



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE	Social Services and Well-being (Wales) Bill – The Balance of Primary to Subordinate Legislation making Powers
DATE	31 October 2013
BY	Gwenda Thomas AM, Deputy Minister for Social Services

I am making this Statement today in light of the great interest shown by the Constitutional and Legislative Affairs Committee during Stage 1 scrutiny in respect of the balance between what is stated on the face of the Bill and the subordinate legislation making provisions, the appropriateness of the delegated powers and the applied legislative procedures. I wanted to take the opportunity to reiterate my position and also set out my thoughts on a number of related other issues.

The Balance of Primary to Subordinate Legislation

In its report of Stage 1 scrutiny, the Constitutional and Legislative Affairs Committee recommended '*...that that the Deputy Minister reviews the balance of the Bill with a view to tabling amendments to ensure that the Bill's policy intent is much clearer.*'

In response, I would say that this is a substantial Bill, bringing together adults and children's social care legislation that dates back as far as 1948. It is a piece of primary legislation which aims to create a framework for sustainable social services in Wales, a framework which will last a generation. In order to provide for this, the system that enables the provision of social care, and the legal footing that that system sits on (i.e. this Bill), needs to be flexible. The Bill itself sets out clear overarching and individual duties to ensure the fundamental changes to the system of social care in Wales that are necessary, take place.

It is also an enabling Bill which needs to allow scope for the operational detail of how Local Authorities and other partners can deliver against the duties to be accommodated over time as it adapts to changing circumstances. Prescribing such detail on the face of the Bill would at best require frequent revision of primary legislation and at worst reduce the lifespan of the Bill itself. In these circumstances therefore, I am firmly of the view that the balance between primary and secondary legislation is not only proportionate, but necessary.

Allowing the more operational details of the system to be defined through subordinate legislation allows the law to be adapted as circumstances and requirements change. It also allows timely reactions to any amendments that may be needed as a result of the UK Government's legislation and policy changes, which are due to take place over the coming years.

The recommendation made by the Constitutional and Legislative Affairs Committee set out above is in the process of being met now as we go through Stage 2. I have tabled a series of Government amendments which seek to strengthen and make clearer my policy intentions. I look forward to the forthcoming scrutiny of the Health and Social Care Committee in these areas.

In response to comments made about the Bill being a framework piece of legislation, this Bill **does** create a framework for the law about social care services and that is what a Bill of this nature should do. It is a different sort of Bill to some of the others that have been before Assembly and which have dealt with single issues. Bills of that nature deal with much narrower policy issues and, understandably, do not need to create a framework for a whole subject area.

A Bill such as the Social Services and Well-being (Wales) Bill would be flawed if it sought to tie down the detail of every aspect over such a wide range of issues and left no scope for variation over time. This Bill is no less specific than the social care law it is consolidating and replacing such as the National Assistance Act 1948, the Local Authority Social Services Act 1970 and the Carers (Recognition and Services) Act 1995. In relation to this, the Constitutional and Legislative Affairs Committee have stated '*We do not consider it good practice to introduce a framework Bill unless there are good reasons for doing so. Ultimately, it is a better to delay the introduction of a Bill rather than introduce one which requires further detailed policy development and for the outcome of that development to be added by means of subordinate legislation.*' I disagree with this statement. A major Bill of this sort needs to create a framework. This Bill is needed now to deal with the challenges, economic and demographic, that we face now. The subordinate legislation which follow will provide detail and will quite properly face scrutiny in its turn.

Consequential Amendments and Repeals

During the Stage 1 debate, reference was made to the exclusion of consequential amendments and repeals from the face of the Bill. In relation to the law for adults I have good reasons for doing this. Members will recall the oral statement made by the then Minister for Health and Social Services on the introduction of the Bill setting out that it did not include such amendments. A very broad power to make consequential amendments is required because it is not possible to draft all the consequential amendments on the face of the Bill. This is because the timetable for this Bill overlaps with the Care Bill going through the UK Parliament. This is the first time since devolution that two Bills, in Wales and England, have been prepared at the same time making a whole system change.

This Bill is changing the legal system for adult social care and replacing it with a new one. The old system applied to England and Wales and the new system in this Bill will be Wales only. At the same time England are changing their arrangements to create an England-only legislation. The overlap in the Assembly and Parliamentary processes means it is not possible to be certain which Act is going to come into force first.

We do not know therefore whether the consequential amendments needed are ones which will allow the appropriate links to be made with:

the existing England and Wales law;

the new England law as it will appear when introduced, or as it may eventually be amended in its passage through Parliament.

I believe my approach is the most sensible way forward.

On the point of repeals, the Constitutional and Legislative Affairs Committee has received a clear and comprehensive table of repeals and related provisions in the Bill which Members will know has been published to the Health and Social Care Committee's Bill web page.

The procedure and timetable for making Subordinate Legislation

I also want to provide some detail about the subordinate legislation making powers in the Bill. First, I want to respond to the Constitutional and Legislative Affairs Committee recommendation that I reconsider the procedures to be applied to the making of subordinate legislation. Members will know that I have given careful consideration to this issue during Stage 1 scrutiny and from my acceptance of recommendations set out in both of the Committee Stage 1 reports. This consideration has resulted in Government Amendments having been tabled for consideration at Stage 2 which make changes to a number of procedures and some of these are:

- a change from affirmative to super-affirmative in relation to any future merger of Safeguarding Boards;
- a change from negative to affirmative in relation to any change to the definition of 'disabled';
- a change from negative to affirmative in relation to Adult Protection and Support Orders; and
- a change from negative to affirmative in relation to duties to meet the needs of adults and children.

Members will also know that in consolidating existing social care law, that in some areas I am simply re-stating existing provisions which we know to work well. As a result, I am bringing across the procedures that go with those provisions as practice indicates these procedures work well. Examples include the provisions for Direct Payments in sections 34-37 and the provisions for looked after children in sections 92 and 93.

In addition, of the various Regulation-making powers, almost half are replicating or slightly modifying powers which are already in existence. A further number are included to build in flexibility so that the categories or definitions set in the Bill can, if required be modified (for example, the power in section 9(3) to prescribe who is to be treated as deaf or blind for the purposes of the register). Importantly, other powers replace direction-making powers which were not subject to any Parliamentary or Assembly scrutiny previously. An important example of this is the ability to make requirements about the way that assessments are carried out by directions under section 47(4) of the National Health Service and Community Care Act 1990. Finally, some of the Regulations proposed are an elevation of requirements that are currently contained in guidance. The most important example of this is the eligibility criteria which are the basis for determining which of a person's needs are met by a local authority.

I have recognised the concerns of the organisations who gave evidence, and those of the Committee Members: that further detail about the subordinate legislation should be brought forward before the Assembly is asked to vote on the Bill so that they can see how this legislation will work in practice. The development of policy intent for the key Regulations is underway and will be complete by December 2013. It is intended that Regulations will go out

to formal consultation in Autumn 2014 and be laid before the Assembly in Spring 2015. I will be making a further Written Statement on this ahead of the Christmas recess.

I also gave my commitment to the Health and Social Care Committee on 18 April that this detail be made available before Assembly Members commitment to the final vote on this Bill in February next year. I am happy to re-affirm that commitment here.

Ahead of that – and in recognition of a recommendation made by the Health and Social Care Committee - I will be making a major policy statement on Assessment and Eligibility later this month so that this can inform Committee Members thinking during Stage 2.

In this Statement, I believe I have demonstrated that I have listened to the issues raised by the Constitutional and Legislative Affairs Committee.