

## **Social Services and Well-being (Wales) Act 2014: essential changes to the draft regulations and Code.**

Significant problems exist with the detail of the Social Services and Well-being (Wales) Act 2014. The Assembly is scheduled to scrutinise the draft regulations and the wording of the Code of guidance that will accompany the Act.

Since the detail of the legislation will determine the support available to people in need and their carers and have a profound impact on their lives – it is essential that the Assembly get this phase 'right'.

Three specific problems are listed below and if these (or any other aspects of the legislation) are of concern a letter could be written to your Assembly member. Welsh and English versions of a draft letter are below and contact details of Assembly Members can be found at:

<http://www.senedd.assembly.wales/mgFindMember.aspx>

On the final pages of this note is a briefing that provides background detail concerning the three problems referred to.

## **English letter**

Dear

### **The Social Services and Well-being (Wales) Act 2014**

I understand that the Assembly is shortly to scrutinise the draft regulations and the wording of the Code of guidance that will accompany the 2014 Act.

I am concerned about aspects of the proposed legal regime and ask that you use your influence to ensure that the problems highlighted below do not occur. This would mean, that:

1. The “can, and can only” requirement in the draft [Care and Support \(Eligibility\) \(Wales\) Regulations 2015](#) regulation 3(c)(iii) is deleted;
2. The clear obligations on the NHS towards carers – currently protected by the Carers Strategies Wales Measure 2010 – will remain; and
3. The failure of the Act, the draft regulations and the draft Code to make specific reference to the UN Convention on the Rights of Persons with Disabilities (CRPD) be rectified by: (1) the regulations requiring assessors to have specific regard to the need to promote the ability of individuals to live independently and to be included in the community, within the meaning of Article 19; and (2) the Code of Guidance making explicit reference to Article 19 as ‘the guiding principle’ of the Act.’

Yours etc

## **Ilythyr Saesneg**

Annwyl Aelod Cynulliad (neu enw)

### **Y Deddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014**

Deallaf fod y Cynulliad i graffu yn fuan ar y rheoliadau drafft a geiriad y Cod canllawiau a fydd yn cyd-fynd â'r Ddeddf 2014. Pryderaf am agweddau ar y gyfundrefn gyfreithiol arfaethedig a gofynaf i chi ddefnyddio eich dylanwad i sicrhau nad yw y problemau a amlygir isod yn digwydd. Byddai hyn yn golygu, bod:

1. angen i ddileu y prawf "*yn gallu, a dim ond yn gallu*" fel sail mynediad i wasanaethau sydd ei gynnwys yn y Rheoliadau Gofal a Chymorth (Cymhwysra) draft (Cymru) 2015, rheoliad 3(c) (iii).
2. Bod y rhwymedigaethau clir ar y GIG tuag at *ofalwyr* - sydd yn cael ei warchod ar hyn o bryd gan y Mesur Strategaethau ar gyfer Gofalwyr Cymru 2010 – yn parhau.
3. Bod methiant y Ddeddf, y rheoliadau drafft a'r Cod drafft i gyfeirio'n benodol at Gofensiwn y Cenhedloedd Unedig ar Hawliau Pobl ag Anableddau (CRPD) yn cael ei gywiro fel bod - (1) y rheoliadau yn ei wneud yn ofynnol i aseswyr roi sylw penodol i'r Confensiwn a bod angen i hyrwyddo gallu unigolion i fyw'n annibynnol ac i gael eu cynnwys yn y gymuned, o fewn ystyr Erthygl 19; a (2) i'r Cod Canllawiau gwneud cyfeiriad penodol at Erthygl 19 fel 'egwyddor arweiniol' y Ddeddf.

Yr eiddoch yn gywir

Gweler y nodyn cefndirol atodedig

## **Background Note**

Briefing notes on the Social Services and Well-being (Wales) Act 2014 include:

1. Welsh social care law risks taking us back 20 years by providing bare minimum:  
[www.communitycare.co.uk/2015/01/02/welsh-social-care-law-risks-taking-us-back-20-years-providing-bare-minimum/](http://www.communitycare.co.uk/2015/01/02/welsh-social-care-law-risks-taking-us-back-20-years-providing-bare-minimum/)
2. The Social Services & Well-being (Wales) Act 2014: an overview:  
[www.lukeclements.co.uk/wp-content/uploads/2014/12/SS-Well-being-Act-update-07.pdf](http://www.lukeclements.co.uk/wp-content/uploads/2014/12/SS-Well-being-Act-update-07.pdf)

### **1. The Eligibility Criteria**

#### **The Problem**

The draft [Care and Support \(Eligibility\) \(Wales\) Regulations 2015](#) create a new barrier to disabled, elderly and ill people (and their carers) accessing personalised services. Such support will only be available if the individual establishes that there is no generic service that could provide the necessary support. This is the “can, and can only” test proposed by the Welsh Government. The burden of proving that generic services (ie a day centre or a local authority respite care service) is not suitable will be on the individual. In many cases this will require them to show that they have tried a particular generic service and it as not met their need. Then and only then might they be eligible for a personalised service.

#### **The remedy**

The “can, and can only” requirement in draft regulation 3(c)(iii) be deleted.

### **2. The Carers Measure**

#### **The Problem**

The statutory reforms will result in the Carers Strategies Wales Measure 2010 being repealed. The Measure was a major achievement, as it placed obligations on the NHS in Wales to support carers. Although clauses in the [Well-being of Future Generations \(Wales\) Bill](#) Schedule 4 might be capable of reinstating these obligations (in regulations) no detailed explanation has been provided as to what precisely is proposed. This is like kicking away the ladder in the basis of a vague commitment that it may be replaced by something similar at some time in the future.

#### **The remedy**

The Welsh Government must explain now, clearly and simply exactly what local authority and NHS planning/reporting mechanism will in practice replace the obligations in the Carers Strategies Wales Measure 2010) are maintained.

### **3. Independent Living**

#### **The Problem**

The Social Services and Well-being (Wales) Act 2014 (section 7) places a statutory duty on authorities to have ‘due regard’ to the UN Principles for Older Persons and the UN Convention on the Rights of the Child. Neither the Act nor the draft regulations make reference to the UN Convention on the Rights of Persons with Disabilities (CRPD). Since the CRPD requirement in Article 19 to promote ‘independent living’ is of core relevance to the aims of the 2014, Act this omission requires to be addressed to ensure that the meaning of ‘independence’ conforms

with the requirements of Article 19. By way of example, section 6(3)(b) of the Act stresses the 'importance of promoting the adult's independence'. This could be interpreted as meaning that a disabled adult should live a 'support free' self-sufficient life, where only the minimum necessary support is made available (something the Minister appears to [endorse](#)). However Article 19 requires that authorities provide a range of community care services, 'including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community'. The CRPD conception of independent is of disabled people having good quality support to enable them to live as independent a life as possible – rather than being 'independent' of support – or of having only the '[minimum necessary](#)' support.

### **The remedy**

- (1) The Regulations accompanying the 2014 Act should require assessors to have specific regard to the need to promote the ability of individuals to live independently and to be included in the community within the meaning of Article 19 UN Convention on the Rights of Persons with Disabilities; and
- (2) The Code of Guidance to the Act must make explicit reference to Article 19. The English [Statutory Guidance](#) for example, states (at para 1.19):  
The wellbeing principle is intended to cover the key components of independent living, as expressed in the UN Convention on the Rights of People with Disabilities (in particular, Article 19 of the Convention). Supporting people to live as independently as possible, for as long as possible, is a guiding principle of the Care Act