

Looked-after children and the Social Services and Well-being (Wales) Act 2014

Dr. Julie Doughty ¹

Introduction

The Social Services and Well-being (Wales) Act 2014 came into effect in Wales on 6 April 2016. It made many changes to the law that gives local authorities their duties and powers regarding social services and children's services. This guide is about the law relating to children who are looked after by Welsh local authorities – what has changed and what this means for social workers. The guide will indicate what the law requires to be done; what is good practice; and where you can find the relevant authority or evidence base.

The new Act is supported by sets of regulations and codes of practice. A code of practice issued under this Act is a mix of statutory guidance (that should be followed) and non-statutory guidance (that is recommended). This means that the term 'code' is now used by the Welsh Government instead of the word 'guidance'.

Although some guidance issued by the Welsh Government before April 2106 might still be helpful in practice, it is no longer statutory guidance. In other words, only guidance contained in the codes is enforceable.

The best place to find all the legislation, codes of practice and other Welsh Government guides is on the [Social Care Wales information and learning hub](#). The site also contains useful training material and information about the ethos and principles of the Act.

All references to 'sections' in this guide refer to the Social Services and Well-being (Wales) Act 2014 unless otherwise stated.

What has happened to the Children Act 1989?

For social workers who are familiar with the Children Act 1989 as the basis of their work with children and families, there are two major changes in the legislation.

1. The provisions for children in need that are contained in section 17 of the Children Act 1989 no longer apply in Wales. These sections have been replaced by a system of assessment and planning under Parts 3 and 4 of the new Act. This means that children who have been receiving family support services, before they become looked after, will have been receiving those services according to the new scheme under the Act, not as 'children in need'. The category or definition of 'children in need' no longer exists in the law in Wales.
2. The law about looked-after children in Wales was previously contained in sections 20-30 of the Children Act 1989. These sections no longer apply. They have been replaced by Part 6 of the 2014 Act. Just like the Children Act

¹ [Dr Julie Doughty](#) is Deputy Director of [Cardiff Law School's Centre for Health and Social Care Law](#).

1989, the term 'looked after' applies to children accommodated by the local authority and to children in care under care orders.

The Children Act 1989 remains the same in England, and the rest of the 1989 Act still applies in Wales, including:

- The welfare principle in court;
- Who has parental responsibility;
- Private law matters such as contact and residence disputes, section 7 reports, and child arrangements orders (The position regarding special guardianship is explained below);
- Care and supervision orders; emergency protection and police protection;
- Child protection investigations and responsibilities .

The new Act has not made any changes to the law about child protection practice.

The part 3 code on assessment of needs says:

90. Where the assessment produces reasonable cause to suspect that a child is experiencing or is at risk and it has not already done so, the local authority must investigate and make inquiries into the circumstances of that child. Where these inquiries indicate the need, the local authority must decide what action, if any, it may need to take to safeguard and promote the child's welfare. The investigation will form an in-depth assessment of the nature of the child's needs and the capacity of his or her parents to meet those needs within the wider family and community context. This duty is set out in section 47 of the Children Act 1989.

The Part 4 code on meeting needs says:

40 ... a local authority must meet the needs of children which the local authority considers it is necessary to meet, in order to protect the child from abuse or neglect or a risk of abuse or neglect or in order to protect the child from other harm or risk of such harm. This is an overriding duty on a local authority irrespective of any application of, or outcome from, the determination of eligibility. A local authority's duties in respect of looked-after children are contained within Part 6 of the Act.

41. Local authorities must determine whether the needs of the individual call for the exercise of any function they have under Part 4 (Care and Supervision) or Part 5 (Protection of Children) of the Children Act 1989.

At the date of writing, the All-Wales Child Child Protection Procedures and the statutory guidance in Working Together under the Children Act 2004 remain unchanged. It is understood that the Welsh Government is currently updating the guidance.

Overarching principles of the Act

Under section 6 of the Act, the local authority has the following 'overarching duties' toward a child who needs care and support:

- As far as reasonably practicable, to ascertain and have regard to the child's views, wishes and feelings
- Have regard to the importance of promoting the child's upbringing by their family, so far as consistent with the child's well-being
- Ascertaining and having regard to the views, wishes and feelings of anyone who has parental responsibility of a child aged under 16

Under section 7, the local authority must now have due regard to the United Nations Convention on the Rights of the Child (UNCRC).

What does this mean for looked-after children?

Similar provisions to the section 6 duties are contained in the Children Act 1989, and are clear principles that social workers already apply when working with looked-after children and their families.

These reflect the [UNCRC](#) as follows:

- Enabling the child's participation – Article 12 UNCRC
- Working toward the least intervention in family life – Articles 5 and 9 UNCRC
- Enabling the child's parents' participation – Articles 5 and 9 UNCRC

These three principles also reflect [Article 8 of the European Convention of Human Rights](#), which is enforceable in the UK through the Human Rights Act 1998.

Therefore, sections 6 and 7 do not present any changes in good practice.

There is however a difference in terminology – the word 'well-being' replaces references in previous law to 'welfare'.

In section 2, the 'well-being' of a person is defined as any of the following—

2(2)

- (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.

2 (3) In relation to a child, "*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 Act 1989](#).

There is no explanation in the Act or supporting documents about what is different in practice for social workers between considering a child's welfare and their well-being. However, it may be useful to be able to refer to a list that explicitly obliges the local authority to promote, for example, the securing of a child's rights and entitlements, instead of relying on the less detailed duty to promote welfare that was found in section 17 of the Children Act 1989.

New law and restated law in the Act

Part 6 of the Act introduces some new law but mostly restates the previous law (ie in the Children Act 1989 from section 20 onward). This part of the guide will set out what is new and what is the same as before April 2016.

Definition of a looked-after child

Section 74 of the Act restates section 22 Children Act 1989. Children accommodated under s 76, and children in care under court orders, are looked after by the local authority.

Sufficiency duty

Section 75 introduces a new duty on the local authority to take steps to provide enough accommodation in its area to meet the needs of looked-after children. This reflects the same duty that was introduced in England in 2010 under section 22G Children Act 1989. This would be dealt with at a strategic level by the authority.

The duty to accommodate

Section 76 largely repeats section 20 Children Act 1989, setting out when the duty to accommodate and maintain a child or young person arises. For example, section 20(3) regarding accommodating 16 and 17 year olds in England is replicated in section 76(3) in the Act.

Sections 20(4) and (5), which give local authorities powers (rather than duties) to accommodate a child, are not repeated in the Act. Powers to accommodate a child (for example, by offering respite care or short breaks) are instead exercised under the assessment and planning provisions in Parts 3 and 4 of the Act. **Short break provision** may also be made in respect of looked-after children. The legal position regarding short breaks is explained in his '[An overview briefing: social care law in Wales](#)' (Clements, 2017 pp 21 - 23).

The following table summarises the effect of sections 77 to 125, which are largely the same as under the Children Act. Any important differences for practice are set out below the table.

Where the word 'welfare' appears in the Children Act, in sections 20 onward, the equivalent section in Wales uses the word 'well-being'.

Section in Social Services and Well-being (Wales) Act 2014	Equivalent section in Children Act 1989	Description
77	21	Child on police protection or remand
78	22	Duties to looked-after children
79	22A	Duty to accommodate
80	22B	Duty to maintain
81	22C	Ways in which child is to be accommodated. [LINK TO BELOW]
82	22D	Requirement for review before placement
83 – 84	None	Care and support plans under section 54
85	29(6) and schedule 2 para 3	Financial contribution toward maintenance of child
86	22E	Children's homes
87 – 94	Schedule 2 paras 12A – 12G	Sets out what regulations may be made
95-96	Schedule 2 Part II para 15	Promotion of contact
97	S 23ZA	Looked after children in detention
98	23ZB	Independent visitors
99-102	25A-G and 26	IROs [LINK BELOW]
103-118		Leaving care including 'When I'm Ready' [LINK]
119	25	Secure accommodation
120 – 123	85 - 86	Children accommodated by health, education authorities
124	Schedule 2 Part II para 19	Arrangements for a child to live outside England and Wales
125	Schedule 2 Part II para 20	Death of a child while being looked after

Placement

Section 81 sets out the ways in which a child may be accommodated, that is, what type of placement would best meet the child's needs.

Placement with parents

Under section 81(3)-(4) and section 88, a looked-after child must be placed with a parent or a person with parental responsibility, unless this would not be consistent

with the child's well-being or would not be practicable. Where a looked-after child is placed with a parent, the former 'Placement with Parents' regulations are replaced by regulations 16-21 of the Care Planning Placement and Care Reviews (Wales) Regulations 2015. Guidance is found in the Part 6 code, chapter 2, paras 136-135.

Fostering or Kinship placement

Under s 81 (5)-(6), if a placement with parents can't be made, the next option is that the child is placed with:

- preferably (a) a relative or a connected person who is a local authority foster carer,
- or (b) a non-related foster carer,
- or (c) a children's home,
- or (d) other arrangements

– whichever of these is the most appropriate.

In determining the most appropriate choice, the placement should be:

- not far from the child's home;
- not disrupt his/her education;
- it should allow siblings to live together;
- and should meet any needs if the child is disabled.

The accommodation should be within the same local authority area. These provisions all apply unless they are not reasonably practicable.

It should be noted that regulation 12 states that preference should always be given to placement within the local authority area. If this is not the best type of placement to meet the child's well-being, then the next option to consider is being placed in an adjoining local authority in Wales, then another part of Wales, before considering England, and, finally, outside England and Wales. A placement out of area can only be made through a panel approval process.

Guidance on out-of-area placements is set out in the Part 6 code, chapter 2, paras 183-214.

Approval of a kinship carer as a foster carer

Guidance on kinship care is set out in the Part 6 code, chapter 2, paras 146 – 165.

Under regulations 26 and 27, approval of a temporary kinship placement can be made for up to 16 weeks, possible extended by another 8 weeks. The requirements are set out in para 156-165 of the Part 6 code. These regulations replace the former 'regulation 38 approval' that allowed only six weeks for a full assessment and approval of kinship carers to be completed. This brings the Welsh regulations into line with the English regulations, which changed in 2011.

Approved foster carers

The regulation of foster carers, in general, is covered in regulations 22 – 29. Guidance on foster carers who are not related to the child is found in the Part 6

code, chapter 2, paras 166-171. The Fostering Services (Wales) Regulations 2003 still apply (apart from regulation 38, as explained above).

Children's homes and other arrangements

Children's homes in Wales are still regulated by the Care Standard Act 2000. The Children's Commissioner for Wales recently published a report on young people's views of residential care, '[The Right Care](#)', which contains evidence of the positive aspects, as well as the challenges, for children's homes.

'Other arrangements' refer to pal for 16 and 17 year olds such as supported lodgings. Detailed guidance on this is contained in Chapter 5 of the Part 6 code, about care leavers (considered below).

Foster-to-adopt placements

This is a new provision. Section 81 (10) and (11) introduce 'foster-to-adopt' placements, which relate to children for whom a best interests decision has been made that they should be adopted – and who can be placed with foster carers who are also prospective adopters. This is a new scheme, which differs from both from the idea of 'concurrent planning', as developed over recent years, and from the English scheme, introduced by the Children and Families Act 2014, called 'fostering for adoption'. Foster-to-adopt is not a widely applicable process for early permanence placement, but instead is to be considered only when the decision that the child should be adopted and the matching decision have both been made prior to a placement order.

Helpful non-statutory [practice guidance on foster-to-adopt](#) has been produced by AFA Cymru and the National Adoption Service for Wales. As that guidance explains, the most likely circumstances in which the duty to place a child in a foster-to-adopt placement will be where birth parents have had one or more children previously placed for adoption, their circumstances have not changed, and there is no realistic chance of reunification with birth parents or family members. The plan may then be to place the child with adopted siblings. As the prospective adopters are already known, it may be possible to match at an earlier stage than is usual, before the placement order.

Planning and reviews

The planning process for children who are looked after comes within Part 6 of the Act, and differs from Parts 3 and 4, which apply to the generic process for assessing and meeting the needs of children and adults who need care and support. Regulations 4 – 10 of the Care Planning Placement and Care Reviews (Wales) Regulations 2015 apply. Under regulation 10, a plan should be agreed before the placement begins, but at least within the first five days. The content of a plan is listed in regulation 5(1).

Chapter 1 of the part 6 code contains detailed guidance on planning, including health and education plans.

Any significant change to a plan can only be made at a review, under regulations 38-44. The timing of reviews has not been amended under the Act. Reviews must take place within 20 working days of the child being looked after, then within three months and within every six months after that.

It is now recognised as good practice in Wales to use the term 'reviews', not 'LAC reviews', following research that found children object to being referred to as 'LAC':

'Young people do not like being referred to a "LAC" as they are not "lacking" in anything.'

(Children's Commissioner for Wales, 2016, p 11).

Independent reviewing officers (IROs)

The role of the IRO has been strengthened under the Act, reflecting the amendments that came into force in England in 2011. Unlike England, there is no detailed [IRO Handbook](#), but there is some guidance in the part 6 code, Chapter 4.

The Act extends the IRO's responsibilities from monitoring the performance by the local authority of their functions in relation to a child's *review* to monitoring the performance by the local authority of their functions in relation to a child's *case*, as set out in section 100. The intention, when these changes were introduced in England, was that they would enable the IRO to have an effective independent oversight of the child's case and ensure that the child's interests are protected throughout the care planning process. The new sections mean that:

- local authorities must appoint a named IRO for each child
- the IRO must monitor each case and the child's wishes and feelings must be given due consideration
- the IRO must speak with each child privately before each review
- the IRO will be able to refer cases to Cafcass Cymru at any time, and not necessarily as a last resort

Regulations 53 and 54 relate to the functions and qualifications of IROs. Under regulation 43, the local authority must make arrangements to implement decisions made in the course, or as result, of the review and notify the IRO of any significant failure to implement it, or if any circumstances change that affect the decision.

Leaving care

Sections 103 – 118 provide for services for children and young people when they stop being looked after, and are similar to the law when this was reformed under the Care Leavers Act 2000. These sections are supported by:

The Care Leavers (Wales) Regulations 2015; and

The Part 6 Code of Practice chapter 5.

(Regulations about category 1 children (formerly known as 'eligible' children) are found in the Care Planning Placement and Care Reviews (Wales) Regulations 2015, because these children are 16 or 17 and still looked after.)

The Care Leavers regulations and guidance cover assessment, pathway plans, and personal advisers. Schedules 1 -3 of the Care Leavers regulations set out the matters to be dealt with in plans.

There are four categories of entitlement to leaving care services in the Children Act 1989. In Wales, these have been replaced by six new categories as follows:

Category	Previously known as	Described in Part 6 Code as
1	Eligible	A young person looked after aged 16 or 17
2	Relevant	A care leaver under 18
3	Former relevant	A care leaver aged 18 or over
4	Within definition of former relevant	A young person who reconnects to care for training or education purposes
5	Qualifying	A young person who left care under a SGO
6	Qualifying	A young person who did not qualify as a care leaver

There is a comprehensive chart setting out what each of these categories means in practice on pages 103 – 108 of the Part 6 Code.

Care leavers – what has changed?

The concept and the qualification criteria for being in category 2 and 3 are the same as for a relevant child and former relevant child respectively. The Children Act 1989 provides that a relevant, or former relevant, child might be charged for services – this does not appear in the Wales Act.

With regard to former relevant young people, a provision in the Children Act 1989, section 23C(5) that requires the young person to demonstrate exceptional circumstances for support to be provided in cash, is not repeated in the Wales Act.

There is a new requirement in Part 10 of the Act, in section 176(4), about representations made relating to former looked-after children. Under this section, the local authority is required to publicise its procedures for making representations and complaints.

Post-18 living arrangements – ‘When I Am Ready’

Section 108 is about the new ‘When I Am Ready’ scheme, which allows a Category 3 young person to continue to live with their foster carer until they are 21. When a young person is still in Category 1, the assessment of their future needs must also check whether they and their foster carer would like to make a post-18 arrangement.

At present, such an option is not available to a young person who turns 18, living in residential care.

Under section 108(4), where the young person and the foster carer do want the arrangement to continue and the local authority agrees it would be consistent with the young person's well-being, advice and support should be provided to facilitate it.

There is detailed guidance in the Part 6 code, chapter 6, which includes statutory guidance on what local authorities must and should do. This is supported by supplementary [Practice Guidance](#) on suggested approaches.

Homeless young people

16 and 17-year-olds who present as homeless to the local authority may acquire looked-after status. The Part 6 code includes guidance on this matter in Chapter 5, paras 583-588.

It is recognised in [statutory guidance issued by the Welsh Government on homelessness](#) that bed and breakfast accommodation is unsuitable for single homeless young people.

Secure accommodation

Section 119 replaces section 25 in the Children Act 1989, and is supported by the Children (Secure Accommodation) (Wales) Regulations 2015 and the Part 6 code, chapter 7.

Although the law has not changed in a way that should affect existing good practice, matters are complicated by the fact that most secure establishments available to children in Wales are situated in England. Social workers therefore need specific advice from their local authority legal advisers as to which courts and which regulations (Wales or England) apply to the particular case.

Public consultation is currently taking place on amendments to the regulations – see <https://consultations.gov.wales/consultations/secure-accommodation-and-placements-children-out-area>

Children in detention

Some children who have been looked after but are detained in a prison or youth detention following a criminal conviction will no longer be looked after, under provisions in the Legal Aid, Sentencing and Punishment of Offenders Act 2012. However a duty continues to visit the child, under section 97. The requirements, including which local authority is responsible for visiting, are set out in the Visits to Children in Detention (Wales) Regulations 2015 and in the Part 6 code paras 338 – 361.

Independent visitors; advocacy; representations

Section 98 of the Act restates s 23ZB of the Children Act 1989 regarding the duty of the local authority to provide independent visitors for looked after children. It is supported by the Part 6 code, chapter 3, paras 302-337. Visits should usually be undertaken by the child's allocated social worker. The timing of visits is explained in paras 310-317 of the code.

The Act has not changed the law regarding the provision of advocacy services for looked-after children. Section 178 restates the existing entitlement of children who are, or have been, looked after to access to independent advocacy. This is preserved by Part 10 of the Act, and a separate code of practice. Guidance on advocacy for looked-after children is found in paras 89 - 112 of the Part 10 code. Also, the importance of information about advocacy for care leavers is highlighted in the Part 6 Code, chapter 5, paras 416-417.

Adoption and special guardianship

The Welsh Government has devolved powers over social services functions but not over the courts, which still operate within an England and Wales system. This means that permanence arrangements that require court orders, like special guardianship and adoption, are not changed by the Social Services and Well-being (Wales) Act 2014. However, two points should be noted:

Adoption

The new Act established the National Adoption Service for Wales in October 2014. This is the only section of the Act that came into force before 2016.

Special guardianship

This is dealt with by section 14A of the Children Act 1989 and continues to apply in Wales. However, the existing regulations and guidance, issued in 2005 relate to local authority functions and need updating. The Welsh Government is currently working on this, taking into account recent approaches by the courts to special guardianship assessments and orders.

Public consultation is currently taking place on amendments to the regulations – see <https://consultations.gov.wales/consultations/special-guardianship-orders>

Conclusion

It can be seen from Welsh Government publicity about the Social Services and Well-being (Wales) Act 2014, such as [this 'essentials' guide](#), that the Act was designed primarily in response to the needs of the adult population in Wales. It has not made radical changes to the law relating to children. Most of the Children Act 1989 still applies in Wales - although Part III of that Act has been removed, the provisions relating to looked-after children are largely repeated in the new Act.

There are some positive changes that will assist good practice:

- The duty to have regard to the UN Convention on the Rights of the Child
- The wider concept of well-being
- Strengthening the role of the IRO
- 'When I am Ready'
- The National Adoption Service

There are other ongoing initiatives designed to improve the experiences and outcomes for children who are looked after in Wales, such as the development of a [National Fostering Framework](#), which is said to be aligned to the implementation of the Act.

References

Cardiff University *Children's Social Care Law in Wales* website: <http://sites.cardiff.ac.uk/childrens-social-care-law/>

Social Care Wales *Information and Learning Hub* website:
<https://socialcare.wales/hub/about>

Children's Commissioner for Wales (2016) *The Right Care: Children's rights in Residential Care in Wales*

Available at <http://www.childcomwales.org.uk/wp-content/uploads/2016/06/The-right-care.pdf>

Clements L. (2107) *The Social Services and Well-being (Wales) Act 2014 – an overview* available at <http://www.lukeclements.co.uk/rhydian-social-welfare-law-in-wales/>