



Regulations and Code of Practice in Relation to Part 7 of the Act

Consultation Response from
ADSS Cymru and WLGA

February 2015

Consultation Response Form

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Introductory Comments:

This is a joint response on behalf of ADSS CYMRU and WLGA to the consultation on the regulations and code of practice in relation to the Social Services and Well-being (Wales) Act.

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. We also recognise and appreciate the fact that Welsh Government has worked with all stakeholders to influence the development of the draft codes of practice and regulations.

In responding to the current consultations a number of key themes have been identified and these need to be considered with the proposals set out in the codes of practice and regulations. These themes include:

Financial - We recognise that resources are limited and there is potential for some efficiencies to be achieved as the Act is implemented. However it is also inevitable that the Act will increase pressure on local authorities, for example through increased responsibilities around supporting the needs of carers. There is a need for some 'invest to save' funds and short term resources to allow for new services to be developed, whilst some current services are kept in place and the Delivering Transformation Grant has provided a welcome opportunity to start some of this work. Welsh Government has already recognised that there are some elements that will have clear cost implications for local authorities, e.g. assessing and meeting the care and support needs of prisoners, however the codes of practice and regulations also place a number of other additional burdens on local authorities, e.g. around IAA services, population assessments and meeting the support needs of carers all of which need careful deliberation. Alongside those factors are the increased pressures as a result of existing budget cuts, welfare reform and increasing demand and expectation. Following the publication of the Welsh Government Budget, local councils are warning that funding for local services will fall by £154m, and if local government continues to bear the brunt of austerity, some local services will disappear, for example preventative services. Indications suggest that local government will need to make up a shortfall of up to £900m by 2018, as a result of which many of the services, that communities rely upon, are expected to become unaffordable in the future. While council leaders understand the pressures being placed on the overall Welsh budget, there is a need to acknowledge that continued funding reductions on this scale will have a huge impact on local services. Councils will have no option other than to look seriously at extending their charging regimes, along with different models of delivery, in addition to those expected from the Act. Many of the services, that communities have been able to take for granted and upon which they have relied, are now at risk, including leisure centres, libraries, community facilities and opportunities for day activities.

Implementation - The Act is vast in scope, and whilst we have supported the move to legislate in key areas such as wellbeing, safeguarding and integration, we support the need for a sequential approach to implementation to ensure deliverability. Many elements of the Act 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 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 for services to be in place from April 2016 and be realistic in agreeing what is achievable in this timeframe.

Preventative Services - The context of increasing demand for services, in part due to well evidenced demographic changes, increase the importance of developing more preventative activities that offer much earlier intervention, with the aim of holding off more costly and potentially intrusive interventions at a later stage. Current austerity measures, particularly affecting local authority budgets, are putting some preventative services and facilities at risk, e.g. closure of leisure centres, reduced hours for day activities, closure of community hubs and meeting places. In addition the potential uncertainty of grant funding, for example Families First and Flying Start, hampers the development and consolidation of key preventative services for children and families. WLGA and ADSS Cymru believe that discretionary services like leisure and culture, are an essential part of local facilities that harness and enhance people's opportunities to 'look after' themselves and promote well-being. Their reduction and in some cases disappearance creates a

barrier to participation and accessibility within communities. Raising the profile of prevention and early intervention is critical to meeting the aspirations of the Act, but with the lack of any significant investment accompanying the Act, local authorities will struggle to give it the priority necessary and will be unable to invest in developing the capacity of neighbourhoods to offer the kind of creative offer that will make a difference to people's lives.

Roles and Responsibilities of Partners – The Codes of Practice and Regulations identify a number of new responsibilities for local authorities and similarly promote amongst partner agencies, in particular LHBs, a sense and duty of shared responsibility, since promoting well-being requires action by all agencies at all levels. The Codes of Practice and Regulations should be strengthened by being explicit in the expectations on partner organisations and specifically identifying sanctions for non-compliance by any of the partner agencies. In addition the Act requires a new way of working and thinking that encourages and requires people to take action to support their own well-being. This needs to be clearly communicated to the public so that a wider dialogue takes place, to ensure that the ideas and facilities develop through co-production.

Training – The workforce will be fundamental to the successful implementation of the Act, a workforce that is multi-agency and multi-disciplinary. The Act requires a very different way of working, particularly around the new approaches to assessment and eligibility. These new approaches will not be simple to apply and will challenge some of the existing practice and training. It will be key to get staff training and development right, in order to support staff to be able to meet the expectations set out in the Act. Time will also be required for this training to ensure that the changes become embedded into people's everyday practice. Some of this work has already started, for example local authorities having an increasing focus on outcomes, however the size of the changes required and the new expectations cannot be under-estimated.

Children's Services – The vision of the Act is welcomed, however it needs to be recognised that it appears to be more easily related to Adult Services and therefore Children's Services face particular challenges in meeting its aspirations. There is a danger that the current strengths of Children's Services are forced to fit into a comprehensive approach when they would work well, as now, in an aligned approach – in particular provisions under Section 17 of the Children Act still have a place under the Social Services and Well-being Act.

The Commission on Public Service Delivery and Governance – The Codes of Practice and Regulations prescribe and recommend different partnership footprints which in itself may cause some confusion due to the inconsistent approach adopted - from the LHB footprint for population assessments, to the public services footprint for Safeguarding Boards and national collaboration for some elements of the IAA Services. We would not to get too caught up on the potential implications falling out as a result of the Commission's work, as these are still unclear, however it is important to raise that there will inevitably be implications for local authorities, how they look in the future and what structures will be in place, which will impact on implementation of the Act.

Both the WLGA and ADSS Cymru welcome the opportunity to be involved in future debates about the issues considered in the consultation papers and remain committed to working with Welsh Government on Tranche 2 of the Act and its implementation.

Safeguarding

- 1. To what extent do you agree that the role of the authorised officer (who may apply for an adult protection and support order) should be restricted to an officer of the local authority?**

Agree <input type="checkbox"/> x	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/> x	Disagree <input type="checkbox"/>
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It is useful to consider the criteria for the AMHP and consider whether there are grounds for including staff of the LHB for consideration as an authorized officer, particularly psychiatric nurses. This would further confirm the shared responsibility for safeguarding that is both explicit throughout the Act. Within local authorities, it ought to be feasible for the role to be carried out by a social worker or occupational therapist.

Fundamental to the successful execution of the role is confidence and competence, in line with the requirements set out in 5.5 of the code of practice. Therefore training and continuous professional development will be more critical than the professional background of the person carrying out the role. In addition we welcome section 5.28 of the code of practice which sets out as condition for the authorized officer to be accompanied by another specified person, who will be identified as part of the application. This encourages shared responsibility, as well as importantly protecting the interests of the person, and as mentioned many times throughout this response, both are critical tenets of the whole approach to safeguarding adults and children and confirmed throughout the Act.

We understand that there is planned development work with the Court Service around the role of the authorized officer and the execution of APSOs and this will be very helpful in the development of the role and its relationship with officers of the court.

- 2. To what extent do you agree with the lead partners nominated by the Safeguarding Boards for each Safeguarding Children Board and each Safeguarding Adults Board, as set out at section 10.1?**

Agree <input type="checkbox"/> x	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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Local authorities carry out this role currently and that is appropriate, without diminishing the importance of shared responsibility amongst other member agencies of each board.

3. To what extent do you agree that the functions of a Safeguarding Board are aligned to their principal priorities?

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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What else should be prescribed?

The functions of boards are clearly to protect and safeguard, the latter carried out through a focus on prevention. Boards will need to develop priorities determined by local circumstances as well as national requirements, but the functions, as set out in the regulations and guidance, offer sufficient flexibility for that to take place. We do need to ensure that the relationships between the priorities and roles of the National, Regional and Local Boards avoid potential duplication and it will be important to get a proper focus on adults and children (given so much of the new roles relate to adults).

Important will be the need to ensure that overseeing delivery of safeguarding practice remains a focus of each board, whilst maintaining a regional and strategic overview and this was confirmed in the legacy statements prepared in the transition from local to regional safeguarding children boards in 2009/10.

One example could be the role set out in 11.14 of the code of practice, 'promoting inter-agency approaches to working with community groups and organisations where they may be populations at risk of harm'. The prevention of child sexual exploitation should be a priority for all boards and where it is known to be prevalent, working with community groups will appropriately take on a higher priority.

4. To what extent do you agree with the criteria for undertaking a concise and extended Adult Practice Review?

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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If you do not agree, what criteria should be used?

The transition from 'serious case reviews' for children to 'child practice reviews' was achieved through good briefings and boards developing an understanding of the rationale for the change and focusing on the purpose of the review, i.e. to learn from what took place, with a view to acting on that learning into the future.

The criteria for Adult Practice Reviews appear to have been developed from the experiences in children's services and that should serve all boards well. There needs to be continuous and shared learning between the safeguarding of children and the safeguarding of adults.

It may be helpful to refer to the work undertaken by Cordis Bright as a way of understanding how to learn from best practice in safeguarding and protecting children.

5. To what extent do you agree that the guidance is clear about the responsibilities of Safeguarding Boards to ensure appropriate membership?

Agree ☒

Tend to agree ☐

Tend to disagree ☐

Disagree ☐

The guidance is helpfully clear and in many ways has been operationalized by boards for the last 12 months and therefore is common practice

6. To what extent do you agree that the guidance is clear about the responsibilities of Safeguarding Boards to ensure engagement with a wide range of organisations involved in safeguarding in the Safeguarding Board area?

Agree ☐

Tend to agree ☐

Tend to disagree ☐

Disagree ☐

Sections 11.48 – 11.51 of the code of practice are helpfully clear about the need for boards to seek out the contribution of other organisations, e.g. YOS and domestic abuse agencies, but also by encouraging the development of suitable networks and forums to ensure that channels of communication remain open, as sharing information will always be a critical feature of preventing harm and safeguarding people's interests. That will be particularly important to ensure that schools have the opportunity to feed their intelligence about what works and what interferes into regional boards.

7. To what extent do you agree that the regulations and guidance enable effective participation of users in the work of Safeguarding Boards?			
Agree <input checked="" type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
<p>There is sufficient scope in section 12 of the code of practice to allow and encourage best practice for involving users and carers to play their part in informing boards about their good and bad experiences. The creation of Junior safeguarding children boards is a good example of offering children and young people more continuous opportunities through developing confidence in negotiating with groups of professionals. This could be replicated through similar arrangements for adults directly affected by the work of the board.</p> <p>These are important mechanisms to have in place, whilst recognizing that to function well, they require considerable time and support and this is a call on the available resources.</p>			
8. To what extent do you agree with the proposed content of the annual plan?			
Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input checked="" type="checkbox"/>	Disagree <input type="checkbox"/>
<p>If you do not agree, please explain why</p> <p>We believe that Welsh Government should give some serious thought to whether there is a need for both an annual plan and an annual report. It could easily be possible for an annual report to be produced that sets out its planned activity in the following year, no doubt informed by its experience during the previous year, but in one document rather than two. The objectives of the annual plan and report are complementary and lend themselves to one document.</p>			

The strong message from the Act is to reduce the administrative and bureaucratic burden and focus on outcomes and the proposal highlighted above supports this message.

9. To what extent do you agree with the proposed content of the annual report set out in Schedule 3 to The Safeguarding Boards (General) Regulations?

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input checked="" type="checkbox"/>	Disagree <input type="checkbox"/>
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If you do not agree, please explain why

See 8 above

10. To what extent do you agree that financial contributions should be prescribed for each Safeguarding Board partner?

Agree <input type="checkbox"/>	Tend to agree <input checked="" type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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This has been and continues to be contentious. We welcome the proposal that the contributions are set out and are prescribed. The question is whether the proposed contributions are fair and equitable.

If all of NHS Wales has a responsibility for safeguarding, we would like Welsh Government to consider whether the NHS Trusts should also make a contribution to the costs of safeguarding boards. This could be done on an all-Wales basis and that contribution distributed equally amongst the regional boards.

Similarly LHB, Probation and Police authorities have questioned the proposed contribution of local authorities, particularly in those health board footprints where there are a number of local authorities, e.g. N. Wales and Gwent, where the 60% contribution becomes relatively small for 6 and 5 local authorities respectively.

Important to this consideration is also agreeing what the financial contribution pays for and that should be consistent across Wales, e.g. the extent of the business support function for each board and the potential for rationalization of the support

into one business support function for both the children and adult boards, as set out in 15.14 of the code of practice

11. To what extent do you agree that the proposals for securing financial contributions to the Safeguarding Board set out fair and equitable arrangements?

Agree ☐

Tend to agree ☒

Tend to disagree ☐

Disagree ☐

See 10 above

We have set out that we believe that a prescribed contribution is welcome and hold to that position. It may be that the current percentages are agreed for a period of three years with a commitment to review their fairness and equability at that point.

12. What are the key priorities for the first year of the National Independent Safeguarding Board?

1. Promoting the principle of shared responsibility for safeguarding children and adults
2. Considering action taken to prevent and tackle child sexual exploitation
3. Considering action to prevent and tackle exploitation of adults at risk of harm
4. The pace and impact of change on safeguarding
5. How the principle of citizen voice and control is being integrated into the work of all regional boards and the national board

There is an opportunity to sweep up and review the proliferation of other short-term initiatives (coming from third sector, Police or other sources e.g. child sexual exploitation, human trafficking) under its scope.

<p>13. How can arrangements for reviewing national safeguarding policy and procedures be taken forward under the responsibilities of the National Independent Safeguarding Board and the Safeguarding Boards?</p>
<p>The National Board should have regular dialogue with the regional boards, so that there is intelligence that the National Board can use in understanding the impact of the legislative changes and where necessary speedily propose changes to policy and procedures. A link national board member with each regional board could go some way to achieving this.</p>
<p style="text-align: center;">Other</p>
<p>The Welsh Government is interested in understanding whether the proposals in this consultation document regarding Part 7: safeguarding will have an impact on groups with protected characteristics. Protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, and sexual orientation.</p>
<p>14. Do you think that the proposals in this consultation will have any positive impacts on groups with protected characteristics? If so, which and why/why not?</p>
<p>15. Do you think that the proposals in this consultation will have any negative impacts on groups with protected characteristics? If so, which and why/why not?</p>

16. Re-balancing the care and support system to deliver the new legal framework will require reprioritisation of resources. What are the key actions that need to be taken to achieve this?

17. We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to tell us about them.

We have a number of other points to make following meeting arranged to discuss this joint response with both ADSS Cymru Safeguarding Policy Group and All Wales Heads of Children's Services Group.

- a) We are concerned that the issues surrounding domestic abuse are not fully integrated into policy, procedure and practice. We propose that the revised DASH is adopted by all agencies, as a safe and reliable pathway and that would acknowledge the domestic abuse experienced by older people and would also avoid people falling between differing processes, e.g. POVA and Domestic Abuse.
- b) We are concerned that the issues surrounding child sexual exploitation maintain a high profile and receive the necessary attention. We are keen to ensure that the Act reinforces the concerns surrounding CSE and the nature of its extent.
- c) We are concerned that, along with the full range of changes required by the Act, that there is a need to ensure the changes are managed in such a way that children and adults at risk are not in any greater risk, because of the changes, hence we are suggesting in our response that the local operational arrangements are given priority in the considerations of the regional boards
- d) The 'duty to report' is a critical part of the Act, but we are concerned if agencies other than local authorities do not also have the duty, particularly providers of services in third and private sector agencies.
- e) In relation to children's services, there is a possibility of the 'duty to report' conflicting with responsibilities towards a 'child in need'. The language used will be a challenge to the workforce which has become used to 'child in need' and it connects to Part 3 of the Act and also Part 6(LAC)
- f) We want to ensure that there is a connectivity between any performance management framework for safeguarding and the National Outcomes framework. We believe that they need to be compatible and complementary.
- g) We have commented elsewhere about the need for sanctions for any agency that does not carry out its responsibilities under the Act. The principle to be applied is that 'a duty has to have a consequence if it is not met/carried out'.

Responses to consultations may be made public – on the internet or in a report. If you would prefer your response to be kept confidential, please enter YES in the box.

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