

Y Pwyllgor Iechyd a Gofal Cymdeithasol

Lleoliad:

Ystafell Bwyllgora 4 – Tŷ Hywel

Dyddiad:

Dydd Iau, 11 Mehefin 2015

Amser:

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Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



I gael rhagor o wybodaeth, cysylltwch â:

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Agenda – Dogfennau Ategol

Rheoliadau Gofal a Chymorth (Cymhwysra) (Cymru) 2015: trafod y dystiolaeth

Noder bod y dogfennau a ganlyn yn ychwanegol i'r dogfennau a gyhoeddwyd yn y prif becyn Agenda ac Adroddiadau ar gyfer y cyfarfod hwn

10 Rheoliadau Gofal a Chymorth (Cymhwysra) (Cymru) 2015: trafod y dystiolaeth (15.20 – 15.30) (Tudalennau 1 – 47)

National Assembly for Wales / Cynulliad Cenedlaethol Cymru
[Health and Social Care Committee](#) / [Y Pwyllgor Iechyd a Gofal Cymdeithasol](#)

[The Care and Support \(Eligibility\) \(Wales\) Regulations 2015](#) / [Rheoliadau Gofal a Chymorth \(Cymhwysra\) \(Cymru\) 2015](#)

Evidence from Age Cymru - CSR 01 /
Tystiolaeth gan Age Cymru - CSR 01



Consultation Response

**National Assembly for Wales Health and Social Care Committee Scrutiny of the
Care and Support (Eligibility) (Wales) Regulations 2015**

May 2015

Introduction

Age Cymru is the leading national charity working to improve the lives of all older people in Wales. We believe older people should be able to lead healthy and fulfilled lives, have adequate income, access to high quality services and the opportunity to shape their own future. We seek to provide a strong voice for all older people in Wales and to raise awareness of the issues of importance to them.

We welcome the opportunity to respond to the Health and Social Care Committee's consultation on regulations and codes of practice in relation to eligibility. The effective operation of the eligibility framework will be fundamental to the operation of the social care system under the new Act.

Introduction

1. Age Cymru were pleased to participate in the work of the Technical Group established by the Welsh Government that considered Eligibility. We welcome this opportunity to comment on the Code of Practice on Meeting Needs and associated regulations as they have been laid before the Health and Social Care Committee.
2. We welcome the steps that have been taken to introduce greater consistency in the eligibility framework across Wales. However, we remain deeply concerned that if the threshold for eligibility is set too high, older people will not receive the support that they need until a crisis point is reached. It is crucial to ensure that no-one is worse off as a consequence of the transition to the new system.
3. Whilst we appreciate that the intention of the Act is to see more people's needs being met by preventative services in the community, we must recognise that this will require a significant shift in resources in order to be achieved. It also needs to be recognised that, despite assertions to the contrary in the Codes, there may not be an immediate reduction in the number of people in Wales who need access to

formal social care services as many people are living for longer and the incidence of chronic conditions and forms of cognitive impairment continues to rise.

The 'Can and Can Only' principle

4. According to 2.20, the National Eligibility Framework is expressed through the following principle:
“The person has needs which meet the eligibility criteria if an assessment establishes that they can, and can only, overcome barriers to achieving their well-being outcomes by the local authority preparing a care and support plan (or a support plan for a carer) to meet their assessed needs, and ensuring that the plan is delivered.”
5. With regard to the 'Can and Can Only' principle for determining eligibility, we are concerned that the restrictive nature of the definition creates potential for the application of the principle to become a barrier to accessing personalised services, if it is interpreted in such a way that a person has to demonstrate that their needs are not being met by the preventative services available in the community. Steps must be taken to ensure that this does not delay people from accessing personalised services to support the achievement of their well-being outcomes.

Co-production and right to appeal

6. In terms of enabling co-production, we are not convinced that the eligibility framework will strengthen the role of individuals as the local authority will retain control of commissioning the services to deliver care and support plans. It is therefore a concern that individuals receiving a care and support package who choose not to have a direct payment will not be full partners in designing and delivering care due to the role of procurement processes in shaping the services commissioned.
7. We welcome the commitment in 3.34 of the code that visits commissioned under a care and support plan should be of sufficient length to ensure appropriate delivery and that the length of visits must be identified in the care and support plan. We must now ensure that this leads to the delivery of quality care. It is important to ensure that commissioning processes work to facilitate this delivery, rather than acting as a barrier or restricting the capacity for co-production to operate.
8. We are also concerned that the language in the Codes and the Regulations leaves decisions to the local authority in a way that works against the principle of co-production. For example, references including the phrase 'if it appears' seem to give the local authority a large degree of discretion in deciding whether a person requires a re-assessment of whether their needs are being met. Under 3.58, for example, the implication would appear to be that if the local authority is satisfied that needs have not changed/needs are being met, then no re-assessment would take place. It is not clear what recourse, if any, exists for an individual or a carer in these circumstances.

9. The above issue reflects the fact that, unlike the Care Act in England, the Social Services and Wellbeing (Wales) Act does not provide a right of appeal to decisions made by local authorities. Currently the only mechanism open to carers and those they care for to object to the outcome of eligibility decisions is to make a formal complaint. We believe that this oversight weakens the overall intentions of the Act and would like to see a formal appeals process introduced by legislation at the earliest opportunity.

Monitoring of signposting to ensure effectiveness

10. Whilst we welcome the revision to the Code of Practice under 2.24 to provide support to access appropriate community-based services, even where a determination of eligibility has been made, we are concerned that the signposting highlighted under 3.9 does not allow for monitoring to ensure that this signposting has worked effectively, that services have been accessed, and that these services have been able to help the person achieve the desired well-being outcome.

Clarity

11. We are unclear as to why the 'specified outcomes' listed in Regulation 5 (b) (i) of the Care and Support (Eligibility) (Wales) Regulations 2015 do not correlate exactly with the 'personal well-being outcomes' that are set out in Part 2 of the Act. This appears to introduce an unnecessary lack of clarity for both practitioners and those seeking assistance.

Direct payments

12. Age Cymru were pleased to be invited to participate in the work of the Overview Group established by the Welsh Government that considered Direct payments. We welcome many of the revisions that have been made to the Code of Practice in line with the recommendations of the Overview Group's consultation response. We welcome the commitment to expanding and facilitating the use of direct payments, and it is important that direct payments are not refused, or fail to be offered, based upon assumptions made about an individual's chronological age.
13. One remaining area of concern relates to the fact that direct payments cannot be used to pay for healthcare as is made clear by 4.7. This gives rise to a concern that without clear processes for joint working between local authorities and healthcare professionals, there is a potential for tensions to emerge between health boards and local authorities over the definition of certain needs.

Advocacy

14. As a long-term proponent of independent advocacy, Age Cymru welcomes the inclusion of advocacy in the redrafted Part 4 Code of Practice, in light of its absence from the original. In particular, we welcome the recognition under 3.51 and 3.52 that a review of a care and support plan can involve an advocate.
15. We are also pleased to see a new paragraph addressing advocacy under 3.32. However, we are concerned that some of the language and phrasing used under this paragraph does not reflect the intention of the work of the Advocacy Technical Group which participated in the development of the draft Code of

Practice on advocacy. In particular, it fails to recognise that support by family and friends may be inappropriate, as opposed to unavailable. Where there are conflicts of interest between an individual and members of their family, or potential safeguarding concerns, advocacy by those family members is entirely inappropriate. The paragraph also fails to reflect those situations where independent advocacy is appropriate.

16. In line with the comments above, we are concerned about the phrasing that has been added around inclusion of an advocate “where one has been identified” (e.g. 2.3) as this does not reflect the importance of providing advocacy where an individual can, and can only, participate effectively in assessment, eligibility and other processes with the assistance of an independent advocate.

Carers

17. We understand the overarching aims of the Act to refocus on people’s strengths, capacity and capabilities but we are concerned that this change of emphasis could easily result in additional demand and expectation being placed on unpaid carers to meet the care and support needs of the people they care for. It is vital then that primary and secondary legislation provides a clear legal framework for the decisions which need to be made by local authorities in these matters.
18. We welcome the high profile given to carers in the Act and both the primary and secondary legislation relating to assessments make it clear that an assessment of needs must be carried out in a manner which disregards the willingness or availability of a carer to provide care and support. The “Can and Can Only” test and eligibility regulations however reintroduce the availability of *“others who are willing to provide that care”* directly into decisions about whether a person is legally entitled to have their needs met by a local authority. We believe that there is an inherent risk for carers in this approach, especially as the stated aim of the legislation is to “reduce the number of people who will require a care and support plan” and thereby have an enforceable right to support from their local authority.
19. Age Cymru, together with other members of the Wales Carers Alliance, was therefore particularly disconcerted to see the removal of Regulation 7 from the original consultation draft. Regulation 7 specifically addressed the importance of a local authority disregarding the care given by a carer (to an adult or a child) when making decisions in regards to need and eligibility. The removal of this clause increases the likelihood of local authorities deciding that the care and support needs of an adult or disabled child can be readily met by their carer, potentially placing undue pressure on carers to take on or maintain increasing levels of care.
20. Clauses 3(c)(ii), 4(c)(ii), 5(c)(ii) of the revised regulations refer to “others who are willing to provide that care” but there is a concern that this does not provide sufficiently clear direction on the relationship between eligibility and the willingness and availability of a carer to provide care and support. The original Regulation 7 may have been confusing but at least attempted to address this issue.

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[The Care and Support \(Eligibility\) \(Wales\) Regulations 2015
/ Rheoliadau Gofal a Chymorth \(Cymhwysra\) \(Cymru\)
2015](#)

Evidence from Alzheimer's Society - CSR 02 / Tystiolaeth
gan Y Gymdeithas Alzheimer's - CSR 02

**Alzheimer's
Society**

Leading the
fight against
dementia

Alzheimer's Society Response

The Care and Support (Eligibility) (Wales) Regulations

May 2015

Consultation Response

Tudalen y pecyn 5

1. Alzheimer's Society

Alzheimer's Society is the UK's leading support and research charity for people with dementia, their families and carers. We provide information and support to people with any form of dementia and their carers through our publications, National Dementia Helpline, website and more than 2,000 local services. We campaign for better quality of life for people with dementia and greater understanding of dementia. We also fund an innovative programme of medical and social research into the cause, cure and prevention of dementia and the care people receive.

By 2016, when these regulations come into force, there will be 46,300 people with dementia living in Wales.

2. Alzheimer's Society response to questions posed

1. Do the draft Regulations and Code of Practice achieve the aims of the Act?

1.1 Alzheimer's Society believes that the draft regulations and code of practice do not achieve the aims of the Act. The duties set out in the code of practice are now vague to the extent that local authorities could interpret them loosely. Leaving the code of practice open to interpretation could lead to eligibility decisions being made in courts of law. This is the opportunity to ensure that the regulations and code of practice allow access to care and support for people with dementia.

1.2 The Act has a strong emphasis on the principle of wellbeing which is supported by Alzheimer's Society. However, we have concerns that with the current drafts of regulations and code of practice, not all people with dementia will be able to meet their personal outcomes in order to achieve wellbeing. In particular, the omission of cognitive impairment in point 3(a) of the regulations could mean the needs of people with dementia are not met. Alzheimer's Society recommends that cognitive impairment is included in point 3(a) in the regulations to ensure that any person with dementia or a learning disability is covered.

1.3 As Alzheimer's Society stated in its original response, many people with dementia may be physically able to get washed or dressed, but may need prompting to do so. As such, this can have an impact on maintaining relationships or involvement in the community. Alzheimer's Society strongly recommends including prompting under point 3(c) in the regulations.

2. Are the draft Regulations and Code of Practice appropriate to ensure the right access to care and support for people with dementia?

2.1 Alzheimer's Society has concerns that the draft eligibility criteria will not ensure the right access to care and support for people with dementia. We recognise that the criteria can be brief in the regulations; however, there are no further explanations in the code of practice. As Alzheimer's Society stated in its original response, many people with dementia may be able to wash or dress, but they may not be able to manage their finances. Point 3(b)(i) in the regulations states that needs could relate to the ability to carry out self-care or domestic routines. This could include the ability to pay utility bills; however, this is not clear if this is the case in the current draft of the code of practice. As stated in the original consultation response, without support with managing finances or paying bills, a person with dementia risks having their electricity or gas supply cut off, which could lead to the need for a higher level of support.

2.2 In its original response, Alzheimer's Society expressed concerns over the 'can and can only' test. If a person can only just achieve their outcomes without the need for care and support, they are at risk of their needs worsening and subsequently requiring a higher level of support from local authorities. Alzheimer's Society recommends that the code of practice states what will happen if a person is not eligible for care and support from the local authority in order to emphasise the preventative aspect of the Social Services and Wellbeing (Wales) Act.

2.3 Alzheimer's Society believes that the original code of practice was stronger than the current draft and would like to return to this version with the addition of explanations and case studies. Alzheimer's Society strongly recommends that explanations are included in the code of practice to prevent any misinterpretations by local authorities. This must include clarification of the self-care tasks listed under point 1(3) in the regulations, as well as under the eligibility criteria in point 3(b) in the regulations.

2.4 The flowchart showing the pathway to personal outcomes is currently illegible and it is impossible to comment on this.

2.5 The case studies included in the annex of the code of practice do not demonstrate a variety of circumstances, given that they focus mainly on reablement services. Alzheimer's Society would like to see a case study of an older person who needs preventative services before they are admitted to hospital. Alzheimer's Society would be happy to work with the Welsh Government on a suitable case study.

3. Do the draft Regulations and Code of Practice sufficiently address any concerns previously raised?

3.1 Alzheimer's Society welcomes some elements of the updated draft regulations and code of practice on eligibility. For example the

inclusion of the 'ability to communicate' as a recognised eligible need for children, adults and carers in the regulations. For people who have conditions that affect their ability to communicate, such as people in the later stages of dementia, taking account of person's communications ability and method of communication is crucial in making sure that they get the care and support at the right time in the right place.

- 3.2 Alzheimer's Society still has major concerns with the regulations and code of practice; in fact, these concerns have been intensified having seen the latest draft versions. Alzheimer's Society recommends that the regulations and code of practice reflect the points sent out below and seeks reassurances from the Welsh Government that this will be the case.
- 3.3 With regards to point 3c, Alzheimer's Society would like to see the addition of the words "or prompting" under (ii). By including these words in the regulations, it would recognise that people with dementia may be physically able to carry out a task but they need prompting to do so (for example, they may be able to have a wash, but they need prompting to do so).
- 3.4 Alzheimer's Society believes that the outcomes in point 1(3) of the regulations are lacking some vital elements. For example, the ability to maintain a home is essential, if it includes paying bills. People with dementia may have the ability to wash, dress or cook a meal, but not be able to look after their finances. Without the right support, this could mean that they lose their electricity or gas supply for non-payment of bills.
- 3.5 Alzheimer's Society also recommends that the outcomes listed under points 2 and 3 in the regulations are expanded and detailed in the code of practice. Doing so would overcome some ambiguities in the regulations and reduce the risk of different interpretations and to provide consistency between local authorities.

4. What are the likely consequences of the draft Regulations and Code of Practice for current and future service users and carers?

- 4.1 Alzheimer's Society's main concern is that people with dementia and their carers living in Wales will not be able to access care and support. As the code of practice is so vague, there could be inconsistencies in the interpretation by local authorities. This means that some people with similar needs could receive support whereas others do not. Without support, the needs of people with dementia can worsen; they are more likely to go into hospital in an emergency or move into a care home earlier than expected – all of which are more costly interventions than being supported to live in their own home.

4.2 Alzheimer's Society believes that, as a consequence of these regulations and code of practice, eligibility decisions may be made in the courts of law. Alzheimer's Society would like to see vast improvements to the regulations and code of practice in order to prevent lengthy legal battles and eligibility decisions based on case law, rather than correct interpretation.

For more information, please contact:

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National Assembly for Wales / Cynulliad Cenedlaethol Cymru
[Health and Social Care Committee / Y Pwyllgor Iechyd a Gofal Cymdeithasol](#)

[The Care and Support \(Eligibility\) \(Wales\) Regulations 2015 / Rheoliadau Gofal a Chymorth \(Cymhwysra\) \(Cymru\) 2015](#)

Evidence from Sense Cymru – CSR 03 / Tystiolaeth gan Sense Cymru – CSR 03

Care and Support (Eligibility) (Wales) Regulations 2015: Sense Cymru evidence

1. Sense Cymru welcomes the opportunity to give evidence to the Health and Social Care Committee on the Care and Support (Eligibility) (Wales) Regulations 2015. Sense Cymru is a member of the Social Care and Well-being Alliance Wales (SCWAW) and endorses the evidence submitted by this alliance.
2. Sense Cymru is the national charity that supports and campaigns for deafblind children and adults. We also support those who have a single sensory loss with an additional need.
3. Sense Cymru broadly welcomes the proposed approach to determining eligibility as set out in the Care and Support (Eligibility) (Wales) Regulations 2015, the accompanying 'Explanatory Memorandum' and the draft Code of Practice on Meeting Needs, subject to minor amendments.
4. We strongly welcome the approach to determining eligibility that does not determine eligibility on the level of need (as in the current system where needs are either 'low', 'moderate', 'substantial' or 'critical') but on the basis of an individual's ability to meet their personal well-being outcomes. This model of determining eligibility puts the individual's needs at the heart of the process rather than eligibility criteria being used as a tool solely to ration financial resources.
5. We welcome the intention to support low level needs where these can and can only be met through the preparation and delivery of a care and support plan. Meeting low level needs is in line with the Act's preventative agenda and, if these low level social care needs are met before they escalate, the cost of meeting these needs is substantially lower than meeting higher level needs further down the line.

6. Whilst we are keenly aware that financial considerations must play a part in reforming the social care system in Wales, we are concerned to ensure that decisions about a person's outcomes and eligible needs in relation to those outcomes should precede decisions by the local authority about the budget apportioned to meeting those needs.
7. We welcome the inclusion of the 'ability to communicate' as a recognised need which meets the eligibility criteria for children, adults and carers in the regulations. Deafblindness affects a person's ability to communicate and therefore taking account of person's communications ability and method of communication is crucial in making sure that they get the care and support at the right time in the right place.
8. Whilst we welcome the move towards a consistent eligibility threshold across Wales, we would stress that geography and location will necessarily be bound up in the determination of eligibility under the proposed system and could lead to differences across Wales. For example, the availability of preventative community services and the local transport infrastructure in any given area will affect whether a person is able to meet their outcomes independently or will be eligible to have their needs met by the local authority's preparation and delivery of a care and support plan.

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[Gofal a Chymorth \(Cymhwysra\) \(Cymru\) 2015](#)

Evidence from – CSR 04 Wales Alliance for Citizen Directed Support /
Tystiolaeth gan Cynghrais Cymru ar gyfer Cymorth a Gyfarwyddir gan
Ddinasyddion – CSR 04

Health and Social Care Committee

Scrutiny of the Care and Support (Eligibility) (Wales) Regulations 2015: Consultation

Your contact details

Name:	Paul Swann
Are you responding as an individual or on behalf of an organisation?	On behalf of an organisation
Organisation (and role if applicable):	Citizens and Providers Network of the Wales Alliance for Citizen Directed Support – Council Member
Telephone / Mobile number:	[REDACTED]
Email:	[REDACTED]
Would you like to be added to the Committee's contacts database for future inquiries?	Yes please.

Disclosure of information

The Assembly's [policy on disclosure of information](#) is available; please ensure that you have considered these details carefully before submitting information to the Committee.

Submitting evidence

If you wish to submit evidence, please send an electronic copy of your submission form to SeneddHealth@assembly.wales.

Alternatively, you send it to:

Catherine Hunt, Second Clerk,

Health and Social Committee

National Assembly for Wales

Cardiff Bay, CF99 1NA.

The Health and Social Care Committee has agreed to undertake scrutiny of the Care and Support (Eligibility) (Wales) Regulations 2015, which will be made under the Social Services and Well-being Act 2014. The draft Regulations were published by the Welsh Government on 8 May, and there will be a 60 day scrutiny period before a resolution for their approval can be considered by the Assembly. During this period, the Committee would like to hear the views of those with an interest on the draft Regulations. The draft Regulations should be considered alongside the Code of Practice on the exercise of social services functions in relation to part 4 (Meeting needs) of the Social Services and Well-being (Wales) Act 2014.

To inform the work the Committee would welcome your views in relation to the consultation questions set out below. Comments should be a maximum of 2000 words in total.

Consultation questions

Question 1a – What are your views as to whether the draft Regulations and Code of Practice as drafted will achieve the desired aims of the Act?

1a.1 The Citizens and Providers Network of the Wales Alliance for Citizen Directed Support (WACDS) welcomes this opportunity to provide evidence to the Health and Social Care Committee. Information about the Alliance and our definition of Citizen Directed Support (CDS) can be accessed at <http://www.disabilitywales.org/?p=4618>. Briefly,

“Citizen Directed Support is a set of ideas to help us build good relationships with people who support us to achieve our goals and live our lives as we choose.”

1a.2 WACDS’ overall perspective on the Act, and on the eligibility and meeting needs sections in particular, is determined by the extent to which we believe that the Regulations and Codes of Practice will guide local authorities and other agencies to implement CDS in practice.

1a.3 We articulated a number of concerns in our response to the

consultation on the regulations and Code of Practice in relation to Parts 3 and 4 of the Act (1). Although we believe that subsequent drafting of the regulations on eligibility and the Code of Practice on meeting needs could have gone further, the progress that has been made does alleviate some of these concerns.

1a.4 For instance, paragraph 2.11 in the Code sets out a rationale for the approach to assessment of need for social support, which we endorse, and regulation 6 provides a clear statement on individuals' ability to meet need. Taken together, we believe that these provide a sound basis for local authorities to approach the tasks of assessment and meeting need – as long as “need” is understood to mean “need for support” and not “special need” (see advice on use of terminology at 1c.6 below).

1a.5 However, we remain concerned that the “can, and can only” test set out in paragraph 2.20 of the Code remains open to interpretation by local authorities. Our understanding is that the intention behind the test is to ensure that local authorities only act within their legal powers and duties, with ‘can’ meaning that the required social support is within the authority’s legal powers and/or duties, and ‘can only’ meaning no other body has powers or duties to provide this support.

1a.6 We understand that a secondary intention was to link to the Section 16 duty to promote social enterprises, co-operatives etc. This should encourage provision of earlier intervention and preventative support that enables people to achieve their wellbeing outcomes without formal social support arrangements with the local authority. Without complete clarity about the purpose of the ‘can and can only’ test there is a risk that eligibility could become a barrier in itself.

1a.7 We are concerned that the requirement for individuals to exhaust all possible family- and community-based options for support before becoming eligible for statutory services could widen the gaps that people can fall through. We do not wish to see people being expected to ‘prove’ that they have made every attempt to overcome the barriers to them achieving their wellbeing outcomes within family and community resources before being listened to. We would therefore like to see guidance that discourages this.

1a.8 We understand that the original intention was to incentivise local authorities to build preventative and community based support provision in order to increase availability of ‘low level’ options for citizens to access

themselves and to reduce demand for more costly local authority provision. We are concerned that this vision has been diluted and strongly advise that it is reinforced in the Codes to prevent potentially life threatening gaps appearing in eligibility and provision.

Question 1b – Do you believe that the draft Regulations and Code of Practice are appropriate to ensure the right access to care and support for people who require it in Wales?

1b.1 We are pleased that the Code of Practice requires local authorities to adopt a pro-active and innovative approach to direct payments and makes it clear that they are a means to achieving individual well-being outcomes. However, we are concerned that some local authorities may continue to interpret the guidance less than adequately.

1b.2 We would like to see clearer guidance to encourage local authorities to adopt a light-touch approach to monitoring and to deter micro-managing individuals' Direct Payments budgets.

1b.3 We remain concerned that the Act is weakened by its failure to provide a legislative basis for direct payments in continuing health care. We urge Welsh Government to reconsider its position on this at the earliest opportunity, to ensure that Welsh citizens have parity with English direct payment recipients.

Question 1c – Do you believe that the draft Regulations and Code of Practice sufficiently address any concerns previously raised?

1c.1 'Independence' is still conflated with 'independent living'. Independence does not mean living alone in isolation or coping without help. The definition of 'independent living' adopted by Welsh Government in its Framework for Action on Independent Living is that:

Independent Living enables us as disabled people to achieve our own goals and live our own lives in the way that we choose for ourselves.

1c.2 The right to independent living is enshrined in Article 19 of the UN Convention on the Rights of Disabled People (UNCPRD). Despite having equal status with the UN Convention on the Rights of the Child,

and higher status than the UN Principles for Older Persons, reference to the UNCRDP has until recently been omitted from the Codes.

1c.3 We are pleased to note, however, that the draft Code of Practice on Parts 4 and 5 of the Act states:

4.2 Welsh Government policies for social care and support aim to promote the independence and social inclusion of individuals. Authorities may wish to take a similar approach in designing any charging policy, *taking into account the principles of the Social Model of Disability and the UN Convention on the Rights of Persons with Disabilities.*

1c.4 This is welcome recognition that local authorities must give due regard to the UNCRDP. We now wish to see this incorporated as a consistent message throughout the Codes of Practice to ensure that local authorities are fully aware of their responsibilities under the UNCRDP. In the Code of Practice on Part 3, the UNCRDP should be referenced alongside the UN Convention on the Rights of the Child and the UN Principles for Older Persons in section 1.5.

1c.5 The definition of well-being in the Act should specify enjoyment of the right to independent living. In our consultation response we highlighted that this has been addressed in the guidance to the Care Act in England.

1c.6 There is a need for clear guidance on the correct use of terminology within the Codes. There continues to be confusion about what is meant by 'care' and 'support'. When accessing social services, people require professionals to assist them to put in place the support they require to achieve their chosen well-being outcomes; they do not require 'care', which by the definition in the Act, can only be provided by unpaid family or friends.

1c.7 The Code for Part 10 replaces the term 'needs' with 'barriers'. We would like to see this repeated throughout the Codes to fully reflect the Social model ethos of the Act. The term 'needs' is still equated with 'impairments', but the impetus in the Act towards citizens directing the support they require leaves no place for this; the promise of a 'barriers and assets' model should now be realised in these Codes.

1c.8 The importance of advocacy in guaranteeing citizens' choice and

control is recognised in the consultation on Part 10 of the Act. The references to advocacy in the Code of Practice on meeting needs are welcome. We wish to see advocacy as a “golden thread” running throughout the Codes and believe that this would strengthen the Act’s transformative potential considerably.

Question 2 – What are your views as to whether there are likely to be any barriers to the implementation of the provisions?

2.1 We wish to see the CDS values and principles embedded into working practice. This requires significant organisational culture change through transformational leadership. Agencies and professionals must commit to genuinely equal partnerships with the people they serve to address the power imbalances which cause problems in the current system. We are not convinced that the necessary infrastructure is being introduced to ensure that organisations deliver genuine voice, choice and control to citizens.

2.2 We are particularly concerned that whilst extensive training on the Act is being made available to professionals, there are currently no plans in place to replicate this for support recipients and the wider public. To be able to engage effectively in empowering conversations with professionals, citizens must have at least a basic understanding of the Act and some of its key concepts, such as well-being, outcomes and co-production.

2.3 We would like to see a stronger statement by Welsh Government on the importance of co-production as “the way that we do public services in Wales”. By co-production we mean *enabling citizens and professionals to share power and work together in genuinely equal partnership*.

2.4 In particular, the Codes of Practice should place a stronger emphasis on the expectation that assessment and support planning is to be conducted co-productively. The assessment Code identifies five considerations that must be taken into account to ensure a holistic approach. This must be integrated with the eligibility system and other sections of the Act (e.g. population needs assessments, prevention, social enterprise and cooperatives) to ensure that people are enabled to use their skills and capacities to improve their own lives and work together co-productively with others for mutual benefit, whilst being clear about local authorities’ responsibilities and duties in this regard. We suggest that these sections of the Act must be linked more closely if positive transformation is to become reality.

Question 3 – What are your views on the likely consequences of the draft Regulations and Code of Practice for current and future service users and carers?

3.1 As the entire Act is designed to transform the way that social services are designed and delivered in Wales, we are optimistic that it will lead to a radical new approach which will be of significant benefit to future recipients of support and services. In particular, we hope to see a fundamental change in the nature of the relationship between citizens and professionals, with citizens having as much, or as little, control over their support as they wish to have.

3.2 Much will depend on the extent to which the vision of the Act is implemented in practice. We believe that it is vital to monitor and evaluate implementation over time.

3.3 We are not aware of any proposals for comprehensive and consistent grassroots monitoring and evaluation of working practices from support recipients' and carers' perspectives. It is vital for citizens to have access to such systems to enable long-term evaluation of the success, or otherwise, of local authorities and service providers efforts to implement the Act.

REFERENCES

1. *Disability Wales and WACDS joint consultation response on Parts 3 & 4 of the Social Services and Well-being (Wales) Act 2014*

<http://www.disabilitywales.org/wordpress/wp-content/uploads/SSWb-Act-FinalPart3and4consultation.doc>

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[The Care and Support \(Eligibility\) \(Wales\) Regulations 2015 / Rheoliadau Gofal a Chymorth \(Cymhwysra\) \(Cymru\) 2015](#)

Evidence from Wales Carers Alliance – CSR 05 / Tystiolaeth gan Gyngghrair Cynhalwyr Cymru – CSR 05

National Assembly for Wales' Health and Social Care
Committee

Consultation on the Care and Support (Eligibility) (Wales) Regulations 2015

Wales Carers Alliance briefing paper

19.05.15

1. The Wales Carers Alliance appreciated the opportunity to take part in the Technical Groups convened by Welsh Government during the development of the regulations and codes of practice for the Social Services and Wellbeing (Wales) Act 2014. We were able to contribute to the Eligibility Technical Group and welcomed the constructive atmosphere amongst officials and representatives from the statutory and voluntary sector whilst dealing with complex and difficult issues.
2. The Alliance would however wish to raise a number of remaining concerns in regards to the Care and Support (Eligibility) (Wales) Regulations 2015, both in terms of the general aims of the Act in relation to setting national eligibility criteria and the detail of the regulations.
3. We understand the overarching aims of the Act to refocus on people's strengths, capacity and capabilities but we are concerned that this change of emphasis could easily result in additional demand and expectation being placed on unpaid carers to meet the care and support needs of the people they care for. It is vital then that primary and secondary legislation provides a clear legal framework for the decisions which need to be made by local authorities in these matters.

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4. The first general point that we would like to make in regards to the “Can and Can Only” test is that during consultation events held in early 2015 by Carers Wales with 58 carers from 16 counties across Wales, the majority of carers commented that they found the “Can and Can Only” test difficult to understand and were indeed concerned that it would lead to increased pressure on carers to provide care and support to their loved ones.
5. The Alliance welcomes the high profile given to carers in the Act. Both the primary and secondary legislation relating to assessments make it clear that an assessment of needs must be carried out in a manner which disregards the willingness or availability of a carer to provide care and support. The “Can and Can Only” test and eligibility regulations however reintroduce the availability of “*others who are willing to provide that care*” directly into decisions about whether a person is legally entitled to have their needs met by a local authority. We believe that there is an inherent risk for carers in this approach, especially as the stated aim of the legislation is to “reduce the number of people who will require a care and support plan” and thereby have an enforceable right to support from their local authority.
6. The Alliance was therefore particularly disconcerted to see the removal of Regulation 7 from the original consultation draft. Regulation 7 specifically addressed the importance of a local authority disregarding the care given by a carer (to an adult or a child) when making decisions in regards to need and eligibility. We recognise that the Code of Practice on eligibility in paragraph 2.35 does provide some clarity on this issue. Specifically, that a local authority ‘**must** identify those needs which would be deemed as eligible if the carer was not meeting needs’.

However, there still remains the risk of confusion in how the Code relates to the regulations. This risk, coupled with the removal of Regulation 7, increases the likelihood of local authorities deciding that the care and support needs of an adult or disabled child can be readily met by their carer. This would potentially place undue pressure on carers to take on or maintain increasing or unsustainable levels of care.

Clauses 3(c)(ii), 4(c)(ii), 5(c)(ii) of the revised regulations refer to “others who are *willing* to provide that care” but the Alliance are concerned that this does not provide sufficiently clear direction on the relationship between eligibility and the willingness and availability of a carer to provide care and support. We also feel that the regulations and the Code of Practice only recognise the willingness of the carer to provide the care, and not the willingness of the

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individual with care needs to receive care from the carer. The original Regulation 7 may have been confusing but at least attempted to address this issue.

7. The Alliance welcomes that the Code of Practice on Eligibility states in paragraph 2.35 that the local authority 'must ensure the individual is involved as a full partner' in the assessment of eligibility. This is a welcome addition to the Code that strengthens the individual's role in determining the extent to which they can meet their well-being outcomes with the support of others or through services to which they have access.
8. Local authorities have a general duty to plan for and provide community preventative services whereas the eligibility regulations deal with decisions relating to individual legal rights and entitlements. There is no individual right or entitlement to access preventative services, this is a potential area for major dispute where local authorities may consider that a certain service or community activity is adequate to meet a person's needs but that person disagrees. This would have direct consequences for decisions about eligibility.

The Alliance is concerned that the regulations and guidance do not say enough about the links between the two. For instance, whose responsibility is it to show that a person's assessed needs can be met with the assistance of services in the community? We would expect regulations and guidance to require a local authority to demonstrate that they have relevantly signposted or made referrals on to a range of community services when making their decisions on eligibility.

Unless adequately resourced with a comprehensive range of community services there is a real risk of placing more pressure on carers instead of assisting them. It is worth mentioning that cuts in budgets in local authorities over recent years have resulted in the closure of many preventative services run by authorities and the third sector e.g. day care and short breaks.

9. The regulations refer to a range of well-being related factors but these do not correlate directly with the attributes of wellbeing specified in Part 2 of the Act. In particular, we can not see any reason for the exclusion of "suitability of living accommodation" from 3(b), 4(b) and 5(b) of the regulations and would want living accommodation to be included.
10. Although it is outside of the immediate remit of these regulations we would also like to highlight, that unlike the Care Act in England, the Social Services and Wellbeing (Wales) Act does not provide a right of appeal to decisions made by local authorities. Currently the only mechanism open to carers and those they care for to object to the outcome of eligibility decisions is to make a formal complaint. The Alliance believes that this oversight weakens

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the overall intentions of the Act and would like to see a formal appeals process introduced by legislation at the earliest opportunity.

11. On a minor note, there does not appear to be a footnote on the definition of “disabled” mentioned in point 19 of the statement setting out the amendments made following consultation.

About Wales Carers Alliance

Wales Carers Alliance exists to represent the concerns and further the interests of carers in Wales. There are over 370,000 carers across Wales providing unpaid care to friends and family, together the 18 member organisations of Wales Carers Alliance work with and for carers to promote the well-being of all carers.

Current members of the Wales Carers Alliance :

Age Cymru, All Wales Forum of Parents & Carers, Alzheimer’s Society, Care & Repair Cymru, Carers Wales, Children in Wales, Kids Cancer Charity, Hafal, Learning Disability Wales, Macmillan Cancer Support, Marie Curie, Motor Neurone Disease Association, MS Society Wales, National Autistic Society Cymru, Parkinson’s UK, SNAP Cymru, Carers Trust Wales, The Stroke Association

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motor neurone disease
association
cymdeithas
clefyd motor niwron

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Evidence from Motor Neurone Disease Association - CSR 06 / Tystiolaeth gan Cymdeithas Clefyd Motor Niwron- CSR 06

Response to the Care and Support (Eligibility) (Wales) Regulations 2015 Scrutiny Period

1. Introduction

- 1.1 Few conditions are as devastating as motor neurone disease (MND). It is rapidly progressive in the majority of cases, and is always fatal. People with MND will, in varying sequences and combinations, lose the ability to speak, swallow and use their limbs; the most common cause of death is respiratory failure. Most commonly the individual will remain mentally alert as they become trapped within a failing body, although some experience dementia or cognitive change. There are about 5,000 people living with MND in the UK. A third of people with the disease die within a year of diagnosis, and more than half within two years. There is no cure. There are about 5,000 people living with MND in the UK, approximately 250 of them in Wales. Half of people with the disease die within 14 months of diagnosis. There is no cure.
- 1.2 The MND Association is the only national organisation supporting people affected by MND in England, Wales and Northern Ireland, with approximately 90 volunteer led branches and 3,000 volunteers. The MND Association's vision is of a world free from MND. Until that time we will do everything we can to enable everyone with MND to receive the best care, achieve the highest quality of life possible and to die with dignity.
- 1.3 People living with MND will have a range of care needs and be in contact with a wide range of services. People who provide care for people living with MND will also have considerable support needs to help them manage their caring responsibilities. For people with MND it is therefore crucial that services take a joined-up approach to care and consider the full range of needs so that people are able to maximise their own wellbeing. This response focuses on the likely

consequences of the draft regulations and Code of Practice for people with MND and their carers.

2. The likely consequences of the draft Regulations for people with MND and their carers.

- 2.1 The MND Association welcomes the standardisation of eligibility regulations under the Social Services and Wellbeing (Wales) Act 2014. It also welcomes the approach to determining eligibility based on ability to achieve well-being outcomes. The list of needs that fall under the eligibility criteria is comprehensive and includes communication needs, which is an important issue for many people with MND.
- 2.2 The Association welcomes the distinct eligibility criteria for carers focussed on the carer's ability to achieve personal outcomes, and particularly the consideration of whether they are prevented from fulfilling those outcomes as a result of the level of care they are providing without local authority support for either the carer or the person receiving care (section 5 (d)).
- 2.3 However, we are concerned about the principle underpinning the National Eligibility Framework, that individuals will only be eligible for local authority support if services in the community are either not available or not adequate, or if a carer is not willing or able to provide that care and support (section 3 (c)). We strongly recommend that this principle is re-worked comprehensively, to remove the substantial barriers that it seems to erect to timely access to appropriate care. Eligibility should be based on what a person needs in order to achieve their personal wellbeing outcomes, rather than what support is available from which sources. We believe that eligibility for support should be determined based on this principle, and the care planning process should determine who has the right skills and capacity to fulfil each need.
- 2.4 The Association believes that this bar of eligibility will leave people at risk of receiving low quality or inadequate support for a significant period before the local authority is able or willing to step in. People with MND will often have specialist and complex needs, requiring a particular level of expertise that may not be available in community services. However, they may have to show that they have exhausted the capacity of local, more generalist services, to meet their needs before they can access the appropriate services. This creates a serious risk that people with a rapidly progressive condition could face unnecessary delays in accessing services. While the legislation and Code of Practice on this subject create discretionary powers to meet needs locally, we anticipate that these will be exercised inconsistently between local authorities, and will not consistently overcome this problem of delayed access to services for people with MND.

- 2.5 While we appreciate the importance and value of services provided by voluntary organisations articulated in the Code of Practice, and agree that some people with MND can benefit significantly from existing community providers, ultimately these services lack close oversight and inevitably offer a variable quality of care. We are therefore not convinced by an approach that requires people with MND to make heavy use of these services before accessing more specialist social care.
- 2.6 Finally, the Association believes that the eligibility criteria may place undue pressure on families and others to provide care. While we welcome the recognition in the Regulations that the local authority will need to provide care to someone whose carer's own wellbeing would be compromised by their caring role, we believe that this places a substantial burden of proof on the person who needs the care. Anyone who cannot meet this burden of proof will be denied services, which concerns us greatly. An assessment of needs and a carer's capacity must be comprehensive in order to determine the real level of support a carer is able to provide, and the system must have the capacity to react swiftly to changes in the carer's circumstances and the level of care required by the person with care needs.

3. Conclusion

- 3.1 The MND Association welcomes the opportunity to feed into this scrutiny period. We broadly welcome the move to establish a single national eligibility threshold, and agree with the adoption of a person-centred approach and a focus on well-being outcomes.
- 3.2 However, the Association hopes that the Health and Social Care Committee addresses the concerns expressed above about the principle of eligibility based on an absence or failings of alternative services. We believe that this risks delays in or exclusion from appropriate services for people with MND and undue pressure on their carers.

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May 2015

Age Alliance Wales

Care and Support Eligibility (Wales) Regulations 2015

Response to Health and Social Care Committee



National Assembly for Wales / Cynulliad Cenedlaethol Cymru
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[The Care and Support \(Eligibility\) \(Wales\) Regulations 2015 / Rheoliadau Gofal a Chymorth \(Cymhwysra\) \(Cymru\) 2015](#)

Evidence from Age Alliance Wales - CSR 07 / Tystiolaeth gan Cynghrair Henoed Cymru - CSR 07

Age Alliance Wales (AAW) is the alliance of 19 national voluntary organisations committed to working together to develop the legislative, policy and resource frameworks that will improve the lives of older people in Wales.

The following 19 organisations represent Age Alliance Wales: Age Connects Wales, Age Cymru, Alzheimer's Society Wales, Arthritis Care, Care and Repair Cymru, Carers Wales, Contact the Elderly, Carers Trust Wales, Cruse Cymru, CSV -RSVP Wales, Deafblind Cymru, Disability Wales, NIACE Cymru, Prime Cymru, RNIB Cymru, Action on Hearing Loss Cymru, The Stroke Association and Volunteering Matters.

1. Age Alliance Wales (AAW) was pleased to have the opportunity to participate in the Welsh Government Technical Groups. Feedback from members showed the groups were viewed as positive and constructive.
2. AAW believes that a new national eligibility framework will be beneficial to older people providing that the criteria for eligibility is fair and adherence to framework is monitored. The level of eligibility needs be set at a fair and reasonable point; setting the benchmark too high would create a barrier to accessing vital care and support services for many.
3. AAW is a keen champion of the role of preventative services in maintaining and enhancing the well-being of older people. We were therefore pleased to note paragraph 2.24 of the Code of Practice which states: *Even where a determination of eligibility is made there remains a duty on the local authority to support people to access any appropriate community based services where these contribute to meeting the person's well-being outcomes.*
4. However, in the light of recent public sector cuts to adult community learning classes, libraries and day centres, we question whether local communities are ready and able to offer the variety and range of preventative services required to support older people with low level needs. It may well be that the development of

new and innovative ways of working alongside increased partnership working between sectors, will lead to an increase in the availability and quality of preventative services, but this is currently not the case.

5. AAW believes that older people should be involved in the design, planning and delivery of services. With local authorities holding sole responsibility for commissioning health and social care services, it is unclear how meaningful engagement with older people will be achieved. Furthermore, with voluntary organisations experiencing budget cuts and being required to deliver more for less, meaningful engagement with older people is being compromised.
6. AAW shares the concerns of the Carers Alliance and Age Cymru that the Bill, in aiming to achieve an increased focus on people's strengths, capacity and capabilities, could result in additional demand and expectation being placed on unpaid carers to meet the care and support needs of the people they care for. It is vital that primary and secondary legislation provides a clear legal framework for the decisions which need to be made by local authorities in these matters.
7. AAW was pleased to note that the Act's primary and secondary legislation relating to assessments stated that needs assessments SHOULD NOT include a consideration of the willingness or availability of a carer to provide care and support. However the 'can and can only' eligibility test contradicts this by stating that consideration of the availability of 'others who are willing to provide that care' SHOULD be included.
8. In light of the above, AAW shares the concern of Age Cymru and the Carers Alliance regarding the withdrawal of Regulation 7 from the original consultation draft. Regulation 7 stated that a local authority should disregard care given by a carer in when assessing need and eligibility. The withdrawal of the regulation could lead to a situation where carers are placed under undue pressure and lack the support they need to care adequately for a relative or friend.
9. There is a lack of clarity in the regulations and guidance regarding how the effectiveness of preventative services will be monitored. As detailed in highlighted in paragraph 3 of this document, cuts to local authority services and reductions in income for voluntary organisations are seriously reducing the number and range of preventative services available to an older person. Consequently, it is vitally important to have effective mechanisms in place that monitor whether community preventative services are being successful in supporting older people to achieve their stated outcomes.
10. AAW shares concerns expressed by RNIB Cymru and Action on Hearing Loss Cymru that assessors carrying out the eligibility test may not have the skills to make an informed assessment of the needs of someone with sight loss or who is deaf or with hearing loss. People with sight loss should have access to specialist

assessments from someone such as a rehabilitation officer for the visually impaired. People who are deaf or have hearing loss should have access to assessments carried out by specialist social workers for the deaf, or suitably qualified and trained social workers, in line with the ADSS' best practice guidance.

11. AAW shared the concern of RNIB Cymru and Action on Hearing Loss Cymru that the first draft of the eligibility regulations failed to reference the barriers to accessing information faced by people with communication needs. People with little or no sight are at a major disadvantage when accessing information and when communicating independently. This applies also to people with hearing loss if services rely on telephone contact and also people who use British Sign Language and for whom English or Welsh could be a second language. We therefore welcome the change made to the eligibility criteria following public consultation, to include the ability to communicate in regulations 3, 4 and 5. However we would recommend that this is reworded to say "ability to communicate or access information."
12. It has not been specified by the Act or in any secondary legislation drafted to date whether specialist habilitation and rehabilitation for people with sight loss will or should be provided as a community-based preventative service, or as a service provided by a local authority that would require an assessment of eligibility to access support. This implies that this would be a decision for local authorities to make, on the basis of their population needs assessment, and may result in differing service structures in different local authority areas. AAW shares the concerns of RNIB Cymru that this will result in inconsistent experiences for blind and partially sighted people across Wales.
13. AAW is concerned that if charging for preventative services is introduced, it will have a negative impact on older people by potentially deterring them from accessing services that maintain well-being and prolong their ability to live independently. The cost of deterring people from accessing preventative services will ultimately be met by the NHS.

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Evidence from RNIB Cymru – CSR 08 / Tystiolaeth gan RNIB Cymru – CSR 08

RNIB Cymru response to Health and Social Care Committee scrutiny of the Care and Support (Eligibility) (Wales) Regulations 2015

29 May 2015

1. About RNIB Cymru

1.1. RNIB Cymru is Wales' largest sight loss charity. We provide support, advice and information to people living with sight loss across Wales, as well as campaigning for improvements to services and raising awareness of the issues facing blind and partially sighted people. We welcome the opportunity to provide evidence to the Health and Social Care Committee on the eligibility regulations.

2. About sight loss

2.1. There are currently 106,000 people in Wales living with sight loss (1). It is estimated that the number of people living with sight loss in Wales will double by 2050 (2).

2.2. The prevalence of sight loss increases with age: one in five people aged 75 and over are living with sight loss; one in two people aged 90 and over are living with sight loss (3). Older people with sight loss, particularly those over the age of 75, are often living with up to three or more long term health conditions, making it even more of a challenge to maintain independence, social networks and wellbeing. Many need care and support (4).

2.3 Children and young people with sight loss may also need support from social services. At least 20 per cent of young people



Yn cefnogi pobl
â cholled golwg
Supporting people
with sight loss

Tudalen y pecyn 29

RNIB charity nos. 226227,
SC039316 and 1109
RNIB rhifau elusen 226227,
SC039316 a 1109

with a visual impairment have additional disabilities or special educational needs and a further 30 per cent have very complex needs (5).

2.4. Sight loss impacts on every aspect of a person's life: their physical and mental health, their ability to live independently, their ability to find or keep a job, their family and social life. As a result, people with sight loss form a significant group of users accessing social care services in Wales.

3. Eligibility regulations

3.1. Will the Regulations and Code of Practice as drafted achieve the desired aims of the Act?

3.1.1. Whether the Regulations and Code of Practice as drafted will achieve the desired aims of the Act cannot be assessed in isolation, or without reference to other regulations and guidance under the Act. In particular, critical to achieving the desired aims will be:

- The ability of information and advice services to provide an appropriate response to the enquiries they receive and refer individuals on for assessment or to other services effectively;
- The availability of a range of preventative services in the community and support to enable individuals to access these services;
- The skills of assessors to make an informed assessment of the needs of someone with sight loss, including access to specialist assessments from someone such as a Rehabilitation Officer for the Visually Impaired.

3.1.2. RNIB Cymru are also seriously concerned that proposals to charge for preventative services which are currently being consulted on could counteract the positive vision set out by the Act. Charging for preventative services may reduce the number of people using them. This in turn could then lead to an increase in the number of people developing eligible needs, resulting in higher costs for local authorities to support higher levels of need and increased costs for health services.

3.2. Are the Regulations and Code of Practice as drafted appropriate to ensure the right access to care and support for people who require it in Wales?

3.2.1. RNIB Cymru have previously expressed concerns about what will happen when someone is assessed as having needs that could be met by accessing services in the community, and what support there would be to enable people to access these services. We therefore welcome paragraph 2.24 of the Code of Practice, which states: “Even where a determination of eligibility is made there remains a duty on the local authority to support people to access any appropriate community based services where these contribute to meeting the person’s wellbeing outcomes”. It is vital that people are both informed about and enabled to access the community based services available, rather than simply being told that they are not eligible for support from the local authority.

3.2.2. Rehabilitation/habilitation support for people with sight loss clearly fits the definition of preventative services provided by the Act. However it has not been specified by the Act or in any secondary legislation drafted to date whether specialist habilitation and rehabilitation for people with sight loss will, or should, be provided as a community-based preventative service, or as a service provided by a local authority that would require an assessment of eligibility to access support. We assume that this will therefore be a decision for local authorities to make, on the basis of their population needs assessment, and could result in differing service structures in different local authority areas. RNIB Cymru are concerned that this will result in inconsistent experiences for blind and partially sighted people across Wales, and be confusing for people who are trying to access support.

3.2.3. Currently, rehabilitation/habilitation services are provided throughout Wales by qualified Rehabilitation Officer for the Visually Impaired (ROVI’s). The support provided by ROVI’s enables people with sight loss to be more independent – for example, by learning new skills to assist with daily activities (such as cooking and cleaning), and specialist mobility training. It can also include emotional support to come to terms with sight loss, provision of aids and adaptations and the development of new communication skills. By promoting independence, this support can reduce the

need for ongoing and long-term care and support from social services and assist people with sight loss to learn new strategies and techniques to maximise their independence. To achieve the positive vision set out by the Social Services and Well-being (Wales) Act for blind and partially sighted people it is vital that access to rehabilitation and habilitation is safeguarded under the Act and associated Codes of Practice and regulations.

3.2.4. The case scenario given at Annex 3 of the draft Code of Practice is therefore helpful in clarifying what someone with sight loss needing access to support from rehabilitation services might expect – that is, if Mr Davies was not able to access support for him to cope with his sight loss from a rehabilitation officer via a service made available in the community, the expectation is that his needs would become eligible for care and support from the local authority.

3.2.5. However, RNIB Cymru remains concerned that this does not ensure equal access to rehabilitation throughout Wales for people with sight loss. This is because while local authorities have a general duty to plan for and provide preventative services, there is no individual right or entitlement to these sorts of services – whereas there would be for someone found eligible for care and support. There would also be different consequences in terms of the charges for accessing such services, if they are provided within the community, as opposed to after an assessment of eligibility. This is confusing for individuals, and a potential area for disputes. We would welcome further guidance from Welsh Government about their expectations as to which services will require an assessment for eligibility, and which would be provided in the community.

3.3. Do the Regulations and Code of Practice as drafted sufficiently address any concerns previously raised?

3.3.1 There are a number of amendments made to the draft regulations following consultation that RNIB Cymru had previously expressed concerns about. We therefore welcome:

- The removal of the definition of “specified outcomes” from the regulations, which we felt would be confusing;

- The introduction of regulation 6, to clarify that a person will be regarded as unable to do something even when they can, but only with a greater level of difficulty than would normally be expected.

3.3.2. RNIB Cymru were part of the technical working group to inform the development of the eligibility regulations. Via this group, and in our consultation response, we repeatedly expressed our concerns that the proposed eligibility regulations failed to take into account consideration of barriers to information and communication needs. People with little or no sight are at major disadvantage in relation to accessing information and communicating independently. Many are unable to read standard printed information and this can be a barrier to maintaining their wellbeing. For example, they will often require labelling systems in their own homes, to ensure that they do not mistake cat food for baked beans, or need ongoing assistance to read correspondence. We therefore welcome the change made to the eligibility criteria following public consultation, to include the ability to communicate in regulations 3, 4 and 5. However we would recommend that this is reworded to say “ability to communicate or access information”.

3.3.3. RNIB Cymru are concerned that the definition of self-care still fails to take into account assistance needed with taking medication and managing medical conditions. People with little or no sight are often unable to detect a change in their appearance or symptoms which might be the early signs of a health problem. Some will need blister packs for medication, or assistance to manage their medication, eg to administer insulin injections. RNIB Cymru have heard from blind and partially sighted people who have accidentally taken the wrong dose. It is vital that this area is added to the definition of self-care to ensure that any risks are minimised, so that blind and partially sighted people who need support with these tasks are found eligible for assistance.

3.3.4 RNIB Cymru had previously expressed concerns that regulation 7 of the consultation draft regulations was confusing. However, we share Wales Carers Alliance’s concerns that clauses 3(c)(ii), 4(c)(ii), 5(c)(ii) of the revised regulations refer to “others who are willing to provide that care” and that this is taken into

account when considering whether a need is eligible or not. This does not provide sufficiently clear direction on the relationship between eligibility and the willingness and availability of a carer to provide care and support.

3.3.5. We would also reiterate concerns expressed by the Social Care and Wellbeing Alliance that the can and can only test suggests that 'need' will be based on which services are available not on the person's needs. The test must meet the person's needs and well-being outcomes. A community service that is only relevant in part will not meet specific needs in the way a more personalised care and support plan would.

4. Further information

For further information, please contact Tess Saunders, Policy and Campaigns Officer.

T. [REDACTED]

E. [REDACTED]

References

1. Estimate based on Access Economics 2009, Future Sight Loss UK 1: The economic impact of partial sight and blindness in the UK adult population, RNIB, and Office of National Statistics (2014), Subnational Population Projections, Office of National Statistics.
2. Access Economics 2009, Future Sight Loss UK 1: The economic impact of partial sight and blindness in the UK Adult Population.
3. Access Economics, 2009, Future Sight Loss UK 1: The economic impact of partial sight and blindness in the UK Adult Population
4. Tate R, Smeeth L, Evans, J, Fletcher A, Owen C, Rudnicka A, 2005. The Prevalence of Visual Impairment in the UK: a review of the literature. RNIB.
5. Keil, S (2012). RNIB survey of VI services in England and Wales 2012. RNIB.

National Assembly for Wales / Cynulliad Cenedlaethol Cymru
[Health and Social Care Committee / Y Pwyllgor Iechyd a Gofal Cymdeithasol](#)

[The Care and Support \(Eligibility\) \(Wales\) Regulations 2015 / Rheoliadau Gofal a Chymorth \(Cymhwysra\) \(Cymru\) 2015](#)

Evidence from Barnardo's Cymru – CSR 09 / Tystiolaeth gan Barnardo's Cymru – CSR 09



Title: Care and Support (Eligibility) (Wales) Regulations 2015 and Code of Practice

From: Dr Sam Clutton, Assistant Director, Policy

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1. Information and working context of Barnardo's Cymru

Barnardo's Cymru has been working with children, young people and families in Wales for over 100 years and is one of the largest children's charities working in the country. We currently run 85 diverse services across Wales, working in partnership with 18 of the 22 local authorities. In 2013-14 we worked with in the region of 8,300 children, young people and families directly and a further almost 22,000 through less direct work; including open groups and outreach work. Barnardo's Cymru services in Wales include: care leavers and youth homelessness projects, young carers schemes, specialist fostering and adoption schemes, family centres and family support, parenting support, community development projects, family support for children affected by parental imprisonment, domestic abuse and parental substance misuse, short breaks and inclusive services for disabled children and young people, assessment and treatment for young people who exhibit sexually harmful or concerning behaviour and specialist services for children and young people at risk of, or abused through, child sexual exploitation and young people's substance misuse services.

Every Barnardo's Cymru service is different but each believes that every child and young person deserves the best start in life, no matter who they are, what they have done or what they have been through. We use the knowledge gained from our direct work with children to campaign for better childcare policy and to champion the rights of every child. We believe that with the right help, committed support and a little belief, even the most vulnerable children can turn their lives around.

- **This response may be made public.**
- **This response is on behalf of Barnardo's Cymru.**

Barnardo's registered Charity Nos. 216250 and SCO37605
Rhifau Cofrestru'r elusen Barnardo's 216250 a SCO37605

Question 1a – What are your views as to whether the draft Regulations and Code of Practice as drafted will achieve the desired aims of the Act?

1.1. The draft Regulations are clear in setting out needs that meet the eligibility criteria and the draft Code of Practice provides greater clarity on the intended application of the aims of the Act than the earlier consultation draft. However the need to consider whether the needs are needs that meet eligibility criteria, apply the national eligibility test and apply these across the five elements of assessment appears complex. Work will be needed to support consistent practice in the implementation of these requirements.

1.2. We still believe that the Code of Practice on Part 4 of the Act and on Part 3 of the Act should provide stronger guidance on the application of best interests considerations in relation to eligibility and social care decisions about children.

1.3. Often social care intervention in the lives of children is based on concerns about impaired parenting capacity or family circumstances which, mean that children may not be receiving the nurture, protection and support they need to develop and secure good well-being through their families. The state places expectations through legislation on the way in which families should provide for children in order to support their best interests and has powers to intervene where these expectations are not met. In this way due regard to Article 3 of the United Nations Convention on the Rights of the Child (UNCRC) is demonstrated. Application of best interests considerations in relation to children will strengthen the potential to achieve the desired aims of the Act in terms of prevention, securing good well-being outcomes, reducing the escalation of social care needs and safeguarding children.

1.4 We note that on page 16 of the Code of Practice on Part 3 of the Act it states 'that the process of assessment of is about ensuring the best interests of the child are met'. This relates to further amendments being developed with a small task and finish group of which we are members. We very much welcome this addition and would like to see reference to ensuring the best interests of the child are a consideration in social care decisions about children reflected throughout the Codes of Practice on Part 3 and Part 4 of the Act.

Question 1b – Do you believe that the draft Regulations and Code of Practice are appropriate to ensure the right access to care and support for people who require it in Wales?

1.5 The eligibility test and associated personal well-being outcomes and five elements of assessment should in theory lead to social care focussed on securing good well-being outcomes for children. The process of preventative provision as an offer for those who do not meet the eligibility test should also support better outcomes. However in practice for children's services these processes are already in place in authorities across Wales with Families First, Team Around the Family and social service intervention operating at different levels of need and systems for families to move between levels of intervention as needs change.

1.6. There must be a clear recognition that in the case of children the majority of contact with the Information, Advice and Assistance (IAA) service will come via referrals based on an identified need for intervention, that signposting to preventative services from the IAA service may not be affective in responding to children and their families- referral is likely to be the main route to preventative services. Work is also needed to address preventative work with families who 'fail to engage' so that children's well-being is supported even where parents have difficulty in accepting preventative interventions that may reduce the need for children to have care and support intervention later on.

Question 1c – Do you believe that the draft Regulations and Code of Practice sufficiently address any concerns previously raised?

1.7. The Act requires that those exercising functions under the Act must have due regard to the UNCRC. This is

referenced at para 1.5 of the Code of Practice on Part 4 of the Act. However there is no guidance on how this might be interpreted, achieved or monitored.

1.8. Further we have not seen a published CRIA in relation to these draft Regulations and Code of Practice or in relation to any other regulation and guidance introduced under the Act. It is imperative that regulation and guidance introduced under an Act which is built on a 'people model' is subject to assessment that clearly demonstrates that due regard to the UNCRC in line with the duty on the Minister has been considered and applied.

1.9. The inclusion of further amendments to the Code of Practice on Part 3 of the Act to ensure maintenance of the key principles of the Framework for the Assessment of Children in Need and their Families goes some way to addressing concerns we have raised in the past.

1.10. Section 21 of the Social Services and Well-being (Wales) Act - Duty to assess the needs of a child for care and support includes:

(7) For the purposes of the needs assessment a disabled child is presumed to need care and support in addition to, or instead of, the care and support provided by a child's family.

The need to protect the entitlements of disabled children as provided under Section 17 of the Children Act 1989 was the subject of concern and debate during scrutiny of the Social Services and Well-being (Wales) Act. The Deputy Minister made a statement committing to address these concerns during the passage of the Bill. This information has been included in the Code of Practice on Part 3 of the Act we believe that it should also be included in the Code of Practice on Part 4 of the Act.

1.11. We remain concerned that the grounds for the refusal to accept an assessment in the Code of Practice on Part 3 of the Act and for refusal of a care and support plan under the Code of Practice on Part 4 of the Act should be subject to a blanket provision that refusal can be overridden where a local authority considers that this is in the best interests of the child. Section 23 of the Act does provide that the refusal of an assessment does not discharge a local authority from their duty in relation to a child where: *The local authority is*

satisfied, in the case of a refusal given by a person with parental responsibility for the child, that not having the assessment would be inconsistent with the child's well-being. This provision as worded on the face of the Act is omitted from the Code of Practice on Part 3 of the Act.

1.12. The provisions and direction on the development and review of care and support plans appear to be robust. However we remain of the opinion that in order to provide children with a sense of voice and control in line with the policy intent of the Act there should be a presumption that a child will require an advocate to support them in participating and being heard in the assessment and care planning process. This in combination with workforce development to support a clear child right's approach to social care work would provide for a co-production approach to social care for children in line with the policy intent of the Act.

Question 2 – What are your views as to whether there are likely to be any barriers to the implementation of the provisions?

2.1 Although there are some good examples of user led organisations, cooperatives and social enterprises led by the parents of disabled children the capacity to increase the range of preventative services beyond existing preventative services in this way will be limited. The development of user led organisations, cooperatives and social enterprises being established by parents where the need for preventative services is related to parenting capacity or family stress is likely to be limited. As a third sector organisation we have experience of supporting parents into volunteering and mutual support opportunities following the completion of an intervention that has reduced care and support needs and built parental confidence. However this requires support and parents are not usually ready to engage in this way until a successful intervention is complete.

2.2. The capacity to meet needs early through preventative services for children and families is likely therefore to be limited to existing funded and commissioned programmes such as Families First. In fact many of the early preventative community based services that were funded under the old Cymorth Grant funding have been now been lost.

2.3. In our experience the level of need among families referred into Families First is increasing with families presenting with more complex needs. It is difficult to see how

without further resources more children will be able to be diverted into preventative services in order to avoid escalation of need and decrease the need for eligible care and support needs to be met. The picture for children may therefore remain static. This is not to claim that quality work is not already being delivered via Families First and social services provision. Rather that the current stretch on services is unlikely to be alleviated by the provisions of the Act.

2.4. In other words there are limits to the extent to which the needs of children with non-eligible care and support needs can be met through current provision.

Question 3 – What are your views on the likely consequences of the draft Regulations and Code of Practice for current and future service users and carers?

3.1. We are not clear at this time how significant the Regulations and Code of Practice will be as applied to the delivery of social care for children. We do believe that stronger direction on the duty to have due regard to the UNCRC for those exercising functions under the Act, including those functions covered by this draft Regulation and Code of Practice, will ensure that the within a people model recognition that the child 'needs special safeguards and care' (as set out in the Declaration on the Rights of the Child) will be better secured. This in turn will support the realisation of the policy intent of the Act as applied to children.

Evidence from Welsh Local Government Association & Association of Directors of Social Services – CSR 10 / Tystiolaeth gan Cymdeithas Llywodraeth Leol Cymru a'r Gymdeithas Cyfarwyddwyr Gwasanaethau Cymdeithasol – CSR 10

The Care and Support (Eligibility) (Wales) Regulations 2015 – Joint response on behalf of the Association of Directors of Social Service (ADSS) Cymru and the Welsh Local Government Association (WLGA)

Introduction

1. The Welsh Local Government Association (WLGA) represents the 22 local authorities in Wales. The three national park authorities and three fire and rescue authorities are associate members. It seeks to provide representation for local authorities within an emerging policy framework that satisfies the key priorities of our members and delivers a broad range of services that add value to Welsh Local Government and the communities they serve.
2. The Association of Directors of Social Services Cymru (ADSS Cymru) is the professional and strategic leadership organisation for social services in Wales and is composed of statutory Directors of Social Services, and the Heads of Service who support them in delivering social services responsibilities and accountabilities; a group of 80 or so social services leaders across the 22 local authorities in Wales.
3. ADSS Cymru and WLGA have previously responded to the Welsh Government consultation on the proposed code of practice and regulations in relation to Eligibility, a copy of the response can be found at: <http://www.wlga.gov.uk/social-services-consultation-responses/wlga-adss-cymru-consultation-response-regulations-and-code-of-practice-part-34-sswb-wales-act/>

Will the draft Regulations and Code of Practice achieve the desired aims of the Act?

4. The WLGA and ADSS Cymru have previously communicated our broad support for the Act's vision and the ambitious principles that it sets out. We welcome its timely nature in the face of increasing pressures on social care services, both within local government and across our partners in NHS and the third sector.
5. We continue to endorse the analysis from 'Better Support at Lower Cost' (SSIA, 2011) that fundamental to achieving those two outcomes, i.e. better support and lower cost, is a cultural shift in professional and organisational practice and policy. There needs to be a move towards people being offered opportunities to take more control over their own lives and over how they make flexible use of the care and support that is available, with a shift in focus away from a concentration on process, towards a determination to consider and deliver better outcomes.
6. The approach to eligibility outlined holds to the principles of the Act, with eligibility based on a judgement that encompasses needs, outcomes, barriers, risks and resources, all of which connect to the Act's ambitions. The [Tudalen 4](#) of the [Tudalen 4](#) provides an added advantage that it complements

the highly regarded work undertaken by Prof. Eileen Munro in England on children's services safeguarding and protection, with her recommendation that the focus should shift to 'doing the right thing' and away from 'doing things right', in other words away from process and towards outcomes. This helps to emphasise that in Wales a system is being developed that is equally applicable for adults and children, and that is another principle of the Act. It also accords with the evidence in the memorandum that this approach is closer to the current arrangements in Children's Services for determining the thresholds for assessment and providing a service.

7. The eligibility test is a significant change, away from eligibility criteria being used predominantly to gatekeep and 'say no'. The 'can and can only' test is not a simple and unambiguous test, as, inevitably and appropriately, it leaves space for professional judgment to be exercised, leading to potentially different interpretations being made. Whilst professional judgment will and should always be a consideration, the search for consistency may be a difficult objective to achieve and this may need more thought and testing out with users and carers in particular.
8. It is important to recognise that the proposed model for eligibility is new and untested. Whilst this approach may reduce the number of people who require a care and support plan by introducing opportunities to help people retain independence and access early intervention and prevention services without the need for a formal plan this is a long term vision and currently remains an aspiration. There are many elements to the Act which are inter-related and dependent on each other – the desired aims and vision for eligibility can only be achieved if there are appropriate preventative and early intervention services in place. Our previous consultation responses to the Act highlight the very real challenges being faced in providing preventative services – if the necessary preventative services are not available, and in fact face being cut, then this is likely to have a detrimental impact on social services as an increasing number of people will become eligible for a care and support plan with lower needs than would have been previously seen as the necessary services are not available in the area. The role of preventative and early intervention services, as well as the greater focus on people's well-being, are not aspects that social services can manage on their own and so it is vital that the wider Council and partner organisations, e.g. health, are fully aware of their responsibilities under the Act and held to account for supporting delivery.
9. Many elements of the Act, including assessment and eligibility, will take time to implement in full, with clear training needs for staff or additional resources required. Whilst local authorities are working on the development of many elements of the Act, including assessment and eligibility, IAA services, promotion of social enterprises and an increasing focus on outcomes, experience has taught us that we need to allow time for their proper and healthy development. As such we need to be clear about the expectations from April 2016 and be realistic in agreeing what is achievable in this timeframe, to ensure new practice is sustainable.
10. Eligibility is dependent on assessment and so it is important that both are considered at the same time. We agree that the approach is simpler than the current assessment arrangements for adults and children. A single assessment process for everyone, children and adults, is a major shift, but one to be welcomed. We do believe that more work needs to take place to ensure that the tools that currently support assessment in both children's and adult services are tailored to meet the aspirations of the Act, if possible, without imposing additional burdens on front-line workers to abandon what currently works well.

11. The aim to reduce bureaucracy is welcome, but that will need energy and resources devoted to tackling the inevitable complexity associated with a much easier and simpler process for 'consented' sharing of information, not the least of which will be ensuring that IT systems and a revitalised shared commitment make this possible.
12. We are less sure about whether the approach will be simple to apply, as it requires a very different approach and thereby challenges some of the practice that has inevitably become embedded in people's daily work. Once again it highlights the need for careful, yet robust training and staff development, so that no-one is left in any doubt about the expectations for a fundamental change in the nature of the relationship between users/carers and the workers who are leading and/or involved in their assessment. Many members of the public look to professionals to solve their family problems and meet their needs and a prudent approach to social care will need to be promoted alongside the prudent healthcare message.
13. It will be vital to review progress as this new approach is implemented and it is positive to see that the Welsh Government intends to commission an evaluation to enable the impact of the new model of assessment and eligibility to be considered. Both ADSS Cymru and WLGA would want to play a full part in this work, as we are all committed to ensure the aspirations of the Act deliver for people with care and support needs.

Are the Regulations appropriate to ensure the right access to care and support for people who require it in Wales?

14. The Explanatory Memorandum (EM) recognises that there is no precedent for the proposed new model and the evidence is based on data that has not been fully tested. We need to allow for a period of time to allow the changes to be implemented and ensure that the new approach is kept under review and tested to ensure that it achieves the ambitions of the Act and provides the right access to care and support for people who require it in Wales.

Do the Regulations and Code of Practice sufficiently address any concerns previously raised?

15. It is positive to see that the code of practice is being further refined in order to reflect and integrate the key principles and guidance from the Framework for the Assessment of Children in Need and their Families as it is important that the current strengths of Children's Services are built on. It is also helpful that the ambiguity between 'simple' and 'complex' assessment has been clarified and we welcome the removal of these terms.
16. The EM looks at the costs associated with each of the eligibility options that were considered. The graphs set out in the EM are helpful, but at this stage may not offer any conclusive evidence about the likely financial impact in particular of option three, the chosen approach. Graph 2 shows the 'spend per head of the adult population on local authority services' for each of the 22 councils. We believe that it is important to understand the socio-economic context for each of the councils, currently operating to both 'low' and 'moderate' criteria. Only one council is operating to 'low' and that council, as shown in graph 1, is spending less than the average per head on adults receiving local authority services and is in the mid-range (i.e. 14th out of 22) on graph 2. Similarly of the four councils operating to 'moderate', three are indeed spending less than the Welsh average on local authority social care or head of adult population, but the fourth is the second highest spender (council 7).

17. It may be that there are characteristics, in relation to the socio-economic context, that are similar for these five councils that could explain these spending positions, potentially suggesting that their use of 'low' and 'moderate' eligibility criteria is not a significant factor in their spending position. Welsh Government may find it helpful to commission a cost benefit analysis across Wales, to compare service profiles and outcomes achieved, when the changes under the Act have had time to bed down.
18. Another factor that should be considered in relation to the demographic trends, that are now well understood, is the ambition within the Act for early intervention and prevention to play a much bigger role in the offer that is made to people. This could mean that increasingly people over 85 will access a wider range of preventative services and facilities, thereby removing the inevitability of that growing population receiving treatment, care and support through public sector services at a critical and acute level. The Act requires that, through the provision of good quality information, advice and assistance, opportunities will be created for older people, in particular, to learn about and access community and neighbourhood facilities, some of which will be in place which do not require a referral but simply an introduction. These may be simply extending what third sector and community organisations are currently offering, or it may be that the encouragement of cooperatives and social enterprises will see the development of facilities that people experience as meaningful, local and in which they can play a part. The development or extension of these different kinds of facilities will not be without the need for support, both financial and practical and third sector agencies regularly demonstrate their ability to develop and extend support with relatively small amounts of resource. The role of WCVA and Community Voluntary Councils is critical in sharing best practice and supporting third sector agencies to attract new funds that are not available to Local Authorities.
19. The EM makes reference to significant savings that could be achieved by reducing the expenditure on assessment and care management. Whilst savings may be possible through a more proportionate response we do need to be mindful of the increased responsibilities local authorities have in relation to carers and the likely increase in demand as a result of carers requesting assessments. Demographic changes also mean that there will be higher numbers of older people and people with long term conditions, who will create new demands on the current workforce. Additionally the code of practice on assessments sets out that as part of the provision of advice and assistance through the IAA service an assessment will be required that takes into account the five elements to determine eligibility – this will require experienced and highly skilled staff to be able to have a meaningful conversation with a person at their first point of contact to be able to undertake these responsibilities and so we need to be clear on what impact this will have, particularly on existing IAA services.

Are there likely to be any barriers to the implementation of the provisions?

20. We have previously outlined our concern that the Act will increase pressure on local authorities and that staff training and workforce development remains the highest priority. As such the Delivering Transformation Grant and the additional resources to support workforce development are welcomed. This will need to be kept under review to ensure that adequate resources and support are available to ensure that the work required to successfully implement the Act can be achieved.
21. As highlighted above no part of the Act can be looked at in isolation as there are many inter-dependencies – whilst assessment and eligibility sit firmly with local authorities many of the services that will be accessed following assessment will sit outside local authority control. This is not something that local authorities can do on their own and so we need to ensure that all partners are aware of their responsibilities and are held to account for delivery of the Act.

22. We have also stressed that whilst the aim is to provide a consistent response across Wales the 'can and can only' test is not a simple and unambiguous test, as, inevitably and appropriately, it leaves space for professional judgment to be exercised, leading to potentially different interpretations being made. In addition we will also have situations where in one area someone will become eligible for a care and support plan as there are no services available in their community that meet their needs, whilst in another area there may be services in place, so someone with very similar needs may find themselves not eligible. This highlights the fact that finding a consistent response may not be possible as it will be determined by what services are available in any given area. This is particularly pertinent as we rely more on third sector and social enterprises, which will not be uniform across Wales but will reflect the geographical and population differences at locality level, as well as the aspirations and priorities of service users, if we are true to our ambition to develop service user led support and services.

National Assembly for Wales / Cynulliad Cenedlaethol Cymru
[Health and Social Care Committee / Y Pwyllgor Iechyd a Gofal Cymdeithasol](#)
[The Care and Support \(Eligibility\) \(Wales\) Regulations 2015 / Rheoliadau](#)
[Gofal a Chymorth \(Cymhwysra\) \(Cymru\) 2015](#)

Evidence from Social Care and Wellbeing Alliance Wales – CSR 11 /
Tystiolaeth gan Cynghrair Gofal Cymdeithasol a Llesiant Cymru – CSR 11

SOCIAL CARE AND WELLBEING ALLIANCE WALES

RESPONSE TO THE ELIGIBILITY CRITERIA REGULATIONS AND CODE OF PRACTICE

We are content for this paper to be made public. For further information please contact
Meleri Thomas, Co Vice-Chair, Social Care and Wellbeing Alliance Wales

[REDACTED]

Tim Ruscoe, Co Vice-Chair, Social Care and Wellbeing Alliance Wales

[REDACTED]

1. The Social Care and Wellbeing Alliance [SCWAW] welcomes the opportunity to respond to and provide evidence to the Health and Social Care Committee on the Eligibility Criteria.
2. SCWAW is an alliance of around 30 third sector and professional organisations established to identify, and seek to address, emerging issues affecting social care and wellbeing and their impact on people in Wales.
3. SCWAW believes the Social Services and Wellbeing Act should deliver robust outcomes for the people of Wales who need access to social care and support services to live full and independent lives.
4. We support the establishment of an all-Wales eligibility criteria. We hope that this will help ensure parity of provision regardless of where people live.
5. We welcome the inclusion of the 'ability to communicate' as a recognised eligible need for children, adults and carers in the regulations. For people who have conditions that affect their ability to communicate, such as autism, taking account of a person's communications ability and method of communication is crucial in making sure that they get the care and support at the right time, in the right place, in the right way.
 - a. We would further welcome that mental capacity be recognised in the ability to communicate, particularly relating to the ability of those with dementia to communicate meaningfully or with real understanding.
 - b. We would still like to see assistance with taking medication and managing medical conditions added to the criteria. This would include people with little or no sight who are often unable to detect a change in their appearance or symptoms which might be the early signs of a health problem, or who will need help to administer or manage their medication.

6. We welcome the commitment to put the needs of the individual at the centre of the assessment and care planning process and the emphasis on it being proportionate. However our overall impression is that the eligibility criteria as currently written rely too much on informal support from family and friends. We are concerned that this will put pressure on families to say that they can provide care and support to avoid eligibility.
7. We would support the principal that children and adults must be 'willing and able' to provide care and support, without a presumption that they can provide it.
8. SCWAW is concerned that the 'Can and Can Only Test' is difficult to understand and has the potential to exclude people who have low-level need such as help getting dressed, getting washed or preparing food [moderate needs under the old system].
9. We are also concerned that the 'Can and Can Only Test' suggests that 'need' will be based on what services are available not on the person's needs. The test must meet the person's needs and well-being outcomes. A community service that is only relevant in part will not meet specific needs in the way a more personalised care and support plan would.
10. We do however note that the 'Can and Can Only Test' will not apply when the need derives from abuse and neglect or the risk of abuse and neglect.
11. SCWAW supports the view that you cannot look at impact of eligibility regulations in isolation, in particular in relation to the skills of the assessor and input of specialists into assessment, and the availability of preventative services in the local area, for example whether someone is found eligible will depend on the preventative or community based services available.
12. We welcome the intention to support low level needs where these can and can only be met through the preparation and delivery of a care and support plan. Meeting low level needs is in line with the Act's preventative agenda and, if these low level social care needs are met before they escalate, the cost of meeting these needs is substantially lower than meeting higher level needs.
13. SCWAW supports the right of individuals to take up a Direct Payment, if they choose to do so. We welcome the inclusion in the Code of Practice that local authorities must explore all options for supporting an individual to manage a direct payment. We would recommend that this specifically includes setting up brokerage schemes to help people manage their direct payments. We would however want specific quality guarantees in place for the care and support purchased by Direct Payments.