal structure will take less time to teach in future, which may lead to efficiencies in the training of social workers in the long run.*

a range of 4,200 to 9,000 staff is assumed to require 6 days training (at 7 hours training per day). The opportunity cost of time spent in training is valued using an hourly wage cost of £38<sup>27</sup> - which is the estimated hourly wage of a social worker. Using this figure is likely to provide an overestimate as not all those staff being trained will be qualified social workers (and therefore may be on lower wage rates). The opportunity cost of 6 days training (at 7 hours per day) at a wage cost of £38 per hour gives rise to a **one off opportunity cost of £6.7 to £14.4 million. A midpoint figure of £10.5 million is assumed as a best estimate.**

141. The Welsh Government already provides substantial grant funding to local authorities to support workforce development across the social care sector. The grant is a match funded grant with planned expenditure on the Social Care Workforce Development Programme (SCWDP) for 2012-13 totalling £12,015,714. The grant element, which provides 70% of the cost of the programme, is £8,411,000. The SCWDP grant is intended as a supplement to employers' own training resources. The funding is provided in acknowledgement of the considerable additional training requirements of the social care workforce and is already directed at up-skilling, obtaining new qualifications and building on existing qualifications.

142. Evidence from grant monitoring indicates that on average, Social Work services staff receive about 5 days grant supported training per year.

143. Beginning in 2014-15, this grant funding will be re-directed to ensure the relevant staff receive the training they need throughout the preparation for, and implementation of, the Act.

*b. the costs of disseminating information on the changes; and*

*c. the costs to the Welsh Government from implementing the changes.*

144. The above costs (b. and c.) are transitional costs that will be borne by the Welsh Government. It has not been possible to estimate these costs at the present time due to the need for a substantial implementation project and full implementation plan to be developed first. The development of this plan, which will be undertaken in parallel with the passage of the Bill, will afford the opportunity for operational implications, and hence costs, to be worked out in conjunction with key stakeholders. Any such costs will be incorporated into existing work streams concerned with the development of social services in Wales. As noted at 141 and 143 above, it is the Welsh Government's intention to re-direct existing grant funding to cover these costs.

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<sup>27</sup> *Personal Social Services Research Unit (PSSRU), Unit Costs of Health and Social Care, 2011*

(B) *THE PROVISION OF PREVENTATIVE AND EARLY INTERVENTION SERVICES*

**Option 1: Do nothing – maintain the status quo**

145. There are no additional costs under this option. The costs of the current system will however continue to be incurred. It is known that the current system intervenes at the point of crisis rather than in a preventative manner. Generally, this is not deemed to be sustainable in the longer term. There are currently some examples of good practice with regard to the provision of preventative services by local authorities in Wales, however implementation is patchy, and the current barriers to an improved focus on prevention are anticipated to remain in the absence of government intervention.

**Option 2: Impose a duty upon Local Authorities to provide (or arrange for) the provision of a range and level of preventative and early intervention services for its area**

146. This option will impose a duty upon local authorities to provide or arrange such services and facilities as they see fit to delay the onset of more complex needs for care and support, or to reduce the escalation of such needs within their local area. The establishment of such a duty is in line with the Law Commission's recommendations for this area of the law and reflects the current expectations as regards children's legislation. We do not expect that this duty will give rise to any costs for local authorities in Wales. The duty is intended to codify established practice and existing statutory guidance in primary legislation, rather than extend significantly the scope of local authorities' responsibilities in this area.

(C) *PRESCRIBE FOR THE PROVISION OF ACCESSIBLE, HIGH QUALITY INFORMATION FOR INDIVIDUALS, CARERS AND FAMILIES*

**Option 1: Do nothing – maintain the status quo**

147. Under this option costs will continue to increase for the provision of advice and information in light of growing demographic pressures; however it is assumed that under this option the current provision of information on eligibility and access will continue to be patchy, as evidenced recently by the *Care and Social Services Inspectorate for Wales*<sup>28</sup>.

**Option 2: Impose a duty upon local authorities to provide accessible, high quality information for individuals, carers and families**

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<sup>28</sup> *National Review of Access and Eligibility in Adults Social Care: Overview Report (CSSIW, 2010)*  
<http://wales.gov.uk/cssiwsbsite/newcssiw/publications/ourfindings/allwales/2010/4481596/?lang=en>

148. The Law Commission, supported by the *Commission on Funding of Care and Support*<sup>29</sup>, recommended that legislation should include a duty on local authorities to provide information and advice on services within their area to replace a duty contained in the section 1 *Chronically Sick and Disabled Persons Act 1970*<sup>30</sup>.

149. The duty will require that local authorities must secure the provision of a service that provides people with:

- a. information and advice relating to care and support; and
- b. assistance in accessing care and support.

150. As a minimum, the above advice will require the publication of information and advice on matters relating to:

- a. the system provided for by the Social Services and Well-being (Wales) Bill and how the system operates in the local authority's area;
- b. the types of care and support, and the providers available in the local authority's area;
- c. how to access the care and support that is available; and
- d. how to raise concerns about the well-being of a person who appears to have needs for care and support.

151. We do not expect that the modernising of a similar existing duty will, in itself, give rise to any costs. We do however know that the information currently provided by local authorities is of variable quality. There is also the possibility that improved information will lead to an increase in the demand for care, thus increasing costs. The scale of any such increase in demand is not known, and at this stage it is not possible to estimate the costs associated with this until more detailed proposals outlining the required actions are established. Accordingly, it will need to be monitored closely. Other aspects of the Bill such as the provisions relating to national eligibility criteria however provide levers to manage any increase in demand within future funding envelopes.

(D) *CREATE A MORE NATIONALLY CONSISTENT SYSTEM FOR ASSESSMENTS AND ELIGIBILITY FOR BOTH USERS AND CARERS*

**Option 1: Do nothing – maintain the status quo**

152. There are no additional costs under this Option. Despite the progress that has been made in this area recently, there remain striking variations in

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<sup>29</sup> *Fairer Care Funding. The Report of the Commission on Funding of Care and Support (2011)*

<http://www.dilnotcommission.dh.gov.uk/>

<sup>30</sup> <http://www.legislation.gov.uk/ukpga/1970/44/contents>

what service users can expect in different parts of the country as evidenced by the *Independent Commission on Social Services in Wales*<sup>31</sup> and the *Care and Social Services Inspectorate for Wales*<sup>32</sup>.

**Option 2: Create a more nationally consistent system for assessments, eligibility for both users and carers**

153. It is planned that changes to local authorities' core process for assessments and eligibility will be made through regulations following the enactment of the Bill. It is not possible to estimate the costs surrounding any such changes until more detailed regulations outlining the changes in eligibility bands and assessment processes have been established. It is envisaged that the new arrangements will need to be piloted with local authorities in order to gather further evidence on the potential impacts in the first instance. A number of options would be available for implementing potential changes in this area within future funding envelopes. The Welsh Government is committed to producing a full impact assessment of such Options prior to the introduction of any changes through specific regulations.

(E) *ENSURE GREATER COLLABORATION AMONGST LOCAL AUTHORITIES AND BETWEEN LOCAL AUTHORITIES AND LOCAL HEALTH BOARDS TO ENSURE THERE IS EFFICACY IN THE COMMISSIONING AND DELIVERY OF CARE*

**Option 1: Do nothing – maintain the status quo**

154. There are no additional costs under this Option. Demographic pressures will continue to exacerbate the current problems created by silo working. Without a more coordinated and coherent framework for integration, current shortcomings will be magnified as more people come into contact with a wide range of health and care services. This implies that, without change, more care users will experience problems navigating a complex system; more people will have unnecessarily poor health and social care outcomes; and the wider population will suffer from inefficiency in the use of public funds.

**Option 2: Introduce a Bill to secure effective collaboration and co-operation between public authorities with a view to improving the well-being of children, adults with needs for care and support and carers with needs for support**

155. We expect that a number of existing guidance (as well as the provisions set out in the Bill) will help to erode the organisational, cultural

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<sup>31</sup> *From Vision to Action: the Report of the Independent Commission on Social Services in Wales, (November 2010)* <http://www.icssw.org/vision/?lang=en>

<sup>32</sup> *Improving Care and Social Services in Wales: the Chief Inspector's Annual Report 2010-2011 (CSSIW, 2011)*  
<http://wales.gov.uk/cssiwsite/newcssiw/publications/annualreports/1011ar/?lang=en>

and financial barriers that exist to integrating care in Wales. At this stage, it is not possible to estimate the costs associated with greater collaborative working between public authorities in Wales until more detailed regulations outlining the required actions are established. The evidence from existing experience in this area is that there are potential transitional costs which can be addressed through initiatives such as the Invest to Save programme. The Welsh Government is committed to producing a full impact assessment of the changes proposed by any such regulations prior to their implementation as well as a full analysis of the Options available in this area.

## **Benefits**

### **(A) REFORM AND INTEGRATE SOCIAL CARE LAW IN WALES**

#### **Option 1: Do nothing – maintain the status quo**

156. There are no additional benefits realised under this Option but the costs of reforming the law would be avoided. However, there are currently inefficiencies created by the existing legislation given that it is complicated and piecemeal.

#### **Option 2: Reform and integrate social care law in Wales**

157. This is the preferred Option. There are a number of ongoing (i.e. recurring) benefits and savings associated with modernising; simplifying; and consolidating the law in relation to social care in Wales. These are expected to include:

- a. a reduction in administrative burdens on Social Workers (as they will spend less time interpreting legal issues);
- b. a reduction in the number of complaints to local authorities (and the associated costs of handling such complaints); and
- c. a reduction in the level of litigation local authorities will face.

158. The above are areas identified by the Law Commission's *Review of Adult Social Care Law*<sup>33</sup>. The potential magnitude of these benefits is discussed below.

#### *a. Reduction in the administrative burden on social workers*

159. Whilst acknowledging that it is a comparatively crude approach; the Law Commission assumed that social workers will save between 20 and 45 minutes a week on average from reforming adult social care law. As a proxy, therefore, this saving is also assumed to hold for the changes made as part of the Social Services and Well-being (Wales) Bill - which takes on the majority of the Law Commission's recommendations (but also covers

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<sup>33</sup> *Review of Adult Social Care Law in England and Wales* (Law Commission, May 2011)  
<http://lawcommission.justice.gov.uk/publications/1460.htm>

aspects of the law in relation to children). Approximately 20 to 45 minutes a week of a social workers time equates to roughly 0.68% to 1.54% of a social workers time per annum.

160. Welsh Government statistics report that approximately 4,200 full time equivalent (WTE) staff are employed in social work services in Wales<sup>34</sup>. We do not know how many are employed as social workers. In addition, we do not know how many are engaged in adult social care (to which the Law Commission's savings apply). In the absence of better information, we assume that all 4,200 WTE staff are social workers - this may well be an overestimate. We also assume that 3,300 of those staff work in adult social care<sup>35</sup>. The individual cost (including on costs) of employing a social worker is estimated at £52,363 per annum<sup>36</sup>. Applying the Law Commission's assumptions with regard to time savings would therefore suggest that a reduction in administrative burden for 3,300 WTE social workers in Wales from a simplified law could **release benefits of up to £1.2 to £2.7 million per annum. Our best estimate assumes a midpoint of approximately £2 million per annum.** There is, unavoidably, a degree of uncertainty with regard to the actual time savings achieved here, however, the aforementioned figures (and the use of the Law Commission's assumptions) are deemed to provide a reasonable estimate for illustrative purposes.

*b. Reduction in the number of complaints to local authorities*

161. It is reasonable to assume that a more modern legal structure will reduce the number of complaints and therefore subsequently the costs incurred by local authorities in investigating such complaints. It is not expected that a reduction in complaints will occur directly as a result of a significant difference in the decisions made about service provision under the new law, but rather, because there will be fewer mistakes in the first instance. This should, in turn, result in fewer complaints. Recipients of social care services in Wales can, in the first instance either complain to their local authority or, if they are not satisfied, to the Public Service Ombudsman for Wales. There is very limited information available with regard to the number and the costs associated with handling complaints about social services in Wales at present. Information about complaints is not routinely collected at a national level but from local information available we know that over 2,000 Stage 1 complaints about social services are dealt with by local authorities annually.

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<sup>34</sup> This figure includes social work team managers, social workers and social work trainees/assistants. Excludes social work staff based in hospital/clinic, residential or day care establishments. See Local Authority Social Services Staff Numbers, 31 March 2012, <http://wales.gov.uk/topics/statistics/headlines/health2012/1210241/?jsessionid=EE60F89B602AE29CE8A62267458FBFE4?lang=en>

<sup>35</sup> This figure is calculated using Welsh Mid-2010 population estimates which show that 79% of the Welsh population are adults - 79% of 4,200 is approximately 3,300 - this figure is therefore used as a guide in the absence of better information.

<sup>36</sup> This is the average cost of social workers in 2010/11 plus direct over head costs – PSSRU, Unit costs of Health and Social Care.

162. The Law Commission assume that a 10% reduction in the number of complaints received may be feasible as part of a more modern statute. The UK Government Department of Health agree with the Law Commission's view and estimate that savings to local authorities in England and the English Local Government Ombudsman achieved by a 10% reduction in complaints would yield a saving of approximately £1.4 million per annum<sup>37</sup>. Although perhaps an over-simplification, in the absence of better information, using the population of both England and Wales to produce a figure of a cost per claim per member of the population would suggest that, if such **savings via a reduction in claims** could be achieved in Wales, they would be **somewhere in the region of £80,000 per annum**.

*c. Reduction in the level of litigation local authorities will face*

163. The Law Commission believe that simplifying the law could lead to a reduction in the level of litigation that local authorities will face. It follows that fewer mistakes will be made as a result of misinterpretation when the complexity of the law is reduced. The Welsh Government supports this view. There is limited information on the potential impacts and benefits here. The Law Commission suggest that 15% of the time spent by local authority lawyers could be saved under the introduction of a simpler law. The Law Commission's best estimate for the number of lawyers in local authorities in England and Wales is 192 people. Applying a population ratio (of 5.8%) suggests that there are approximately 11 lawyers working in local authorities in Wales. This would seem low given that there are 22 local authorities. However, the figure is adopted to provide a conservative estimate. The median salary for a lawyer (plus on costs) is assumed at £46,400 per annum. Therefore, releasing 15% of 11 lawyers' time would yield a **potential benefit of approximately £80,000 per annum**. In addition to this, there would be further savings made with regard to the direct costs of litigation, including Counsel's fees, courts costs, and other disbursements.

**(B) THE PROVISION OF PREVENTATIVE AND EARLY INTERVENTION SERVICES**

**Option 1: Do nothing – maintain the status quo**

164. No additional benefits are anticipated under this Option. There are currently some examples of good practice with regard to preventative services, but implementation is patchy, and the current barriers to an improved focus on prevention are anticipated to remain in future in the absence of any Government intervention.

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<sup>37</sup> *Impact Assessment, Annex A, Reform of Adult Social Care Legislation, (Department of Health, 2012)* <http://www.dh.gov.uk/health/2012/07/careandsupportwhitepaper/>

**Option 2: Impose a duty upon Local Authorities to provide or arrange for the provision of a range and level of preventative and early intervention services for its area**

165. It is anticipated that this option will yield benefits in the longer term with some transitional costs initially. Savings cannot currently be quantified; however, emerging evidence is available from systematic review papers to suggest that preventative interventions can deliver improvements in health and care outcomes<sup>38,39,40</sup>. There is also evidence that the provision of information, advice and assistance to help people maintain their health and well-being can prevent or delay the need for more costly interventions<sup>41</sup>. However, given that the evidence on the impacts of preventative services is still emerging, and admittedly some gaps in research remain to be filled, local authorities will need to adopt a flexible approach, and refer to the latest evidence when making decisions as to which services and interventions will deliver the best results in their respective areas.

**(C) PRESCRIBE FOR THE PROVISION OF ACCESSIBLE, HIGH QUALITY INFORMATION FOR INDIVIDUALS, CARERS AND FAMILIES**

**Option 1: Do nothing – maintain the status quo**

166. There are no additional benefits anticipated under this Option. There may be some increase in the provision of advice and information in light of growing demographic pressures; however it is assumed that the current provision of information on eligibility and access will continue to be patchy (as recently evidenced by the *Care and Social Services Inspectorate for Wales*<sup>42</sup> in annual reports over recent years).

**Option 2: Impose a duty upon local authorities to provide accessible, high quality information for individuals, carers and families**

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<sup>38</sup> Gillespie, L., Robertson, M., Gillespie, W., Lamb, S., Gates, S., Cumming, R. and Rowe, B., *Interventions for Preventing Falls in Older People Living in the Community*, Cochrane Review, 2010

<sup>39</sup> Turner, S., Arthur, G., Lyons, R., Weightman, A., Mann, M., Jones, S., John, A. and Lannon, S., *Modification of the Home Environment for the Reduction of Injuries*, Cochrane Review, 2011.

<sup>40</sup> McClure, R., Turner, C., Peel, N., Spinks, A., Eakin, E. and Hughes, K., *Population-based Interventions for the Prevention of Fall-related Injuries in Older People*, Cochrane Review, 2008.

<sup>41</sup> *National Evaluation of Partnerships for Older People Projects: Final Report (PSSRU, 2010) Social Services*  
[http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_111240](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_111240)

<sup>42</sup> *National Review of Access and Eligibility in Adults Social Care: Overview Report (CSSIW, 2010)*  
<http://wales.gov.uk/cssiwsbsite/newcssiw/publications/ourfindings/allwales/2010/4481596/?lang=en>

167. It is assumed that an improvement in information and advice to the public will yield additional ongoing benefits to recipients of social care services in Wales. It has not been possible to quantify these savings. However, there is evidence to suggest that there are benefits realised by improving the quality of information on services provided. For example, the literature suggests that:

- a. improving access to information can reduce anxiety<sup>43</sup>;
- b. information is a precondition of choice<sup>44</sup> (Windle et al found that 10% of respondents wanted someone to make decisions for them, whilst more than 50% wanted information and advice. This is particularly important for those that do not interact with their local authority, and may therefore forego care altogether); and
- c. Baxter et al suggest that providing information that is accessible to all can disproportionately improve choice for those in lower socio-economic groups<sup>45</sup>.

(D) **CREATE A MORE NATIONALLY CONSISTENT SYSTEM FOR ASSESSMENTS AND ELIGIBILITY FOR BOTH USERS AND CARERS**

**Option 1: Do nothing – maintain the status quo**

168. There are no additional benefits under this Option. Variations in what service users can expect in different parts of the country will remain, as evidenced by the *Independent Commission on Social Services in Wales*<sup>46</sup> and the *Care and Social Services Inspectorate for Wales*<sup>47</sup>. In addition, there is evidence to suggest that individuals fear losing their package of care services when moving to another geographical area<sup>48</sup>. This restricts their freedom of movement and can potentially add to the anxiety of those already considered to be vulnerable.

**Option 2: Create a more nationally consistent system for assessments, eligibility for both users and carers**

169. It is anticipated that this Option will yield benefits. While it is difficult to monetise the benefits of more sensitive and effective assessment

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<sup>43</sup> Windle, K., Netten, A., Caiels, J., Masrani, R., Welch, E. and Forder, J., *Measuring the Outcomes of Information and Advice Services: Final Report*, 2010.

<sup>44</sup> *Choice and Competition in Public Services: A Guide for Policy Makers*, (OFT, 2010)

<sup>45</sup> Baxter, K., Glendinning, C. and Clarke, S., *Making Informed Choices in Social Care: the Importance of Accessible Information, Health and Social Care in the Community*, 16 (2), 2008.

<sup>46</sup> *From Vision to Action, the Report of the Independent Commission on Social Services in Wales, November 2010*, <http://www.icssw.org/vision/?lang=en>

<sup>47</sup> *Improving Care and Social Services in Wales: Chief Inspector's Annual Report 2010-2011* (CSSIW, 2011)

<http://wales.gov.uk/cssiwsite/newcssiw/publications/annualreports/1011ar/?lang=en>

<sup>48</sup> *Cutting the Cake Fairly: Review of Eligibility for Social Care* (Commission for Social Care Inspection, 2008)

accurately, the revisions to the system that will be delivered via future regulations could potentially lead to better outcomes for individuals and a greater clarity for professionals in local authorities that conduct assessments. An assessment of the impacts of all the Options available to the Welsh Government in this area will be undertaken prior to the introduction of any regulations.

170. This Option also aims to increase the portability of care and support plans, which will also form part of any future regulations drawn up in this area. Under the current system, there is a risk that an individual or family may lose vital care and support for a period of time should they move between local authority areas; until such point in time that they are re-assessed by the receiving local authority. It follows that increasing portability of assessments would therefore bring about significant welfare gains by enabling individuals to move closer to families and friends or into more suitable accommodation, which would have benefits in terms of improved outcomes and potential reductions in costs to the state. It would also help both users and carers to move in order to take up or remain in employment, which would bring benefits to the wider economy from increased productivity and potentially a reduction in welfare benefits claimed.

*(E) ENSURE GREATER COLLABORATION AMONGST LOCAL AUTHORITIES AND BETWEEN LOCAL AUTHORITIES AND LOCAL HEALTH BOARDS TO ENSURE THERE IS EFFICACY IN THE COMMISSIONING AND DELIVERY OF CARE*

**Option 1: Do nothing – maintain the status quo**

171. There are no additional benefits under this Option. It is possible that demographic pressures may create incentives to reduce silo working between public authorities. However, without a coordinated and coherent framework for integration, it is assumed that the current shortcomings of the system will persist.

**Option 2: Introduce a Bill to secure effective collaboration and co-operation between public authorities with a view to improving the well-being of children, adults with needs for care and support and carers with needs for support**

172. This Option is anticipated to deliver additional benefits, however, at present; it is not possible to identify the specific impacts of proposals with regard to collaboration. No particular model will be mandated but it is hoped that closer working between health and social care services will facilitate greater take-up of integrated cost-effective services in future. The evidence from existing experience in this area is that there are potential transitional costs which can be addressed through initiatives such as the Invest to Save programme.

## **Summary Tables**

173. The following tables provided a summary of the potential additional costs and benefits discussed within this RIA.

## Summary of Potential Additional Costs

Bill Area	Option	Type of Cost	ADDITIONAL COSTS		Costs fall to
			Transitional (one-off)	Recurring	
(a)	Option 1: Do nothing	N/A	0	0	N/A
	Option 2: Bill proposal	Training	£1,800,000	0	Local Authorities
		Staff Opportunity Cost	£10,500,000	0	Local Authorities
		Disseminating information	Not quantified	Not quantified	Welsh Government (WG)
		Introducing changes	Not quantified	Not quantified	Welsh Government (WG)
(b)	Option 1: Do nothing	N/A	0	0	N/A
	Option 2: Bill proposal	Provision of services	0	0	Local Authorities
(c)	Option 1: Do nothing	N/A	0	0	N/A
	Option 2: Bill proposal	Provision of information	0	0	Local Authorities
(d)	Option 1: Do nothing	N/A	0	0	N/A
	Option 2: Bill proposal	Assessment and eligibility	Assessed at Regulations	Assessed at Regulations	Local Authorities & WG
(e)	Option 1: Do nothing	N/A	0	0	N/A
	Option 2: Bill proposal	Greater collaboration	Assessed at Regulations	Assessed at Regulations	Local Authorities, WG and other Public Bodies

### Key:

- (a) Reform and integration of social care law in Wales, taking the Law Commission's recommendations into consideration;
- (b) The provision of preventative and early intervention services;
- (c) Prescribe for the provision of accessible, high quality information for individuals, carers and families;
- (d) Create a more nationally consistent system for assessments and eligibility for both users and carers;
- (e) Ensure greater collaboration between local authorities, and between local authorities and local health boards, to ensure effective commissioning and delivery of care.

## Summary of Additional Benefits

Bill Area	Option	Type of Benefit	ADDITIONAL BENEFITS		Benefits accrue to
			Transitional (one-off)	Recurring	
(a)	Option 1: Do nothing	N/A	0	0	N/A
	Option 2: Bill proposal	Reduced admin. burdens	0	£2,000,000	Local Authorities
		Reduction in complaints	0	£80,000	Local Authorities, Public Service Ombudsman and Service Users.
		Reduced litigation	0	£80,000	Local Authorities, Service Users and Courts.
(b)	Option 1: Do nothing	N/A	0	0	N/A
	Option 2: Bill proposal	Provision of services	Assessed at Regulations	Assessed at Regulations	Local Authorities, Service Users and Wider Public.
(c)	Option 1: Do nothing	N/A	0	0	N/A
	Option 2: Bill proposal	Provision of information	0	Not quantified	Local Authorities, Service Users and Wider Public.
(d)	Option 1: Do nothing	N/A	0	0	Local Authorities
	Option 2: Bill proposal	Assessment and eligibility	Assessed at Regulations	Assessed at Regulations	Local Authorities, Service Users and Wider Public.
(e)	Option 1: Do nothing	N/A	0	0	Local Authorities
	Option 2: Bill proposal	Greater collaboration	Assessed at Regulation	Assessed at Regulations	Local Authorities, WG, Service Users and Wider Public

174. The table below presents a comparison of the additional costs and benefits associated with Options 1 and 2. Both costs and benefits have been profiled over a period of 10 years (to produce a 10 year appraisal of impact) and discounted using a 3.5% discount rate to present the numbers in their present values<sup>49</sup>.

**Summary Table (Monetised Costs and Benefits)**

<b>Option</b>	<b>Present value of Potential Additional Costs (£m)</b>	<b>Present Value of Additional Benefits (£m)</b>	<b>Net Present Value (£m)</b>
1: Do Nothing	£ 0	£ 0	£ 0
2: Legislate	£ 12.2	£ 14.3	£ 2.1

175. To explain the above figures - training costs are expected to be incurred during the first two years following the implementation of the Bill (assuming that there is a four day training requirement in year 1 and a two day training requirement in year 2). This equates to a total training cost of £12.3 million over 2 years (this figure includes the cost of the training and the opportunity cost of staff time as discussed above, i.e. £1.8m + £10.5m = £12.3m). When this cost is discounted at a discount rate of 3.5%, its present value is approximately £12.2 million (as shown in the Summary Table above). No further training costs are anticipated from year 3 onwards in the 10 year appraisal. There will however be additional costs in future years when different Parts of the Bill are implemented, but these have not yet been quantified at this stage given that further clarity on the content of future regulations is required before more detailed costing work can be undertaken.

176. Benefits have been assumed to accrue from year 3 onwards in the 10 year appraisal given that it is from this point in time (following the training of staff in years 1 and 2) that the benefits of the Bill are expected to be realised. As discussed above, the benefits from time savings, reduced complaints and a reduction in litigation total approximately £2.2 million per annum (£2,000,000 + £80,000 + £80,000 = approx. £2.2 million). As noted previously, these benefits are expected to accrue on a recurring basis from year 3 onwards up to and including the 10th year of the appraisal period (which is 8 years in total). The total monetary value of these benefits is therefore approximately £17.6 million (£2.2m x 8 = £17.6m). When discounted, the present value of these benefits is approximately £14.3 million (as can be seen in the Summary Table above).

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<sup>49</sup> The concept of present values takes into account that a set sum of money is not as valuable to us at some point in the future as it would be today (see the HM Treasury Green Book for full details). Future costs and benefits therefore must be discounted in order to be comparable with today's costs and benefits. The Net Present Value of a policy is the Present Value of Benefits minus the Present Value Costs, and so demonstrates the overall current monetary value of a policy option.

177. Based upon a comparison of the present value of benefits and costs, the Net Present Value of introducing the Social Services & Well-being (Wales) Bill is approximately £2.1 million. This result suggests that the additional benefits of implementing the Bill will outweigh the additional costs of implementation. However, it should be noted that this is a simple comparison based upon what we currently know. A number of areas where the Bill is anticipated to impact will be investigated when specific regulations are drafted. The impact of such regulations will therefore invariably affect the overall NPV result presented in this RIA (e.g. costs may increase and not be adequately compensated by an equivalent increase in benefits). Further costing work therefore needs to be undertaken at such point in time when the detail of regulations that will follow under the Bill have become clearer.

## **9. Post Implementation Review**

178. A substantial implementation project will be required to ensure Directors of Social Services, other local authority managers and staff, NHS managers and staff, social work and social care staff, lawyers, the Police, the Third Sector and independent sector providers and others become acquainted with the new legal framework and its operational implications. A more detailed plan for implementation will be prepared in parallel with the progress of the Bill through National Assembly for Wales scrutiny processes and as regulations are being developed. It is intended that the Bill and subsequent regulations will be underpinned by Codes of Practice. At this stage it is too early to specify post implementation review arrangements as the detail of the proposals, and timescales for implementation, remain to be developed.

## PART 3 - EQUALITY IMPACT ASSESSMENT

### 10. The protected characteristics

179. The *Inclusive Policy Making* model developed by the Welsh Government requires that all policy and legislation is developed “that meet(s) the identified needs of individuals and communities, placing a citizen focus based on the principles of human rights; fairness, respect, equality and dignity at the centre of all our policy actions.” Since the development of this model, the *Equality Act 2010* has come in to force and the Welsh Government’s *Strategic Equality Plan*<sup>50</sup> published in April 2012 has further developed the requirement to “ensure that public services and employment are fair, accessible, responsive to people’s needs, and that communities are inclusive.” The Bill is intended to embed an approach to social services that has at its core all of these factors.

180. The Bill intends to advance equality of social services provision for each of the equality strands otherwise described as protected characteristics: age, disability, gender or gender reassignment, race, religion or belief and sexual orientation. The *Strategic Equality Plan* further adds mothers-to-be, being married or in a civil partnership.

181. There are four Objectives contained within the *Strategic Equality Plan* that directly relate to the Bill. Next to each is evidence of where the Bill is contributing to delivering on these Objectives:

Objective 1: Strengthen advice, information and advocacy services to help people with protected characteristics understand and exercise their rights and make informed choices.

The Bill places a duty on local authorities to provide information and advice to all people that appear to be in need of care and support services and that assistance is provided to people in accessing care and support. These are new duties. The Bill also extends to adults the right that children already have to advocacy in relation to complaints and representations about social services.

Objective 3: Reduce the numbers of young people not in education, employment or training (NEET).

The Bill will provide for children and young people in a range of ways, for example, through the provision of accommodation for children looked after by a local authority and for those children to have their needs and wishes properly taken in to account when making accommodation choices.

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<sup>50</sup> <http://wales.gov.uk/topics/equality/equalityactatwork/?lang=en>

Objective 5: Tackle barriers and support disabled people so that they can live independently and exercise choice and control in their daily lives.

One of the nine principles of *Sustainable Social Services: A Framework for Action* is to enable users and carers to have a strong voice and real control over the services they receive. The Bill provides for independent living, voice and control by, for example, placing a new duty in relation to assessment on local authorities to seek and identify the outcomes that people wish to achieve in their everyday lives.

Objective 6: Put the needs of service users at the heart of delivery in key public services, in particular health, housing and social services, so that they are responsive to the needs of people with protected characteristics.

One of the nine principles of *Sustainable Social Services: A Framework for Action* is to enable users and carers to have a strong voice and real control over the services they receive. The Bill places the needs of service users at the heart of social services by, for example, placing a duty on local authorities, working with LHB's to jointly assess needs for care and support services in their area and to ensure that the services available properly meet the identified needs. The Bill provides for integrated working across the statutory services in order to make accessing services simpler. A new duty is placed on local authorities to ensure that the well-being of people is a primary consideration when developing collaborative provision.

182. In general, some examples of where equality is being advanced within the Bill include:

Age - bringing together the mass of social care legislation that currently exists for adults, children and carers into one Bill, will greatly simplify eligibility and access for all people in need of care and support. Simplification of processes provisions for integrated working should also provide for a more dignified experience of social care. Importantly, the *Equality Act 2010* provides for a ban on age discrimination in social care and this ban came in to force on October 1 2012 and this Bill specifically changes the social care landscape by dispensing with the artificial barriers of age and instead providing for 'people'.

Disability – many disabled people receive social services and social care and their experience of the system will improve as a result of the streamlined ways in which services will be accessed and delivered that are provided for in the Bill. Again, simplification of processes and provisions for integrated working should also provide for a more dignified experience of social care. The Bill places a new duty on local authorities to provide or arrange the provision of services that will minimise the effect of disabilities on disabled people.

Gender - placing unpaid carers - that research shows are often older, married women - on the same legal footing as service users, is a bold step and for the first time in law recognises fully that this cohort of people have particular needs to be met. The Bill provides for new duties on local authorities to ensure that in carrying out an assessment for support, that due regard is paid to whether a carer works or wishes to and whether a carer wishes to participate in education, training or leisure activities.

Race – Regulations will provide for the detail of the assessment process. In order to ensure that the Bill meets its central aims of creating a more accessible and fair social care landscape, the regulations may state that there are considerations which the local authority may take into account when carrying out an assessment. Such considerations could include consideration of a person's race.

Religion – Regulations will provide for the detail of the assessment process. In order to ensure that the Bill meets its central aims of creating a more accessible and fair social care landscape, the regulations may state that there are considerations which the local authority may take into account when carrying out an assessment. Such considerations could include consideration of a person's religion.

Race and Religion - in relation to the duties placed on local authorities regarding looked after children, there is a specific duty to ensure that a child's race, religion, cultural and linguistic needs are properly taken into account when making any type of decision.

Sexual Orientation - Regulations will provide for the detail of the assessment process. In order to ensure that the Bill meets its central aims of creating a more accessible and fair social care landscape, the regulations may state that there are considerations which the local authority may take into account when carrying out an assessment. Such considerations could include consideration of a person's sexual orientation.

183. It is also worth noting that the consultation on the key principles of the Bill elicited a range of responses from organisations representing people with the protected characteristics. The following provides a breakdown of respondents:

43 responses were received from organisations representing older people and children & young people (the age characteristic);

36 responses were received from organisations representing disabled people;

One response was received from a women's organisation (the gender characteristic);

Two responses were received from organisations representing Black, Minority Ethnic people (the race characteristic); and

Two responses were received from Equalities organisations.

## 11. Human Rights

184. There are no elements of this Bill which contravene any part of the *Human Rights Act 1998*<sup>51</sup>. Articles 5 and 8, regarding the Right to Liberty and Security and the Right to Respect for Private and Family Life are the most relevant in relation to this Bill. In relation to Article 5, we are not proposing any power of removal or detention so we do not consider there to be any conflict with this Article. In relation to Article 8, to ensure that the application of the power of entry is justified and proportionate, and therefore compatible with the Article, we intend that social services are required to apply to a court for authorisation to exercise the power in the form of an Adult Protection and Support Order.

## 12. The Welsh Language

185. The Welsh Government's *Welsh Language Scheme*<sup>52</sup> requires that an assessment of the impacts of the Bill on the Welsh language be carried out. The assessment reveals that no negative impact on the language is likely and that as the Bill is designed to create a fairer and more equitable system for all people eligible for care and support, opportunities to increase the use of the Welsh language in service provision exist. The *Welsh Language (Wales) Measure 2011*<sup>53</sup> takes forward much of the content of the *Welsh Language Act 1993* and it is this legislation which provides the overarching legal framework for the Welsh language in public services: all people and organisations involved in the delivery of social services and social care must have regard to the right of people to communicate in Welsh and will be required to comply with any future Welsh Language Standards.

186. In preparing this Bill, the report of the Welsh Language in Health and Social Care Task Group *More than just words: the Strategic Framework for Welsh Language Services in Health, Social Services and Social Care*<sup>54</sup> has been considered and as a result of it, a Ministerial commitment has been given that the Welsh language will be included within the regulations and Guidance which underpin this Bill, for example, in relation to the new assessment and commissioning arrangements for social services and social care.

## 13. Sustainable Development

187. The central organising principle of the Welsh Government is sustainable development: "sustainable development means enhancing the

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<sup>51</sup> <http://www.legislation.gov.uk/ukpga/1998/42/contents>

<sup>52</sup> <http://wales.gov.uk/topics/welshlanguage/publications/wls11-16>

<sup>53</sup> <http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/business-legislation-measures-wl.htm>

<sup>54</sup> <http://wales.gov.uk/consultations/healthsocialcare/words/?lang=en>

economic, social and environmental well-being of people and communities, achieving a better quality of life for our own and future generations in ways which promote social justice and equality of opportunity". This Bill does much to promote this principle.

188. The title of this Bill is the Social Services and Well-being (Wales) Bill. The change came about as a result of what consultation respondents told us, that the key principles of the Bill were about much more than social services and social care. The principle of promoting well-being for people – children, adults and carers - is central to the Bill. This way ensures that focus is on individual need. The Bill sets out the shift in emphasis from services to individual need, and to take a rights based approach. Focussing on well-being plays much more strongly into the prevention and early intervention service model that the Bill aims to establish. It is fundamental to the commitment contained within *Sustainable Social Services for Wales: A Framework for Action* that is about giving people a strong voice and real control.

189. The definition<sup>55</sup> of 'well-being', in this context, builds on broad powers currently placed on local authorities and LHB's to promote the improvement of the economic, social and environmental well-being of their area; that extends to the population of Wales. The definition will ensure that our rights based approach and the important role that families have in individuals' well-being is rooted in the proposed arrangements for care and support.

190. 'Well-being' in relation to a person may relate to any of the below:

- a) physical and mental health and emotional well-being;
- b) protection from abuse and neglect;
- c) education, training and recreation;
- d) domestic, family and personal relationships;
- e) the contribution made to society;
- f) securing rights and entitlements; and
- g) social and economic well-being;

In relation to a child 'well-being' includes:

- (a) physical, intellectual, emotional, social and behavioural development
- (b) "welfare" as that word is interpreted for the purposes of the Children Act 1989

In relation to an adult, 'well-being' includes:

- (a) control over day-to-day life
- (b) participation in work

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<sup>55</sup> Section 25, Children Act 2004

## 14. The United Nations Convention on the Rights of the Child (UNCRC)

191. The *Rights of Children and Young People Measure 2011*<sup>56</sup> requires the Welsh Ministers to give due regard to the United Nations Convention on the Rights of the Child in the development of all legislation and policy. The Bill takes forward Wales' distinctive and internationally regarded rights based approach to children's social care. The assessment of the impacts that the Bill will have on children and young people confirms the rights based approach that is taken, reveals that many of the Articles are relevant and those listed below are being dealt with in the Bill:

Article 1 Everyone under 18 years of age has all the rights in this Convention.

Article 2 The Convention applies to everyone whatever their race, religion, abilities, whatever they think or say and whatever type of family they come from.

The rights conferred on children in the Bill apply to all children regardless of any of their characteristics.

Article 4 Governments should make these rights available to children.

All the sections creating rights for children within the Bill give effect to this obligation.

Article 5 Governments should respect the rights and responsibilities of families to direct and guide their children so that, as they grow, they learn to use their rights properly. Helping children to understand their rights does not mean pushing them to make choices with consequences that they are too young to handle.

Section 4(4) accords with this Article. "Well-being" is a key concept throughout the Bill. The definition of "well-being" in section 3 includes securing rights and entitlements to expressly acknowledge this aspect.

Article 6 All children have the right of life. Governments should ensure that children survive and develop healthily.

The Bill's creation of a comprehensive framework of general duties for local authorities and other public bodies towards children in their area combined with specific entitlements for individual children or their carers following assessment accords with and supports this right.

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<sup>56</sup> <http://www.legislation.gov.uk/mwa/2011/2/contents>

Article 12 Children have the right to say what they think should happen, when adults are making decisions that affect them, and to have their opinions taken into account.

The Bill (Part 10, Chapter 1) re-enacts the entitlements given to children to make representations about how a local authority discharges its functions under the Act and their right to assistance in making those representations.

Article 18 Both parents share responsibility for bringing up their children, and should always consider what is best for the child. Governments should help parents by providing services to support them, especially if both parents work.

The Bill is open about the type of care and support which may be needed by children and their carers to ensure that there is scope to recognise fully the varied roles which parents may provide in parenting their children.

Article 19 Governments should ensure that children are properly cared for, and protect them from violence, abuse and neglect by their parents or anyone else who looks after them.

The local authority's general duty under sections 6(2)(d), (e) and (f) give effect to this. The recognition of the broad range of circumstances which may trigger the entitlement to assessment and of the need for children's rights to services to bypass the eligibility criteria where they are at risk all give effect to this. All the provision in Part 6 creating safeguards for children who are looked after and the provision about Safeguarding Boards in Part 7 are relevant to the observance of this right.

Article 23 Children who have any kind of disability should have special care and support so that they can lead full and independent lives.

The needs of disabled children are recognised through the entitlement of carers or disabled children to assessment in their own right and through the availability of Direct Payments instead of services for carers of disabled children and for 16 and 17 year old children who are disabled.

Article 29 Education should develop each child's personality and talents to the full. It should encourage children to respect their parents, and their own and other cultures.

The education dimension of social care needs is recognised in a number of places – in the definition of well-being, in the specific duty for local authorities to promote the educational achievement of looked after children and in the provision

extending the rights of care leavers where they are pursuing educational opportunities.

Article 30 Minority or indigenous children have the right to learn about and practice their own culture, language and religion. The right to practice one's own culture, language and religion applies to everyone; the Convention here highlights this right in instances where the practices are not shared by the majority of people in the country.

Article 34 Governments should protect children from sexual abuse.

See Article 19.

Article 39 Children who have been neglected or abused should receive special help to restore their self respect.

The Bill sets out a comprehensive framework to assess needs and ensure that services are provided to those whose needs are greatest. The Bill provides scope for children who have suffered abuse and neglect to have their particular needs accorded given an appropriate level of priority.

Note: where there are references to parents, we consider that their definition can be extended to include the corporate parent, the local authority.

# **ANNEX 1 – EXPLANATORY NOTES**

## **Introduction**

1. These Explanatory Notes relate to the Social Services and Well-being (Wales) Bill introduced into the National Assembly for Wales on 28 January 2013.
2. They have been prepared by the Welsh Government’s Department for Health, Social Services and Children in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the National Assembly for Wales.
3. The Explanatory Notes should be read in conjunction with the Bill. They are not meant to be a comprehensive description of the Bill. Where an individual section of the Bill does not seem to require any explanation or comment, none is given.

## **PART 1 – INTRODUCTION**

### **Section 1 – Overview of this Act**

4. This provides an overview of the Bill.

### **Section 2 - Meaning of “well-being”**

5. “Well-being” is defined in relation to a list of outcomes for individuals. These are the key areas where social services can make a difference to people and their lives. Subsection (2) lists the outcomes which are relevant to all persons, children and adults; subsection (3) lists the outcomes which are particularly relevant to children; and subsection (4) lists the outcomes which are particularly relevant to adults.

### **Section 3 – Meaning of ‘adult’, ‘child’, ‘carer’ and ‘disabled’.**

6. Subsection (4) defines a carer as a person who provides or intends to provide care for an adult or disabled child (disability being defined in subsection (5) by reference to the Equality Act 2010). The general premise is that professional carers who receive payment should not be included within the scope of the definition (see subsection (7)). However, local authorities are afforded a wide discretion to treat a person as a carer if they consider that, in the context of the caring relationship, it would be appropriate for a person to be treated as a carer (see subsection (8)). This would, for example, enable a local authority to treat a person as a carer in cases where the caring relationship was not principally a commercial one.

## **PART 2 – GENERAL FUNCTIONS**

### **Section 4 – Overarching well-being duties**

7. This section imposes overarching duties on persons exercising functions under the Bill in relation to the well-being of people who need care and support and carers who need support.
8. These overarching duties will apply to all persons and bodies exercising functions under this Bill, including the Welsh Ministers, local authorities, Local Health Boards and other statutory agencies.
9. Subsection (1) provides for a general duty to promote the well-being of people (adults and children) who need care and support and carers who need support. Subsections (2) to (4) set out the principles which apply when a person is exercising functions under the Bill. Subsection (2) applies when a person is exercising a function in relation to an adult or a child and sets out the principle that they must have regard to the individual's views, wishes and feelings. Subsections (3) and (4) set out the principles which apply when a person is exercising functions in relation to an adult and child respectively.

### **Section 5 – Assessment of needs for care and support, support for carers and preventative services**

10. Subsection (1) requires local authorities and Local Health Boards (LHBs) to work together to assess the extent of needs for care and support (including the needs of carers) in the local authority's area and the extent to which needs for care and support are not being met. They must also assess the range of services needed to meet the care and support needs identified, and the range of services needed to prevent, delay or reduce needs for care and support or otherwise achieve the purposes described in section 6 (referred to as "preventative services").
11. This local needs assessment is in addition to any other assessment of the health and well-being needs of the local population which may be required by regulations under section 40 of the NHS (Wales) Act 2006. Subsection (3) amends section 40 of the NHS (Wales) Act to require that this local needs assessment is taken into account when preparing the joint health and well-being strategy or when this strategy is reviewed.
12. Subsection (4) amends section 26 of the Children Act 2004 to achieve the same effect as regards children and young people's plans.

### **Section 6 – Preventative services**

13. This places a general duty on local authorities to provide or arrange the provision of services (generally referred to as "preventative services") that will prevent, delay or reduce needs for care and support, promote the up-bringing of children within families, minimise the effect of

disabilities on disabled people, contribute to the prevention of abuse and neglect, reduce needs for court proceedings, encourage children not to engage in criminal behaviour and reduce the need for children to be placed in secure accommodation.

14. Local authorities also have to consider the importance of achieving these purposes when exercising any of their other functions. This means that it is the responsibility of the local authority as a whole, not just the social services department, to consider the kind of preventative services which could be provided.
15. In the same way, Local Health Boards also have to consider the importance of these purposes when exercising their functions. Although this does not confer any new functions on LHBs, this means that they have to consider whether there are things they can provide or arrange under their existing functions which would achieve these purposes.

### **Section 7 – Promoting social enterprises, co-operatives, user led services and the third sector**

16. This provides that local authorities must promote social enterprises, co-operatives, user-led services and the third sector in relation to their development and their involvement in the provision of care and support services.

### **Section 8 – Provision of information, advice and assistance**

17. This places a duty on local authorities to secure the provision of an information, advice and assistance service. The purpose of the service is to provide people with information and advice relating to care and support and provide assistance to them in accessing it. Information and advice is available to all people regardless of whether they have needs for care and support
18. The service must include information and advice about the care and support system provided for under this Bill, the type of care and support available in a local authority area and how to access it and how to raise concerns about people who appear to have needs for care and support or support.
19. LHBs and NHS Trusts are under a duty to facilitate the service by providing the local authority with information about the care and support that they provide.

### **Section 9 – Registers of blind, deaf and other disabled people**

20. This provides that local authorities must establish and maintain a register of people who are blind, deaf and both blind and deaf. The registers are for the purposes of identifying people who may have needs for care and support. Local authorities are also to have powers to establish and

maintain registers of people who are not disabled but have a physical or mental impairment or otherwise have needs for care and support.

### **PART 3 – ASSESSING THE NEEDS OF INDIVIDUALS**

#### **Section 10 – Duty to assess the needs of an adult for care and support**

21. This requires local authorities to assess whether an adult has needs for care and support and if so, what those needs are. The duty is triggered where it appears to a local authority that an adult may have needs for care and support. The duty applies in relation to adults that are ordinarily resident in the area and to other adults in the area, regardless of the level of need for care and support and the level of the adult's financial resources. The assessment will need to focus on the outcomes the adult wishes to achieve in his or her daily life and the extent to which the provision of care and support contributes to those outcomes. The assessment itself is required to be proportionate. Regulations under section 18 will provide further detail on the circumstances in which a proportionate assessment will be appropriate.

#### **Section 11 – Refusal by an adult of a needs assessment**

22. This provides that if an adult refuses an assessment, the local authority's duty to carry out the assessment does not apply.
23. This provision ensures that adults have control over whether an assessment is carried out. They can decide that they wish to make their own arrangements for meeting their needs for care and support without the involvement of the local authority.
24. However, there are some cases where the local authority will still be obliged to carry out an assessment notwithstanding a refusal. The first case is where the adult lacks capacity and that an assessment would be in his or hers best interests. The second case is where the adult is experiencing or is at risk of abuse or neglect.
25. An adult who refuses an assessment is entitled to change their mind and the local authority will then be obliged to carry out an assessment. Also, if the adult's needs or circumstances change, the local authority must again offer to carry out an assessment but are not obliged to do so if the adult refuses (unless one of the exceptions applies).

#### **Section 12 – Duty to assess the needs of a child for care and support**

26. This makes similar provision in relation to the assessment of the needs of children. Local authorities are required to assess whether a child has needs for care and support and if so, what those needs are. The duty is triggered where it appears to a local authority that a child may have needs for care and support.

27. The duty applies in relation to children that are ordinarily resident in the area and to other children in the area, regardless of the level of need for care and support and the level of financial resources of the child, or any person with parental responsibility for the child.
28. There are particular considerations that apply to the assessment of children. The assessment must take into account the developmental needs of the child, the capacity of the family to provide care and support to meet those needs and any other well-being affecting circumstances. This reflects the current guidance in the “Framework for the Assessment of Children in Need and their Families” (issued by the National Assembly for Wales and the Home Office in 2001)
29. Different provision is also made for the way the assessment seeks to identify outcomes for children. In addition to focusing on the outcomes the child wishes to achieve in his or her daily life, the assessment must also seek to identify the outcomes that those with parental responsibility (and such other persons as are specified in regulations) wish to achieve. There must be an assessment of the extent to which the provision of care and support contributes to those outcomes.
30. The assessment itself is required to be proportionate. Regulations under section 18 will provide further detail on the circumstances in which a proportionate assessment will be appropriate.
31. This section does not apply to a child looked after by a local authority. They are separately provided for in Part 6.

### **Section 13 – Refusal by a child of a needs assessment**

32. This makes similar provision to section 11 such that the local authority is not obliged to carry out an assessment if a child refuses. This recognises the importance of ensuring children have the same control as adults over whether the local authority is to be involved in providing or arranging services to meet their care and support needs.
33. In the case of children under 16, there is no presumption in law that they have capacity. Subsection (3) provides that in order for a refusal by a child under 16 to discharge the local authority’s duty to carry out an assessment, the local authority must be satisfied that the child is able to make an informed decision.
34. It is important to ensure that there are safeguards such that a refusal by a child can be overridden in certain circumstances and the duty to carry out the assessment will still apply.
35. In the case of children aged 16 or 17, the refusal of the child can be overridden by the local authority in two cases. The first is where the local authority is satisfied that the child lacks capacity and that an

assessment would be in his or hers best interest. The second is where the child is experiencing or is at risk of abuse or neglect

36. In the case of children under the age of 16, a refusal by a child who is considered capable of making an informed decision can be overridden if the local authority suspects the child is experiencing or is at risk of abuse or neglect.
37. The duty is also re-engaged if the child subsequently asks for an assessment or if the local authority considers that the child's needs or circumstances have changed.

#### **Section 14 – Refusal by a parent of a needs assessment for a child**

38. This provides that if anyone with parental responsibility for a child under 16 refuses an assessment for that child then the duty on the local authority to assess does not apply.
39. It is important to ensure that there are safeguards such that a refusal by the parent of a child can be overridden in certain circumstances and the duty to carry out the assessment will still apply.
40. The refusal of a parent can be overridden in three cases. The first case is if the local authority suspects the child is experiencing or is at risk of abuse or neglect. The second case is if the local authority is satisfied that that the parent lacks the capacity to decide to refuse an assessment. The third case is if the local authority is satisfied that the child can make an informed decision and disagrees with the parent's view.
41. The duty is also re-engaged if the parent subsequently asks for an assessment or if the local authority considers that the child's or the child's parents' needs or circumstances have changed.

#### **Section 15 – Duty to assess the needs of a carer for support**

42. This requires a local authority to carry out an assessment of a carer's needs for support. "Carer" is defined in section 3 as a person who provides or intends to provide care for an adult or a disabled child.
43. The duty is triggered if it appears to the local authority that a carer may have needs for support. The duty to assess applies regardless of the authority's view of the level of support the carer needs or the financial resources he or she has or the financial resources of the person needing care.
44. The assessment must include an assessment of the extent to which the carer is able and willing to provide the care and to continue to provide the care, the outcomes the carer wishes to achieve both in terms of themselves and if a child is the carer, the outcomes the parent of that

child (and such other persons as are specified in regulations) wishes to achieve for them and the extent to which support will assist in achieving the identified outcomes.

45. The assessment also must have regard to whether the carer wishes to work and participate in education, training or leisure activities and if the carer is a child, his or her developmental needs and the extent to which it is appropriate for the child to provide the care. This should lead to consideration by the local authority of whether a child carer is actually a child with care and support needs in his or her own right and who should be assessed under section 12

### **Section 16– Refusal by a carer of a needs assessment**

46. This provides that if an adult carer or a carer aged 16 or 17 refuses an assessment then the duty to assess does not apply. The duty to assess is re-engaged if the carer asks at a later date for an assessment or if the local authority is satisfied that the carer's circumstances have changed meaning that a further assessment would be beneficial to the carer.

### **Section 17 – Combining needs assessments and other assessments**

47. This provides that a local authority may combine a user's and carer's assessment if it considers it would be beneficial to do so and if the carer and the cared for person agree.
48. It also provides that a local authority may carry out a needs assessment under the Bill at the same time as it carries out an assessment under other Acts or at the same time as another body carries out an assessment under other Acts.
49. In such cases, the local authority may carry out the assessment on behalf of or jointly with the other body or jointly with another person who is carrying out the other assessment.
50. This will avoid the duplication of assessments under different legislation being carried out separately and will improve the experience of users and carers.

### **Section 18 – Regulations about assessment**

51. This enables regulations to be made about the carrying out of needs assessments under the Bill and describes what kind of requirements which could be imposed. This could include requirements to consult with other people, in addition to those specified in sections 10, 12 and 15.
52. Regulations can require assessments to be carried out in a particular way, which could include proportionate assessments in particular circumstances. The regulations could set out who can carry out assessment and the circumstances in which this could be delegated to

other persons or bodies. Regulations could set out the time limits within assessments must be completed. Regulations could also require the results of an assessment to be recorded in a particular way, to ensure consistency. Regulations can provide for a local authority to have regard to other considerations when carrying out an assessment. Regulations could provide for a power to provide information for the purpose of the assessment. Regulations can also provide for the review of an assessment.

## **PART 4 – MEETING NEEDS**

### **Section 19 – Determination of eligibility and consideration of what to do to meet needs**

53. This provides that if an assessment concludes that there are care and support needs or support needs to be met, the local authority must determine whether the needs meet the eligibility criteria or whether the needs identified call for the exercise of any duty or power under the Bill or under Parts 4 and 5 of the Children Act 1989.
54. If they do not meet the eligibility criteria, the local authority must determine whether the needs should be met anyway if the person is identified as being in need of protection from abuse or neglect.
55. It also provides that the local authority must consider what could be done to meet the identified needs, whether it should to impose a charge for doing so and the level of that charge.
56. Regulations will provide for the detail of the eligibility criteria in terms of the specification of the levels of eligibility.
57. A national eligibility framework will be developed to provide clarity through regulations on what constitutes an ‘eligible need’. This will replace the local eligibility criteria that local authorities currently apply in accordance with guidance in “Unified and Fair System for Assessing and Managing Care”.

### **Section 20 – How to meet needs**

58. Once a local authority has determined it is going to meet a person’s needs and is considering what could be done to meet those needs, it can seek to meet those needs in a number of ways. Unlike the current legal framework, the Bill does not specify the provision that local authorities may or must provide. This provides flexibility and encourages innovation.
59. This section sets out examples of what may be provided to meet a person’s needs and examples of the ways in which it may meet a person’s needs. Local authorities can also decide whether to provide services itself or to arrange for the services to be provided by someone

else. A person's needs could also be met by providing services to another person, for example providing support to the family of a child in order to meet the child's needs for care and support.

60. There are some restrictions on what a local authority is able to do to meet a person's needs. These are set out in sections 30 to 33.

### **Section 21 – Duty to meet care and support needs of an adult**

61. This section sets out the conditions that must be met for a local authority to be under a duty to meet the care and support needs of an adult in its area. The application of the eligibility criteria will be the principal means of determining whether an adult's needs for care and support must be met by the local authority.
62. However, subsection (3) provides safeguards to ensure that local authorities have a duty to meet an adult's needs for care and support if this is necessary to protect the adult from abuse or neglect, even if their needs do not meet the eligibility criteria.
63. Subsection (4) provides that the local authority must meet the needs of people who are entitled to receive services without charge or whose means are such that they do not have to pay the full charge.
64. The local authority does not have to meet the needs of "self funders": adults whose means are assessed as being above the financial limit such that they are liable to pay the full charge. However, this is subject to two important exceptions. The first is if the adult can afford to pay but nonetheless asks the authority to meet his or her needs. The second exception is if the adult lacks the capacity to arrange the provision of care and support him or herself.
65. If either of these exceptions applies, the local authority will be under a duty to meet the person's needs and will be able to recover the full charge for providing or arranging services. The local authority will also be able to impose a "brokerage" charge (see section 46)
66. Even if these conditions are met, a local authority will only be under a duty to meet a person's needs if the residence condition in subsection (2) is met. Subsection (2) provides that a local authority will be under a duty to meet the needs of an adult if they are "ordinarily resident" in its area. This is a term which is used in the NAA 1948 and requires some degree of permanence.
67. A local authority must also meet the needs of adults who are within its area and have no settled residence. The local authority does not have to meet the needs of adults who are temporarily within its area but are ordinarily resident elsewhere.

## **Section 22 – Power to meet care and support needs of adult**

68. This section confers a power on local authorities to meet the care and support needs of an adult without the need for first completing a needs assessment or carrying out a financial assessment. This power is available where it is considered necessary to meet needs as a matter of urgency.
69. This power is also available in cases where an assessment has been carried out but the needs do not meet the eligibility criteria. In these circumstances, the local authority may nonetheless decide to meet the needs, even though they are not under a duty to do so. If the local authority is meeting the care and support needs of an adult who normally lives in another area, then it must notify that authority that it is doing so.

## **Section 23 – Duty to meet care and support needs of a child**

70. This section sets out the conditions that must be met for a local authority to be under a duty to meet the care and support needs of a child in its area.
71. The application of the eligibility criteria will be the principal means of determining whether a child's needs for care and support must be met by the local authority under this section.
72. However, subsection (3) provides safeguards to ensure that local authorities have a duty to meet a child's needs for care and support if this is necessary to protect the child from abuse or neglect, even if their needs do not meet the eligibility criteria.
73. The duty is owed to any child who is within its area, even if they ordinarily resident elsewhere. The duty is also owed to children who are outside the local authority's area but are ordinarily resident in its area.
74. This section does not apply if the child is looked after by a local authority. They are separately provided for in Part 6.
75. A local authority may also have a duty to provide accommodation for children under section 60 or section 61 of this Bill or may have other duties to meet a child's needs for care or support under Parts 4 or 5 of the Children Act 1989.

## **Section 24 – Power to meet care and support needs of a child**

76. This section confers a power on local authorities to meet the care and support needs of a child without the need for first completing a needs assessment or carrying out a financial assessment. This power is available where it is considered necessary to meet needs as a matter of urgency.

77. This power is also available in cases where an assessment has been carried out but the needs do not meet the eligibility criteria. In these circumstances, the local authority may nonetheless decide to meet the needs, even though they are not under a duty to do so.
78. If the local authority decides to exercise this power to meet the care and support needs of a child who is ordinarily resident in another area, then it must notify the local authority for that area that it is doing so.
79. This section does not apply if the child is looked after by a local authority. They are separately provided for in Part 6.

### **Section 25 – Duty to maintain family contact**

80. This section is a restatement of the provision in paragraph 10 of Schedule 2 to the Children Act 1989.
81. It places additional duties on local authorities in relation to children in their area who it considers are in need of care and support and who are living apart from their family but are not being looked after by the local authority.
82. Whether or not it has determined such a child has eligible needs which must be met, the local authority must take steps to enable the child to live with their family or to promote contact between the child and their family, if it considers this is necessary to promote their well-being.

### **Section 26 – Duty to meet support needs of an adult carer**

83. This section sets out the conditions that must be met for a local authority to be under a duty to meet the support needs of an adult carer of an adult or a disabled child in its area.
84. The application of the eligibility criteria will be the principal means of determining whether the adult carer's needs for care and support must be met by the local authority under this section.
85. There is a link between the duty to meet needs and the financial resources of the carer and of the person cared for. In so far as meeting the support needs of the carer involves the provision of support to the carer, the section provides that the local authority must meet the needs of a carer who is entitled to receive services without charge or whose means are such that they do not have to pay the full charge.
86. Where the adult needing care agrees that support needs of the carer can be met by the provision of care and support to the adult, the local authority must meet the needs of the adult if they are entitled to receive services without charge or if their means are such that they do not have to pay the full charge.

87. The local authority does not have to provide support to carers who can afford to pay the full charge unless the carer nonetheless asks the authority to meet his or her needs. Likewise, the local authority does not have to provide care and support to an adult who can afford to pay the full charge unless the adult nonetheless asks the authority to make such provision.
88. The question of which local authority is responsible for meeting the support needs of a carer will depend on the residence of the person cared for. This will be the local authority which would be responsible for meeting the cared for person's needs if they were eligible in their own right, either as an adult (see section 21) or a child (see section 23).

### **Section 27 – Duty to meet support needs of a child carer**

89. This section sets out the conditions that must be met for a local authority to be under a duty to meet the support needs of a child carer of an adult or a disabled child in its area.
90. The application of the eligibility criteria will be the principal means of determining whether the child carer's needs for care and support must be met by the local authority under this section. In the case of a child carer who is caring for an adult, there is a link between the duty to meet needs of a child carer and the financial resources of the adult cared for.
91. Where the adult needing care agrees that support needs of the child carer can be met by the provision of care and support to the adult, the local authority must meet the needs of the adult if they are entitled to receive services without charge or if their means are such that they do not have to pay the full charge.
92. The local authority does not have to provide care and support to an adult who can afford to pay the full charge unless the adult nonetheless asks the authority make such provision.
93. The question of which local authority is responsible for meeting the support needs of a child carer will depend on the residence of the person cared for. This will be the local authority which would be responsible for meeting the cared for person's needs if they were eligible in their own right, either as an adult (see section 21) or a child (see section 23).

### **Section 28 – Supplementary provision about the duties to meet carer's needs**

94. This provides supplementary provisions in relation to the duties in sections 26 and 27.
95. If it is feasible to do so, local authorities may meet a carer's needs for support by providing services to the person cared for, even if the cared

for person would not be entitled to receive services in their own right (under sections 21 or 23).

### **Section 29 – Power to meet support needs of a carer**

96. This section confers a power on local authorities to meet the support needs of a carer without the need for first completing a needs assessment or carrying out a financial assessment. This power is available where it is considered necessary to meet needs as a matter of urgency.
97. This power is also available in cases where an assessment has been carried out but the needs do not meet the eligibility criteria. In these circumstances, the local authority may nonetheless decide to meet the needs, even though they are not under a duty to do so.

### **Section 30 – Exception for persons subject to immigration control**

98. This provides that a local authority may not meet the needs for care and support of an adult to whom section 115 of the Immigration and Asylum Act 1999 applies and whose needs for care and support have arisen solely because the adult is destitute or because of the effects, anticipated or actual, of being destitute.

### **Section 31 – Exception for provision of health services**

99. This section makes provision for a local authority's powers to provide health services.
100. The starting point (subsection (1)) is that a local authority is not permitted to meet needs for care and support by providing health care services which are required to be provided under the NHS Acts. This prohibition also applies in relation to the local authorities powers to provide preventative services under section 6.
101. However, this prohibition does not apply to the provision of health care services which are "incidental or ancillary" to the provision of other services which the local authority has the powers to provide.
102. In order to resolve any doubt as to whether local authorities do or do not have powers to provide health care services, including any question as to whether the provision of health care services is "incidental or ancillary", subsection (3) enables the Welsh Ministers to make regulations which can make this clear.
103. Even where a local authority does have power to provide health care services, they are still prohibited from providing or arranging the provision of nursing care by a registered nurse. "Nursing care" is defined in subsection (10).

104. Subsection (6) makes it clear that the prohibition on a local authority providing nursing care does not prevent them from arranging for the provision of accommodation in a nursing home, provided consent has been obtained from the LHB. In these circumstances, the nursing care element will be funded by the NHS in accordance with arrangements for NHS funded nursing care. Subsection (8) enables regulations to be made requiring arrangements to be made for dealing with disputes between local authorities and NHS bodies.
105. Local authorities can also be required to be involved in the process for assessing a person's needs for health care and deciding how those needs will be met. Regulations could be made under this subsection to require local authority involvement in the procedures for determining eligibility for Continuing Health Care.

### **Section 32 – Exception for provision of housing etc**

106. This section provides for other restrictions on the powers local authorities have to meet an adult's needs for care and support.
107. In particular, they are prohibited from doing anything which a local authority would be required to do under the Housing Act 1996. This would mean that a local authority would have no power to meet needs by providing accommodation in accordance with this Bill if they are required (or another local authority is required) to provide accommodation under its homelessness duties.
108. The Welsh Ministers also have the power to make regulations which would place further restrictions on the powers of local authorities under the Bill, by prohibiting them from doing anything which a local authority would be able to do under any other Act specified in the regulations.

### **Section 33 – Restrictions on provision of payments**

109. Section 20 (How to meet needs) provides that making payments is one of the ways that a local authority can meet an individual's needs for care and support. This section sets limits on the circumstances when payments can be made. Payments can be made under the scheme for direct payments as set out in sections 34 to 37. They can be made where, in the local authority's view, a person's needs are urgent and it would not be reasonably practicable to meet the needs in another way. Subsection (1)(c) allows a local authority to make payments in the course of contracting for the provision of services. Regulations may set out other circumstances when payments may be permitted. Subsection (2) sets limits on the extent to which payments can be used in the discharge of a local authority's duties to provide preventative services under section 6.

## **Section 34 – Direct payments to meet an adult’s needs**

110. Under this section Welsh Ministers have power either to require or allow a local authority to make payments (direct payments) towards meeting the costs associated with meeting an adult’s needs for care and support so as to allow the adult to make his or her own arrangements to purchase the care required. Subsections (3) and (4) set out the preconditions for any such payments to be made firstly (subsection (3)) where the adult in question has capacity and in subsection (4) where the adult with needs does not have capacity. A person with capacity must consent to receiving payments instead of services. Where a person does not have capacity then consent to the making of direct payments can be given in a number of ways. If there is person authorised under the Mental Capacity Act 2005 (the “2005 Act”) (through an appropriately worded lasting power of attorney or through appointment as a deputy by the Court of Protection) then that person can consent to the recipient of the payments himself or can consent to the payments being made to another person who also consents to taking on that role. If there is no-one authorised under the 2005 Act then a person willing to be the recipient of the payments can give consent so long as the other conditions are met. In the case of an adult with capacity (subsection (3)) or without capacity (subsection (4)) payments can be made if the recipient of the payment might not be able to manage the payment him or herself but is capable of doing so with support which is available. In both cases there is a need for a local authority to be satisfied that making the payments is an appropriate way of meeting the adult’s needs. Additionally, where the adult does not have capacity the local authority must be satisfied that the recipient of the payment will act in the adult’s best interests.

## **Section 35 – Direct payments to meet a child’s needs**

111. Welsh Ministers have power to make regulations that may require or allow a local authority to make payments (direct payments) towards the costs of meeting a child’s needs for care and support. As under section 17A of the Children Act 1989 direct payments can only be made to meet a child’s needs in certain circumstances. Payments can be made to a person with parental responsibility for a disabled child who has needs for care and support, a disabled person with parental responsibility for a child who has needs for care and support, or, a disabled child aged 16 or 17 who has needs for care and support. Direct payments can be made if the local authority believes the person who is to receive the payments has the capacity to consent; in addition the local authority must be satisfied that making the payments is an appropriate way of meeting the child’s needs, that the well-being of the child will be safeguarded and promoted by the making of the payments and that the person who is to receive the payments is capable of managing them by him or herself or with support.

## **Section 36 – Direct payments to meet a carer’s needs**

112. This section gives Welsh Ministers power to make regulations that either require or allow a local authority to make payments (direct payments) towards the costs of. In the case of a carer the direct payments must be made to the carer himself or herself and he or she must have capacity to consent. The local authority must be satisfied that making the payments is an appropriate way of meeting the carer’s needs and that the carer is capable of managing the payments, whether by him or herself, or with support.

## **Section 37– Direct payments: further provision**

113. The power to make regulations in the previous three sections is elaborated in this section to allow provision about a wide range of related matters. This includes provision about the manner in which the amount of the payment is determined and provision about making payments either net or gross of any contribution which the beneficiary of the payment is liable to make under the charging provisions in Part 5. Subsections (3) and (4) provide that the regulation-making powers in relation to direct payments may be exercised. Subsection (5) provides that where direct payments are made in lieu of services under section 117 of the Mental Health Act 1983, then the payments must not be subject to any liability to make any contribution or reimbursement to the local authority towards the cost of meeting the needs to which the direct payment relates (this is akin to the charge which is potentially payable if services are directly provided) . Subsection (6) means that direct payments are not subject to requirement to reimburse or a make contribution towards the costs for three further categories of people where the beneficiary of the payment is a child. These categories are (1) a person with parental responsibility for a disabled 16 or 17 year old (2) a disabled person with parental responsibility for a 16 or 17 year old with care or support needs or (3) a person in receipt of a welfare benefit of a specified kind. For these three categories the payments must not be subject to any requirement to reimburse or make a contribution towards the costs of securing the provision of the services to meet the needs in respect of which the direct payment is made. For the first two categories, in addition, the payments must be made at a rate equivalent to the cost of meeting the relevant needs. Subsections (9) and (10) provide that the persons from whom a recipient of direct payments can purchase services includes the local authority itself and, where that is the case, the local authority may charge even though it is otherwise under a duty to meet the needs in question.

## **Section 38 – Care and support plans and support plans**

114. This section provides that a local authority must prepare and maintain a care and support plan or a support plan for the eligible person and that the plans must be kept under review. Regulations must make provision about how the plan is prepared, what it must contain, review

arrangements and the process may link in with the preparation of plans by other bodies for the eligible person and include copies of those plans. Further, if the local authority believes that an eligible person's circumstances have changed, it must conduct a new assessment and revise the plan.

### **Section 39 – Regulations about care and support plans and support plans**

115. This section provides that regulations may be made specifying plans be produced in a certain form; contain certain things; include arrangements for consulting with different people in the plan's preparation and review; specify who prepares and reviews the plans; specify to whom written copies of the plan are provided including to whom the plan can be given without the eligible person's consent and the circumstances in which the plans must be reviewed.

### **Section 40 – Portability of care and support**

116. This section provides that a local authority (the 'sending authority') must notify another local authority (within Wales) of an eligible person's intention to move to that authority and provide it with a copy of the person's care and support plan. If that person has a carer, a copy of his or her support plan should also be provided plus any other information the 'receiving authority' may deem relevant. Further, when the 'receiving authority' is satisfied that the person is moving to its area it must notify the 'sending authority' of this, provide the eligible person and their carer if they have one with appropriate information and review the care and support plan and support plan.

117. On the day that the eligible person moves to the area, the 'receiving authority' must, if it hasn't reviewed the 'sending authority's' plan(s) or carried out new assessments, meet the care and support needs identified and set out in the eligible person's plan that was prepared by the 'sending authority' and it must do so until it completes its own review and assessments along with any other steps that need to be taken. Regulations may make further provision with regard to the steps to be taken, the matters to which the 'receiving authority' must have regard and where the duties in this section may not apply.

### **Section 41 – Cases where a person expresses preference for particular accommodation**

118. This section provides that regulations may be made that require the local authority to provide or arrange the provision of preferred accommodation and if the preferred accommodation incurs additional costs to the costs associated with providing otherwise suitable accommodation then those costs must be borne by person concerned.

## **Section 42 – Protecting property of persons being cared for away from home**

119. This section provides for the protection of an eligible person's property should they be away from the accommodation provided to them or admitted to hospital. This provision includes entering the person's premises and dealing with the property in a way which prevents or mitigates loss or damage but the power cannot be exercised unless consent is obtained and identification and authorisation is produced. If exercising the power is obstructed then an offence is committed and if costs are incurred in protecting property then they are recoverable from the person.

## **PART 5 – CHARGING AND FINANCIAL ASSESSMENT**

### **Section 43 – Power to impose charges**

120. This section provides that a local authority may impose a charge for providing or arranging the provision of care and support or support and that such a charge can only be for costs the local authority incurs in meeting the needs for which the charge is made. Subsection (3) contains an exception to this proposition, which allows a local authority to pay an additional sum in the circumstances set out within the subsection. The local authority's power to impose a charge is subject to the regulations referred to in sections 45 and 46, and the duty in section 50.

### **Section 44 – Persons upon whom charges may be imposed**

121. This section provides the detail in relation to the person upon whom the charges may be imposed for the provision of care and support (or, where relevant, support): on a child aged under 16, the charge is imposed on the person with parental responsibility for the child, where the young person is aged 16 or 17 the charge may be imposed upon that young person or a person with parental responsibility for him or her and where a charge relates to any other person, it is imposed on that person. In relation to support for a carer, a charge can be imposed on an adult carer and where the cared for person is an adult, the cared for person. Where a charge is imposed for providing support to a young carer aged under 16, the charge will be incurred by the person with parental responsibility for the child. Where a charge is imposed for providing support to young carer aged 16 or 17, the charge will be incurred by the young carer or upon a person with parental responsibility for the carer. An exception to this proposition is contained within subsection (5), which provides for the situation where support is provided to a carer by providing care and support for the person for whom the carer provides care.

### **Section 45 – Regulations about the exercise of a power to impose a charge**

122. This section provides for regulations that may be made in relation to exercising the power to impose a charge. They could include the maximum amounts to be charged, the circumstances in which a charge could be imposed and the use of any formula to determine the charge.

### **Section 46 – Regulations disapplying a power to impose a charge**

123. This section provides for regulations that may be made that disapply the local authority's power to impose a charge and may instead require the local authority to provide the care and support or support free of charge.

### **Section 47 – Duty to carry out a financial assessment**

124. This section provides that where a local authority has concluded that it will meet needs for care and support or support, it must carry out a financial assessment of a adult's, child's or carer's resources.

### **Section 48 – Regulations about financial assessments**

125. This section provides that regulations must be made that will provide for the calculation of an eligible person's income and capital, the extent to which either is regarded or disregarded in the calculation of charges to be imposed, the circumstances in which a person will be deemed as having financial resources above a set threshold and circumstances in which a new financial assessment must or may be carried out.

### **Section 49 – Regulations disapplying the duty to carry out a financial assessment**

126. This section provides that regulations may be made that set out the circumstances in which the duty to carry out a financial assessment is disapplied.

### **Section 50 – Determination as to a person's ability to pay a charge**

127. This section provides that the local authority must determine in light of the financial assessment whether it is reasonably practicable for the eligible person to pay its standard charge for the service (which represents the cost to the local authority of the provision of the service to meet a person's need) and if not how much it is reasonably practicable for the person to pay (if anything). Regulations must make further provision regarding how to determine the ability to pay.

### **Section 51 – Duty to give effect of determination as to ability to pay a charge**

128. This section provides that the local authority must give effect to the determination provided for in section 50, for example in relation to when the determination takes effect and if a determination is to be replaced with a revised determination.

### **Section 52 – Review of charging decisions**

129. This section provides that regulations may be made in relation to the review of a decision made about the charges imposed (under section 43) or a determination made in accordance with section 50 and may include provisions regarding the procedure to be followed, who can request the review and the time period in which a request for a review can be made.

### **Section 53 – Deferred payment agreements**

130. This section provides that regulations may be made in relation to entering into a deferred payment agreement with a person whose needs are being or are going to be met by a local authority (under sections 21 to 29) and a charge will be imposed upon the person in respect of the same. The regulations may specify, for example, whether interest can be charged and the duration of the agreement.

### **Section 54 – Charging for preventative services and information, advice and assistance**

131. This section provides that regulations may be made that provide for the local authority to impose a charge for the provision of preventative services, information, advice and assistance. Subsection (2) provides that regulations may not require a person to pay a charge under this section if a charge has already been imposed in accordance with section 43 and prevents the charge from covering anything other than the cost of providing the services, information, advice or assistance to which the charge relates.

### **Section 55 – Recovery of charges, interest etc**

132. This section provides for the local authority to recover charges, interest and any costs incurred while recovering such charges and interest, unless a deferred payment agreement has been entered in to. Regulations may make further provision, for example, in relation to due dates for repayment and charging interest.

### **Section 56 – Creation of a charge over an interest in land**

133. This section provides for the local authority to create a charge on land in which a person who fails to pay a sum recoverable to a local authority

under Part 5 (charging and financial assessment) has a legal or beneficial interest in order to secure payment of the sum due.

### **Section 57 – Transfer of assets to avoid charges**

134. This section provides for the recovery of charges where an individual has transferred assets to another person in order to avoid charges. The person to whom the assets have been transferred then, for the most part, becomes liable for making the payment to the local authority.

## **PART 6 – LOOKED AFTER AND ACCOMMODATED CHILDREN**

### **Section 58 – Meaning of ‘looked after child’**

135. This section provides a definition of ‘looked after child’.

### **Section 59 – General duty of local authority to secure sufficient accommodation for looked after children**

136. This places a general duty on local authorities to provide children it looks after with accommodation within the local authority area that meets the child’s needs; however, this duty is subject to any alternative requirement that may be made by the Welsh Ministers in regulations which may be made by virtue of section 74 (which deals with the making of regulations about placement of looked after children outside the local authority’s area). There must be a range of accommodation available and that range will include foster parents or children’s homes. This is a restatement of section 22G of the Children Act 1989.

### **Section 60 – Accommodation for children without parents or who are lost or abandoned etc**

137. This section restates the duty currently contained in section 20 of the Children Act 1989.

138. It provides that the local authority must provide accommodation for any child that appears to need it as a result of having no person with parental responsibility to look after them, is lost or abandoned, or the person with parental responsibility for them is prevented for whatever reason from providing the child with accommodation or care. It further provides that if another local authority is providing accommodation in an area different to where the child normally lives, then that authority must notify the other authority within three months or any longer period specified in regulations made by the Welsh Ministers period.

139. The local authority must also provide accommodation to a child who has reached the age of 16 if failure to do so would seriously prejudice his or her well-being.

140. A local authority may not provide accommodation if any person with parental responsibility for the child under the age of 16 objects and is willing and able to provide accommodation or can arrange for it to be provided and can remove the child at any time from the accommodation provided by the local authority. Exceptions apply in the latter case where a residence order exists, where the child has a special guardian or if the child is subject to a High Court Order. If the child is subject to more than one of these then all parties involved must agree.

### **Section 61 – Accommodation for children in police protection or detention or on remand, etc**

141. This restates the duty currently contained in section 21 of the Children Act 1989. It provides that the local authority must provide accommodation for children who are removed or kept away from home under Part 5 of the Children Act 1989; subject to police protection under section 46(3)(f) of the Children Act 1989; under section 38(6) of the Police and Criminal Evidence Act 1984; remanded by virtue of paragraph 4, Schedule 1 or paragraph 6, Schedule 8 of the Powers of Criminal Courts (Sentencing) Act 2000; remanded by virtue of paragraph 21, Schedule 2 of the Criminal Justice and Immigration Act 2008; remanded by virtue of paragraph 10 of the Schedule to the Street Offences Act 1959 or subject to a Youth Rehabilitation Order imposing a residence or fostering requirement.
142. Where costs are incurred in relation to a child being removed under Part 5 of the Children Act 1989, are detained under section 38 of the Police and Criminal Evidence Act 1984 or where the child is not provided with accommodation by the local authority, LHB or NHS Trust, these are recoverable from the local authority where the child usually lives.

### **Section 62 – Principal duty of local authority in relation to a child it looks after**

143. This section provides that the local authority looking after any child must safeguard and promote the child's well-being and do for the child what any reasonable parent would do within reason (section 4(3) confirms that in relation to a child, well-being includes "welfare" as that word is interpreted and used for the purposes of the Children Act 1989). It must also promote the child's educational achievement, assess from time to time whether the child has eligible care and support needs and for those needs to be met, have regard to the views, wishes and feelings of anyone who has parental responsibility for the child or anyone else the authority deems relevant and take in to account the child's religion, race, cultural and language needs. It further provides that if there is risk of harm to members of the public from a child it looks after, it may disregard the duties provided for in this section. This section restates much of the provision that is currently made within section 22 of the Children Act 1989

### **Section 63 – Provision of accommodation for children in care**

144. This section makes clear that the local authority must provide accommodation for a child in its care. This section restates section 22A of the Children Act 1989

### **Section 64 – Maintenance of looked after children**

145. This section provides that the local authority must maintain a child in its care in other ways. This section restates section 22B of the Children Act 1989.

### **Section 65 – Ways in which looked after children are to be accommodated and maintained**

146. This section provides for the ways in which the local authority must accommodate and maintain a child in accordance with the child's well-being: with a relative or friend, a foster parent, in a children's home or any other place deemed suitable by the local authority. These arrangements must enable (where appropriate) the child to live near his or her home, continue with his or her education or training, enable the child's sibling to live with him or her if the sibling is also in the care of the authority and if the child is disabled, is accommodated in a suitable place. This section restates section 22C of the Children Act 1989 and contains new provision which (in appropriate circumstances) requires a local authority to place a child who is to be adopted with his or her prospective adopter provided the specified requirements are met (thereby achieving "early permanence" for the child).

### **Section 66 – Review of child's case before making alternative arrangements for accommodation**

147. This section provides that the local authority must make arrangements to review a child's case before alternative accommodation arrangements are made, unless it needs to move the child as a matter of urgency. This section restates section 22D of the Children Act 1989.

### **Section 67 – Care and support plans**

148. This section provides that any care and support plan for a child looked after by a local authority must be reviewed and maintained. If the child does not have a care and support plan, the authority must arrange for one to be prepared. Regulations must further provide for the content and review of the plans and that if other plans are being prepared for the child by other bodies, for those plans to be included with the care and support plan. The local authority must also carry out a new assessment and revise the plan if it believes the circumstances of the child have changed in such a way as to affect the existing plan.

## **Section 68 – Regulations about care and support plans**

149. This section provides that regulations may be made specifying their form, content, consultation with people who should contribute to the preparation and review of a plan, who should prepare the plan, who should receive written copies of the plan and the circumstances for reviewing the plan.

## **Section 69 – Contributions towards the maintenance of children looked after by local authorities**

150. This section introduces Schedule 1 of this Bill which makes provision setting out when local authorities can seek contributions towards the maintenance of looked after children which Schedule restates the provision within Part 3 of Schedule 2 to the Children Act 1989.

## **Section 70 – Children’s homes provided, equipped and maintained by the Welsh Ministers**

151. This section provides that the Welsh Ministers may determine the terms by which a local authority may place a child it is looking after in a children’s home; where that children’s home is provided, equipped and maintained by the Welsh Ministers under section 82(5) of the Children Act 1989. This section restates section 22E of the Children Act 1989.

## **Section 71 – Regulations about children looked after by local authorities**

152. This section provides that regulations may be made making further provision in relation to children a local authority looks after.

## **Section 72 – Regulations as to conditions under which child in care is allowed to live with parent, etc**

153. This section provides that regulations may be made that impose requirements on local authorities in relation to children it looks after to live with a parent or other person with parental responsibility. These regulations will refer to decision making, supervision or medical examination of the child, circumstances in which a child can be removed from where he or she lives and record keeping. This section restates paragraph 12A of Schedule 2 to the Children Act 1989.

## **Section 73 – Regulations as to placements of a kind mentioned in section 65(6)(d)**

154. This section provides that regulations may be made that make provision in relation to the placements described in section 65 in terms of the notification of arrangements being made to place a child; opportunities the child has to make representations; record keeping and supervision by the local authority of any arrangements made. This section restates paragraph 12B of Schedule 2 to the Children Act 1989.

### **Section 74 – Regulations about placements out of area**

155. This section provides that regulations may be made that impose requirements which local authorities must follow before placing children outside the authority area and ensuring the child's well-being in doing so. This section restates paragraph 12C of Schedule 2 to the Children Act 1989.

### **Section 75 – Regulations about the avoidance of disruption in education**

156. This section provides that regulations may be made that impose requirements on local authorities in relation to any decision regarding a child's placement when he or she is in the Fourth Key Stage of education as provided for under Part 7 of the Education Act 2002. This section restates paragraph 12D of Schedule 2 to the Children Act 1989.

### **Section 76 – Regulations about the placing of children with local authority foster parents**

157. This section provides that regulations may be made in relation to the provision of foster care: that the child's well-being is taken in to account; that the appropriate arrangements are made with regard to the child's health and education; record keeping; that as far possible, the child is placed in a family with the same religious beliefs as the child and that the accommodation the child is placed in, is subject to inspection to ensure the child's well-being. This section restates paragraph 12E of Schedule 2 to the Children Act 1989.

### **Section 77 – Regulations providing for approval of local authority foster parents**

158. This section provides that regulations may be made in relation to the approval of foster parents by the local authority: that the child cannot be placed with foster parents until the local authority has approved their appointment; setting up an independent procedure for reviewing the approval of foster parents including establishing a panel convened by the Welsh Ministers; the duties and powers such a panel may have; the appointment of members to the panel and how they are paid and arrangements for monitoring reviews. Regulations may also provide for the Welsh Ministers to contract with another organisation to provide the independent review function. This section restates paragraph 12F of Schedule 2 to the Children Act 1989.

### **Section 78 – Regulations about agency arrangements**

159. This section provides that regulations may be made in relation to the circumstances in which local authorities can make arrangements with other organisations to discharge duties made under regulations on their behalf. This section restates paragraph 12G of Schedule 2 to the Children Act 1989.

## **Section 79 – Promotion and maintenance of contact between child and family**

160. This section provides that the local authority must promote contact between a child it looks after and anyone who has parental responsibility for the child plus any other relative or friend. When a child moves accommodation, the local authority must ensure it informs whoever has parental responsibility for the child and for the person with parental responsibility to ensure it keeps the local authority informed of any changes to their address. It also provides that when a 'receiving authority' takes responsibility for providing accommodation to a child from a 'transferring authority', that the 'receiving authority' informs whoever has parental responsibility for the child. It further provides that the local authority is not required to inform whoever has parental responsibility for the child if doing so would prejudice the child's well-being. Subsection (5) makes it an offence for a parent or person with parental responsibility for a looked after to child not to keep the local authority informed of his or her address. This section restates paragraph 15 of Schedule 2 to the Children Act 1989.

## **Section 80 – Family visits to or by children: expenses**

161. This section provides for the payment of travel and subsistence expenses to whoever has parental responsibility for a child the local authority looks after when that person visits the child. The authority may also make payments to a child it looks after if the circumstances warrant it, for example, if the child paid for the travel him or herself, it would cause them financial hardship. This section restates paragraph 16 of Schedule 2 to the Children Act 1989.

## **Section 81 – Duty of local authority to ensure visits to, and contact with, looked after children and others**

162. This section provides that the local authority must ensure visits and contact between a child it looks after or used to look after and a representative of the authority. That representative must arrange for the provision of advice, support and assistance and regulations may further provide for the frequency of visits, the circumstances in which visits can take place and the functions of representatives. The local authority also must ensure that the representative it chooses has the appropriate skills and experience to perform the functions. This section restates section 23ZA of the Children Act 1989

## **Section 82 – Independent visitors for children looked after by a local authority**

163. This section provides that the local authority must appoint an independent person to be the child's visitor if the child falls within a category specified in regulations or if it would be in the child's interests. The appointed person must befriend and advise the child and can claim

expenses from the authority. The person's appointment comes to an end once the child ceases to be looked after by the authority, or resigns but the appointment cannot be made in the first place, or continue after it has started if the child is able to object to it. If the child objects generally to having a visitor, the local authority does not have to appoint anyone. This section restates section 23ZB of the Children Act 1989

### **Section 83 – Appointment of independent reviewing officer**

164. This section provides that the local authority must, for the benefit of any child it looks after, appoint an independent reviewing officer (IRO) for each child's case. This section restates section 25A of the Children Act 1989

### **Section 84 - Functions of the independent reviewing officer**

165. This section provides for the functions of IROs: they must monitor the work of the local authority in relation to the child; participate in any review of the child's case; ensure that the child's wishes and feelings are heard and perform any other function as required in regulations. The IRO may also refer a child's case to a Welsh family proceedings officer and, if not an employee of the local authority, the local authority must make every effort to co-operate with the IRO. This section restates section 25B of the Children Act 1989

### **Section 85 – Referred cases**

166. This section provides that the Lord Chancellor may make regulations to extend the functions of Welsh family proceedings officers but only with the consent of the Welsh Ministers. This section restates section 25C of the Children Act 1989

### **Section 86 – Review of cases and inquiries into representations**

167. This section provides that regulations may be made that require the review of a case of a looked after child. The circumstances for the review would include the frequency of them; taking the views of various people in to account including the child and whoever has parental responsibility for them; informing the various people of any steps that may be taken under this Bill or the Children Act 1989; notifying the various people of the outcomes of the review; implementing decisions made as a result of the review and monitoring any arrangements made. The authority is also required to keep the plan required under section 31A of the Children Act 1989 under review and revise and make a new plan if required and consider if an application should be made to discharge the care order. The authority is further required if providing accommodation to the child to prepare a plan if none exists; keep it under review and revise and make a new plan if required and consider if the accommodation meets with the requirements of this Part. This section restates part of the provision contained in section 26 of the Children Act 1989

## **Section 87 – Befriending, advising and assisting looked after children**

168. This section provides that a local authority must continue to befriend, advise and assist a child it has ceased looking after, with the intention of maintaining the child's well-being. This section restates the provision made within paragraph 19A of Schedule 2 to the Children Act 1989.

## **Section 88 – Young people entitled to support under sections 89 to 94**

169. This section sets out the different categories by which young people who are designated as “care leavers” are defined for the purposes of this Bill.

170. A category 1 young person is a child or young person aged between 14 and 16, who is looked after by a local authority and who has been looked after for a period specified in regulations which began after he or she reached an age specified in regulations and who is aged 16 or 17. This definition restates the definition of an “eligible child” (as defined within paragraph 19B(2) of Schedule 2 to the Children Act 1989) .

171. A category 2 young person is a child or young person who is no longer looked after by a local authority but used to be a category 1 child and who is aged 16 or 17. The definition of a category 2 young person restates that of a “relevant child” as defined in section 23A of the Children Act 1989.

172. A category 3 young person is a young person who is aged 18 or over and who used to be a category 2 or 1 person and has not attained the age of 21 (or has attained the age of 21 and is pursuing or wishes to pursue education or training which commences before he or she attains the age of 25. The definition of a category 3 young person restates the definition of a “former relevant child” within section 23C of the Children Act 1989; it also includes young persons who qualify for advice and assistance on the basis of section 23CA who “reconnect” with a local authority for the purposes of seeking to pursue education or training

173. A category 4 young person is a young person who is 16 but not yet 21 in respect of whom a special guardianship order is in force or if the person is 18, the order was in force when he or she reached 18. The Children Act does not contain a definition akin to “eligible” or “relevant” child for such persons who are considered to be persons who qualify for advice and assistance under section 24A of the Children Act 1989 (on the basis that he or she is a person who qualifies for advice and assistance by virtue of section 24(1A)).

174. A category 5 young person is a young person who is not yet attained the age of 21 but who after attaining the age of 16 was accommodated by specified bodies (including by the Third or private sectors, an LHB, NHS Trust, Special Health Authority, etc. for a period of at least three months, was a looked after by a local authority or was fostered. Again, the

Children Act 1989 does not contain a strict definition of this category of young person who are considered to be persons who qualify for advice and assistance under section 24A by virtue of section 24(1B) of the Children Act 1989.

175. Subsections (4) – (6) contain further provision which specifies which local authority is the “responsible local authority” for the purposes of this section and provides power for such a local authority to make decisions about entitlement to assistance under sections 93 and 94.
176. Regulations may be made by the Welsh Ministers to add further categories of person to this group of “care leavers” or to make changes to existing categories, including who could be excluded and provide for which local authority would be the ‘responsible local authority’.

### **Section 89 – Keeping in touch**

177. This section provides that a local authority must take reasonable steps to keep in touch with persons who are within the definition of a category 2 or category 3 young person whether or not that person is still in that local authority area and if contact is lost, do all that it can to re-establish contact.
178. If a person is a category 5 young person and the local authority has lost touch with him or her, the local authority must take reasonable steps to re-establish contact. This section restates provision that is made by sections 23B and 23C of the Children Act 1989 (in respect of category 2 and 3 young persons) and section 24 in respect of category 5 young persons.

### **Section 90 – Personal advisers**

179. This section provides that a local authority must arrange for a young person who falls within the definition of a category 1, 2 or 3 young person and any such young persons who may be specified in regulations, to have a personal adviser. Personal advisers must provide practical advice and support; participate in pathway plan reviews; liaise with the local authority regarding the implementation of the pathway plan; coordinate the provision of services and take reasonable steps to ensure that the services are made use of; stay informed about the young person’s well-being and keep records of contacts with the young person. This section restates the provision made in paragraph 19C of Schedule 2 (in respect of category 1 young persons), sections 23B (in respect of category 2 young persons), and 23C and 23CA (in respect of category 3 young persons).
180. Regulations may specify further functions for a personal adviser.

### **Section 91 – Pathway assessments and plans**

181. This section provides that in relation to a category 1 young person, the local authority must carry out an assessment to determine the advice, assistance and support the young person needs both while he or she is being looked after and after he or she ceases to be looked after. This provision restates the duty contained in paragraph 19B(4) of Schedule 2 to the Children Act 1989.
182. If a person who is a category 2 or 3 young person who does not already have a pathway plan in place, the local authority must carry out an assessment to determine the advice, assistance and support that young person needs. This provision restates the obligations contained in sections 23B, 23C and 23CA in respect of category 2 and 3 young persons.
183. Subsection (4) contains a definition of a pathway plan. This subsection restates provision made in section 23E, paragraph 19B(4) of Schedule 2, and sections 23C(3)(b) and 23CA(3)(a) of the Children Act 1989.
184. Regulations may specify further requirements about assessments, such as who is to be consulted, who is to carry such an assessment and when, record keeping, the process for review and any other considerations. This assessment or review can be carried out at the same time as any other assessment or review.

### **Section 92 – Support for category 2 young people**

185. This section provides that the local authority responsible for a category 2 young person must safeguard and promote his or her well-being (to the extent that it is required) and support the person by maintaining him or her (including by the provision of cash), providing suitable accommodation and any other support set out in regulations. Regulations may also define 'suitable accommodation' particularly in relation to landlords. This restates the provision made within sections 23B of the Children Act 1989.

### **Section 93 – Support for category 3 young people**

186. This section provides that the local authority must support a category 3 young person (to the extent that it is required) by contributing to expenses incurred that enable the young person to live near his or her place of work; study or training; make a grant to enable the young person to study or train and do anything else it considers appropriate. Assistance is provided in kind or exceptionally, in cash. If the young person is pursuing higher education then the local authority must pay the relevant amount to him or her in accordance with the pathway plan. Regulations may specify further what is meant by 'relevant amounts' including how it is paid, 'higher education' 'full time', 'vacation' and arrangements for recovering monies if needed. Local authorities must provide accommodation to category 3 young people when they are in further or higher education and they have nowhere else to stay during

vacation time. If accommodation is not provided then the local authority must provide the young person with enough money to secure the accommodation needed. This section restates provision which is currently made by sections 23B, 23C and 23CA of the Children Act 1989.

#### **Section 94 – Support for category 4 and 5 young people**

187. This section provides that the local authority must consider whether the specified conditions are met by young persons who fall within the definition of a category 4 and 5 young person are satisfied. The conditions are set out in subsection (2) and are that the young person needs assistance, and if the young person has not been looked after by any local authority, that whoever was looking after them does not have the necessary facilities to advise or befriend them. If these conditions apply then the local authority must advise or befriend the young person but if the conditions do not apply, then that authority may advise or befriend the young person.

188. The support provided can be in the form of contributing to expenses and making a grant or, in exceptional circumstances, by providing accommodation or cash. Local authorities must provide accommodation to eligible young persons within category 4 and 5 when they are in further or higher education and they have nowhere else to stay during vacation time. If accommodation is not provided then the local authority must provide the young person with enough money to secure the accommodation needed. This section restates provision that is currently made in sections 24A and 24B of the Children Act 1989.

#### **Section 95 – Charging for provision under sections 92 to 94**

189. This section provides for local authorities to impose a charge for accommodation, maintenance or support under sections 92-94.

#### **Section 96 - Information**

190. This section provides that where a local authority has duties to young people under sections 89 and 94 and that if such a young person intends to move to another local authority area, it must inform that new local authority of the young person's intentions. Where the young person ceases to be accommodated in (whether in a Third or private sector home, by any local health board, NHS trust special health authority , or local authority (exercising its education functions), these organisations must inform the local authority in which the organisation is based of the young person's intentions to move. Some minor exceptions apply. This section is based on provision made in section 24C of the Children Act 1989.

## **Section 97 – Use of accommodation for restricting liberty**

191. This section applies to a child looked after by a local authority may not be placed and if placed may not be kept in accommodation in Wales provided for the purposes of restricting liberty. A child cannot be placed in secure accommodation unless the child has a history of absconding and is likely to suffer significant harm including injury or alternatively if the child is likely to injure himself or others if kept in any other form of accommodation.
192. Subsection (2) provides that regulations may be made which specify the maximum period in which a child can be held in secure accommodation and for which the court may authorise a child to be kept in secure accommodation in Wales. The section also provides for a range of other determinations, powers and authorisations which may be made in relation to the use of secure accommodation.
193. Subsection (7) provides that regulations may provide this section does not apply to a child of any description that may be specified in these regulations and may specify a description that does not include a looked after child.
194. Subsection (10) provides that this section is subject to section 60(5). Section 60(5) provides that whoever has parental responsibility for the child retains the right to remove the child from accommodation provided by or on behalf of a local authority, LHB, NHS Trust, a local authority in the exercise of education functions, care home or independent hospital. This section is based on provision made in section 25 of the Children Act 1989.

## **Section 98 – Assessment of children accommodated by health authorities and education authorities**

195. This section provides that where a child is accommodated in Wales by a LHB, NHS Trust or by a local authority in the exercise of education functions (the ‘accommodating authority’) for a continuous period of 3 months or it is intending to do so, it must notify an ‘appropriate officer’ of the responsible local authority, that is, the Welsh or English authority where the child was ordinarily resident. If the child has no settled place of residence, the Welsh or English authority where the accommodation in which the child is placed is located must be notified instead. A similar duty arises when the accommodating authority ceases to accommodate the child. The ‘appropriate officer’ of a local authority so notified then has a duty to assess the child as outlined in section 12. This section is based on provision made in section 85 of the Children Act 1989.

## **Section 99 – Assessment of children accommodated in care homes or independent hospitals**

196. This section provides that where a child is to be accommodated in Wales a care home or independent hospital or there is an intention to provide such accommodation for a period of at least 3 months, then the person who carries on the establishment must notify the 'appropriate officer' of the local authority in which the care home or independent hospital is located that it is accommodating the child and when it ceases to accommodate the child. The 'appropriate officer' then has a duty to assess the child as outlined in section 12. An 'authorised person' may enter a care home or independent hospital to establish whether this section is being complied with and the care home or the independent hospital is guilty of an offence if it fails to comply with this section in terms of both notifying the local authority of the child's accommodation and obstructing the authorised person in the exercise of their power of entry. This section is based on provision made in section 86 of the Children Act 1989.

### **Section 100 – Visitors for children notified to local authority under section 98 and 99**

197. This section provides that the 'appropriate officer', in accordance with regulations made under this section, must arrange for the child to be visited by a 'representative' of the authority so that they can provide advice and assistance to such children. Regulations may make further provision in relation to the frequency of visits and the circumstances in which visits can be made plus any further functions. The local authority must also ensure that the 'representative' has the necessary skills to do the job. This section is based on provision made in section 86A of the Children Act 1989.

### **Section 101 – Services for children notified to a local authority under section 98 and 99**

198. This section ensures that the "responsible local authority" for the purpose of sections 98 and 99 has a duty to provide services for children who are ordinarily resident in their area but are resident in accommodation outside their area.

199. The services must be provided with a view to promoting contact between the child and their family.

200. Any such duty is in addition to any duty that the local authority for the area in which the child is accommodated may have under section 25 (duty to maintain family contact).

### **Section 102 - Arrangements to assist children to live outside England and Wales**

201. This section provides that a local authority may only arrange for any child in its care to live outside England or Wales with the approval of the court. The section further provides that the court must not give its

approval if such a move would not be in the child's best interests; if suitable arrangements to ensure the child's reception and well-being overseas have not been made; if the child has not consented or if all those with parental responsibility for the child have not consented. If the court considers the child does not have sufficient understanding to make an informed decision then it can disregard the requirement to secure the child's consent and where someone who has parental responsibility for the child cannot be found, is incapable of consenting or is withholding consent unreasonably, the court can also disregard the requirement to secure consent. This section also includes details of the ability to appeal a decision of the court under this section and disappplies the section to circumstances in which a local authority is placing a child for adoption which his or her prospective adopters. This section is based on provision made in paragraph 19 of Schedule 2 to the Children Act 1989.

### **Section 103 – Death of children being looked after by local authorities**

202. This section provides that in the event of the death of a looked after child, the local authority must notify the Welsh Ministers and all those persons with parental responsibility for the child. If it would cause a person with parental responsibility for the child financial hardship, the local authority must also make payments to them to enable the payment for the child's funeral and any travel, subsistence or other costs associated with it. The local authority may however arrange for the burial or cremation if whoever has parental responsibility for the child permits it and must also arrange for burial or cremation depending on the child's religion. If the child was under the age of 16 when he or she dies, the local authority can recover any incurred costs from those with parental responsibility for the child. This section is based on provision made in paragraph 20 of Schedule 2 to the Children Act 1989.

## **PART 7 – SAFEGUARDING**

### **Section 104 – Adults at risk**

203. This places a duty on a local authority to carry out an investigation where it suspects that a person is an "adult at risk"

204. "Adult at risk" is defined in subsection (1); "abuse" is defined in section 166 (interpretation).

205. The local authority must make whatever enquiries it thinks necessary to help it decide if action should be taken. Action could include the provision of care and support under this Bill or the taking of steps to protect the adult under other legislation, such as the Mental Health Act 1983 or the Mental Capacity Act 2005. The principle in section 4 will apply to the way the local authority exercises its functions under this section. This means that it must have regard to the adult's views, wishes and feelings as far as reasonably practicable.

206. Local authorities will be expected to ensure that an action plan is drawn up following an investigation under this section. Subsection (3) enables provision to be made in regulations under section 38 (care and support plans) for such an action plan to be recorded as part of the care and support plan.

### **Section 105 – Adult protection and support orders**

207. This section enables applications to be made to the court for Adult Protection and Support Orders. Subsection (2) provides that the purpose of the order is to enable the ‘authorised officer’ to speak to an adult suspected of being at risk in private, to establish whether the adult can make decisions freely, to assess whether the person is an adult at risk and to establish if any action should be taken.

208. An ‘authorised officer’ can apply to the court for such an order. An ‘authorised officer’ is an individual identified by the local authority to perform the tasks in this section. Regulations can place restrictions on who may be authorised under this section, for example the requirement of particular qualifications or experience.

209. When the order is in force, the authorised officer, a constable and any other person specified in the order have the power to enter premises where the suspected adult at risk is living for the purposes set out in subsection (2). Subsection (7) provides that a constable may use reasonable force if this is necessary to gain access to the premises where the adult at risk lives or to ensure that the authorised officer can speak to the adult in private.

210. Subsection (3) sets out the grounds on which an order may be granted. The court may make an order if it is satisfied that the ‘authorised officer’ has reasonable cause to suspect the adult is at risk; it is necessary for the ‘authorised officer’ to enter the adult’s place of residence to establish whether he or she is at risk; that making the order will meet the purposes of the order and that exercising the power of entry allowed for by the order will not increase the risk experienced by the adult. Subsection (4) sets out the conditions that must be specified in the order. The order must specify the address where the adult at risk lives; how long the order will be in force for and provide that the authorised officer to be accompanied by a constable.

211. Other conditions may also apply including restrictions on when the power of entry can be used; who else the ‘authorised officer’ can be accompanied by and requiring notice of an order to be given.

### **Section 106 - Duty to report adults at risk**

212. This section requires a ‘relevant partner’ (as defined in section 143) to inform a local authority if they suspect a person to be an adult at risk. It also requires a local authority to inform another local authority if an adult

they suspect to be at risk is living or moving to the area of that other authority.

### **Section 107 - Abolition of local authority's power to remove persons in need of care and attention**

213. This section abolishes section 47 of the National Assistance Act 1948 which gives local authorities the power to remove a person in need of care from their home. This no longer in applies in Wales.

### **Section 108 – Duty to report children at risk**

214. This section requires a local authority to inform another local authority if a child they suspect to be at risk is living or moving to the area of that other authority. This is a restatement of the current duty in paragraph 4 of Schedule 2 to the Children Act 1989.

### **Section 109 – The National Independent Safeguarding Board**

215. This section (Subsection (1)) provides for the establishment of a National Independent Safeguarding Board. The Board is referred to within the Bill as the National Board. Subsection (2) places the National Board under a general duty to provide support and advice to Safeguarding Boards (established under section 114) to ensure their effectiveness, to report on the adequacy and effectiveness of safeguarding arrangements for children and adults in Wales and to make recommendations to Welsh Ministers regarding how to improve safeguarding arrangements. Subsection (3) provides that the National Board must make an annual report to Welsh Ministers and any other reports required by Welsh Ministers. The National Board may make any other reports as it thinks fit.

### **Section 110– Regulations about the National Board**

216. This section provides that regulations may be made regarding the National Board. These may contain provision about the constitution and membership of the National Board (including terms of appointment and resignation); remuneration and allowances of members; proceedings of the National Board; people who should be consulted regarding safeguarding arrangements in Wales and the form, content, timing and publication of reports. Subsection (3) provides that the regulations may not provide that a Minister of the Crown can be a member of the National Board.

### **Section 111- Safeguarding Children Boards and Safeguarding Adults Boards**

217. This section provides that regulations must be made specifying the areas in Wales where there are to be Safeguarding Children Boards and Safeguarding Adults Boards (“Safeguarding Board areas”). These

Boards (collectively referred to as “Safeguarding Boards”) are collaborative arrangements between different partners who have an interest in safeguarding children and adults. Subsection (2) provides that each of the following is a partner of a Board: a local authority, a chief officer for a police area, a Local Health Board and NHS Trust. Subsection (3) provides that after consulting with these partners, Welsh Ministers must specify in regulations who will be the lead partner for both a Safeguarding Adults Board and a Safeguarding Children Board. In subsections (4) and (5) the lead partner for each Safeguarding Board must then establish the Board and include the aforementioned partners along with any other member specified in regulations under subsection (6)(b) (who must be persons or bodies who exercise statutory functions in relation to children or adults in Wales – see subsection (7) but excludes a Minister of the Crown – see subsection (8)). Subsections (9) and (10) provide that it is possible for a Safeguarding Board to include representatives of other persons or bodies that the Board considers should be represented. These representatives must be involved in activities or have legal functions relating to children or adults in the Safeguarding Board area in question.

### **Section 112– Functions and procedures of Safeguarding Boards**

218. Subsection (1) sets out the objectives of Safeguarding Children Boards. These are to protect children who are experiencing or are at risk of abuse, neglect or other harm and to prevent children in the Safeguarding Board area from becoming at risk of abuse, neglect or other harm. “Harm” is defined in section 166 in relation to a child as meaning abuse or the impairment of physical or mental health or physical, intellectual, emotional, social or behavioural development. Subsection (2) sets out the objectives of Safeguarding Adults Boards. These are two-fold. Firstly, they are to protect adults in the Safeguarding Adults Board area who have needs for care and support and who are experiencing, or are at risk of, abuse or neglect. Secondly, the Safeguarding Adults Board has the objective of preventing adults with needs for care and support from becoming at risk of abuse or neglect. Subsection (3) provides that a Safeguarding Board is under a duty to achieve its objectives by coordinating and ensuring the effectiveness of the contributions made by each partner. Subsection (4) provides that regulations may make further provision regarding the functions of the Safeguarding Boards including how children or adults can be involved in its work. A Safeguarding Board may co-operate with another Safeguarding Board (subsection (5)) and a Safeguarding Board may act jointly with one or more Safeguarding Boards and a Safeguarding Children Board and a Safeguarding Adults Board may form a joint Board (see subsections (6) and (7)).

### **Section 113 – Safeguarding boards – annual plans and reports**

219. This section provides that the Safeguarding Boards must, before the start of the new financial year (which ends on 31<sup>st</sup> March each year), publish an annual plan setting out its programme of work for the year

ahead. Before 31 July each year, a Safeguarding Boards must publish a report on how it has exercised its functions in the preceding financial year which must include an assessment of the extent to which it has implemented proposals that were set out in its annual plan. Welsh Ministers may make regulations making further provision about the form and content of plans and reports under this section.

### **Section 114 – Supply of information requested by Safeguarding Boards**

220. This section provides that a Safeguarding Board may ask a person or a body to provide information to it or a person or body that it specifies. The information request must come from a “qualifying person or body” and must be for the purpose of assisting the Safeguarding Board in the exercise of its functions. A “qualifying person or body” is defined in subsection (6) and means a person or body whose activities or functions are considered by the Safeguarding Board to be such that the person or body is likely to have information relevant to the exercise of a function of the Board. The type of information referred to in this section includes information relating to the qualifying person or body, the person or body’s functions or activities and captures information supplied to or derived from information supplied to the qualifying person or body. The qualifying person or body is under a duty to comply with a request for information made by a Safeguarding Board under this section.

### **Section 115 – Funding of Safeguarding Boards**

221. This section provides that a Safeguarding Board partner may make payments towards expenditure incurred by the Safeguarding Board. It may also provide staff, goods, services, accommodation or other resources.

### **Section 116 – Safeguarding Boards - supplementary**

222. Subsection (1) provides that a Safeguarding Board must co-operate with the National Board and provide information to it, if requested by the National Board. Subsection (2) provides Welsh Ministers with the power, by regulations, to make provision about the functions of Safeguarding Board partners relating to the Safeguarding Boards on which they are represented. A Safeguarding Board partner is under a duty to have regard to any guidance given by the Welsh Ministers (subsection (3)) and subsection (4) provides that each partner is also under a duty to take all reasonable steps to ensure that the Safeguarding Board on which it is represented operates efficiently.

### **Section 117 – Combined Safeguarding Boards**

223. This section provides that the Welsh Ministers may, by order amend this Part of the Bill to require a Safeguarding Children Board and a Safeguarding Adults Board to combine, creating a single Board. Such an order may not be made unless a draft of the instrument has been laid

before and approved by resolution of, the National Assembly for Wales (see section 165(5)(b)).

### **Section 118 – Interpretation of Part 7**

224. This section provides definitions for the purpose of this Part.

## **PART 8 – SOCIAL SERVICES FUNCTIONS**

### **Section 119 – Social services functions of local authorities**

225. This section provides for the social services functions as set out in the list of legislation in Schedule 2 and for the Welsh Ministers to add, remove or amend entries.

### **Section 120 – Directors of social services**

226. This section requires that every local authority appoint a Director of Social Services and if appropriate for two or more local authorities to appoint a Director for both or all of those authorities. The local authority must ensure the adequate provision of staff to assist the Director in delivering his or her functions and the Welsh Ministers must specify the competencies which a potential Director must possess in order to be appointed to the post, via a code or in regulations. Currently, the competencies a Director must possess are contained in guidance issued under section 7A of the Local Authority Social Services Act 1970.

### **Section 121 – Power to issue codes**

227. This section provides for the Welsh Ministers to issue and publish a code of practice, on the exercise of social services functions under the Bill, which includes guidelines about aims and objectives, and requires local authorities to act in accordance with them. The Welsh Ministers must also publish of the code, and make available (whether on their website or otherwise) any versions of the code which have been revoked and replaced.

### **Section 122 – Making, approval and revocation of codes**

228. This section provides that the Welsh Ministers must consult on a draft of the code or revised code and that following the consultation, it must be laid before the National Assembly for Wales for 40 days. If the National Assembly resolves not to approve the code, it cannot be published. If it resolves to approve the code then it must be published. The Welsh Ministers may revoke a code in accordance with this section or by direction; if a code is revoked by direction then the direction must also be laid before the National Assembly.

### **Section 123 – Departure from requirements in codes**

229. This section enables a local authority to exercise its social services functions in a way that does not adhere to the requirements set out in a code if it considers In such circumstances, the local authority must follow the procedure set out in this section notify the Welsh Ministers of its reasons and to set out its alternative policy or proposed course of action.

### **Section 124 – Policy statements: requirements and ancillary powers**

230. This section describes how the local authority must set out its policy statement: that it must explain, for example, how its policy differs from the requirement in the code, why it is doing things differently, when the statement and the policy comes in to effect and for a copy to be sent to be published and sent to Welsh Ministers.

### **Section 125 – Directions to require compliance with codes of practice**

231. This section provides that Welsh Ministers may direct a local authority to comply with the code if it considers that its alternative policy statement will not adequately deliver its social services functions. The direction must be given in writing, could be revoked by a later direction and the local authority must comply with it.

### **Section 126 – Grounds for intervention**

232. This section provides that Welsh Ministers may intervene in a local authority where it considers it has failed or likely to fail in the exercise of a duty that is a social services function; has acted or is proposing to act unreasonably in the exercise of a social services function or where it is failing or likely to fail to perform a social services function to an adequate standard. This section is derived in part from section 7D of the Local Authority Social Services Act 1970 in respect of a local authority's exercise of its adult social services functions. It is, however, more widely drawn and reproduces for "people" the broader intervention powers that are available for the Welsh Ministers to intervene in the exercise of a local authority's social services functions in relation to children (under sections 496 – 497B of the Education Act 1996 and section 50 of the Children Act 2004).

### **Section 127 – Warning notice**

233. This section provides that the Welsh Ministers must give a warning notice to a local authority if they are satisfied any of the grounds in section 126 exist. The notice must specify the grounds for intervention, reasons why the Welsh Ministers consider the grounds to exist, the action the local authority must take to deal with the grounds, the period within which the action must be taken and the action Welsh Ministers will be minded to take if the local authority does not take the required action.

### **Section 128 – Power of Welsh Ministers to intervene**

234. This section provides that the Welsh Ministers have the power to intervene in a local authority's exercise of its social services functions if a warning notice has been given and the authority has not taken the required action. Where the Welsh Ministers have the power to intervene, it must keep the circumstances in which the exercise of the power came about under review and the power remains in effect until the authority is notified in writing. The Welsh Ministers are also not limited to taking the action they were minded to take in the warning notice.

### **Section 129 – Power to require a local authority to obtain advisory services**

235. This section provides that when the Welsh Ministers are exercising their power under section 128, they can direct the local authority to enter in to a contract with a person or body to provide services of a specified advisory nature, according to certain terms and conditions.

### **Section 130 – Power to require performance of functions by other persons on behalf of authority**

236. This section provides that when the Welsh Ministers are exercising their power under section 128, they can direct the local authority to secure delivery of the functions in respect of which they deemed intervention to be necessary under section 126 by another person and according to certain terms and conditions.

### **Section 131 – Power to require performance of functions by Welsh Ministers or nominee**

237. This section provides that when the Welsh Ministers are exercising their power under section 128, they can direct delivery of the functions in respect of which intervention was deemed to be necessary under section 126 will be undertaken by themselves or a person nominated by them and the local authority must comply with the instructions given.

### **Section 132 – Power to direct exercise of other social services functions**

238. This section provides that the direction may relate to other social services functions in addition to those in respect of which the grounds for intervention relate. In doing so, the Welsh Ministers may have regard to, among other things, financial considerations.

### **Section 133 – General power to give directions and take steps**

239. This section provides that when the Welsh Ministers are exercising their power under section 128, they have a general power to give directions or take any other steps.

## **Section 134 – Directions**

240. This section provides that when the Welsh Ministers are exercising their power under section 128, a local authority, or an officer of an authority that is subject to such a direction or instruction must comply with it.

## **Section 135 – Duty to co-operate**

241. This section provides that a local authority subject to a direction or instruction must co-operate and give assistance to Welsh Ministers (or a nominated person) who is exercising functions in accordance with this Part of the Bill.

## **Section 136 – Powers of entry and inspection**

242. This section provides that the people assisting the Welsh Ministers in the delivery of the social services functions has at all reasonable times a right of entry to the premises of the local authority in question; a right to inspect and make copies of any relevant documentation; a right to access any computer used in connection with any of the aforementioned documentation and can require the people who use the computers to provide the information to assist in the production of information for inspection.

# **PART 9 – WELL-BEING OUTCOMES, CO-OPERATION AND PARTNERSHIP**

## **Chapter 1 – Well-being Outcomes**

### **Section 137 – Duty to issue a statement of the outcomes to be achieved**

243. This section provides that the Welsh Ministers must issue and from time to time revise a statement relating to the well-being of people who need care and support and carers who need support. The statement must specify the outcomes to be achieved in terms of the well-being of those people in relation to the care and support or support provided by local authorities or the care and support or support provided by others. The statement must also specify the measures against which achievement of the outcomes is to be assessed, lay a copy before the National Assembly for Wales and publish it.

### **Section 138 – Power to issue a code to help achieve the outcomes**

244. This section provides that the Welsh Ministers must issue and from time to time revise a code to help achieve the specified outcomes. The code can give guidance, impose requirements and, for example, include quality standards, performance measures and performance targets to achieve; the steps to be taken to meet them and specify differences in each for different categories of care and support and support. The code must also be published together with versions which are no longer in force.

### **Section 139 – Local authorities and the code**

245. This section provides that local authorities must act in accordance with any requirements imposed in the code and have regard to any relevant guidance contained within it. Where performance measures or performance targets are specified in the code which apply to the performance of local authorities, they are to be treated as having been specified under section 8(1) of the Local Government (Wales) Measure 2009.

### **Section 140 – Making, approval and revocation of the code**

246. This section provides that the powers under section 122 apply in relation to the code described in section 138, as it would under the power at section 121.

### **Section 141 – Power to help local authorities to comply with the code’s requirements**

247. This section provides that the Welsh Ministers may do anything it considers will help a local authority to comply with the requirements of the Code including entering into arrangements with any person; cooperating, facilitating or coordinating the activities of the person; exercising any functions on behalf of that person and providing staff, goods, services or accommodation to any person. In doing any of these things, the Welsh Ministers must consult the local authority they intend to assist and any relevant stakeholders.

### **Section 142 – Publication of information and reports**

248. This section provides that the Welsh Ministers may publish information about the provision of care and support as described in section 137 and report on the progress made by local authorities and others towards achieving the specified outcomes under section 137 and the quality standards and targets specified in the Code under section 138.

## **Chapter 2 – Co-operation and Partnership**

### **Section 143 – Arrangements to promote co-operation – adults with needs for care and support and carers**

249. This section provides that a local authority must make arrangements to promote cooperation between the local authority, officers of the authority, each of the authority’s ‘relevant partners’ and other bodies who are engaged in activities relevant to adults in need of care and support and carers in need of support. The arrangements are to be made with a view to improving the well-being of adults with needs for care and support and carers. Arrangements also need to focus on improving the quality of care and support and protecting adults who are experiencing or at risk of abuse or neglect.

250. This section also sets out the ‘relevant partners’ of the local authority: the police; any other local authority; any provider of probation services required under section 3(2) of the Offender Management Act 2007; a LHB; a NHS Trust; Welsh Ministers in relation to functions discharged under Part 2 of the Learning and Skills Act 2000 and any other person which regulations may specify. All relevant partners must co-operate with the local authority in making arrangements under this section and may provide staff, goods, services, accommodation, establish and maintain a pooled fund and share information with one another. A ‘pooled fund’ is defined as being made up of contributions from the authority and the ‘relevant partners’ out of which payments can be made in the discharge of functions. The local authority and its ‘relevant partners’ must also have regard to any guidance given by the Welsh Ministers.

#### **Section 144 – Arrangements to promote co-operation – children**

251. This section makes amendments to section 25 of the Children Act 2004 (co-operation to improve well-being: Wales). These amendments are made to ensure that the existing duty in the 2004 Act to make arrangements to promote co-operation to improve the well-being of children is aligned with the new duty in section 146 of this Bill (arrangements to promote cooperation – adults with needs for care and support and carers). In particular, the definition of “well-being” in section 2 of this Bill is imported into section 25 of the 2004 Act in place of the current definition.

#### **Section 145 – Duty to co-operate and provide information in the exercise of social services functions**

252. This section provides that if the local authority requests the cooperation of or information from a ‘relevant partner’ in exercising its social services functions, it must do so unless it is incompatible with its own duties or otherwise have an adverse effect on its own functions. The ‘relevant partner’ refusing to co-operate or provide information must do in writing giving reasons for the decision.

#### **Section 146 – Promoting integration of care and support with health services etc**

253. This section provides that a local authority must exercise its social services functions with a view to integrating care and support provision with health provision and health-related provision where it would promote the well-being of children, adults with needs for care and support and carers with needs for support; contribute to the prevention or delay of care and support needs and support needs and improve the quality of care and support and support including the outcomes to be achieved.

## **Section 147 – Partnership arrangements**

254. This section enables the Welsh Ministers to make regulations which specify partnership arrangements to be made by two or more local authorities; one or more local authority and one or more LHB. The partnership arrangements are for carrying out social services functions or LHB or NHS Trust functions. The regulations may specify the form of the partnership arrangement; the operation and management of the arrangement; staffing arrangements; the people for whom the benefit of the partnership arrangement is intended; the referral of people to services provided by the partnership arrangement; sharing information; review of cases; dealing with complaints or disputes and accounts and audit.

## **Section 148 – Resources for partnership arrangements**

255. This section provides that a local authority and a LHB may pay towards the establishment and operation of partnership arrangements by making payments directly or in to a 'pooled fund' and by providing staff, goods, services, accommodation and other resources. Regulations may make further provision that, for example, requires the establishment of a 'pooled fund'; the amount of contributions to be made to it; expenditure on posts that are part of the partnership arrangement and administration expenditure.

## **Section 149 – Partnership Boards**

256. This section provides that regulations may be made that require a Partnership Board to be established in respect of partnership arrangements made under regulations under section 147. The regulations may provide for the membership of the Board; payment of remuneration; Board objectives and functions; procedures and reporting arrangements.

## **Section 150 – Guidance about partnership arrangements**

257. This section provides that Partnership Board members must have regard to any guidance issued by the Welsh Ministers.

## **Section 151 – Adoption Service – joint arrangements**

258. This section provides for joint working arrangements to be made in relation to adoption services. A section is inserted in to the Adoption and Children Act 2002. The effect is to allow the Welsh Ministers to direct two or more local authorities to work together to provide specified aspects of their adoption service. Such joint arrangements may include the establishment of a pooled fund, specify staffing and accommodation arrangements, establishment of an adoption panel and processes for resolving disputes and complaints.

## **PART 10 – COMPLAINTS AND REPRESENTATIONS**

### **Chapter 1 – Complaints and Representations about social services**

#### **Section 152 – Complaints about social services**

259. This section gives regulation making powers to the Welsh Ministers to establish procedures for making complaints about social services. These will replace the current provisions about complaints procedures for Welsh local authority social services under sections 114 and 115 of the 2003 Act, which is repealed.
260. Subsection (1) gives Welsh Ministers the power to make regulations that make provision about the handling and consideration of complaints about local authority social services. The provision sets out what complaints can be considered under the regulations. This includes complaints about the provision of services by a local authority or other person under a partnership arrangement under section 33 of the National Health Service (Wales) Act 2006 or section 75 of the National Health Service Act 2006 in relation to the functions of an NHS body, so far as exercisable in relation to Wales. The intention is that a person receiving both health and local authority services from a local authority under such an arrangement will be able to complain to that local authority even if the complaint is about health services which it provides.
261. Subsection (2) allows for the regulations to make provision for who will consider a complaint. It is envisaged that the first stage of the procedure will involve a complaint being made to the local authority concerned, where an attempt will be made to resolve the matter informally. If this is not possible, the complaint may be followed up with formal investigation.
262. Subsection (3) provides for complaints, or any matter raised by a complaint, to be referred elsewhere. It makes specific provision enabling Welsh Ministers to provide in regulations that matters may be referred to the Public Services Ombudsman for Wales (“the Ombudsman”) to consider under the Public Services Ombudsman for Wales Act 2005. This is intended to raise awareness amongst complainants of their right to complain to the Ombudsman. Otherwise, the complaint or matter raised by the complaint may be referred to any other body so that it can decide whether to take any action.
263. Subsection (4) precludes regulations made under this section from making provision for complaints and representations capable of being made under sections 155 or 157. The separate complaints procedure for specified groups of children is being maintained and represents the distinction that exists between the 2003 Act and 1989 Act.

## **Section 153 – Complaints about social services: supplementary**

264. This section sets out supplementary provisions relating to complaints regulations made under section 152. These will replace the current provisions about complaints procedures under section 115 of the 2003 Act, which is repealed in relation to Wales. Subsection (2) provides for regulations to be made to specify such matters as who may make a complaint and to whom, the complaints which may or may not be made, and the procedure for making, handling and considering a complaint. Subsection (3) is concerned with the making of a payment in relation to the consideration of a complaint. Subsection (4) enables the regulations to make provision requiring persons or bodies handling complaints to make information available to the public about the procedures to be followed under the regulations. Subsection (5) enables the regulations to authorise the production or disclosure of information or documents. Where it would not be possible owing to common law duties of confidentiality to disclose relevant information about a complaint to the body which is to consider it under the regulations, or to the body to which a complaint is to be referred for consideration under other provisions, subsection (5) allows for the regulations to make the disclosure lawful. This provision will not override the specific provisions of the Data Protection Act 1998, to the effect that information relating to an individual must not be disclosed without the consent of that individual unless it is necessary to do so for any of the reasons specified in the Act.
265. Regulations made under subsection (6) may provide for a situation in which a complaint raises matters which fall to be considered both under regulations made under section 152, and also under another complaints procedure. The regulations may provide that the complaint may be made under the regulations, and that insofar as it concerns matters falling to be considered under the other procedure, it will be treated as having been raised in a complaint made under the other procedure (e.g. regulations may provide that a complaint may be made to an NHS body about both NHS and local authority services, and that the complaint about local authority services is to be treated as having been made under the regulations made under section 152). In this way, the complainant will be able to make his complaint to only one body, with both sets of procedures being activated. It is also envisaged that the two procedures will thereafter operate as far as possible in parallel so that for the complainant it appears as one system.

## **Section 154 – Assistance for complainants**

266. This section provides that regulations may be made that require local authorities to assist people making a complaint. The regulations could require local authorities to provide advocacy services to enable people to make complaints. The regulations can specify different groups or types of persons who should be provided with assistance. The purpose of this is to enable Welsh Ministers to target the duty to assist groups who are

identified as having the greatest need for advocacy and other support. The regulations may also include provision about publicising any arrangements for the provision of such assistance.

### **Section 155 – Representations relating to certain children**

267. This section requires a local authority to establish a procedure for considering representations that relate to certain children. It replicates to a large extent the provisions of section 26(3) to (3C) of the 1989 Act which are to be repealed. Local authority functions that can be subject to representations under this section fall into three categories:

- a. Representations about the following functions relating either to children looked after by the local authority or to children who are not looked after but may have needs for care and support:
  - i. functions exercisable under Parts 3 to 6 of this Bill (other than functions which are exercisable in relation to a child as a carer).
  - ii. functions exercisable in relation to a child under Part 7 of this Bill.
  - iii. functions under Part 4 or 5 of the Children Act 1989 but specified in regulations.

In such cases, representations must be made by the persons listed in subsection (3).

- b. Representations about local authority functions under section 14F of the Children Act 1989 which are made by persons listed in subsection (4). Section 14F provides that local authorities must make arrangement for the provision within their area of special guardianship support service (such as counselling, advice and information).
- c. Representations about local authority functions under the Adoption and Children Act which have been specified in regulations and that are made by persons specified in subsection (5). Subsection (6) requires that the local authority must ensure that the procedure it establishes under this section must provide that representations are considered by at least one person who is not a member of the local authority concerned. It also provides that any discussions held by the authority about the representations must include a person who is not member of the local authority concerned. This is to ensure that there is a sufficient degree of independence built into the process to ensure that the views of potentially vulnerable children are given adequate weight. The regulations can disapply this requirement in situations where representations are being considered or discussed for the purposes of trying to resolve matters informally (see subsection (8)). Subsection (9) requires local authorities to publicise the procedure it establishes under this section.

## **Section 156 – Representations relating to certain children: further provision**

268. This section provides that a local authority, in considering representations, must comply with the requirements imposed on it under sections 155(6) to (8) (procedural requirements and the requirement for representations to include consideration by a person who is not a member or officer of the local authority concerned) and Welsh Ministers may by regulations require the local authority to monitor the steps it has taken to ensure compliance.
269. A local authority must have regard to the findings of the person who considered the representations considered under section 155 and must notify the person who made the representation, the child (if the local authority considers that the child has sufficient understanding) and any other person who appears to the authority to be likely to be affected, of the local authority's decision and its reasons.

## **Section 157 – Representations relating to former looked after children etc**

270. This section provides that a local authority must establish a procedure for considering representations by certain categories of children and young persons about the discharge of the local authority's functions under Parts 3 to 7 of the Bill in relation to them. It replicates to a large extent section 24D of the 1989 which is repealed.
271. The children and young persons referred to are described as category 1 to 5 young persons. These have the meaning provided by section 88 of the Bill. They are essentially older children (aged 16 to 17) who are looked after or were formerly looked after and young people (18 and older) who are generally care leavers. A looked after child is defined in section 61 of the Bill as a child in local authority care or who is provided with accommodation by the authority in the exercise of specified social services functions.
272. Welsh Ministers have the power to make regulations which may impose requirements about the procedure that must be established by the local authority under this section and may specify time limits.
273. A local authority is under a duty to give publicity to the procedure which it establishes under this section and they must comply with any procedural requirements set out in regulations.

## **Section 158 – Further consideration of representations**

274. This section provides that regulations may be made in relation to representations (including complaints) which have been considered by a local authority under section 156 or 157. This replicates the former

provision contained in section 26ZB of the Children Act 1989. This section cites a broad range of regulation making powers.

275. Subsection (4) provides for complaints, or any matter raised by a complaint, to be referred elsewhere. It makes specific provision enabling Welsh Ministers to provide in regulations that matters may be referred to the Ombudsman to consider under the Public Services Ombudsman for Wales Act 2005. This is intended to raise awareness amongst complainants of their right to complain to the Ombudsman. Otherwise, the complaint or matter raised by the complaint may be referred to any other body so that it can decide whether to take any action.

### **Section 159 – Assistance for persons making representations**

276. This section provides that a local authority is under a duty to make arrangements to provide assistance to children who make representations under section 155 and persons who make representations that fall within section 157. The local authority must give publicity to assistance arrangements. This provision replicates the provision in section 26A of the Children Act 1989 (to be repealed in relation to Wales). The assistance provided under this section must include assistance by way of representation and will therefore provide for advocacy support in the making of representations. This is in order to facilitate vulnerable children and young persons in the making of representations. Regulations must require that certain categories of people do not provide the assistance and may impose other requirements such as for the local authority to monitor the steps it takes to comply with the imposed requirements.

## **Chapter 2 – Complaints about Private Social Care and Palliative Care**

### **Section 160 – Investigation of complaints about privately arranged or funded social care and palliative care**

277. This section gives effect to Schedule 3 of this Bill. This inserts a new Part 2A, Part 2B and Part 3A in to the 2005 Act which gives the Ombudsman powers to investigate complaints about certain kinds of social care and palliative care.

### **Section 161 – Independent advocacy services for complaints about privately arranged or funded palliative care**

278. This section amends section 187 of the National Health Service (Wales) Act 2006 (“the 2006 Act”). Section 187 of the 2006 Act places a duty on Welsh Ministers to provide independent advocacy services (that is services providing assistance to individuals making or intending to make complaints) in relation to complaints about certain specified health services. Section 187 of the 2006 Act currently captures any complaints made to the Ombudsman under the 2005. The section is being amended to make it clear that the duty to provide independent advocacy

services applies only in relation to health care complaints to the Ombudsman. This includes complaints about independent palliative care providers (which is to have the same meaning as in the 2005 Act).

## **PART 11 – SUPPLEMENTARY AND GENERAL**

### **Section 162 – Recovery of costs between local authorities**

279. This section brings together the arrangements for the recovery of costs between local authorities which are currently found in section 32 of the National Assistance Act 1948 (in relation to adults) and section 29 of the Children Act 1989 (in relation to children).
280. It ensures that in circumstances where a local authority is exercising a power to provide care and support to a person who is not ordinarily resident in their area, they are able to recover the costs from the local authority in which the person is ordinarily resident.
281. This will arise where it is necessary to meet a persons needs urgently or in any case where the local authority for the area in which the person is living notifies the other authority.
282. The section sets out the particular circumstances in which the local authority which is providing accommodation or other care and support services for a child is entitled to recover the costs from another local authority.

### **Section 163 – Ordinary residence**

283. This section does not contain a definition of “ordinary residence”, which will retain its ordinary and natural meaning. The provision made by this section is based on provision which is made in section 24 of the National Assistance Act 1948 and section 105 of the Children Act 1989.
284. In subsection (1) describes the impact upon a person’s ordinary residence status as a result of a person moving in to the accommodation needed to meet the care and support needs, including accommodation provided under the NHS (Wales) Act 2006.
285. Regulations may make provision about whether an adult has a need for a particular type of accommodation.
286. When any determination of the area of ‘ordinary residence’ of a child is undertaken, any period in which a child lives at a school or similar institution; according to a supervision order under the Children Act 1989; according to a youth rehabilitation order under Part 1 of the Criminal Justice and Immigration Act 2008; in accommodation provided by a local authority or a place specified in regulations, is to be disregarded.

## **Section 164 – Disputes about ordinary residence and portability of care and support**

287. This section provides for the Welsh Ministers or anyone appointed by them to settle any disputes about a person's 'ordinary residence'. Regulations may make further provision, for example, to ensure that care and support needs are met while the dispute is being resolved and provision in relation to the procedure for referring the dispute to the Welsh Ministers or appointed person. This section derives from provision which is made in section 32 of the National Assistance Act 1948 and section 30 of the Children Act 1989.

## **Section 165 – Orders and regulations**

288. This section makes further provision in relation to the making of orders and regulations under this Bill.

289. Subsection (5) specifies the orders and regulations which are to be subject to the affirmative procedure. All other orders and regulations are subject to the negative procedure.

## **Section 166 – General interpretation and index of defined expressions**

290. This section provides a list of terms used in the Bill and their definitions, for example, 'abuse'; 'eligibility criteria'; 'enactment'; 'function' and 'upbringing'.

## **Section 167 – Power to make consequential and transitional provision**

291. This section provides that the Welsh Ministers can, if they consider it expedient, make regulations which provide for provisions of this Bill to come in to force at different times to other provisions.

## **Section 168 – Commencement**

292. This section provides for the commencement of this Bill.

## **Section 169 – Short title**

293. This section provides for the name of the Bill.

## **Schedule 1 – Contribution towards maintenance of looked after children**

## **Schedule 2 – Social services functions**

### **Schedule 3 – Investigation of complaints about privately arranged or funded social care and palliative care**

294. Paragraphs 1 and 2 insert a new part 2A and 2B into the Public Services Ombudsman (Wales) Act 2005. Parts 2A and 2B contain the following provisions:
295. Section 34A sets out that Part 2A of the 2005 Act applies to the following three matters: (1) Action taken by a care home provider in connection with the provision of accommodation, nursing or personal care in a care home in Wales. (2) Action taken by a domiciliary care provider in connection with the provision of domiciliary care in Wales. (3) Action taken by an independent palliative care provider in connection with the provision of a palliative care service in Wales. Part 2A does not apply to complaints dealt with under part 2 of 2005 Act or matters described in new Schedule 3A to the 2005 Act. Subsection (3) and (4) provide that the Welsh Ministers may by order amend Schedule 3A but must consult the Ombudsman before doing so. Such an order must be laid before and approved by a resolution of the National Assembly for Wales. The terms used in this section are defined in sections 34R to 34T.
296. Section 34B mirrors the general approach taken in section 2 of the 2005 Act. By virtue of section 34B (1) the Ombudsman may only investigate a complaint relating to a matter if:
- a. the complaint has been duly made or referred to him/her; and
  - b. prior to the Ombudsman considering the complaint, the matter must have been brought to the attention of the provider to whom the complaint relates. The provider must also have been given a reasonable opportunity to consider the matter and to respond.
297. In the case of complaints about independent palliative care providers there is an additional condition that the independent palliative care provider received public funding within three years preceding the date of the action to which the complaint relates. “Public funding” is defined in subsection (3) and means funding from the Welsh Ministers, a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006, an NHS Trust or a county council or county borough council in Wales.
298. Sections 34B (4) and 34E set out the circumstances where a complaint is duly made to the Ombudsman. Section 34B (5) and section 34F set out the circumstances where a complaint is duly referred to the Ombudsman by a provider to whom it relates. Section 34B (7) enables the Ombudsman to accept a complaint even if specific requirements as to the way it has been made or referred have not been fulfilled if he/she considers it reasonable to do so. Subsections 34B (8) and (9) provide the Ombudsman with a wide discretion as to whether to begin, continue or discontinue an investigation. Section 34B (10) makes it clear that the

Ombudsman may begin or continue an investigation even if the complaint has been withdrawn. This covers the situation, for example, where a complaint has been made in relation to a provider's action which affects more than one person but where the complaint that has been withdrawn was put forward as the 'lead' complaint. In such cases, where the 'lead' complaint has been withdrawn, it will be open to the Ombudsman to begin or to continue an investigation as he/she sees fit.

299. Section 34C mirrors section 3 of the 2005 Act and provides the Ombudsman with a wide power to take steps to resolve complaints without proceeding to formal investigation. The power is available to the Ombudsman to use instead of or in addition to the power to investigate.

300. Section 34D is based on section 4 of the 2005 Act. A member of the public ("the person aggrieved") is only entitled to complain to the Ombudsman if he or she claims to have sustained injustice or hardship as a result of maladministration or service failure (as the case may be). It is not only individuals who can complain to the Ombudsman. For example, companies or other corporate bodies could complain to the Ombudsman. Persons acting in their capacity as care home providers, domiciliary care providers, independent palliative care providers and listed authorities cannot complain to the Ombudsman (see subsection 34D(3)). The Ombudsman determines whether a person is entitled to make a complaint under this section.

301. Section 34E provides that complaints to the Ombudsman must, generally, be made in writing (which would include by electronic means) (section 34E (1) (a)). However, under section 34B (7) the Ombudsman may decide to accept a complaint otherwise than in writing if he/she thinks it reasonable to do so. For example, if the person aggrieved has a disability which makes it difficult for that person to make his or her complaint in writing, the Ombudsman has discretion to decide whether to accept an oral complaint instead.

302. Section 34E (2) provides that the time-limit ("the permitted period") for making a complaint to the Ombudsman is:

- a. Where the person aggrieved has notice of the matter before the date on which section 34B comes into force, the period of 12 months beginning with the date on which the section comes into force, and
- b. In any other case, within 12 months beginning with the day on which the person aggrieved first had notice of the matter.

303. Again, under section 34B(7), the Ombudsman has discretion to consider a complaint made outside that time limit if he/she considers that in the circumstances of the case it is reasonable to do so. The Welsh Ministers also have a power to make regulations modifying the application of the 2005 Act to former care home providers in Wales, former domiciliary

care providers in Wales and former independent palliative care providers in Wales (see the amendments to section 42 of the 2005 Act by paragraph 29 of Schedule 3A). It is anticipated that this power may be used to vary, for example, the time-limit in respect of which complaints about the actions of such persons must be made to Ombudsman

304. Subject to the particular express requirements in the 2005 Act, it is for the Ombudsman to decide his or her own procedures and, in particular, section 34E (3) provides that it is for the Ombudsman to decide whether the requirements of section 34E have been met in a particular case.
305. Section 34F provides that a provider can refer a complaint made to it to the Ombudsman but only if it is made by a person who would have been entitled to make that complaint directly to the Ombudsman. The complaint must also have been made to the provider before the end of the “permitted period” referred to in section 34(E) (2). Any such referral must be in writing and the referral must occur before the end of one year beginning on the day on which the complaint was made to the provider. Under section 34B (7) the Ombudsman may, for the purposes of accepting a referred complaint, disregard either (or both) of those time-limits (as described above) if he/she considers that it is reasonable to do so.
306. Section 34G provides that the Ombudsman must prepare a statement of reasons in relation to any decision by him/her not to begin or to discontinue an investigation. This includes the situation where, under section 34C, the Ombudsman has resolved a complaint and therefore decided not to undertake an investigation. Under section 34G (2), the Ombudsman must send a copy of that statement to:
- a. the person who made the complaint to him/her; and
  - b. the provider to whom the complaint relates.
307. Under section 34G (3) the Ombudsman may send a copy of the statement to any other person.
308. The Ombudsman may publish such a statement if the requirements of section 34G (4) are met. The Ombudsman may only publish such a statement if he/she considers that it is in the public interest to do so. In reaching his/her view, the Ombudsman must take account of the interests of the person aggrieved and any other persons he/she thinks appropriate.
309. Section 34G (6) and (7) provides that when the Ombudsman prepares a statement that:
- a. names any person (other than the provider to whom the complaint relates); or
  - b. includes information which, in the opinion of the Ombudsman, is likely to identify such a person and which, in the opinion of the

ombudsman, can be omitted from the statement without impairing its effectiveness,

the Ombudsman may only include such information in the version of the statement that he/she is required or empowered to send or which he/she publishes if it is in the public interest to include such a name or identifying particulars. In reaching his or her view, the Ombudsman must have regard to the interests of the person aggrieved and any other persons he/she thinks appropriate.

310. In the case of the version of the statement that the Ombudsman is required to send, under section 34G(2), to the person who made the complaint and the provider to whom the complaint relates, it is not anticipated that it would be difficult for the Ombudsman to show that it is in the public interest to include such information. This is because, in such cases, there is likely to be a strong public interest in those parties knowing the names and identities of persons that the Ombudsman considers it necessary to refer to in the statement. In many cases such a statement is likely to name or identify only the person aggrieved, the provider that took the action which is the subject of the complaint, and those of its employees who are relevant.
311. Section 34H (3) provides that subject to the requirements in subsections (1) and (2) of that section, it is for the Ombudsman to decide the procedure for conducting an investigation. The Ombudsman could, for example, establish different procedures for different types of complaints and he/she could, in any particular case, depart from any such established procedures if he/she considered it appropriate.
312. Section 34H (4) (a) makes it clear that the Ombudsman may make such inquiries as he/she thinks appropriate. Section 13(4) (b) provides that it is for the Ombudsman to decide whether a person may be legally represented or be represented in some other way (e.g. by an independent advocate).
313. Section 34H (6) empowers the Ombudsman to make payments towards the expenses of persons assisting him/her in an investigation, provided that they are properly incurred, and to pay certain allowances. It is for the Ombudsman to determine whether it is appropriate to make such payments or to impose any conditions on such payments.
314. Section 34I confers wide powers on the Ombudsman to require the production of information or documents in relation to an investigation (section 34I (2) and (3)) and to require certain persons to provide him/her with any facilities he/she may reasonably require (section 34I (4)). The latter provision may be needed, for example, if the Ombudsman were to require the use of certain computer hardware or software to view documents or information provided.

315. The Ombudsman has the same powers as the High Court in relation, amongst other things, to the taking of evidence from witnesses (section 34I (3)).
316. Section 34I (5) provides protection for those from whom the Ombudsman may require evidence or the production of information or documents. Such a person cannot be required by the Ombudsman to give any evidence or produce any documents which that person could not be compelled to give or produce before the High Court.
317. Section 34I(6) prevents information from being withheld by the Crown on the ground that it is subject to an obligation to keep it secret or a restriction on its disclosure.
318. The effect of section 34I(7) is that, in relation to the Ombudsman's power to require evidence or the production of information or documents, the Crown cannot rely on either its special privileges or immunities to defeat the Ombudsman's right of access to such information or on the protection that would otherwise be afforded by section 14(5).
319. Section 34J (1) and (2) enable the Ombudsman to certify to the High Court that, in his/her opinion, a person has without lawful excuse obstructed him/her (or a member of his/her staff etc.) in the discharge of his/her functions under Part 2A or that the person has acted in a way that, if the act was done in relation to High Court proceedings, would amount to a contempt of court.
320. If the Ombudsman issues such a certificate then the High Court may inquire into the matter and if the High Court finds that the person concerned has obstructed the Ombudsman, the High Court may deal with the person as if he/she had committed contempt in relation to the High Court (section 34J(4)).
321. Section 34K 16(1) provides that after conducting an investigation the Ombudsman must, unless he/she decides to report under the alternative procedure set out under section 34N, prepare a report on his/her findings and send a copy of that report to the persons specified in section 34K(3). The Ombudsman may also send a copy of the report to any other persons he or she thinks appropriate.
322. The Ombudsman may publish his/her report if the requirements of section 34K (4) are met. The Ombudsman may only publish such a report if he/she considers that it is in the public interest to do so. In reaching his/her view, the Ombudsman must have regard to the interests of the person aggrieved and any other persons he/she thinks appropriate.
323. Sections 34K (7) and (8) provide that when the Ombudsman prepares a report that:

a. names any person (other than the provider to whom the complaint relates); or

b. includes information which, in the opinion of the Ombudsman,

is likely to identify any person and which, in the opinion of the Ombudsman, can be omitted from the report without impairing its effectiveness, the Ombudsman may only include such information in the version of the report that he/she is required or empowered to send, or which he/she publishes, if it is in the public interest to include such a name or identifying particulars. In reaching his view, the Ombudsman must have regard to the interests of the person aggrieved and any other persons he/she thinks appropriate.

324. In the case of the version of the report that he/she is required to send, under section 34K (2) (b), to the person who made the complaint and the provider to whom it relates etc, it is not anticipated that it would be difficult for the Ombudsman to show that it is in the public interest to include such information. This is because, in such cases, there is likely to be a strong public interest in those parties knowing the names and identities of persons that the Ombudsman considers it necessary to refer to in his report. Indeed, in many cases such a report is likely to name or identify only the person aggrieved, the provider who took the action which is the subject of the complaint and those of the provider's employees that are relevant (e.g. because it is the employee who took the action that is the subject of the complaint).

325. Section 34L provides that the Ombudsman may publish a notice about an investigation report in a newspaper or other broadcast/electronic media. Any decision to publish such a notice must take account of the public interest, the interests of the person aggrieved and any other persons the Ombudsman thinks appropriate (see section 34L(4)). The notice may (amongst other things) include the matters specified in section 34L (2). The provider to whom the report relates must reimburse the Ombudsman for the reasonable costs of arranging the publication of the notice, if requested to do so by the Ombudsman.

326. Section 34M provides that if, following an investigation, the Ombudsman reports (under section 34K) that the person aggrieved has sustained injustice or hardship as a consequence of the action investigated, the provider concerned is required to consider the Ombudsman's report and notify him/her of the action that the provider has taken or proposes to take in response and also of the time within which such action will be taken. The provider concerned must make the notification within one month starting on the day that the provider receives the report or such longer period as the Ombudsman in his/her discretion specifies.

327. Section 34N provides that the full reporting procedure under sections 34K to 34M does not apply if the Ombudsman decides to report under the

alternative procedure set out in this section. If after an investigation, the Ombudsman concludes that the person aggrieved:

- a. has not sustained injustice or hardship as a consequence of the action investigated; or
- b. has sustained such injustice or hardship and the provider to whom the complaint relates agrees within the permitted period (as defined in section 34N (3)) to implement the Ombudsman's recommendations, then the Ombudsman may decide to report under the alternative procedure under section 34N but only if he/she is satisfied that the public interest does not require him/her to report under the full reporting procedure set out in sections 34K to 34M.

328. A report under the alternative procedure in this section is subject to the same restrictions with respect to naming or identifying individuals as a report under section 34K (section 34N(8) and (9)).

329. Under section 34O, the Ombudsman may issue a special report in three cases:

- a. the Ombudsman concludes in an investigation report that the person has sustained injustice or hardship as a result of the matter investigated and in terms of the requirements of section 34M (action following receipt of investigation reports) the Ombudsman has not received the notification required under that section, is not satisfied with the notification or the action taken/proposed to be taken;
- b. The Ombudsman has prepared a report under section 34N (2) (alternative procedure) and is not satisfied that the provider has implemented his or her recommendations within the permitted period; and
- c. A complaint has been resolved under section 34C (alternative resolution of complaints), in resolving the complaint the person aggrieved has sustained injustice or hardship as a result of the matter complained of, the provider has agreed to take particular action and the Ombudsman is not satisfied that the provider has taken that action before the end of the permitted period.

330. Section 34P (1) provides that the Ombudsman must make whatever recommendations that he or she thinks appropriate with respect to the action he/she thinks should be taken to remedy the injustice or hardship suffered by the person aggrieved and to prevent similar injustice or hardship being caused again. Sections 34P (2) and (3) set out to whom the Ombudsman is required to send a copy of a special report. The requirement depends on whether the original report was a full report under section 34K, a report made under section 34N (alternative procedure

reports) or a statement made following a resolution of the complaint under section 34C.

331. Section 34P (4) to (10) makes further provision with regard to special reports. In particular, a special report is subject to the same restrictions with respect of naming or identifying individuals as a report under section 34K.
332. Section 34Q provides the Ombudsman with the power to publish a notice about a special report in a newspaper or by means of broadcast and electronic media, and in determining whether to publish should take into account the public interest, the interests of the person aggrieved and the interests of any other person the Ombudsman considers appropriate. A provider to whom a report relates must, if requested to do so by the Ombudsman, reimburse the Ombudsman for the reasonable costs of arranging publication. If a provider does not pay it is expected that the Ombudsman could pursue the costs as a civil debt.
333. Section 34R provides definitions of “care home” and “care home provider” by reference to the Care Standards Act 2000. Action of the provider will include actions of the provider’s staff and others acting on the provider’s behalf.
334. Section 34S provides definitions of “domiciliary care” and “domiciliary care provider”. Action of a provider will include action of the provider’s staff and others acting on the provider’s behalf.
335. Section 34T provides definitions of “palliative care service” and “independent palliative care provider”. A palliative care service is a service the main purpose of which is to provide palliative care. It is therefore not intended to cover services that provide a degree of palliative care but such care is incidental to the main service being provided. It is intended, however, to capture a wide range of palliative care services ranging from community based services to palliative care hospitals. Action of a provider will include action of the provider’s staff and others acting on the provider’s behalf.

## **PART 2B**

336. Section 34U (1) and (2) requires the Ombudsman to consult another specified ombudsman whenever he/she thinks that a complaint is about a matter that could be the subject of investigation by that other ombudsman. The other ombudsmen that the Ombudsman is required to consult are specified in section 34U (7). There is power for the Welsh Ministers, by order, to amend this list of specified ombudsmen (section 34U (8) and (9)).
337. Where the Ombudsman is required to consult with another ombudsman on a matter, he/she may also co-operate with that other ombudsman on that matter (section (34U (3)). The consultation and co-operation may extend to anything relating to the matter. Examples of

matters on which there may be consultation and co-operation are set out in section 34U (4), namely:

- a. how an investigation into the complaint should be conducted;
- b. the form, content and publication of a report following an investigation.

338. Section 34U(5) and (6) provides that, where such consultation takes place, the Ombudsman and any of the specified ombudsmen (other than the Scottish Public Services Ombudsman) can conduct joint investigations and publish joint reports.

339. In cases of consultation on a complaint, the Ombudsman will be able to use his/her supplementary powers in paragraph 21 of Schedule 1 to the 2005 Act to forward a copy of the complaint to the other ombudsman. Furthermore, the Ombudsman could use those supplementary powers to inform the person who has made the complaint how he or she can make a complaint to the other ombudsman.

340. Section 34V deals with situations where the Ombudsman, when dealing with a complaint, identifies matters which could be subject to examination by the Commissioner for Older People in Wales or the Welsh Language Commissioner. It requires the Ombudsman to inform and consult the Commissioner for Older People in Wales and the Ombudsman may inform and consult the Welsh Language Commissioner. The Ombudsman and another Commissioner referred to in this section may co-operate or conduct joint investigations. They may prepare joint reports.

341. Section 34W contains further provision about collaborative working between the Ombudsman and other Commissioners (specifically the Commissioner for Older People in Wales and the Welsh Language Commissioner) where complaints raise matters that could be dealt with the Ombudsman or by the respective Commissioners (referred to as “connected matters”).

342. Section 34X provides that information obtained in relation to or in connection with complaints is to be kept confidential except in limited circumstances. Section 34X (2) provides for the exceptions where such information may be disclosed, namely:

- a. for the purposes of deciding whether to investigate a complaint; for the purposes of an investigation; for the purposes of resolving a complaint and for the purposes of reporting on an investigation;
- b. for the purposes of consulting, co-operating, working and reporting jointly with other ombudsmen in accordance with sections 34U, 34V and 34W;
- c. for the purposes of certain proceedings or for inquiries with a view to taking certain proceedings;

- d. where the Ombudsman considers it is in the public interest, for the purposes of protection from or avoiding or minimising etc. any threat to the health or safety of any person or persons;
- e. in the case of information within section 34X (3) to (5) to the Information Commissioner.

343. Section 34X (6) provides that neither the Ombudsman nor a member of his/her staff or other person acting on his/her behalf or assisting him/her can be required in any proceedings (except proceedings specified in section 34X (2)) to disclose information coming to his knowledge in deciding whether to investigate a complaint; during an investigation of a complaint; in resolving a complaint; or in consulting, co-operating, working or reporting jointly on a complaint with another ombudsman.

344. Section 34Y(1) provides that a Minister of the Crown may give notice to the Ombudsman that disclosure of any document or information or class of document or information specified in the notice would, in the opinion of the Minister, be prejudicial to the safety of the State or otherwise contrary to the public interest. Where such a notice is given, this Bill neither authorises nor requires the Ombudsman, a member of his/her staff or any other person acting on his/her behalf or assisting him/her, to disclose such specified information.

345. Where the Ombudsman or a member of his/her staff etc. is obliged by virtue of some other legal requirement to disclose the information then nothing in this section prevents that person from complying with that obligation.

346. Section 34Z provides that the following are absolutely privileged for the purposes of defamation, namely:

- a. any publication (which will bear its usual meaning within the law relating to defamation) of any matter by the Ombudsman, a member of his/her staff or another person acting on his/her behalf or assisting him/her in the discharge of his/her functions under the 2005 Act;
- b. any publication of a matter in any report published by a person in the discharge of its functions under section 17 (requirement on listed authorities to publish the Ombudsman's report of an investigation); and
- c. any publication in certain communications concerning a complaint, namely:
  - i) communications between a listed authority (including a member or co-opted member, officer or member of staff or another person acting on behalf of or assisting in the discharge of the functions of that authority) and the Ombudsman (or his/her staff or persons acting on his/her behalf or assisting him/her in the discharge of his/her functions);

- ii) communications between a care home provider, domiciliary care provider or independent palliative care provider, (including an officer or member of staff or another person acting on behalf of or assisting in the discharge of the functions of that provider) and the Ombudsman (or his/her staff or persons acting on his/her behalf or assisting him/her in the discharge of his/her functions.)
- iii) communications between the person aggrieved or the person making the complaint on behalf of the person aggrieved and an elected member of the Assembly; and
- iv) communications between the person aggrieved or the person making the complaint on behalf of the person aggrieved and the Ombudsman (or his staff, persons acting on his behalf or assisting him in the discharge of his functions).

347. This provision generally replicates similar protection under the legislation relating to other ombudsmen.

348. Paragraphs 3 to 36 of the Schedule make consequential changes to the 2005 Act and related legislation.

## **ANNEX 2 – TABLE OF DERIVATION**

- 1. This document is intended as an informal aid to debate on the Bill in the National Assembly for Wales. While care has been taken to ensure that the document is as accurate as reasonably practicable, it does not purport to be, and should not be relied on as, authoritative.**
- 2. The attached table is intended to provide information on the derivation of the provisions of the Social Services and Well-being (Wales) Bill. The table does not provide definitive or exhaustive guidance, and should be read in conjunction with the Bill and with the explanatory notes on the Bill.**

### **KEY TO ABBREVIATIONS**

NAA 1948 – National Assistance Act 1948

HSPHA 1968 – Health Services and Public Health Act 1968

CSDPA 1970 – Chronically Sick and Disabled Persons Act 1970

LASSA 1970 – Local Authority Social Services Act 1970

HASSASSA 1983 – Health and Social Services and Social Security Adjudications Act 1983

MHA 1983 – Mental Health Act 1983

DP(SCR)A 1986 – Disabled Persons (Services, Consultation and Representation) Act 1986

CA 1989 – Children Act 1989

NHSCCA 1990 – National Health Service and Community Care Act 1990

C(RS)A 1995 - Carers (Recognition and Services) Act 1995

EA 1996 – Education Act 1996

CDCA 2000 – Carers and Disabled Children Act 2000

HSCA 2001 – Health and Social Care Act 2001

HSC(CHSA) 2003 – Health and Social Care (Community Health and Standards) Act 2003

CA 2004 – Children Act 2004

PSO(W)A 2005 – Public Services Ombudsman (Wales) Act 2005

NHS(W)A 2006 – National Health Service (Wales) Act 2006  
SCC(W)M 2010 – Social Care Charges (Wales) Measure 2010  
CS(W)M 2010 – Carers Strategies (Wales) Measure 2010

<b>TABLE OF DERIVATIONS</b>		
<b>SECTION / PARAGRAPH</b>	<b>CORRESPONDING REFERENCE IN EXISTING LEGISLATION</b>	<b>SUBSTANTIVE CHANGE?</b>
<b>PART 1 : INTRODUCTION</b>		
1	New	
2	New, although meaning of “well-being” is based on section 25(2) of CA 2004 and, in relation to children includes “welfare” for the purposes of CA 1989	
3	Meaning of “carer” - section 1 CS(W)M 2010; section 1 of CDCA 2000. Meaning of “disabled” – section 17(11) CA 1989 in relation to children; section 16 DP(SCR)A 1986 in relation to adults	Yes
<b>PART 2 : GENERAL FUNCTIONS</b>		
4	New for adults but, in relation to children, subsection (4) derives from section 17(1) and (4A) and section 22(4) and (5) CA 1989	
5	New Amendments are made to section 40 NHS(W)A 2006 and section 26 CA 2004	
6	New but based partly on section 17 and Schedule 2 CA 1989 in relation to children	
7	New	
8	New, but based partly on: in relation to adults - section 29(4) NAA 1948, and section 1 CSDPA 1970; in relation to carers - CS(W)M 2010; and in relation to children – paragraph 1 of Schedule 2 to CA 1989	
9	Section 29(4) NAA 1948 in relation to adults and paragraph 2 of Schedule 2 to CA 1989 in relation to disabled children	Yes
<b>PART 3: ASSESSING THE NEEDS OF INDIVIDUALS</b>		
10	New but based partly on section 47(1) NHSCCA 1990	

11	New	
12	New	
13	New	
14	New	
15	New but carers' assessments currently provided for in section 1 of the C(RS)A 1995 and section 1 and section 6 of the CDCA 2000.	
16	New	-
17	New for adults, but in relation to children derives from paragraph 3 of Schedule 2 to CA 1989	
18	New but section 47(4) NHSCCA 1990 contains a power to give directions	
<b>PART 4: MEETING NEEDS</b>		
19	New	
20	New	
21	New but local authorities have functions in relation to meeting the care and support needs of adults under a number of statutes, including NAA 1948, HSPHA 1968, CSDPA 1970, NHS(W)A 2006	
22	New but local authorities have functions in relation to meeting the care and support needs of adults under a number of statutes, including NAA 1948, HSPHA 1968, CSDPA 1970, NHS(W)A 2006	
23	New but derived from existing functions local authorities have in relation to meeting the care and support needs of children, their families and others under section 17 of and Schedule 2 to the CA 1989	No
24	New but derived from existing functions local authorities have in relation to meeting the care and support needs of children, their families and others under section 17 of and Schedule 2 to the CA 1989	No
25	Paragraph 10 of Schedule 2 to the CA 1989	No
26	New	-
27	New	-

28	New	-
29	New although there are currently powers to provide services to carers under section 2 CDCA 2000 and to parents of children in need under section 17(3) CA 1989	-
30	Section 21(1A) NAA 1948	No
31	Sections 21(8), 26(1C) (1D) and 29(6)(b) NAA 1948; section 49 HSCA 2001	Yes
32	Section 21(8) NAA 1948	
33	New but section 29(6)(b) contains restrictions on payments	
34	Section 57 HSCA 2001	No
35	Section 17A CA 1989 and section 57 HSCA 2001	No
36	Section 57 HSCA 2001	No
37	Section 57 HSCA 2001	No
38	New, although there is existing guidance issued under LASSA 1970 upon which the form and content of care plans for children and adults who receive social care services is based.	Yes
39	New	
40	New	
41	New but based partly on section 54 HSCA 2001. The National Assistance Act (Choice of Accommodation) Directions 1993 are issued under powers in LASSA 1970 (section 7A)	No
42	Section 48 NAA 1948 in relation to adults	Yes
<b>PART 5: CHARGING AND FINANCIAL ASSESSMENT</b>		
43	New, but derived from - section 22 NAA 1948, sections 17(7) – (10) and 29(1) – (5) CA 1989, and sections 1 and 3 SCC(W)M 2010	Yes
44	New, but derived from - section 22 NAA 1948, sections 17 and 29 CA 1989, and section 3 SCC(W)M 2010	No

45	New, derived from section 2 SCC(W)M 2010 (which applies only in relation to adult non-residential care services for adults)	
46	New, derived from section 3 SCC(W)M 2010	
47	New, but derived from – section 22 NAA 1948, sections 17 and 29 CA 1989, and sections 4 – 6 SCC(W)M 2010	
48	New, but derived from – section 22 NAA 1948, and section 5 SCC(W)M 2010	
49	New	
50	New, but derived from – section 22 NAA 1948, sections 17 and 29 CA 1989, and section 7 SCC(W)M 2010	
51	New, derived from section 8 SCC(W)M 2010	
52	New, derived from section 11 SCC(W)M 2010	
53	New, derived from section 55 HSCA 2001 (which applies only in relation to charges for residential care services for adults)	
54	New	
55	New, but derived from – sections 45, 52 and 56 NAA 1948, section 24 HASSASSA 1983, and section 1 SCC(W)M 2010	
56	New, derived from – section 22 HASSASSA 1983 (which applies only in relation to residential care services for adults)	
57	New, but derived from – section 21 HASSASSA 1983 (which applies only in relation to residential care services for adults)	

<b>PART 6: LOOKED AFTER AND ACCOMMODATED CHILDREN</b>		
58	Section 22(1) and (2) CA 1989	No
59	Section 22G CA 1989	No
60	Section 20 CA 1989	No
61	Section 21 CA 1989	No
62	Section 22(3) – (8) CA 1989	No
63	Section 22A CA 1989	No
64	Section 22B CA 1989	No
65	Section 22C CA 1989, and new provision within subsections (10) to (12) of section 65	Yes (in relation to subsections (10) to (12))
66	Section 22D CA 1989	No
67	NEW	
68	NEW	
69	Section 29(6) of and paragraph 3 of Schedule 2 CA 1989	No
70	Section 22E CA 1989	No
71	Sections 22C(11) and 22F of and Part 2 of Schedule 2 CA 1989	No
72	Paragraph 12A of Schedule 2 CA 1989	No
73	Paragraph 12B of Schedule 2 CA 1989	No
74	Paragraph 12C of Schedule 2 CA 1989	No
75	Paragraph 12D of Schedule 2 CA 1989	No
76	Paragraph 12E of Schedule 2 CA 1989	No
77	Paragraph 12F of Schedule 2 CA 1989	No
78	Paragraph 12G of Schedule 2 CA 1989	No
79	Paragraph 15 of Schedule 2 CA 1989	No
80	Paragraph 16 of Schedule 2 CA 1989	No
81	Section 23ZA CA 1989	No
82	Section 23ZB CA 1989	No
83	Section 25A CA 1989	No
84	Section 25B CA 1989	No
85	Section 25C CA 1989	No

86	Section 26(1) and (2) CA 1989	No
87	Paragraph 19A of Schedule 2 CA 1989	No
88	<p>Section 88 is derived from the following provisions of the CA 1989 -</p> <p><u>subsections (1) and (2)</u> - Paragraph 19B(2) of Schedule 2, section 23A(2), section 23C(1), (6) and (7) , section 23C (7) and 23CA, section 24A and section 24(1B)</p> <p><u>subsection 3</u> - section 24(2) and section 24(1B)</p> <p><u>subsection (4)</u> – section 24(3) and section 24(1B)</p> <p><u>subsection (5)</u> - paragraph 19B(1) of Schedule 2, section 23A(4) CA 1989, section 23C(1)(a), section 24(4) and (5)</p> <p><u>subsection (6)</u> - section 23C(8), section 24B(4)</p> <p><u>subsection (7)</u> – paragraph 19B(3) of Schedule 2, section 23A(3) and (5)</p>	No
89	<p>Section 89 is derived from the following provisions of the CA 1989 –</p> <p><u>subsection (1)</u> – section 23B(1), section 23C(2)(a)</p> <p><u>subsection (2)</u> – section 23B(11), section 23C(2)(b)</p> <p><u>subsection (3)</u> – section 23B(11)</p>	No

	<p><b><u>subsection (4)</u> – section 24(4)</b></p>	
90	<p>Section 90 is derived from the following provisions of the CA 1989 –</p> <p><b><u>subsections (1) and (2)</u> – paragraph 19C of Schedule 2, section 23B(2), section 23C(3)(a) and section 23CA(2)</b></p> <p><b><u>subsections (3) and (4)</u> – section 23D</b></p>	No
91	<p>Section 91 is derived from the following provisions of the CA 1989 –</p> <p><b><u>subsection (1)</u> – paragraph 19B(4) of Schedule 2</b></p> <p><b><u>subsection (2)</u> – section 23B(3), section 23C(3)(b), and section 23CA(3)</b></p> <p><b><u>subsection (3)</u> – paragraph 19B(4) of Schedule 2, section 23B(3)(b), section 23C(3)(b), and section 23CA(3)(b)</b></p> <p><b><u>subsection (4)</u> – section 23E(1), paragraph 19B(4), section 23B(3)(a), section 23C(3)(b) and section 23CA(3)(a)</b></p> <p><b><u>subsections (5) and (6)</u> – section 23E(1) and (1B)</b></p>	No

	<p><b><u>subsection (7)</u></b> –  paragraph 19B(5) of Schedule 2,  section 23E(1D), and  section 23C(3)(b)</p> <p><b><u>subsection (8)</u></b> –  section 23E(1)</p>	
92	<p>Section 92 is derived from the following provisions of the CA 1989 –</p> <p><b><u>subsection (1)</u></b> –  section 23B(8)</p> <p><b><u>subsection (2)</u></b> –  section 23B(9)</p> <p><b><u>subsection (3)</u></b> –  section 23B(10)</p> <p><b><u>subsection (4)</u></b> –  section 23B(13)</p>	No
93	<p>Section 93 is derived from the following provisions of the CA 1989 –</p> <p><b><u>subsection (1)</u></b> –  section 23C(4),  section 23C(4)(a) and section 24B(1),  section 23C(4)(a) and section 24B(2)(a) and  section 23CA(5)(a)  section 23C(4)(b) and section 24B(2)(b) and  section 23CA(5)(b)</p> <p><b><u>subsection (2)</u></b> –  section 23C(5)</p> <p><b><u>subsection (3)</u></b> –  section 23C(5A)</p> <p><b><u>subsection (4)</u></b> –  section 23C(5B)</p> <p><b><u>subsection (5)</u></b> –</p>	No

	section 23C(9) and section 24B(5), and section 23CA(9) and section 24B(5)	
94	<p>Section 94 is derived from the following provisions of the CA 1989 –</p> <p><u>subsection (1)</u> – section 24A(1)</p> <p><u>subsection (2)</u> – section 24A(2)</p> <p><u>subsection (3)</u> – section 24A(3)</p> <p><u>subsection (4)</u> – section 24A(4)</p> <p><u>subsection (5)</u> – section 24A(5), section 24B(1), section 24B(2)(a), section 24B(2)(b), and section 24A(5)</p> <p><u>subsection (6)</u> – section 24B(3), section 24(1A) and section 24(2)(a), section 24B(5) and section 24B(6)</p>	No
95	<p>Section 95 is derived from the following provisions of the CA 1989 -</p> <p>section 23B(12) and section 17(7) – (9), section 23B(10) and section 17(7) – (9), section 23CA(8) and section 17(7) – (9), section 24A(6) and section 17(7) – (9)</p>	No
96	Section 24C CA 1989	No
97	Section 25 CA 1989	No
98	Section 85 CA 1989	No
99	Section 86 CA 1989	No
100	Section 86A CA 1989	No

101	Paragraph 8A of Schedule 2 CA 1989	No
102	Paragraph 19 of Schedule 2 CA 1989	No
103	Paragraph 20 of Schedule 2 CA 1989	No
<b>PART 7: SAFEGUARDING</b>		
104	New	
105	New	
106	New	
107	Repeal of Section 47 NAA 1948	
108	Paragraph 4 of Schedule 2 CA 1989	
109	New	-
110	New	-
111	New but Safeguarding Children Boards based on similar model to those in part 3 CA 2004	-
112	New but Safeguarding Children Boards based on similar model to those in part 3 CA 2004	-
113	New	-
114	New but based on section 32A CA 2004	-
115	New but with some aspects of section 33 CA 2004 that currently apply to Local Safeguarding Children Boards	-
116	New but with some aspects of section 34 CA 2004	
117	New	-
118	New	-
<b>PART 8: SOCIAL SERVICES FUNCTIONS</b>		
119	Section 1A LASSA 1970	No
120	Section 6 of LASSA 1970, New requirements contained in subsections (2) and (3)	Yes, in relation to subsections (2) and (3)
121	New	
122	New	
123	New	
124	New	

125	New	
126	New, but derives from section 7D LASSA 1970 (in relation to social services functions for adults) and sections 496 – 497B EA 1996 and section 50 CA 2004 (in relation to social services functions for children)	Yes (in relation to adults)
127	New	
128	New	
129	New, based on section 497A EA 1996	
130	New, based on section 497A EA 1996	
131	New, based on section 497A EA 1996	
132	New	
133	New, based on section 497 EA 1996	
134	New, based on section 497AA EA 1996	
135	New, based on section 497AA EA 1996	
136	New, based on section 497B EA 1996	
<b>PART 9: WELL-BEING OUTCOMES, CO-OPERATION AND PARTNERSHIP</b>		
<b>CHAPTER 1: WELL-BEING OUTCOMES</b>		
137	New	
138	New	
139	New	
140	New	
141	New	
142	New	
<b>CHAPTER 2: CO-OPERATION AND PARTNERSHIP</b>		
143	New	

144	Amends section 25 CA 2004	
145	New but based partly on section 27 CA 1989	
146	New	
147	New	
148	New	
149	New	
150	New	
151	New	
<b>PART 10: COMPLAINTS AND REPRESENTATIONS</b>		
<b>CHAPTER 1: COMPLAINTS AND REPRESENTATIONS ABOUT SOCIAL SERVICES</b>		
152	Section 114(3)(4)(5)(6) HSC(CHSA) 2003 with some changes	No
153	Section 115 HSC(CHSA) 2003	No
154	New	-
155	Section 26(3) to (3C) and (4)(4A)(5A) and (8) CA 1989	No
156	Section 26(4A)(6) and (7) CA 1989	No
157	Section 24D CA 1989	No
158	Section 26ZB CA 1989	No
159	Section 26A CA 1989	No
<b>CHAPTER 2: COMPLAINTS ABOUT PRIVATE SOCIAL CARE AND PALLIATIVE CARE</b>		
160	New	-
161	New	-
<b>PART 11 : SUPPLEMENTARY AND GENERAL</b>		
162	New, but based on – section 32 NAA 1948, and section 29 CA 1989	
163	Section 24 NAA 1948 (in relation to adults), section 105 CA 1989 in relation to children	Yes
164	Section 32 NAA 1948 (in relation to adults), section 30 CA 1989 (in relation to children)	Yes

165	New	
166	New	
167	New	
168	New	
169	New	
<b>SCHEDULE 1 : CONTRIBUTIONS TOWARDS MAINTENANCE OF LOOKED AFTER CHILDREN</b>		
1	Paragraph 21 of Schedule 2 CA 1989	No
2	Paragraph 22 of Schedule 2 CA 1989	No
3	Paragraph 23 of Schedule 2 CA 1989	No
4	Paragraph 24 of Schedule 2 CA 1989	No
5	Paragraph 25 of Schedule 2 CA 1989	No
<b>SCHEDULE 2 : SOCIAL SERVICES FUNCTIONS</b>		
	Schedule 1 LASSA 1970	No
<b>SCHEDULE 3 : INVESTIGATION OF COMPLAINTS ABOUT PRIVATELY ARRANGED OR FUNDED SOCIAL CARE AND PALLIATIVE CARE</b>		
1	New	-
2	New	-
3	New	-
4	New	-
5	New	-
6	New	-
7	New	-
8	New	-
9	New	-
10	New	-
11	New	-
12	New	-
13	New	-
14	New	-
15	New	-
16	New	-
17	New	-

<b>18</b>	<b>New</b>	-
<b>19</b>	<b>New</b>	-
<b>20</b>	<b>New</b>	-
<b>21</b>	<b>New</b>	-
<b>22</b>	<b>New</b>	-
<b>23</b>	<b>New</b>	-
<b>24</b>	<b>New</b>	-
<b>25</b>	<b>New</b>	-
<b>26</b>	<b>New</b>	-
<b>27</b>	<b>New</b>	-
<b>28</b>	<b>New</b>	-
<b>29</b>	<b>New</b>	-
<b>30</b>	<b>New</b>	-
<b>31</b>	<b>New</b>	-
<b>32</b>	<b>New</b>	-
<b>33</b>	<b>New</b>	-
<b>34</b>	<b>New</b>	-
<b>35</b>	<b>New</b>	-
<b>36</b>	<b>New</b>	-