

Appendix 3 - Relevant legislation, guidance and policy

Social Services and Well-being (Wales) Act 2014

1. The Social Services and Well-Being (Wales) Act 2014 (“the SSWB Act”) states that well-being, in relation to a person, relates to any of the following:

- a) Physical and mental health and emotional well-being
- b) Protection from abuse and neglect
- c) Education, training and recreation
- d) Domestic, family and personal relationships
- e) Contribution made to society
- f) Securing rights and entitlements
- g) Social and economic well-being
- h) Suitability of living accommodation.

In relation to a child (under 18), well-being also includes:

- a) Physical, intellectual, emotional, social and behavioural development
- b) “welfare” as that word is interpreted for the purposes of the Children’s Act 1989.

In relation to an adult (over 18), well-being also includes:

- a) Control over day-to-day life
- b) Participation in work.

2. The wellbeing duty means that a person exercising functions under the SSWB Act must seek to promote the wellbeing of people who need care and support and carers who need support.

3. Section 17 of the SSWB Act states that a local authority must secure the provision of a service for providing people with information (includes, but is not limited to, financial information including information about direct payments) and advice relating to care and support and assistance in accessing care and support. The local authority must ensure that

the service is sufficient to enable a person to make plans for meeting needs for care and support that might arise and provide information, advice and assistance to a person in a manner which is accessible to that person.

4. The SSWB Act defines a carer as someone who provides, or intends to provide, unpaid care for an adult or disabled child. The cared for person may be a family member or a friend who, due to illness, disability, a mental health problem or an addiction, cannot cope without their support.

5. Part 3 of the SSWB Act places a duty on local authorities, where it appears that a carer may have needs for support, to assess whether the carer has needs for support (or is likely to do so in the future) and, if the carer does, what those needs are (or are likely to be in the future). This duty applies to a carer who is providing or intends to provide care for:

- a) An adult or disabled child who is resident in the authority's area, or
- b) Any other adult or disabled child who is within the authority's area.

6. Section 24(3) of the SSWB Act outlines that the duty to assess needs for support applies regardless of the authority's view of the level of the carer's needs for support, or the level of financial resources of the carer, or the person the carer cares for, or intends to care for.

7. Section 24(4) explains that, in carrying out a carer's needs assessment, the local authority must:

- a) Assess the extent to which the carer is able, and will continue to be able, to provide care for the person for whom the carer provides, or intends to provide, care.
- b) Assess the extent to which the carer is willing, and will continue to be willing, to do so.
- c) In the case of an adult carer, seek to identify the outcomes that the carer wishes to achieve.
- d) In the case of a young carer, seek to identify the outcomes that:

- i. the young carer wishes to achieve, to the extent it considers appropriate to the young carer's age and understanding,
 - ii. The persons with parental responsibility for the young carer wish to achieve in relation to the young carer, to the extent it considers appropriate having regard to the need to promote the young carer's well-being, and
 - iii. Persons specified in regulations (if any) wish to achieve in relation to the young carer.

 - e) Assess whether and, if so, to what extent, the provision of support, preventative services, or information, advice and assistance could contribute to the achievement of those outcomes, or otherwise meet needs identified by the assessment, and
 - f) Assess whether, and if so, to what extent, other matters could contribute to the achievement of those outcomes, or otherwise meet those needs.
8. Under Section 24(5) of the SSWB Act, when carrying out a needs assessment, local authorities must have regard to:
- a) Whether the carer works or wishes to do so,
 - b) Whether the carer is participating in or wishes to participate in education, training or any leisure activity, and
 - c) In the case of a carer who is a child, their developmental needs and whether it is appropriate for the child to provide the care (or any care) in light of those needs.
9. Section 24(6) states that local authorities must include the following when carrying out a needs assessment:
- a) The carer, and
 - b) Where feasible, the person for whom the carer provides or intends to provide care.
10. Section 24 (7) sets out that the nature of the needs assessment required is one that the local authority considers to be proportionate in the circumstances, subject to any requirement in regulations.

11. Section 25 of the SSWB Act states that, if an adult carer refuses a needs assessment, the duty to assess the carer's needs does not apply. However, that duty is not discharged if:

- a) The carer lacks capacity to decide whether to refuse a needs assessment but there is an authorised person¹ to make the decision on the carer's behalf.
- b) The carer lacks capacity to decide whether to refuse a needs assessment and there is no authorised person to make the decision on the carer's behalf and having an assessment would be in the carer's best interests.

12. Section 25(3) outlines that, where a carer has refused a needs assessment, the duty is re-engaged if they subsequently ask for an assessment, or the local authority considers that the carer's needs or circumstances have changed.

13. Section 26 of the SSWB Act states that, if a carer aged 16 or 17 (or where applicable, an authorised person) refuses a needs assessment, the duty to assess the carer's needs does not apply. The duty to assess the carer also does not apply if a person with parental responsibility for a carer aged 16 or 17 refuses a needs assessment for the carer, in circumstances in which the local authority is satisfied that the carer lacks capacity to decide whether to refuse a needs assessment and there is no authorised person to make the decision on the carer's behalf. However, that duty is not discharged if the local authority is satisfied that:

- a) The carer lacks capacity to decide whether to refuse to have the assessment.
- b) In the case of a refusal given by a person with parental responsibility for the care, that the person lacks capacity to decide whether to refuse the assessment.
- c) In the case of a refusal by a person with parental responsibility for the carer, that not having the assessment would not be in the carer's best interest.

14. Section 26(4) outlines that, where a carer has refused a needs assessment, the duty is re-engaged if the carer (or an authorised person) subsequently asks for an assessment or that a person with parental responsibility for the carer subsequently asks for an assessment, or the local authority considers that the carer's needs or circumstances, or the needs or circumstances of a person with parental responsibility for the carer, have changed.

¹ A person authorised under the Mental Capacity Act 2005 to decide whether to refuse, or ask for, a needs assessment on the carer's behalf.

15. Section 27 relates to the refusal of a needs assessment for a carer aged under 16. If a carer aged under 16 refuses a needs assessment and the local authority is satisfied that the carer has sufficient understanding to make an informed decision about the refusal of the assessment, the duty to assess the carer's needs does not apply. Similarly, if a person with parental responsibility for a carer under 16 refuses a needs assessment for the carer, the duty to assess the carer's needs does not apply. However, such a refusal does not discharge the local authority from its duty to assess the carer's needs, if the local authority is satisfied in the case of a refusal by a person with parental responsibility:

- The person lacks capacity to decide whether to refuse the assessment.
- The carer has sufficient understanding to make an informed decision about the refusal of the assessment and does not agree with the refusal given by the person with parental responsibility for the carer.
- That not having the assessment would be inconsistent with the carer's well-being.

The duty will be re-engaged if the carer, or a person with parental responsibility for the carer, subsequently asks for an assessment, or if the local authority considers that the carer's needs or circumstances, or the needs or circumstances of a person with parental responsibility for the carer, have changed.

16. Section 28 states that the local authority may combine a cared for person's needs assessment and the carer's needs assessment. However, the local authority may not combine a needs assessment for:

- A cared for adult with a needs assessment for another person unless the adult gives valid consent or the requirement for valid consent may be dispensed with.
- A child aged 16 or 17 with a needs assessment for another person, unless the child gives valid consent, a person with parental responsibility for the child gives valid consent in circumstances where the child lacks capacity to decide whether to consent to combining the needs assessments and there is no authorised person to make the decision of the child's behalf, or the requirement for valid consent may be dispensed with.
- A child under 16 with a needs assessment for another person, unless the child or a person with parental responsibility for the child gives valid consent, or the requirement for valid consent may be dispensed with.

There are various exceptions to consent being valid and for the local authority to dispense with the requirement for valid consent.

17. Section 29 states that, where a person who appears to need support as a carer also appears to have needs for care and support in their own right, a local authority may combine a needs assessment for that person as a carer with a needs assessment for that person for care and support in their own right.

18. Part 4 of the SSWB Act deals with deciding what to do following a needs assessment. Section 32(1) states that, where a local authority is satisfied, on the basis of a needs assessment, that a carer has needs for support, the authority must:

- a) Determine whether any of the needs meet the eligibility criteria
- b) If the needs do not meet the eligibility criteria, determine whether it is nevertheless necessary to meet the needs, in order to protect the person from:
 - i. Abuse or neglect, or a risk of abuse or neglect (if the person is an adult)
 - ii. Abuse or neglect, or a risk of abuse or neglect, or other harm, or a risk of such harm (if the person is a child)
- c) Determine whether the needs call for the exercise of any function it has under the SSWB Act or Parts 4 or 5 of the [Children Act 1989](#), in so far as the function is relevant to that person
- d) Consider whether the person would benefit from the provision of anything that may be provided by virtue of preventative services or information, advice and assistance or anything else that may be available in the community.

19. Section 32(2) states that, if a local authority determines that any needs must be met, or are to be met, the authority must consider what could be done to meet those needs and must consider whether to impose a charge for those things.

20. Section 34(1) provides examples of the ways in which a local authority may meet needs:

- a) By arranging for a person other than the authority to provide something
- b) By itself providing something
- c) By providing something, or by arranging for something to be provided, to a person other than the carer with needs for support.

21. Section 34(2) provides examples of what may be provided or arranged to meet needs of people needing carer and support or the needs of carers:

- a) Accommodation in a carer home, children's home or premises of some other type
- b) Carer and support at home or in the community
- c) Services, goods and facilities
- d) Information and advice
- e) Counselling and advocacy
- f) Social Work
- g) Payments (including Direct Payments)
- h) Aids and adaptations
- i) Occupational therapy.

22. Sections 40 and 42 places a duty on a local authority to meet the support needs of a carer who is an adult or a child, if it is satisfied that 3 conditions, and any conditions specified in regulations, are met. The conditions are:

- Condition 1 – the person cared for by the carer is an adult who is ordinarily resident in the local authority's area or of no settled residence and within the authority's area, or a disabled child who is within the authority's area.
- Condition 2 – the carer meets the eligibility criteria.
- Condition 3 – relates to financial assessment (where applicable where the carer is a child).

23. Section 44(2) states that meeting some or all of a carer's needs for support may involve the provision of care and support to the person cared for by the carer, even when there would be no duty to meet the person's needs for that care and support under Section 35 or 37 of the SSWB Act. Section 44(3) states that, where a local authority is required by Section 40 or 42 to meet some, or all, of a carer's needs for support, but it does

not prove feasible for it to do so by providing care and support to the person cared for by the carer, it must, so far as it is feasible to do so, identify some other way in which to do so.

24. Section 45(1) states that a local authority may meet a carer's needs for support if the person cared for by the carer is within the local authority's area or ordinarily resident in the authority's area, but outside its area. Section 45(2) states that a local authority has the power to meet needs under this section whether or not it has completed a needs assessment in accordance with Part 3 or a financial assessment in accordance with Part 5.

Social Services and Well-being (Wales) Act 2014 Part 3 Code of Practice (assessing the needs of individuals)

25. The Part 3 Code of Practice (assessing the needs of individuals) ("Part 3 Code") was issued under Section 145 of the SSWB Act. Local authorities must act in accordance with the requirements contained within the Part 3 Code when exercising their social services functions. The Part 3 Code sets out a process for assessing the needs of an individual for care and support, or support in the case of a carer, a process of assessment that will apply to all people (children, adults and carers), and a process of review and re-assessment that will apply to assessments.

26. It states that a local authority must offer an assessment to any carer where it appears to that authority that the carer may have needs for support. The duty is triggered if it appears to the local authority that a carer may have needs for support. The assessment must include an assessment of the extent to which the carer is able and willing to provide the care and to continue to provide the care, the outcomes the carer wishes to achieve both in terms of themselves and, if a child is the carer, the outcomes the person(s) with parental responsibility for that child wish(es) to achieve for them and the extent to which support, preventative services, or the provision of information, advice or assistance could assist in achieving the identified outcomes. The assessment must also consider whether the carer works, or wishes to work, and whether they are participating or wish to participate in education, training or leisure activities. If the carer is a child, the assessment must have regard to their developmental needs and the extent to which it is appropriate for the child to provide care. If the carer is a young adult carer, aged between 16 and 25, the assessment must include an assessment of any current or future transitions the carer is likely to make into further or higher education, employment or training and have due regard to what the young adult carer wished to participate in.

27. The assessment should build a better understanding of someone's situation, identify the most appropriate approach to addressing their particular circumstance and establish a plan for how they will achieve their personal outcomes. The assessment should be based on the principles of co-production, ensuring that it involves a relationship where practitioners and individuals share the power to plan and deliver support together and recognising that all partners have vital contributions to make helping to meet identified personal outcomes.

28. The assessment process will often start when a person accesses the information, advice and assistance service. However, access to an assessment should not be restricted to being accessible through this service alone. The provision of information does not require an assessment. If advice and/or assistance has been given, an assessment of a person's needs will have taken place.

29. The local authority's approach to assessment and eligibility must be clearly communicated, so that all people can understand how to access an assessment, what is involved in an assessment, how it will be undertaken, who will be involved and what it means for them. There will be occasions when, because of their particular needs, people will need additional support to ensure that they understand what is available to them and how to access support.

30. All practitioners undertaking assessments must be suitably skilled, trained and qualified in undertaking assessments. Appropriate levels of qualification for undertaking these activities include either a registered Social Work or Social Care practitioner holding a professional qualification at level 5 or above, or a person holding a social care qualification at level 4 or above, which includes knowledge and skills undertaking person centred assessment, under the supervision of a registered Social Work or Social Care practitioner. A local authority will also need to be satisfied that all staff undertaking these activities have the skills, knowledge and competence to work with children and young people, adults and carers, as appropriate.

31. The assessment process must recognise the concept of language need. Local authorities should be proactive in their approach and the individual should be asked which language they would prefer at the beginning of the process, to ensure that they are able to receive services in their own language throughout the process.

32. A local authority must record the outcome of the assessment and any advice or guidance given on the assessment and eligibility tool. The record must include an explanation of how that recommended action will help meet the identified outcome or otherwise meet needs identified by the assessment. This applies to those needs which are to be met through the provision of care and support and those met through community based or preventative services, the provision of information, advice and assistance, or by any other means. A copy of this assessment must be offered to the person or family to whom the assessment relates, or to their representative.

33. An assessment will conclude with one of the following:

- a) There are no needs to be met
- b) A more comprehensive assessment is required, which may include more specialist assessments
- c) Needs can be met through the provision of information, advice or assistance
- d) Needs can be met through the provision of preventative services
- e) Needs can be met, wholly or in part, by the individual themselves (with or without the assistance of others)
- f) Other matters can contribute to the achievement of the personal outcomes, or otherwise meet the needs
- g) Needs can only be met through a care and support plan, or a support plan.

34. The local authority must enable the person whose needs have been assessed to have a clear understanding of the outcome of the assessment and what will happen next.

Social Services and Well-being (Wales) Act 2014 Part 4 Code of Practice (Meeting Needs)

35. The Part 4 Code of Practice sets out the eligibility criteria that will apply to all people, including carers. The framework for eligibility requires a local authority to work in partnership with individuals and their families and carers to ensure that services meet the care and support needs identified.

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

36. The Care and Support (Assessment) (Wales) Regulations 2015 (“the Regulations”) set out that the local authority responsible for carrying out an assessment must ensure that there is a named individual whose function is to coordinate the carrying out of assessments.

37. Section 3 of the Regulations states that a local authority must ensure that any person carrying out an assessment has the skills, knowledge and competence to carry out the assessment in question and has received training in the carrying out of assessments. When assessing, a local authority must consider whether the nature of the person’s needs calls for the involvement of a person who has specialist skills, knowledge or expertise.

38. In carrying out an assessment, Section 4 states that a local authority must:

- a) Assess and have regard to the person’s circumstances
- b) Have regard to the personal outcomes
- c) Assess and have regard to any barriers to achieving those outcomes
- d) Assess and have regard to any risks to the person or to other persons if those outcomes are not achieved, and
- e) Assess and have regard to the person’s strengths and capabilities.

39. The local authority must make a written record of the results of the assessment and the matters to which the authority has had regard in carrying out the assessment. The written assessment must include details of any provision of preventative services, information, advice or assistance or other matters that could contribute to the achievement of the personal outcomes, or otherwise meet needs identified in the assessment and how the provisions or those matters could contribute to the achievement of the personal outcomes or otherwise meet the needs identified in the assessment.

40. Section 6 of the Regulation states that the local authority must offer to give a copy of the record to the person being assessed, any person authorised to act on behalf of the person, any person with parental responsibility for a child being assessed (unless doing so would be inconsistent with the child’s well-being), when the individual being assessed lacks capacity to request a person to act on their behalf and there is no person authorised to act on their behalf, any person who the local authority considers to be acting in the best interests of the individual.

41. A local authority must review an assessment if it appears to it that there has been a significant change in the person's circumstances or in their personal outcomes. The local authority may refuse to comply with a request for a re-assessment if it is satisfied that there has not been any significant change in the person's circumstances or in their personal outcomes since the assessment was completed.

Wellbeing of Future Generations (Wales) Act 2015

42. The [Wellbeing of Future Generations \(Wales\) Act 2015](#) requires public bodies to consider the long-term wellbeing of the population and to work sustainably to prevent persistent problems such as poverty and health inequalities. The Wellbeing Act also encourages organisations to work together to prevent problems occurring or worsening. It also established 7 national wellbeing goals including a resilient Wales, a healthier Wales and a more equal Wales.

The Human Rights Act 1998

43. The [Human Rights Act 1998](#) gives legal protection to a person's human rights. The rights are called 'Convention rights', as the Act gives effect to the human rights set out in the European Convention on Human Rights. There are 18 rights in total and each one is referred to as a separate article.

44. Article 3 is the prohibition of torture. No one shall be subjected to torture or to inhumane or degrading treatment or punishment.

45. Article 6 is the right to a fair trial. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

46. Article 8 is the right to respect for private and family life. Everyone has the right to respect for their private and family life, their home and their correspondence.

47. Article 14 is the prohibition of discrimination. It enables a person to exercise their human rights without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

The Equality Act 2010

48. The [Equality Act 2010](#) protects a person with protected characteristics from discrimination. There are 9 protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

49. The Act outlines the different types of discrimination, including:

- **Direct discrimination** – a person discriminates against another if, because of a protected characteristic, they treat them less favourably than they treat, or would treat, others.
- **Indirect discrimination** – a person discriminates against another if they apply to that person a provision, criterion or practice which is discriminatory in relation to that person’s relevant protected characteristic.

Public Sector Equality Duty

50. The Equality Act introduced the Public Sector Equality Duty (“PSED”), which has 3 overarching aims. Those subject to the duty must have due regard to the need to:

- Eliminate discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

51. The aim of the PSED is to ensure that those subject to it consider advancement of equality when carrying out their day-to-day business. Local authorities in Wales are subject to the PSED.