Welsh Government

Consultation Document

Social Services (Wales) Bill

Date of issue: 12 March 2012
Action required: Responses by 01 June 2012
Overview

This consultation document sets out the Welsh Government’s legislative proposals for the Social Services (Wales) Bill in the following areas: maintaining and enhancing the wellbeing of people in need; giving citizens a stronger voice and real control; ensuring a strong national direction and local accountability for delivery; safeguarding and protection; regulation and inspection; adoption and transitions for disabled children and young people.

How to respond

You can respond to this consultation by completing, by the closing date, the consultation response form at the back of this document and returning it to us by post to:

Social Services Bill Team
Social Services Directorate
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

Alternatively the consultation response form is available on our website (http://wales.gov.uk/consultations/?lang=en) and can be returned to us by e-mail to: socialservicesbill@wales.gsi.gov.uk

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

Sustainable Social Services for Wales: A Framework for Action:
http://wales.gov.uk/topics/health/publications/socialcare/guidance1/services/?lang=en

Independent Commission on Social Services report:
http://www.icssw.org/vision/?lang=en

Law Commission Review of Adult Social Care Legislation:

Report of the Welsh Safeguarding Children Forum:
http://wales.gov.uk/topics/childrenyoungpeople/publications/forum/?lang=en

Report of the Protection of Vulnerable Adults Project Board:

Contact details

For further information, please contact:

Name: Social Services Bill Team

Address: Social Services Directorate
Fourth Floor
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

E-mail: socialservicesbill@wales.gsi.gov.uk

Telephone: 029 2082 5681

Data protection

How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. The law however, also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. There might however, sometimes be important reasons why we would have to reveal someone’s name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.
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Foreword

Social Services face a series of challenges: changing public expectations; increasing demand for services; demographic change; and increasingly tight resources mean that change in how we deliver these services is inevitable.

For this reason I asked the Independent Commission on Social Services to review social services in Wales. The Commission painted a picture of a service with many strengths and it outlined a clear way forward. This review and the Commission’s extensive engagement with people across Wales formed the foundation for the Welsh Government’s White Paper: *Sustainable Social Services for Wales: A Framework for Action*.

*Sustainable Social Services* set out how the Welsh Government will take forward social services and social care to develop the high quality, responsive, citizen-centred social services that are essential to a successful Wales. Our White Paper set an ambitious agenda for change and one that we can only deliver successfully by working closely with our partners across Wales. At the heart of this is the need to ensure that citizens have a stronger voice and real control over services.

Much of the programme of change that we outlined in *Sustainable Social Services* can be achieved without altering the legislation. However, there are also a number of key areas of action that will require us to legislate, and these are laid out in this consultation document. The positive result of the referendum on law making powers for Wales means that we can now make these changes for ourselves and so, on 12th July 2011, the First Minister announced the Welsh Government’s legislative programme for 2011 – 2016. Within his statement he announced his intention to introduce a Social Services (Wales) Bill. This commitment was then reaffirmed in the First Minister’s Programme for Government.

This Bill is therefore an important step on our journey towards more sustainable social services and will help us meet the challenges facing us in the future. As well as providing us with the legislative basis to take forward *Sustainable Social Services for Wales*, the Bill once enacted will provide - for the first time - a coherent Welsh legal framework for social services, based on the principles we hold dear in Wales. It will simplify the web of legislation that currently regulates social care in Wales and will make access to services much easier and more understandable to those who need them. This Bill will give people a strong voice and real control. It will cover social care services for both children and adults, and will, as far as it is possible and appropriate, integrate the arrangements for both of these groups so that social care services are provided on the basis of need and not of age.
Our Social Services Bill will provide us with a legislative basis to meet the changing needs of the people of Wales in the years to come. I have valued the degree of consensus about the changes needed, including the support across political parties about the job we have to do. I look forward to engaging with you on our proposals so that we can ensure we have all the tools we need to seize the opportunities ahead.

Gwenda Thomas AM
Deputy Minister for Children and Social Services
Summary

The case for change

Social Services are at the heart of Welsh public life. They support 150,000 young, old and disabled people every year to achieve their potential and help make them safe. Many of these services are delivered in partnership with others, including housing, health and education services.

The story of social services in Wales is one of success and of progress over the past ten years. However, our society is changing and social services must change in response. There has been and will continue to be shifts in the public’s expectations of social services, as a result of demographic change and changes in our society. Social services need to alter and respond to all of these.

Furthermore, demand is rising across social services, yet the financial outlook for all public services is difficult. Whilst we have protected social services expenditure, we need to make a more fundamental change than just pursuing the obvious efficiency measures if we are to make social services sustainable.

Our White Paper Sustainable Social Services for Wales: A Framework for Action sets out a programme of change to meet these challenges based on the following nine principles:

- A strong voice and real control
- Supporting each other
- Safety
- Respect
- Recovery and restoration
- Adjusting to new circumstances
- Stability
- Simplicity
- Professionalism

These have been informed by discussion with stakeholders and debates in the Assembly and elsewhere since Sustainable Social Services for Wales was published. These sit alongside the evidence of the Independent Commission on Social Services in Wales, the Law Commission’s review of adult social care legislation and our Review of Safeguarding. In particular at the close of 2012, we received responses to Sustainable Social Services from the Welsh Local Government Association (WLGA) and the Association of Directors of Social Services Cymru (ADSSC); and from the Care Council for Wales and the Care and Social Services Inspectorate Wales (CSSIW). These concerned the crucial contribution they will make to the agenda of transformation. This dialogue has made a substantial contribution to refining our proposals.
Our implementation of Sustainable Social Service will not solely be achieved through legislation. We have made a series of strategic decisions, based on the need to stop doing some things and prioritising new things, not imposing an additional layer of activity. The result is a programme of action that is being led and managed by our National Partnership Forum on social services that brings together the senior political figures in social services, along with our key partners. The change programme is being delivered through a range of projects. Much of the activity will not require legislation; but for many others, the Social Services (Wales) Bill will be central to the transformation we want to see by establishing the core legal framework for social services and social care in Wales.

Our legislative proposals

The Social Services (Wales) Bill will support the delivery of services in an integrated way to people of all ages, not in separate ways to children and to adults. There will of course be different implications for children, who do not have the same autonomy as most adults, and we have been clear about the particular services they need.

Wales has a distinctive and internationally regarded rights based approach to children’s social care. We believe in a rights based approach because children are a relatively powerless group in society. We have put on a statutory basis our long standing commitment to the United Nations Convention on the Rights of the Child, as captured by our ‘Seven Core Aims’ for children.

Children like adults are not a homogenous group. We will therefore define social services within the Bill in a way that starts with a commitment to “people in need”, which is designed to be an active not a passive concept. We will expect local authorities and their statutory partners to maintain and enhance the wellbeing of people in need, and the Bill will provide a definition of them.

Social services can not be sustainable without delivering more early intervention. The Bill will therefore require local government to understand the dimensions and shape of the population in need in their areas, to make this public and to have powers to make arrangements to provide a range of services to meet these needs.

Some people will require an intensive and comprehensive range of services. The Bill will make it clear that local authorities have a duty to provide, or arrange to provide social care services and will bring forward a definition of these types of services that will draw on the existing definitions and take account of proposals put forward by the Law Commission.

The legislation will also seek to provide individuals with a stronger voice and real control. The starting point is enabling individuals to understand fully how care and support may help them. Our proposals give individuals a right of

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1 [http://wales.gov.uk/topics/childrenyoungpeople/rights/sevencoreaims/?lang=en](http://wales.gov.uk/topics/childrenyoungpeople/rights/sevencoreaims/?lang=en)
access to an assessment of their needs and will require those assessments to be carried out in a way that focuses on the outcomes that people themselves are seeking.

The Bill will also give people the right to access information, advice, and assistance in finding out about services. It will enable us to introduce a portable assessment of need and will give Welsh Ministers the powers to establish a national eligibility framework. These measures will drive the creation of a more coherent framework for services and will enable us to improve consistency of access to services.

The Bill will extend the range of services for which people have the right to a direct payment, where that is their wish. It will enable the Welsh Government to extend the rights of carers to an assessment more widely when circumstances permit.

It will also strengthen the complaints procedure and extend the Public Services Ombudsman’s powers to consider complaints. Alongside this Bill, we are also consulting on ways in which we can improve the complaints system.

*Sustainable Social Services* and *Together for Health* make it clear that a step change in integrating services, particularly for frail older people with complex needs, is an urgent necessity. The Social Services (Wales) Bill will therefore extend the duty on social services and the NHS to collaborate in the delivery of integrated services, including the expectation of the use of pooled budgets and other flexibilities.

We have been clear about the need for social services to have a stronger national direction. Our Bill will include powers to establish a national outcomes framework and to set standards for social services; but we also want to be clear about local accountability. The Bill will therefore include a duty on local authorities to appoint a competent Director of Social Services to lead and manage family-focused social services. These provisions will include explicit powers to enable authorities to share Directors of Social Services.

Our legislative proposals on safeguarding and protection include provisions for a statutory basis for adult protection, for stronger national direction and to establish clearer links between child and adult protection.

We plan to make strategic changes to the regulatory system for social care, including clarifying the responsibilities of employers and the regulator’s role in checking financial viability of providers. We need to strengthen our key professionals and build their confidence by being clear about the level of expertise needed in delivering particular services.

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Finally, the Bill will simplify arrangements in relation to adoption by placing a duty on the twenty-two Local Authorities to require them to come together to establish a single adoption service.

The detail behind all of these proposals is contained within this document along with a range of questions on which we are seeking your views. Your responses will then inform the development of the Bill prior to its intended introduction into the National Assembly in October 2012.

We see the Bill falling into six parts, and these are reflected in the chapters that follow. The Bill is however, only one step in our journey. Regulations and a Code of Practice for Social Services will bring the legislative proposals fully into force.

Work is underway to understand the impacts that these changes might have, both financially and socially. This will culminate in a Regulatory Impact Assessment that will be published alongside the Bill. In order to be as informative as possible about our plans, and to test some of our assumptions, we have provided a summary impact analysis in this document against each of our proposals. Where we have done this we would value your views on whether you think the assumptions we have made are reasonable and if not, whether there is other evidence that we should consider as we finalise our assessments.

This consultation will run for twelve weeks from Monday, 12 March 2012 and the closing date for your response is Friday, 1 June 2012.
1. ** Maintaining and enhancing the wellbeing of people in need**

The diagram below shows the future shape of services and the relationship between its different components. This starts with people in need and is completed with the smaller number of those who need specific social care services. The parts of the Bill covered within the different service elements make up the following chapters.

**People in Need**

- A new duty to maintain and enhance the wellbeing of people in need.
- A duty to assess and publish an assessment of the need of people in need in a local authority area.
- Duty to encourage the development of services that maintain and enhance the wellbeing of people in need.

**National Eligibility Framework**

- To determine eligibility for specific social care services.

- Duty to assess for social care needs.

- Duty to provide or arrange the provision of social care services.
1.1 Wellbeing of people in need

What are the main issues?

1.1.1 We believe that it is important to be explicit about the central concept that underpins community and family focussed social services. This will help to give coherence to our new framework of outcomes, responsibilities and entitlements for social services in Wales, and it will help us to achieve an integrated approach to social services for people of all ages.

1.1.2 Furthermore, social services cannot be sustainable unless we take action to drive forward the development of early intervention and preventative services at a greater pace. These are services that will prevent people’s existing needs from becoming more severe. If we can do this, we will improve the quality of life for individuals, assist many people to live in their own homes for longer and ensure that finite social care and health services are used in the most effective way.

What is the current position?

1.1.3 A definition of “children in need” is in force in Welsh law, but there is no similar definition in law for adults who have social care needs. There are currently duties on local authorities and Local Health Boards (LHBs) to formulate and implement health, social care and well being strategies.

Why are we proposing change?

1.1.4 The Bill must enable an approach that sees people as part of their families and communities. It must build on people’s strengths and focus on outcomes. It must therefore underpin arrangements that deliver holistic services to people in need and that do not create inappropriate distinctions between people based on predetermined categories of need such as age.

1.1.5 We therefore intend to put in place a legal framework that, wherever appropriate, supports the delivery of services in an integrated way to people of all ages, not separately to children and to adults.

What changes are we proposing to make through this Bill?

a. We will introduce a general duty to maintain and enhance the well being of people in need.

Explanation

1.1.6 We want to see the social services that are provided in Wales working to maintain and enhance the wellbeing of “people in need” (explained at (b) below). For this purpose, we need to adopt a concept of well being which

3 See Children Act 1989 s.17(10)
makes sense in a social services context and which can underpin the design and delivery of appropriate services. We therefore intend to build on the definition of wellbeing that was introduced in the 2004 Children Act. It is our intention that this will become the common basis for the provision of all social services in Wales, not only those for children.

1.1.7 It will be important to be clear about what is meant by well being. Our intention is to capture the key outcomes for people in need. The working definition we have at present is to define it as encompassing the following:

(a) physical and mental health and emotional wellbeing;
(b) protection from harm and neglect;
(c) education, training and recreation;
(d) the contribution made by them to society;
(e) securing their rights; and
(f) social and economic wellbeing.

b. We will create a definition of “people in need”

Explanation

1.1.8 We want to define “people in need” as a category of people, of whatever age. We believe that this will bring a common approach to the delivery of social services functions that are designed to meet the requirements of people in need, and that its adoption would bring greater coherence to the law, policy and practice. We recognise however, that some aspects of the definition of need, such as development, may only apply to children.

1.1.9 It will be important to be clear about the definition of a person in need. The working definition that we have at present is as follows:

A person is considered to be “in need” if:

(i) they are unlikely to achieve or maintain, or have the opportunity of achieving or maintaining, a reasonable standard of health or wellbeing, (and, in the case of a child, development) without the provision for them of social care services;
(ii) their health, wellbeing (and, in the case of a child, their development) is likely to be significantly impaired, or further impaired, without the provision for them of social care services;
(iii) they are a disabled child;
(iv) they are in need of safeguarding or protection. If they are an adult they are an adult in need who has been harmed or is at risk of harm by virtue of that need.
c. We will require local authorities and their statutory partners to maintain and enhance the wellbeing of people in need in their areas.

Explanation

1.1.10 This general duty on local authorities and their statutory partners, including the NHS will require them to maintain and enhance the wellbeing of people in need in their local areas. Our expectation is that local authorities will understand the characteristics of the population in need in their area. We will expect them to encourage the development of services that maintain and enhance people in need’s well being. We will expect local authorities to publicise the availability of these services. Access to these services will not require a social care assessment. Individual services may have their own definition of the service they offer and therefore it is likely that some will be open to all and some may offer a service to meet particular needs. We understand that some of these services for some people, for example participation in an early years service or a community alarm service, will at times flow from a social care assessment.

1.1.11 The proposed duty on local authorities and their partners would require them to:

(i) Identify the extent to which there are persons in need in their area (i.e. through a local people in need assessment).
(ii) Encourage the provision of what appears to them to be a suitable range of services in their area.
(ii) Publish information, provide advice and give assistance in their area to people who may benefit from such services.

1.1.12 It would also give Welsh Ministers powers to make regulations or issue guidance requiring local authorities to demonstrate how they are discharging their wellbeing duties for people in need through implementation of prevention and intervention strategies.

1.1.13 We will require local government to collect information about the numbers and needs of the population in need in their areas and to make this data public. We intend to give local government the necessary powers to make arrangements to provide a range of services which will meet those needs.

d. We will produce guidance on the general duty

Explanation

1.1.14 We will provide statutory guidance, through the Code of Practice (see section 3.2 – Code of Practice), on the definitions of people in need and wellbeing and on the application of the new general duties on local authorities and their partners. This will assist local authorities in understanding what is expected of them in this new area of responsibility.
Impact

1.1.15 We believe that additional costs will fall to local authorities from the provision of a broader range of wellbeing services to people in need. The full impact of these costs will be mitigated, however, as we expect these services to be developed over time and not to be fully in place from the date the Bill is brought in to force. We also believe that the costs of providing these services will be offset by the savings to be made from delivering fewer intensive services than would otherwise have been the case, because individuals’ conditions would be prevented from escalating or would be escalating more slowly. There are administrative savings to be made through simplifying and clarifying the legislation in this area.

1.1.16 We believe that there will be a positive equality impact, as the proposals will extend social care services to a larger range of people than is the case currently, and local authorities will be required to understand the population in need in their areas, to survey their needs and to provide services that meet these identified needs.

Consultation Questions

1) Do you agree with our proposals to base this legislation on the concept of maintaining and enhancing the wellbeing of people in need?

2) Do you agree with our working definitions of “wellbeing” and “people in need”? Do you wish to suggest alternatives?

3) What are your views on the proposed general duty on local authorities and their partners to maintain and enhance the wellbeing of people in need in their local areas?

4) What are your views on the proposals to provide guidance on this area through the Code of Practice?
1.2 Social Care Services

What are the main issues?

1.2.1 Currently, there are various powers and duties to provide social care services and these differ for children and adults. We want to simplify the current arrangements and provide greater clarity for individuals about what we mean by these services and what services an authority can provide following an assessment of need (see section 2.2 – Assessment of need).

1.2.2 It is also important that Directors of Social Services, who will be responsible for ensuring the provision and delivery of these social care services, are clear what services they are expected to provide to their local communities. On the other hand, we want to ensure that our definition is sufficiently broad to capture the diverse range of support that individuals may need if they could benefit from social services support.

What is the current position?

1.2.3 The current position is that, for adults, various laws provide for a wide range of community care services, for example: information, advice, residential care, home care (domiciliary care etc), adaptations to the home, meals, recreational and occupational activities, home help and furniture or equipment for home premises.

1.2.4 For children, the services an authority can provide to a child in need and their family are equally diverse and authorities are required to publish information about the services that are available. Services can include: information, advice, counselling, accommodation, cash, assistance in kind, holidays, occupation, cultural and recreation activities, home help including laundry facilities and transport services.

Why are we proposing change?

1.2.5 We want to simplify the current arrangements so that individuals can be clear what services are available and who can receive them. We wish to ensure that local authorities provide, or make arrangements for the provision of, social care services in their local areas; and that Directors of Social Services are responsible for ensuring the provision, or the arrangements for the delivery, or the availability of these services. This is to ensure that across Wales, individuals have access to the services they need, in their local communities, to support themselves effectively.
What changes are we proposing to make through this Bill?

e. We will place broad power on local authorities in Wales to provide or make arrangements for the provision of social care services.

Explanation

1.2.6 This will bring together the existing duties into one single power for local authorities, to ensure that citizens and authorities are clear what services should be provided by a local authority and who can receive them. The duty to provide a service will be determined by the process of assessment and the application of eligibility criteria.

f. We will define “social care services”

Explanation

1.2.7 In the Government of Wales Act 2006 “social care services” means any of the following provided in connection with the well being of any person: residential or non residential care services; information, advice, counselling or advocacy services; financial or other assistance.

1.2.8 We intend to build on this definition by adding social work as a service and taking into account the Law Commission’s other recommendations in relation to the definition of social care services.

1.2.9 The relationship between services that enhance and maintain well being and social care services is outlined in paragraph 1.1.10 (section 1.1 - Wellbeing of people in need).

Impact

1.2.10 We believe that the change to the definition of Social Care Services will be cost neutral. It will benefit service users, practitioners and commissioners by making the legal requirements and entitlements more coherent and easier to understand. It will have a positive impact on equalities by creating a single clear and flexible definition of social care services that is common to services for both children and adults.

Consultation Questions

5) What are your views on the proposed broad power for local authorities in Wales to provide or make arrangements for the provision of social care services?

6) What are your views on our proposed definition of “social care services”?
2.  **A stronger voice and real control**

2.1  **Information, advice and assistance**

What is the current position?

2.1.1 Information, advice and assistance are some of the wide range of community care services that local authorities can provide to an adult following an assessment. There are limited duties on a local authority to provide information and advice to adults on community care services. The Children Act 1989 requires local authorities to publish information about services available to children in need and their families and take such steps as are reasonably practical to ensure that those who may benefit from a service receive information that is relevant to them.

Why are we proposing change?

2.1.2 In order to exercise control and have a strong voice, people need to be able to access information about services. We propose that local authorities, in cooperation with others, will have duties to secure: the provision of information; advice and assistance about services; how assessments for social care services may be accessed; eligibility criteria for social care services; and how to make representations and complaints.

What changes are we proposing to make through the Bill?

g. **Access to services will be supported by the provision of information, advice and assistance. New duties will require local authorities to:**

- publish information, offer advice and assistance about the range and level of services for people in their area;
- publish information offer advice and assistance about the social care assessment process;
- secure the provision of assistance in accessing social care services;
- come together with other local authorities where that assists in the efficient deliver of this service; and
- work with advice agencies in the delivery of this service.

Other statutory bodies, such as the NHS, will have a duty to cooperate in the delivery of this service.

Explanation

2.1.3 We anticipate that a local authority (or collaboration of local authorities) will establish this service, or work with other information, advice and assistance services to deliver it.
What outcomes do we anticipate?

2.1.4 We anticipate:

- Stronger voice and control for people (including people who will pay for their own social care services) in making informed decisions about their entitlements; and
- Promotion of local preventative strategies and earlier access to support that result in better outcomes for people. It will also reduce the need for more costly intervention at a later stage.

Impact

2.1.5 There will be some initial set up cost in establishing these new arrangements, in particular for adults. Many local authorities have developed local and/or regional arrangements for the provision of advice or services in discharging their duties under the Children Act 1989, and as part of their local Children and Young People and Community strategies for promoting the wellbeing of their populations.

Consultation Questions

7) Do you agree that we need to make a significant step forward in making information, advice and assistance accessible?

8) Do you think that the legislation should specify any particular organisational form for this, such as an information hub?

9) Do you think that the legislation should specify more clearly how local government and the NHS should work more closely together in the provision of information, advice and assistance?
2.2 Assessment of Need

What is the current position?

2.2.1 The Children Act 1989 (Schedule 2) provides for the assessment of children in need. There are various assessment duties in relation to adults, principally the NHS and Community Care Act 1990, Chronically Sick and Disabled Persons Act 1970 and Carers and Disabled Children Act 2000. The overlapping and contradictory application of these duties has been criticised, and a key feature of the Law Commission proposals to reform adult social care law is to provide for a single assessment for adults.

2.2.2 The two principal tools and guidance used to discharge duties of assessment to children and adults are: the Framework for Assessment for Children in Need and their Families (2001) and Creating a Unified and Fair System for Assessing and Managing Care (2002). Both are issued under section 7 of the Local Authority Social Services Act 1970 (LASSA). Both the tools and their aims differ in that the assessment for children is based on a child in need and is focussed around ‘a child’s development’. For adults, the individual’s ‘ability to maintain independence and autonomy’ is the main consideration.

2.2.3 Assessment for children enables an analysis of the child/family situation and informs the care plan as to which intervention is the most appropriate. These assessments identify the strengths and weaknesses of parents and their capacity to care/develop a child. From the point of referral local authorities, through statutory guidance, are required to carry out an initial assessment within 7 days and core assessments within 35 days. No equivalent timescales are applied to adult assessments.

2.2.4 The Unified Assessment Process (UAP) for adults describes and evaluates an individual’s “presented needs” and the circumstances of how they constrain or support his/her capacity to live a full and independent life. The impact of a person’s needs on his or her independence, daily functioning and quality of life is evaluated so that appropriate action can be planned.

2.2.5 The UAP is also the multi-agency tool that practitioners use as a multi-agency assessment for secondary mental health service and community care services. UAP includes key sub-sets (allowing specialist assessment) within domains for mental health and substance misuse. These are known as Care Programme Approach (CPA) and the Wales Integrated Substance Misuse Assessment Tool (WISMAT). The Mental Health (Care Coordination and Care and Treatment Planning) (Wales) Regulations 2011 (SI 2011/2942) prescribe the care and treatment plan for people in receipt of secondary mental health services. Many of these people will have multiple problems and be eligible for an assessment for community care services.
Why are we proposing change?

2.2.6 The law and arrangements for the assessment of children and adults are very different. Adult community care assessment is based on an individual’s need for a service; conversely for a child, the assessment is based on the child’s need to have their welfare safeguarded and promoted and it extends to assessing the needs of parents of the child. The current model is in need of modernisation to deal with the diverse needs and expectations of assessment.

2.2.7 The current arrangements can be problematical and place pressure on the service, restricting local authorities’ ability to respond as effectively as they would wish. Currently, anyone with whom the local authority comes into contact who has the appearance of any level of need would have to be assessed.

2.2.8 The Care and Social Service Inspectorate Wales’ review of access and eligibility criteria in adult social care (2010)\(^4\) raised a number of issues about the assessment process, concluding that the current system is acting as a barrier that is stopping individuals from accessing services. Their view is that the system has become focused on screening people out of eligibility for a service; and as result, there is a growing section of the population with unmet need. This is in part linked to local authorities’ application of the eligibility criteria, which is explored in section 2.5 (National eligibility framework) of this consultation.

2.2.9 Similar conclusions were reached by the Law Commission\(^5\), which suggested that a more proportionate assessment system should be introduced.

What changes are we proposing to make in the Bill?

h. The Bill will provide for:

- A statutory right of assessment of need for people of all ages;
- A single duty for local authorities to assess a person where it appears to them that their needs can be met by a social care service;
- Different levels of complexity of assessment, proportionate to need;
- A duty on local authorities to consult the person being assessed;
- A number of other assessments to be discharged at the same time as the social care assessment;
- Duties on key partners, for example the NHS, to contribute to the assessment, whilst preventing the local authority from delegating their social care assessment duties to others;
- Welsh Ministers will have powers to make regulations and guidance to prescribe the assessment process, the roles of other public bodies,


professionals and others in contributing to the assessment, and to prescribe arrangements for self-assessment; and

- The Bill will also make provision for the assessment of children and adults at risk and in need of protection.

Explanation

2.2.10 Whilst recognising that there are differences between adults and children in terms of their autonomy to make decisions, the aim is to establish a legal framework which supports the administration and delivery of integrated services.

2.2.11 We are proposing that there should be a single duty to assess the needs of people in need so that children and adults will have the same right to an assessment. The duty will be ‘needs led’ rather than ‘service led’, linked to an individual’s need that can be met by a social care service.

2.2.12 The assessment will be triggered where it appears to the local authority that an individual may be in need, and where the provisions of social care services may support or address those needs. The system should be flexible, and through the broad definition of social care services, will enable local authorities to plan and respond in an innovative and flexible way to the diverse needs of people, to deliver the outcome necessary for an individual to maintain and enhance their wellbeing.

2.2.13 To ensure continuity we will prescribe ‘a common core’ to the integrated assessment process. This will take account of the individual’s needs and the specialist domains such as mental health, substance misuse and additional learning needs. The integration of assessment for people in need will require us to review and modify the current tools used in UAP, as well as the Framework for Assessments for children in need and their families which is effected through local authorities’ systems for Integrated Children Services (ICS).

What outcomes do we anticipate?

2.2.14 We anticipate:

- Greater control for service users through understanding their rights to assessment;
- Fairer, equitable access to social care services;
- Improved integration of assessment and service delivery for people who have more intense needs and require intervention from a number of agencies and professionals;
- Improved social work practice that enables practitioners to spend more time working directly with people;
- More efficient assessment leading to improved quality and delivery of care and support plans and review of such plans;
- A simplified system that service users, carers, parents, professionals, enforcers and the courts can understand;
• Removal of the risk that people who purchase their own services could be refused assessments on the basis of resources; and
• Reduced procedural burdens on local authorities.

Impact

2.2.15 Currently, there is no local or national collection of information on the number of assessments refused, or failing to result in a service because the individual’s assessed needs fail to meet the local threshold criteria. It is our intention to require local authorities’ cooperation in undertaking an exercise over the summer to gain a better understanding of these volumes and their cost.

2.2.16 We believe that overall however, the new duties of integrated assessment should result in savings from reduced complaints and social care process, from better targeting of resources with ‘invest to save’ benefits arising through the development of information, advice and from universally accessible social care services. The new system, as a whole, will identify local need and provide services earlier to people. This in turn should reduce the numbers of formal assessments and an individual’s need for an assessment to receive more intense, targeted services.

Consultation Questions

10) Do you agree there should be a single right of assessment?

11) Do you agree the new system will benefit service users and their carers, as well as professionals in understanding their duties of assessment? If not, why?

12) Do you agree that law and policy should provide for proportionate assessments i.e. a formal prescribed assessment for people who have social care needs?

13) Is it helpful to prescribe the assessment process and who should be involved?

14) What information do you think should be included within the “common core” of a new integrated assessment?

15) Will the new system be more efficient and provide local authorities with greater flexibility?

16) Do you see a role for self assessment and if so how would this work?
2.3 Portability of Assessments

What is the current position?

2.3.1 Duties to undertake an assessment of an individual’s need for a community or social care service rest with each local authority, in accordance with the rule of ordinary residency\(^6\). Access to social care services however, and the rules for ordinary residency, vary across adult and children social care in accordance with the law and its application. There are no plans to change these rules as they apply to residential care or to extend them to non-residential care services.

2.3.2 With few exceptions, when someone moves to a new area and crosses a local authority boundary, that individual is required to begin afresh with a new inquiry to the appropriate council. The inquiry is the start of a process of assessment to agree a new care package, based on a new assessment with the new authority, even if the individual service user’s needs have not changed.

2.3.3 There is no fixed process, and differing access routes exist across local authorities. Individuals (services users, carers and parents) find the whole experience of having to repeat their story and navigate the systems of the new area frustrating and debilitating; and there is the risk of unnecessary breaks in their care and support arrangements.

Why are we proposing change?

2.3.4 We want assessments to be portable, in the sense that when a person who has a social care assessment moves home, the local authority in their new area will be under a duty to accept the existing needs assessment.

2.3.5 We understand that it will not always be possible to provide ‘like for like’ services between areas as the location, available services and the individual’s circumstances may differ. The expectation will be however, that the new local authority will be required to maintain ‘as far as is reasonable and practical’ a level of service set out in the care plan to meet the individual’s needs on their arrival.

2.3.6 The duty will be for a limited period, until the planned review date for the service. The local authority or the service user (by request) will be able to initiate the review before the statutory due date (for the care plan) so as to consider the change in circumstances.

\(^6\) The concept of “ordinary residence” is important for local authorities as responsibility for the provision and funding of social care accommodation and services under the National Assistance Act 1948 is largely based on where a person is ordinarily resident. The term “ordinary residence” is not defined in legislation but court judgements have interpreted it to mean (broadly) the place a person has chosen to live voluntarily and for settled purposes.
2.3.7 The new arrangements will not apply to children who are looked after. For looked after children, the corporate parent (responsible authority) will remain responsible for the placement, care and support plan and the reviews of the child care package.

2.3.8 Portability will not apply to people who are placed in accommodation by their local authority away from where they normally live but are still a resident that the authority is responsible for. This will equally apply to adult placements out of area, where there is no change of place of normal residency for the adult client.

What changes are we proposing to make through the Bill?

i. New powers will enable Welsh Ministers to make regulations to:

- Place a duty on local authorities to accept an assessment from another local authority in Wales. The receiving local authority would be required as far as is reasonable and practicable to maintain the level of service set out in the individual’s own care and support plan for a limited period. This provision would be drawn in such a way as not to impose a duty to provide a like for like service to replicate that provided by its predecessor authority;

- Place a duty on local authorities to provide social care services where the person is ordinarily resident, and a power to provide services for people not ordinarily resident or of no settled residence;

- Prescribe the circumstances in which the duty to accept does not apply. This will include prescribing the length of time for which the assessment (and the provision of services through a care plan) of another authority will apply;

- Place a duty on the local authority to make arrangements for the transfer of information (i.e. the assessments, with the appropriate consents) to the new authority;

- Require local authority partners, such as the NHS, to co-operate with the local authority in acceptance of the assessment and provision of services; and

- Specify the circumstances in which a local authority has the right to recoup costs from another authority, and arrangements for dispute resolution between authorities on matters of ordinary residence.

Explanation

2.3.9 Our aim is to ensure a consistent approach to producing high quality assessments throughout Wales, involving social services, the NHS, education

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7 Similar notification arrangements exist in law relating to looked after children and care leavers
and other key stakeholders; and including potential service users, carers and providers.

2.3.10 Portability of assessment should prevent a newly-relocated service user being deprived of social care services and having to start all over again from the initial assessment to the negotiation of a care package (where eligible needs are recorded) when they move between local authority areas in Wales.

2.3.11 The development of a portable assessment would avoid the service user having to repeat information as well as avoiding the need to duplicate the work of other professionals. Increased portability of assessments should reduce the number of assessments required and therefore lead to administrative savings.

What outcomes do we anticipate?

2.3.12 We anticipate:

- Greater equity in access and continuity of care and support for people in need across Wales;
- More effective use of resources by reducing the number of re-assessments and the development of new care and support plans;
- Introducing a more reliable way of transferring information will lead to improved confidence in the relationship between service users, practitioners and the services as a whole. This should lead to fewer complaints.

Impact

2.3.13 Increased portability of assessments should cut down on the number of assessments required and therefore lead to savings.

Consultation Questions

17) Should the Bill impose a general duty on local authorities and their partners to provide social care services to a person in need who resides in their area?

18) Do you agree that portability of assessment will bring greater consistency of care for service users? Do you agree that it will lead to savings?

19) When someone moves into a new local authority area, what do you think is an acceptable period for which to require that the new authority must maintain the assessment of a service user before it reviews the case?

20) Do you agree with our proposals for notification and transfer of information?
2.4 Management and Review of Care and Support Plans

What is the current position?

2.4.1 Assessing the needs of individuals and deciding how best to meet those needs is a fundamental part of practice. The framework for practice is built around four key components: social care assessment, care planning, intervention and review. Care and support plans record a person’s assessed and eligible needs and describe how a local authority plans to meet, or make arrangements to meet, the eligible needs.

2.4.2 The process of care and support planning and reviews bring together the child or adult and their families, carers and professionals in order to plan for the care and support of the individual and to review that plan on a regular basis. In constructing and discharging a plan the voice, wishes and feelings of the individual must be at the centre of the decision-making process.

2.4.3 Regular reviews of an individual’s plan are essential, both to monitor the progress made towards achieving the outcomes set out in the social care assessment and to make decisions to amend the plan. Amendments might be necessary to take account of major changes either in an individual’s life or in the service available to the individual. Recording these arrangements ensures that people receive the right support and that it contributes to achieving their desired outcomes. It sets out the agreements reached about how and by whom they will be met. It also demonstrates accountability in the way in which the functions of local authorities are exercised.

2.4.4 Reviews ensure that the individual’s wellbeing continues to be maintained and enhanced. Where appropriate, reviews also ensure that the individual’s welfare is safeguarded and promoted in the most effective way throughout the period that he or she receives a service, and that this is coordinated and delivered through social services. There are separate law and practice arrangements for the management and review of a child and an adult care plan.

Why are we proposing change?

2.4.5 There has been much criticism about what has been seen as the disparate and often overlapping arrangements for the assessment, care management and review of services to people of all ages (both children and adults). The disparate legal basis for care planning and the lack of prescription about how it should be carried out has led to a lack of efficiency and fragmentation in the current system. Difficulties arise for services users, as well as for practitioners, regulators and the judiciary in seeking to apply it fairly and equitably.
2.4.6 Concerns about these issues have been raised in The Law Commission’s review of adult social care services, the report of the Independent Commission on Social Services in Wales, reports by the Care and Social Services Inspectorate Wales (and its partner inspectorates Health Inspectorate Wales and ESTYN, the education and training inspectorate for Wales), as well as by the review of the Family Justice System in England and Wales.

2.4.7 We want to address these concerns through the introduction of a common approach to unified care and support planning, and further review, for people in need. Our aim is to ensure that this new approach does not draw distinctions between people based on predetermined categories of need. We believe that this will ensure greater consistency and equity in the way that care planning arrangements are applied, to meet the diverse needs of people who are assessed as benefiting from social care services.

What changes are we proposing to make through the Bill?

j. The Bill will provide a new legal framework for the management of care and support plans, and for the review of care and support plans. In particular, it will place new statutory duties on:

(i) local authorities to:

- prepare a care and support plan for a person who has been assessed as being in need of social care services, where that person has undergone an assessment of their needs;

- make a formal record of the care and support plan that has been created, flowing from such an assessment, and to keep that plan under review; and

- meet statutory requirements for plans to be discharged as part of the Care and Support Plan.

(ii) statutory partners to:

- co-operate in contributing to the construction and discharge of the care and support plan and, where appropriate, to its review

(iii) Welsh Ministers to:

- make regulations or issue guidance to a local authority and, where appropriate, other statutory bodies about the way in which, and with whom, they must collaborate in the review of care and support plans;

  and through regulations to:

- prescribe the persons who must receive a copy of the care and support plan and the arrangements for this, including the particular arrangements (eg formats and processes) for differing needs;
• specify the format, content, timescales, structure and persons who can be involved in the process or lead a review of a person’s entitlement; and

• prescribe the review arrangements for care and support plans and the ways they are applied to the different categories of people who are in need.

2.4.8 It will enable Welsh Ministers to issue statutory guidance on Care and Support plans by means of the Code of Practice (see section 3.2 – Code of Practice).

Explanation

2.4.9 We want to remove inconsistency and undue complexity in the system and move to a system that provides a flexible framework to support person-centred planning, and outcomes tailored to an individual’s needs. Better integration and greater co-production of care and support planning, intervention and review will bring greater clarity to the law and the systems that implement it. Because the service user will then understand these systems better, they will be able to lead their use, in partnership with the practitioner.

2.4.10 Legislation will set out the arrangements for care and support plans and their review, and make clear what the expectations are of all agencies, professionals and others in the construction and discharge of the plan.

2.4.11 The care and support plan will be tailored to the particular needs of the individual.

Plans for child care court proceedings

2.4.12 The new care and support plans will include a child who is party to family proceedings or subject to a care or supervision order. The framework will be sufficiently flexible to enable service users, practitioners, courts, Welsh Family Proceedings Officers and lawyers representing parties in family law cases to understand clearly the rights of the child and the duties of the local authority towards the child.

Circumstances in which a care and support plan must be produced

2.4.13 The new framework for prescribed care and support plans, and the review of those plans, will apply on a mandatory basis to those people in need who have a social care assessment.

What outcomes do we anticipate?

2.4.14 Taken together, the reforms to the assessment, care and support plans, and the review of such plans, will result in better and more efficient delivery of social care and other services to enable people to maintain or enhance their
wellbeing. A common framework to simplify the care and support plan, and the review of plans, will lead to a greater degree of consistency in practice, improved effectiveness of practitioners, regulators, courts and others through their clearer understanding and application of the law.

Impact

2.4.15 These proposals will bring greater clarity to the arrangements for care and support plans, and the review of those plans, and should not result in increased burdens on local authorities. A simplified legal framework will promote more efficient and less burdensome systems.

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<td>21) Do you agree that the statutory duty changes we have outlined above are the right ones to improve care and support plan and review systems?</td>
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<td>22) Do you agree that it will be important to prescribe, in the regulations and guidance, the different arrangements for different needs?</td>
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2.5 National Eligibility Framework

What is the current position?

2.5.1 The NHS and Community Care Act 1990 puts a duty on a local authority to decide whether, following an assessment of a person’s needs, they require a service to be provided. The basis for that decision is provided in the guidance Creating a Unified and Fair System for Assessing and Managing Care. This provides a standardised framework within which local authorities should specify local criteria about which needs should be met. If a person’s needs fall within those criteria, they must meet those needs. How the needs are met is within the local authority’s discretion.

2.5.2 The guidance sets out four levels - critical, substantial, moderate and low - against which care needs should be assessed. The Eligibility Framework has become a central plank in deciding who should receive social care. In its review of adult social care law, the Law Commission reported on the complex relationship between the current statutory guidance and the requirements of community care legislation. It proposed a new interpretation of the legal duty to meet eligible needs8.

2.5.3 For children, the Children Act established the definition of a child in need. Through their individual policies, local authorities set local criteria on the access thresholds for a child in need. CSSIW report variability in local authorities’ thresholds for children in need; in particular, there are diverse interpretations of the definition of a child in need as a system for rationing and controlling service access against increasing service pressures. The high number of re-referrals to children services demonstrates the risk and the inequitable way in which the threshold criterion is applied for children. As a result, many children return to the system with significantly increased need and requiring costly interventions. The development of new services like Families First and Integrated Family Support Services (IFSS) should offer a more holistic approach for local authorities and their partners to ensure there is a sufficient level and range of intervention available for children in need.

Why are we proposing change?

2.5.4 We want to see more coherence across Wales in the way in which social care services are accessed and delivered.

2.5.5 The Care and Social Service Inspectorate Wales’ review of access and eligibility in adult social care reports its difficulties in ascertaining whether the system is fair and consistent across Wales. It reports a number of contributory factors including the level of local resources available to fund social care and a lack of management information as to the numbers of and reasons why individuals fail to meet local eligible criteria. An audit of local

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authorities' thresholds suggests that most set their access threshold at ‘substantial’ or ‘critical’.

2.5.6 The Law Commission pointed to the complexity and lack of full consistency across various guides and information, and in social services’ application of the eligibility process. It also found that the service user’s central concern was to have a system that provides clarity on what they are entitled to. The Report of the Commission on Funding of Care and Support in England (the Dilnott Commission) came to similar conclusions and called for a single eligibility threshold and more consistent eligibility criteria at the national level.

2.5.7 The Law Commission also considered the pros and cons of putting co-produced self assessments on a statutory footing. They recommended the Code of Practice should provide guidance on how they should be integrated into the assessment process and when it would be appropriate for other individuals or bodies to be authorised to carry out an assessment or aspects of it.

2.5.8 A commitment to improve practice and reduce complexity in public law care proceedings (for local authorities and the courts) is also a key feature of the Welsh and UK Governments’ response to the Family Justice Review of Family Proceedings in England and Wales.

What changes are we proposing to make through the Bill?

k. We intend to introduce new duties that will require:

Welsh Ministers to:

- prescribe through regulations and specify through the Code of Practice a national eligibility framework that local authorities must operate to when determining eligible need; and

Local authorities to:

- determine whether a person’s social care needs are eligible needs, using eligibility criteria and related guidance published by Welsh Ministers; and
- provide or arrange social care services to meet all eligible needs.

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12 http://wales.gov.uk/about/cabinet/cabinetstatements/2012/familyjustice/jsessionid=MRGXPTwpkItGHTnQ7mVpVknPSnh76VT5HgQjYGSdRyxY0pVCx2ml!-351825548?lang=en
Explanation

2.5.9 The proposals to set a single eligibility threshold of entitlement at a national level will apply to all local authorities’ determination of eligibility for care and support services. There will be different parts of the eligibility framework for people with different needs. The eligibility framework will draw on the definition of people in need and on the outcome framework for social services (see section 3.1 – National outcomes framework and Standards for Social Services). In order to simplify the law the assessment of need and the application of eligibility criteria will be the means by which a person’s eligibility for social care services is determined.

2.5.10 Our aim is to bring greater coherence and transparency in the application of eligibility thresholds across Wales.

2.5.11 We will want to ensure that services are provided where an individual is at risk of harm.

What outcomes do we anticipate?

2.5.12 We anticipate:

- Improved experience and outcomes for children and adults in need through improved consistency in access to social care services;
- Greater transparency in eligibility for services because of national criteria and a single threshold for eligibility for a service have been set; and
- Strengthened practice, with reduced complaints and fewer legal challenges about service thresholds.

Impact

2.5.13 The impact of these changes for services users and their carers will be that they will see more consistency in the manner that their eligibility for services is determined. For local authorities, the setting of eligibility criteria at a national level will provide for greater uniformity and more efficiency in the processes they use. The impacts of a new eligibility framework and national criteria will be investigated further at the time the required regulations are put in place.

Consultation Questions

23) Do you think that a new national eligibility framework will be beneficial?

24) What do you see as the local authority’s role in setting criteria for eligibility and what do you see as the Welsh Government’s responsibilities?

25) Do you believe that the current four-level definition of eligibility: “critical, substantial, moderate and low” is a helpful way of categorising eligible need?
26) Do you agree the new framework should extend to all categories of people in need – both children and adults?

27) Do you envisage any particular barriers in operating a single eligibility threshold? How would you overcome these barriers?

28) Should people be able to self-assess for access to services? If so, how would you see this working?
2.6 Rights of carers

What are the main issues?

2.6.1 The 2001 Census identified 340,000 carers in Wales (11.9% of the population) providing substantial unpaid care on a regular basis. 90,000 carers in Wales provide care for 50 hours a week or more. This makes the unpaid care workforce the single largest provider of care to people with support needs in our communities. We know that the number of carers is increasing and that many carers can also require support themselves. For example, according to the 2001 Census, of the 340,000 carers identified in Wales 13% were aged over 65 and 23.7% reported that their health was not good. Carers are a key partner in the delivery of care so we need to ensure that they are effectively supported to be able to continue to care.

What is the current position?

2.6.2 Supporting carers is a key element of the Welsh Government’s health and social care agenda. Work to refresh the Carers Strategy for Wales and to implement fully the Carers Strategies (Wales) Measure 2010 is included within the Programme for Government as a priority for action.

2.6.3 Local authorities have long had responsibility for supporting carers. Carers have a right to have an assessment of their needs although local authority duties to offer assessments are different in separate pieces of legislation. For example, whilst there are duties on local authorities to undertake assessments under the Carers (Recognition and Services) Act 1995, the duty to assess is contingent upon the carer requesting an assessment at the time the person they care for is being assessed for community care services or when a disabled child is being assessed. Different duties arise in the Carers and Disabled Children Act 2000 where carers have a free standing right to an assessment independent of the assessment of the cared-for person. Local Authorities are required to inform carers of their right to request a carer’s assessment where the local authority believes that the carer may be entitled to one. Local authorities also have powers to: provide services directly to carers and to enlist the help of Housing, Education and the NHS in providing support to carers. There are also duties on local authorities to ensure that carers’ leisure, lifelong learning and employment opportunities are accounted for in a carer’s assessment and, in partnership with the NHS, to determine what services will be provided for a carer when the person they are caring for is discharged from hospital.

2.6.4 The Carers Strategies (Wales) Measure 2010 requires Local Health Boards and local authority social services to produce strategies setting out how they will consult with and provide information and advice to carers to assist them in their caring role. The Welsh Government has committed to extending the duties within the Carers Strategies (Wales) Measure 2010 to other local

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13 The Carers and Disabled Children Act 2000 and Carers (Equal Opportunities) Act 2004
14 The Community Care (Delayed Discharges) Act 2000
authority functions, such as Education and Housing. It is not however, proposed to take this forward within this Bill, as the Welsh Government already has the powers it needs to make these changes through secondary legislation.

**Why are we proposing change?**

2.6.5 Unpaid carers are the single largest provider of care to people with support needs in our communities and there is growing evidence that caring can have a detrimental impact on the physical, emotional and mental health of carers. It has also been shown that their health is increasingly at risk as their caring responsibilities grow. Carers providing high levels of care are, for example, a third more likely to suffer ill health than non-carers.

2.6.6 Unpaid carers require support to fulfil their roles. When a caring relationship breaks down (often because unsupported carers can no longer cope), it can result in the cared-for person, the carer, or both, entering hospital or local authority care. This is particularly an issue where older carers are caring for spouses, partners, friends or adult children with learning disabilities. Many parent carers of children with complex needs and challenging behaviours face high levels of stress over a long period and without additional support, severe strain is often placed on the wider family, with an impact on the development of siblings.

**What changes are we proposing to make through this Bill?**

I. **We propose to draw together the existing pieces of legislation relating to carers’ rights and the duties on local authorities and partners to support them.**

**Explanation**

2.6.7 Current legislation for carers is piecemeal with the potential to cause confusion to local authorities and carers alike. The Welsh Government is therefore seeking to simplify and clarify the legislation relating to carers by drawing the law together in one place. There is no intention to minimise rights currently afforded to carers. Rather, it is proposed that there will be a single duty on local authorities in the Bill that consolidates the existing duties on them. Carers who provide a substantial amount of care on a regular basis will retain their existing rights to request a carer’s assessment and local authorities will be put under a stronger duty to: offer a carer’s needs assessment to a carer (of any age) if they believe that they have a regular and substantial caring role and to carry out an assessment if the carer wants them to do so. We believe that this will encourage local authorities to become more proactive in identifying carers and offering support to them. Although the duties on local authorities will apply to carers providing a substantial amount of care on a regular basis, the proposals will not prevent local authorities from going beyond their legal duties and assessing a wider group of carers if they wish to.
m. We propose replacing the various definitions of a ‘carer’ with a single
definition, based on the definition used within the Carers Strategies
(Wales) Measure 2010.

Explanation

2.6.8 We propose to adopt in this Bill the definition of a carer that is along the lines
of that provided for in section 1(2) of the Carers Strategies (Wales) Measure
2010. This definition of a carer is:

s.1(2) “…an individual, whether an adult or a child, who provides or intends to
provide a substantial amount of care on a regular basis for—
(a) a child who is disabled within the meaning of Part 3 of the Children Act
1989, or
(b) an individual aged 18 or over.
But “carer” does not include an individual who provides or intends to provide
that care—
(a) by virtue of a contract of employment or other contract with any person, or
(b) as a volunteer for any body (whether or not incorporated).”

2.6.9 We believe that adopting one universal definition for all the carers’ provisions
of our Bill will give clarity and consistency about our intentions regarding this
group.

n. We believe that the above definition should be amended slightly, so that
local authorities have the discretion to class persons as carers, even if
they receive a payment or have a contract for the care they provide.

Explanation

2.6.10 We believe that there is a distinction between paid or volunteer care workers
and a carer who may receive a payment or contract for the care they provide
but the relationship is not primarily a commercial or ordinary volunteering one.
Currently, a previously unpaid carer who begins to receive a payment for
some of the care they provide and has a contract in place would then fall out
of our proposed definition of a carer. We therefore want to allow these carers
to benefit from the support afforded to carers, where a local authority believes
that the relationship is not principally a commercial or ordinary volunteering
one.

o. We propose to impose duties on local authorities to publish information
on carers’ rights and the services offered to carers in their local areas.

Explanation

2.6.11 This will be consistent with the proposals for the provision of information and
advice to people in need (see section 2.1 – Information, advice and
assistance). It will ensure that carers can easily identify themselves as carers
and having done so, become aware of their rights and of the services
available locally that will support them in their caring role. It will also support
the implementation of the Carers Strategies (Wales) Measure by building on the requirements for Local Health Boards and Local Authorities to publish strategies setting out how they will provide information and advice to carers, and requiring them to provide and publish this proposals information.

p. We propose to take powers to publish guidance on carrying out carers needs assessments through the Code of Practice.

Explanation

2.6.12The Code of Practice will set out, in one place, the guidance that local authorities have to follow in discharging their duties relating to social care services. They must have regard to the Code when carrying out these duties (see section 3.2 – Code of Practice). We believe that through the Code we can reduce the variance in how these assessments are carried out across Wales and ensure that good practice is shared across local authorities. The Code may, for example, be used to ensure that the carer's and the person in need assessments inform each other and/or set an appropriate review period for a carer's assessment.

Impact

2.6.13 We believe that there will be some additional costs as a result of these changes, in terms of identifying and providing assessments to a larger number of carers than is currently the case. This is however, outweighed by the social and financial gains to be made by ensuring that carers with substantial caring responsibilities are effectively supported to maintain their own health and carry out their caring role.

Consultation Questions

29) Do you agree that the proposed definition of a carer should be based on the one referred to in paragraph 2.6.8?

30) Should we allow local authorities to include some carers who receive payments or have a contract for the care they provide within the definition of a carer, where the relationship is not a commercial or ordinary volunteering one? (In order that carers can receive an assessment and benefit from other support provided to unpaid carers).

31) Are there other groups of carers that are not covered but should be included?

32) Should local authorities be allowed discretion to consider requests from Foster Carers or Adult Placement / Shared Lives carers to be classified as a ‘carer’ and be entitled to request a carers’ needs assessment?
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<td>Do you agree that there should be a duty placed on local authorities to publish information on carers’ rights and the services offered to carers in their local areas?</td>
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<td>34</td>
<td>Do you agree that local authorities should be required to offer a carer’s assessment to anyone who appears to the authority to be a carer with substantial caring responsibilities?</td>
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2.7 Direct Payments

What are the main issues?

2.7.1 Sustainable Social Services made a commitment that the Welsh Government would work with all stakeholders, especially service users, to develop a model of self-directed support that is consistent with our principles for social care and ensures that service users and their carers have a much stronger voice and control over their services. It is not an approach driven by the market or by consumerism but by a wish to enable people to achieve their goals and live their lives in the way they choose for themselves.

2.7.2 Work has already been undertaken in Wales on such a model, which is about changing social care to be more transparent and sustainable, ensuring people can live as independently as possible with opportunities to contribute to their community. A separate, more detailed, consultation process will begin in May to ask stakeholders across Wales to engage in the development of this model.

2.7.3 One method for providing users with greater control over their care arrangements that has been in place in Wales for some time is the use of Direct Payments. These are monetary payments made by local authorities directly to individuals who have been assessed as having community care needs that are eligible for certain services. They enable individuals to purchase the assistance or services that the local authority would otherwise provide.

2.7.4 The overall aim of direct payments is to increase independence and choice by giving individuals control over the way services are delivered to meet their assessed needs. The idea is to give day to day control of the money and support package to the person who has the strongest incentive to ensure that it is properly spent on the care and support required, and who is best placed to judge how to use available resources to achieve the desired outcomes that are identified in the care plan.

What is the current position?

2.7.5 The level of take-up of direct payments has increased progressively over the years, showing a particularly marked increase of some 60% between 2008 and 2010. In 2011/12 there were around 3,000 users of Direct Payments in Wales. This still, however, represents only a relatively small proportion of the total social services provision that supports around 150,000 people each year.\(^{15}\)

2.7.6 Analysis shows that, throughout Wales, the vast majority of Direct Payments users are in the 18–64 age group, accounting for almost 78% of the total. The proportions reduce substantially in the use by older people, with people in the 85 and over age group accounting for less than 6% of the total. The greatest

\(^{15}\) Figures taken from [http://statswales.wales.gov.uk/index.htm](http://statswales.wales.gov.uk/index.htm)
proportion of those receiving direct payments is concentrated in the categories of physical and sensory disability and learning disability (91%).

2.7.7 Currently, eligible persons can choose to receive direct payments in the form of cash payments in lieu of care services which are provided directly by the local authorities\(^{16}\). From 1\(^{st}\) March 2005, the duty to offer Direct Payments was extended to include all people aged 65 or over in receipt of community care services and from November 2006, availability was further extended to include all people aged 18 to 64 in receipt of community care services. Most recently, regulations which came into force in April 2011 have extended the provision of Direct Payments to include those people who lack capacity, within the meaning of the Mental Capacity Act 2005.

**Why are we proposing change?**

2.7.8 We believe that Direct Payments are an important tool for increasing the control that people have over their social care. A recent report\(^{17}\) for example concluded that “only direct payments seem to offer budget holders real choice and control over their care”.

2.7.9 We recognise that they are not suitable for everyone but we do want to increase the uptake of Direct Payments amongst those who will benefit from them and make them more flexible and responsive to individual needs than they are currently. Extending direct payments and improving take up would be important features of a new model of self directed support and control. For these reasons we want Welsh Ministers to be given the powers they need to implement these changes.

**What changes are we proposing to make through this Bill?**

q. **We believe that the current legislation around Direct Payments can usefully be drawn together in the Bill.**

**Explanation**

2.7.10 This would make it easier for service users and practitioners to understand the law in this area and their entitlements.

r. **We want powers to enable Welsh Ministers to prescribe the clients and circumstances under which Direct Payments may be used.**

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\(^{16}\) The Community Care (Direct Payments) Act 1996; the Community Care, Services for Carers and Children’s Services (Direct Payments) (Wales) Regulations 2004 and the Community Care, Services for Carers and Children’s Services (Direct Payments) (Wales) Amendment Regulations 2006.

\(^{17}\) ‘Users of Social Care Personal Budgets’, National Audit Office (July 2011)
Explanation

2.7.11 This will cover both individuals receiving social care services and carers. It will not roll back any of the existing provision and will be sufficiently broad to allow Welsh Ministers to introduce a model of self-directed support.

2.7.12 These could potentially be used to allow Direct Payments to be extended to allow the purchase of residential accommodation. They could allow local authorities and/or third parties to become agents for the purpose of making contracts with social care service providers and they could be extended to purchase local authority services.

s. We intend to seek a power for Welsh Ministers to make regulations and guidance in relation to the Direct Payments support services across Wales.

Explanation

2.7.13 This would allow Welsh Ministers, through the Regulations and Code of Practice, to continue to provide guidance on the use of Direct Payments to local authorities. This would assist in increasing the consistency of these services across Wales, to adapt the existing guidance to respond to the needs of a new model of self-directed support and move to develop a stronger support infrastructure for users of Direct Payments in Wales.

Impact

2.7.14 We do not see these changes as imposing any significant new costs, as we see Direct Payments as a means of using Local Authority funds in a different way. There will be significant benefits from these changes, however, in assisting individuals to have more control over the design of their care package and the services they receive. We have not identified any equality impacts from the changes.

Consultation Questions

35) Do you agree with the proposal to use this Bill to bring together the legislation regarding the provision of Direct Payments in Wales?

36) Do you agree with the proposals to allow Welsh Ministers broad powers to extend the existing Direct Payments arrangements so that they can introduce an effective model of self-directed support and control that also encourages a greater uptake of Direct Payments arrangements in Wales?

37) Do you have views on other ways in which Direct Payments could be extended beyond the current scheme? For example, should they be extended to allow the purchase of residential accommodation or to allow a local authority or independent organisation to be an agent or a broker for services and hold a budget on the service user’s behalf?
2.8 Complaints and the Public Services Ombudsman for Wales (PSOW)

What are the main issues?

2.8.1 The Public Services Ombudsman (Wales) Act 2005, (the 2005 Act) gives the PSOW powers to investigate complaints about alleged maladministration, alleged failures in relevant services and alleged failures to provide relevant services by specified authorities, known as “listed authorities”. However, the PSOW cannot currently consider complaints made about social care services that are not commissioned by the public authorities that are specified in the 2005 Act (such as local authorities and NHS bodies). The PSOW also cannot consider complaints about independent palliative care services. We want to provide the PSOW with the necessary legal authority to consider complaints about such services.

What is the current position?

2.8.2 Currently the 2005 Act provides that individuals who have complaints about a local authority can complain to the PSOW (provided that the complaints fall within the scope of the 2005 Act’s provisions). Local authority social services complaints are currently subject to a three stage process established under the Social Services Complaints Procedure (Wales) Regulations 2005 (the Regulations). It is also possible for such complaints to be referred to the PSOW, usually when the other procedures have been exhausted and a complainant remains dissatisfied. Complainants are generally encouraged to utilise the three stage process but they can proceed directly to the PSOW rather than engage the third stage of the process (an independent panel administered by the Welsh Ministers), should they so wish. Welsh Ministers are consulting on proposals to introduce a new complaints procedure for social services.

2.8.3 The Making Things Better consultation is seeking views on how a streamlined complaints procedure could operate within social services. This would bring the social services complaints model in line with the all Wales model complaints process\(^\text{18}\) and remove the independent panel element.

2.8.4 Individuals who receive certain social care services commissioned by the local authority can ultimately complain to the PSOW if they are dissatisfied with that service. However, if a person funds their own social care service then they cannot access the PSOW’s services, even if they are receiving identical care to another person who is funded by the local authority.

2.8.5 Regulations under the Care Standards Act 2000 require providers of social care services such as care homes and domiciliary care agencies to have procedures in place for handling complaints but there is no provision for

independent consideration of complaints. In many cases, there is no recourse to the PSOW in respect of complaints about the providers of social care services.

2.8.6 Patients who receive independent palliative care and respite care in a hospice or in the community, will normally do so alongside having received intensive clinical care in the NHS. There will be a defined care pathway or journey through NHS clinical care and end of life palliative care. Although this is usually seen by patients and their families or carers as a seamless transition, the situation becomes complicated if an individual wishes to make a complaint. For NHS services, a patient or their representative can complain to the NHS organisation and have the matter investigated; if they remain unhappy they can approach the PSOW. Throughout this process, patients can ask to be supported by an advocate who will assist them to take forward their concern.

2.8.7 Once care has passed to a non-NHS palliative care service, the position is different. A patient or their representative can raise a concern with the palliative care service provider and the provider should investigate it. However, there is then no automatic entitlement (because of the way their service is funded) to take the matter to the PSOW if the individual remains dissatisfied. Nor is there an automatic entitlement to advocacy support during this process. The only exception to this is would be if the care being provided to the patient had been provided under an arrangement with a NHS organisation. In that case the patient or the patient’s representative could complain to the PSOW and access advocacy services. This would be a less common situation.

Why are we proposing change?

2.8.8 A significant and increasing number of people in Wales are required to fund their own social care. It is likely that many if not all of these service users form a vulnerable social group as they are persons in need of assistance. Service users often have complex multiple needs. Taking action to pursue a complaint against a service provider is likely to be very challenging for such individuals, particularly those in care homes. We believe that it is inequitable for access to the PSOW to depend upon how a particular social care service is funded and wrong that people whose care is not provided or arranged by a local authority have no recourse to independent resolution of their complaints. We also want to make it easier for those accessing social care services in Wales to raise their concerns and complaints, regardless of how that service is funded.

2.8.9 Given that palliative care largely follows from NHS clinical care and that it is deemed necessary for the well-being of the patient, it is our view that it is both inequitable and confusing for patients or their family or carer if they cannot refer a complaint to the PSOW solely because of the way independent palliative care services are funded. It could be said that many independent palliative care services provided by charitable and other bodies are services that would have had to have been provided by the NHS if the independent
bodies were not available. To this extent, independent palliative care services can be seen in a general sense to have a “public service” element to them and so should be within the remit of the PSOW. Thus we want to allow patients or their families an opportunity to seek further assistance from the PSOW if the service provider has not been able to resolve the matter.

What changes are we proposing to make through this Bill?

\( t. \) We propose to extend the PSOW’s jurisdiction to enable him to consider complaints in relation to individuals whose complaint is about providers of care homes and domiciliary care agencies.

\( u. \) We also propose to extend the PSOW’s jurisdiction to enable the PSOW to also consider complaints in relation to individuals whose complaints are about independent palliative care services.

\( v. \) Individuals who have complaints about independent palliative care services should also be able to access advocacy services.

**Explanation**

2.8.10 By widening the remit of the PSOW to consider complaints from individuals who fund their own social care in either a care home or through a domiciliary care agency we will achieve equality in terms of independent consideration of both privately and publicly funded services users.

2.8.11 The choice of palliative care is limited and patients/families/carers see the service as a natural extension of the care that has already been received from the NHS. They should therefore have the opportunity to make complaints to the PSOW if appropriate.

2.8.12 Access to advocacy services is already available in relation to NHS complaints. If the remit of the PSOW is extended for independent palliative care services then access to advocacy should also follow.

\( w. \) We want to give the PSOW broad discretion to consider complaints about providers of care homes, domiciliary care agencies and independent palliative care services that occurred prior to the extension of his powers.

**Explanation**

2.8.13 It is very likely that, in a number of cases, the circumstances giving rise to the complaint will have arisen prior to the PSOW’s powers being broadened. This is because complaints will be subject to local processes before being referred to the PSOW. There will also be occasions where the incident may have occurred prior to the PSOW’s extended powers of jurisdiction being commenced and was not subject to any complaints process. This may be so especially amongst children and young people, where an incident might affect
a child when they are young, but they might lack the confidence, ability or support to raise a complaint until they are 18.

Impact

2.8.14 We believe that there will be some additional costs as a result of allowing self funders access to the PSOW. However, policy changes to the social services complaints procedures could be expected to result in cost savings that should absorb the additional costs from these proposals.

2.8.15 In comparison with the number of NHS Hospitals and primary care practitioners there are only a small number of independent palliative services. Additional funding has already been provided to both the PSOW and Community Health Councils for the provision of advocacy services following changes made to the NHS Complaints process in April 2011 (Putting Things Right).

Consultation Questions

38) Do you agree with the proposal that people funding their own social care should have their complaints considered by the Public Services Ombudsman for Wales (PSOW)?

39) Do you agree that the PSOW’s remit should be extended to care homes and domiciliary care agencies only, or that a wider extension to his remit be considered?

40) Do you agree that the PSOW’s remit should be extended to independent palliative care services?

41) Do you agree with the proposal to allow the PSOW to consider complaints about matters arising, prior to the PSOW’s powers being extended?

42) We are not proposing that “information sharing powers” between CSSIW and the PSOW be included in the proposal, and expect that a protocol between the two bodies will be established. Do you agree that this is sufficient, or should information sharing powers be considered?

43) Do you agree that individuals who have complaints about independent palliative care services should also be able to access advocacy services?
3. **Strong national direction and local accountability for delivery**

3.1 **National outcomes framework and standards for social services**

What are the main issues?

3.1.1 *Sustainable Social Services for Wales* set out our intention to drive forward a new accord for social services and social care in Wales by securing strong national collaborative leadership and local accountability for delivery. We want people who use services to have a strong voice and real control.

3.1.2 To be effective we want to underpin these arrangements with a coherent National Outcomes Framework, supported by a series of high level, measurable indicators for social services and social care.

3.1.3 We want every part of the system - local authorities and service providers as well as individual professionals - to contribute to achieving these outcomes and we want to ensure that the framework does not stand separately from other frameworks across public services.

What is the current position?

3.1.4 Welsh Ministers have powers to encourage improvement in relation to regulated services currently set out in the Care Standards Act 2000 and in relation to local authority social services in the Health and Social Care (Community Health and Standards) Act 2003.

3.1.5 There is a range of powers available to specify standards and performance measures but these apply separately to local authorities and to regulated services.

Why are we proposing change?

3.1.6 We want to ensure that we underpin the new legal framework for social services and social care with a system that clearly articulates what people can expect from those services and transparently reports on that.

3.1.7 We want to ensure that organisations and service providers themselves take the primary responsibility for ensuring quality, a strong voice and real control for service users, and safeguarding and protection.
What changes are we proposing to make through the Bill?

The changes we propose to make are:

- New powers in the Bill will place a general duty on Welsh Ministers to encourage improvement in social services and social care services as defined in this Bill in Wales.

- Welsh Ministers will have a duty to publish (from time to time) and review (periodically) a statement of national outcomes for social services and social care services. Those outcomes will be defined so as to reflect the principle of wellbeing set out in section 1.1 (Wellbeing of people in need). These outcomes will be high level statements.

- There will be a power to specify performance standards, to be met by local authorities and social care service providers and which will sit beneath the national outcomes framework.

- The standards will be measured through performance indicators. These indicators will be in respect of services defined as social care services in this Bill and will not be confined to local authorities.

- The provisions of the Bill will allow Welsh Ministers to issue guidance on these matters; and to allow Welsh Ministers to publish information about the performance of local authorities and social care services, as defined in this Bill, in relation to standards and performance indicators.

- There will be a duty on local authorities and social care services providers and on social care regulation / inspection bodies to have regard to the outcomes and standards.

- There will be a requirement for local authorities and social care services providers to report publicly on their performance in relation to standards and performance indicators.

Explanation

3.1.8 The aim of these provisions is to create a coherent and transparent framework of outcomes and standards across social services and social care. The framework will operate at national and local levels.

3.1.9 It will allow government to set national outcomes and understand and report on standards and performance. It will allow organisations and service providers to manage, improve and report on their own standards and performance within the national framework. It will allow for local and national information to be available to the public.
What outcomes do we anticipate?

3.1.10 We anticipate:

- Stronger voice and control for people who use services through more accessible and transparent information about services and organisations.
- Better targeted policy development based on delivery of national outcomes.
- Better targeting of improvement resources and programmes both locally and nationally to ensure national outcomes and standards are achieved consistently.

Impact

3.1.11 There are already regimes for specifying, collecting and publishing information, including through the regulatory framework, by Government, local authorities and service providers. It is our intention to build on these regimes and, where possible, to streamline them. The national outcomes framework will be an overall articulation of what is required and by streamlining and integrating information requirements our overall intent is to reduce the burden of providing information and reporting.

Consultation Questions

44) Do you agree that there should be a duty on Welsh Ministers to encourage improvement in social services and social care services (as defined in this Bill) in Wales?

45) Do you agree that Welsh Ministers should have a duty to publish (from time to time) and review (periodically) a statement of national outcomes for social services and social care services?

46) Should there be a power to specify performance standards to be met by local authorities and social care service providers to sit beneath the national outcomes framework?

47) Should the standards be measured through performance indicators?
3.2 Code of Practice

What are the main issues?

3.2.1 The Law Commission Report (2011) on Adult Social Care Law recommends that Ministers prepare a Code of Practice to accompany the new statute. The Commission envisions that the Code would provide the form under which statutory guidance is issued. This would mean that current obligations placed on Local Authorities in statutory guidance could be consolidated into a single instrument and would be of equal legal status. This would simplify the current arrangements for both practitioners and service users, by housing all relevant social services (including policy and practice guidance) guidance in one place and in a common format. The Welsh Government already uses Codes of Practice in other areas, so this would be an extension of current practice into a new field.

What is the current position?

3.2.2 Statutory guidance is issued under section 7 of the Local Authority Social Services Act 1970. It must be followed by local authorities in exercising their functions and it can only be deviated from where there is a good reason to do so. There is currently a wide range of practice guidance and related policies in existence across social services client groups, which can cause confusion about the status to be afforded to the document by a local authority and can be difficult for service users, their advisers or other interested parties to locate.

What changes are we proposing to make through this Bill?

y. In line with Recommendation 3 of the report of the Law Commission’s review of Adult Social Care Legislation, the Social Services (Wales) Bill would:

• require the Welsh Ministers to prepare, and from time to time revise, a Code of Practice which would provide guidance for social services authorities on the exercise of their functions under the statute;

• require Welsh Ministers to consult with the organisations that will be affected and other persons before any Code is prepared or substantial revisions made;

• require that when the Code of Practice, and any substantial revisions made to it, are laid before the National Assembly for Wales, it will be subject to the negative resolution procedure in the National Assembly (which means that it will come into force without debate unless an Assembly Member requests to debate it); and

• specify that the Code of Practice must be followed by decision makers acting under the legislation and can only be deviated from where there are good reasons to do so (this ability however, to deviate from the Code
would not give decision makers the freedom to take a substantially different course from that specified).

**Explanation**

3.2.3 This will not add a further layer to the legislative structure. The code would sit alongside our Social Services Act and its Regulations and would mean that local authorities, practitioners and individuals need only have regard to a single statute and one code of practice to understand their obligations and entitlements. Whilst the goal would be to put in place comprehensive consolidated guidance, we recognise that the practicalities of this task will require that we develop and introduce the Code on a phased basis over a reasonable period of time, rather than waiting until all the contents were ready to publish.

**Impact**

3.2.4 We expect that this new duty will have a positive impact for services users and their representatives and for statutory bodies and professionals. All the existing guidance will be brought together in one place, making it easier to access and clarifying its status. It will bring greater coherence to the framework of the statutory requirements and will help people to understand what those requirements are and how they interrelate. Consolidating all the statutory requirements in the Code of Practice will enable us to make it easily available on the internet. Overall, the new duty would help reduce administrative burdens on everyone with responsibilities and entitlements under the social care law and will improve efficiency and effectiveness.

**Consultation Questions**

48) Should there be a duty on Welsh Ministers to prepare a Code of Practice to bring together statutory guidance on social services matters?

49) Should Welsh Ministers be required to consult on the contents of the Code of Practice before it is introduced?

50) Should Welsh Ministers be required to consult in advance on any substantial amendments that they propose to make to the Code of Practice?

51) Should the Bill specify that the Code of Practice must be followed by authorities acting under the legislation and can only be deviated from where there are good reasons to do so (although this proviso would not give the freedom to take a substantially different course)?

52) In addition to the Code of Practice, should Welsh Ministers retain their existing power to issue directions on certain matters, such as policy or practice guidance?
3.3 Directors of Social Services

What are the main issues?

3.3.1 The Welsh Government is not accountable for delivery of services. Identifying need and determining service priorities for an area are the responsibility of the locally elected members of a local authority Council.

3.3.2 We want to underpin the focus on leadership and accountability set out in *Sustainable Social Services in Wales* and underline our commitment to integrated social services departments with a strong community and family orientation located within local government.

3.3.3 The statutory role of the Director of Social Services is essential in delivering the framework set out in this Bill and in providing a corporate voice for disadvantaged groups in society, although we believe that one individual may exercise this role for a number of local authorities.

What is the current position?

3.3.4 Local authority responsibilities for social services were established in the Local Authority Social Services Act 1970, as amended, which lists these functions in Schedule 1. Section 6 requires Authorities to appoint a Director of Social Services.

3.3.5 Welsh Government guidance on Executive and Alternative Arrangements 2006, sets out six core responsibilities of the Director across all the authority’s social service functions. The guidance stresses the importance of ensuring clear accountability arrangements to Councillors and for all staff engaged or employed in delivering social services functions, both those who are directly accountable to the Director, and those who are not in a direct line management relationship. Delivering on these core responsibilities is necessary in order for a Council to discharge its social services responsibilities.

Why are we proposing change?

3.3.6 Achieving the Government’s vision for social services will depend on strong, accountable, outward looking leadership and on statutory powers reflecting the particular policy agenda in Wales.

3.3.7 We wish to strengthen local accountability by requiring that new Director of Social Services appointments comply with requirements for specific competences, to ensure that they are able to lead and manage community- and family-focused social services for people in need. We wish social services functions to reflect the new model for social services, including the duties placed on local authorities, which are set out in this Bill.
What changes are we proposing to make through this Bill?

z. We will place a requirement on the face of the Bill for local authorities to:

• Appoint a Director of Social Services for the purposes of their social services functions; and
• Secure the provision of adequate staff for assisting the Director in the exercise of functions.
• We will also put in place provision to allow authorities to share a Director, to exercise their functions when appropriate.

aa. Welsh Ministers will have powers to specify (in regulations or guidance) the competences that a Director of Social Services must have.

Explanation

3.3.8 Placing these provisions on the face of the Bill will consolidate the Welsh Government’s approach to the leadership of local authority social services functions and ensure that those functions reflect the focus on wellbeing and people in need and the new definitions of social care services that the Bill will contain.

What outcomes do we anticipate?

3.3.9 We anticipate:

• Clear and accountable local leadership; and
• A corporate voice for social services in local government.

Impact

3.3.10 These provisions already exist in statute and will be consolidated by the Bill.

Consultation Questions

53) Do you agree that we should place the requirement to appoint a Director of Social Services on the face of the Bill, and have powers to specify the competencies that a Director of Social Services must have?

54) Do you agree that local authorities should be able to share a Director of Social Services?
3.4 Collaboration in integrated services; pooled budgets and other flexibilities

What are the main issues?

3.4.1 We strongly believe that the vision outlined in Sustainable Social Services for Wales: A Framework for Action cannot be achieved unless we change the way in which services are provided. This means not simply adding new layers of activity but choosing to stop doing some things and prioritising new things.

3.4.2 Sustainable Social Services clearly states that “Our first priority is to ensure that resources are used in a more joined up way as this will make better use of the capacity that exists”. It also highlights the importance of developing more integration of health and social services for children, young people, and frail older people, and in respect of re-ablement services. Joining up in this way will help break down barriers that can often get in the way of providing services and drive out duplication. In order to achieve this, the Bill needs to provide a legal framework that drives closer partnership working. This is particularly important in the case of partnerships between local authorities and the NHS.

What is the current position?

3.4.3 A formal partnership is a legally binding agreement where the parties involved agree to share responsibilities for services supplied. Such a partnership can be confirmed by use of a contract. Despite heavy investment over the last decade and despite evidence of increasing activities the take up of formal partnerships has been slower in Wales than is needed. There are now around 11 formal partnerships and pooled budgets (where two or more organisations contribute to a single joined up budget) being used within the social care sector in Wales, with the largest partnership involving the five Gwent local authorities and the Local Health Board. There has also been one example of a Welsh Government prescribed formal partnership with a pooled budget, which has been applied to community equipment services in Wales. The Welsh Government has also introduced, through Integrated Family Support Services (IFSS), a requirement for a particular sort of joint service delivery.

3.4.4 Existing legislation\(^{19}\) allows the NHS and local authorities to enter into partnerships and pooled budget arrangements. It also allowed the NHS and Local Authorities to delegate functions to each other, whilst retaining their statutory responsibility for the delivery of these functions. This also includes powers to allow Welsh Ministers to compel partnership arrangements where there is evidence that one of the bodies is not exercising its functions adequately.

\(^{19}\) The Health Act 1999, as amended by the National Health Services (Wales) Act 2006
Why are we proposing change?

3.4.5 This is not, however, an issue that is confined to Wales; this is a challenge across the UK. A range of approaches have been tested (including structural change and financial incentives) with limited success. Now is the right time for Welsh Ministers to have strengthened powers to require the delivery of integrated services and collaborative arrangements.

3.4.6 The powers we have proposed will drive the growth of partnership working in Wales, through the clarification of the legislation in respect of partnership working and by providing Welsh Ministers with powers to mandate the creation of partnerships where there is a case to do so. In some circumstances, for example in the delivery of services for families with complex needs or older people with complex needs, we expect services to be delivered in an integrated way. These powers will allow Ministers to set an expectation of integrated services, to define how such services will be provided in parts or all of Wales and to define the roles of partners. They could also be used to ensure the simplification of services for example, if necessary, to meet the expectation of a National Contract Framework for Care Homes and Domiciliary Care. This would help ensure that contracts used by local authorities to procure social care would become more consistent across Wales.

What changes are we proposing to make through this Bill?

ab. We propose to introduce powers to strengthen partnership working, including the use of pooled budgets and other flexibilities, that will require partnerships between local authorities, across local authority functions, for example between social care and housing, social services and education services and between local authorities and Local Health Boards in order to drive the creation of more integrated models of service provision.

Explanation

3.4.7 These powers will drive a step change in the delivery of integrated services.

3.4.8 The powers would be applied where Welsh Ministers believe that it is in the interests of people who are receiving, or may need, services. They will not be confined to circumstances of service failure. They will include arrangements that would:

- improve the outcomes for service users in terms of health and wellbeing, safety and promoting their independence;
- improve access to services;
- avoid service fragmentation;
- improve the use of resources;
- provide greater transparency in terms of expenditure and performance;
- improve multi-disciplinary working;
• facilitate the development of services in terms of their range, capacity and quality;
• provide a more coherent approach to quality assurance; or
• increase capacity to cope with escalating demand.

3.4.9 We will expect wider partners such as the independent and third sectors to take part where appropriate in these arrangements. Their role may be specified in particular regulations or statutory guidance. There would be a requirement on Welsh Ministers to consult prior to specifying particular partnerships.

3.4.10 Without these powers to drive forward the creation of such formal partnerships, the pace of development of integrated services in Wales will continue to be slower than is needed and will restrain the delivery of the vision for change outlined in Sustainable Social Services.

ac. We would like a power for Welsh Ministers to make Regulations and guidance in relation to partnerships.

Explanation

3.4.11 This would allow Welsh Ministers to specify the circumstances, the service areas and the nature, of particular integrated services and pooled budgets. Regulations would also set out in which ways (in addition to current powers) Welsh Ministers would require particular organisations to collaborate.

Impact

3.4.12 We see that these proposals offer the opportunity for savings to be made by facilitating organisations to work more effectively together, to use existing resources better, to reduce duplication and to address difficult common issues. We do not see any negative equality impacts of this approach but there will be much to be gained from the provision of better, more joined up, services to people in need from all backgrounds, across Wales.

Consultation Questions

55) Do you agree with the proposal to introduce a single consistent set of powers relating to the creation of formal partnerships in Wales, for the purpose of delivering integrated services?

56) Do you agree with our proposal to introduce powers to define in Regulations and guidance the parameters for developing formal partnerships and pooled budgets and to set out how and when these will be used?
4. Safeguarding and protection

4.1 A National Independent Safeguarding Board

What are the main issues?

4.1.1 The Bill will include provision to establish a National Independent Safeguarding Board, which operates at ‘arm’s length’ from government and will fulfil executive functions. The Board’s responsibilities will cover both the protection of adults at risk and safeguarding children.

What is the current position?

4.1.2 There is currently no national organisation with oversight for safeguarding and protection. A shadow board will be established in 2012 to help shape the safeguarding and protection elements of the Bill, including the precise structure, remit and functions of the National Board and its work will be informed by this consultation.

Why are we proposing change?

4.1.3 We believe that a National Board is needed to ensure a coherent, consistent and integrated approach to safeguarding and protection.

What changes are we proposing to make through this Bill?

ad. To establish a National Independent Safeguarding Board

Explanation

4.1.4 We believe that a strong national focus is required to drive up standards and deliver consistency, demonstrate leadership, promote ownership and provide expert advice on action to strengthen policy and practice. We are of the view that the Board will be sponsored by, but independent of, the Welsh Government and will comprise expert membership. It would have a national remit and carry out a wide range of important functions, but the distance from the Welsh Government would mean that day-to-day decisions are independent and removed from Welsh Ministers. Welsh Ministers would, though, set the overall strategic agenda of the Board, be responsible for the level of independence, effectiveness and efficiency and will ensure that service users are represented on the Board.
4.1.5 The Welsh Safeguarding Children Forum has provided advice on the possible role and functions of the National Board. The Forum has said:

“Clearly more work and debate will be required on the detail of the proposals, but the move to ensure that there is proper strategic and national focus on the safeguarding agenda which seeks to ensure that consistent priority is given to safeguarding and protection is to be applauded. The Forum has responded to the request by the Deputy Minister and has considered the potential role and functions that might be attributed to a new National Safeguarding Board for Adults and Children. The main elements that have been agreed upon are:

- A new National Board independently chaired with executive functions to commission work and review arrangements across Wales.
- It would advise the Minister on all aspects of policy and practice for safeguarding in Wales.
- It would promote the voice of the child and ensure that the United Nations Convention on the Rights of the Child becomes a reality for all children and young people, maintaining the clear focus on the experience of children and their families.
- It would promote the voice of adults; maintaining the philosophy of promoting independence, choice, dignity and respect.
- It would provide Accountability and Overview function on performance data (outcomes framework) and delivery (statutory plans) via regional bodies.
- It would be required in law and there would be a statutory requirement for it to produce an annual report “the state of safeguarding in Wales” which would be received by the Welsh Government.
- It would draw on the full range of intelligence and best practice in producing the report.
- It would have an agreed work programme and adequate budget.
- The Chair would have a term of sufficient tenure to adequately deliver its objectives (for example 3-5 years).
- Its remit would be children and adults and it would foster safeguarding as a holistic integrated system.
- It would demonstrate leadership and promote ownership of the safeguarding agenda across agencies. Advise on legislation required to strengthen policy, practice and mandate Lead Officers from named responsible agencies to fund and lead the work of safeguarding and protection of children and vulnerable adults.
- It would provide and establish mechanisms to evaluate the effectiveness of Children and Adult Safeguarding Boards and other partnerships in respect of safeguarding responsibilities.
- It would determine a funding formula across all named responsible organisations to appropriately deliver the regional and local safeguarding responsibilities.”
Consultation Questions

57) Do you agree with the view of the Welsh Safeguarding Children Forum on the role and function of the National Independent Safeguarding Board?

58) What type of organisation do you think the Board should be? How would the relationship and accountabilities with Welsh Ministers and Safeguarding and Protection Boards be constructed (see section 4.2 – Safeguarding and Protection Boards)?

59) How should the Welsh Government achieve service user representation on the Board?
4.2 Safeguarding & Protection Boards

What are the main issues?

4.2.1 We will provide for the establishment of six Safeguarding Children Boards to replace Local Safeguarding Children Boards (LSCBs) which will run in parallel to Adult Protection Boards to be established at the same time. In time Boards will be merged to provide a cohesive approach to safeguarding and protecting people through Safeguarding and Protection Boards.

What is the current position?

4.2.2 The Children Act 2004 required each local authority to establish an LSCB in their area and their functions are set out in the Local Safeguarding Children Boards (Wales) Regulations 2006. There are also non-statutory Adult Protection Committees.

Why are we proposing change?

4.2.3 There are issues around sustainability and the current arrangement that provides for 22 LSCBs compounds resource and capacity issues and results in considerable duplication. While some LSCBs have taken positive action to collaborate, and some have formally merged, the pace of change will continue to put at risk the effectiveness of safeguarding arrangements and the ability of partner agencies to ensure that safeguarding and protection are paramount. The Simpson Review and the Safeguarding Children Forum recognised that partnership and collaboration would be more sustainable on a larger geographic footprint. The results of an inspection by the Care and Social Services Inspectorate Wales, in collaboration with other inspectorate bodies, in October 2011 provided evidence that LSCBs could not demonstrate that they were performing effectively.

4.2.4 We have said that arrangements for adult protection should be placed on an equitable footing to those to safeguard children, and the establishment of Adult Protection Boards will help achieve that. The Law Commission has also recommended that Adult Protection Boards should be statutory\(^{20}\).

What changes are we proposing to make through this Bill?

ae. We intend to establish new Safeguarding Children Boards and Adult Protection Boards. These will merge in time, when it is safe to do so, to form Safeguarding & Protection Boards. The new structure will be based on the geographic areas of North Wales; Mid & West Wales; Gwent; Cardiff & Vale; Cwm Taf; and Swansea Bay.

Explanation

4.2.5 We believe that a common, coherent footprint will enable and support joint working across local government, health and police services and will reduce complexity. The Welsh Government has committed to the geographical footprint of six to support collaboration in public service delivery and this will help overcome some of the structural problems that have beset the effective operation of LSCBs. The Bill – and the governing regulations that will follow - also provides an opportunity to begin to strengthen issues around the work of the Boards, and some of the operational barriers that exist. Given the intention to merge Boards into one cohesive structure, the Bill will be drawn so as to align arrangements broadly to facilitate that process.

4.2.6 As with the current LSCB arrangements, we will be using the Bill to put in place the high level arrangements to establish the Safeguarding Children and Adult Protection Boards, but the detail of operation will be considered by the shadow safeguarding board (see para 4.1.2) and set out in Regulations. We will use the results of this consultation to inform that work. There are broad principles that apply to the establishment of Safeguarding Children and Adult Protection Boards and the key areas are as follows:

af. Establishment of Boards

Explanation

4.2.7 Current arrangements are constructed on a local authority footprint. This has resulted in what are believed to be inequitable arrangements where the authority (and particularly social services) is left as the default position with other partners in some areas taking a less active role and responsibility - than might have been envisaged by the 2004 Act. We consider that a more equitable approach would be to consider that there is a joint responsibility on Board partners – and particularly the local authority and the Local Health Board – to establish the new Safeguarding Children and Adult Protection Boards, and to ensure their effectiveness.

ag. Functions of Boards

Explanation

4.2.8 As with LSCBs, we will use secondary legislative powers to set out the detailed functions required of Safeguarding Children and Adult Protection Boards, but we have said that as a working proposition the strategic functions of LSCBs provide a sound base to consider the principles of what functions might need to be put in place, though some adaptation will be required to develop the adult agenda. The key areas of LSCB functions are to:

- foster a relationship of mutual trust and understanding amongst the persons or bodies represented and promoting the welfare of children;
• raise awareness of the need to safeguard and promote the welfare of children and to provide information about how this might be achieved;

• develop policies and procedures in relation to information sharing; action to be taken where there are concerns about a child; the recruitment and supervision of persons who work with or have regular access to children and the safety and welfare of children who are privately fostered;

• review the efficacy of the measures taken by each person or body on the Board;

• co-ordinate what they do to safeguard and promote the welfare of children;

• undertake ‘serious case reviews’ and monitor implementation of recommendations;

• develop criteria for measuring the performance against the Children and Young Persons Plan, or their successor, in terms of safeguarding and promoting welfare; and

• disseminate information, undertake research and review, and provide training needs.

ah. Funding of Boards

Explaination

4.2.9 The current arrangement for funding LSCBs provides statutory partners with discretion to contribute to the costs of running the Board. There is evidence that leaving decisions to member agencies does not provide a stable financial resource to meet commitments, and ensure effectiveness. The burden of responsibility appears to fall to the local authority and currently – on average – they contribute around 70% of the costs. In some areas, other statutory partners make little or no financial contribution to the running of Boards. In November 2010, the Health, Wellbeing and Local Government Committee concluded that the Welsh Government should consult on a national funding formula for LSCBs and the Safeguarding Children Forum also concluded that the current position was unhelpful and that there was a need for greater clarity.

4.2.10 We remain of the view that it is the responsibility of each LSCB, and its partner agencies, to determine the appropriate funding arrangements but recognise that these matters cannot be left to chance. We intend to set out in the Bill the need for a funding formula to be contained in Regulations – which will also need to be negotiated with the UK Government because of non-devolved interests.
ai. Membership of Boards

Explanation

4.2.11 The statutory membership of LSCBs is set out in statute, and statutory guidance Working Together provides LSCBs with considerable discretion to invite other organisations and individuals to participate in its work. We are not aware of any significant weaknesses in the membership but we intend to use the Bill to give Welsh Ministers powers to extend the statutory membership of Safeguarding and Protection Boards, consulting with the parent UK Department if necessary. Many of the same key partners will also need to be part of the Adult protection Board, but there will also need to be key additions such as housing partners and the Benefits Agency.

aj. Board Chairs

Explanation

4.2.12 The Health, Wellbeing and Local Government Committee acknowledged that there were strengths and weaknesses in having an independent chair and recommended that the Welsh Government give the matter further consideration. The Safeguarding Children Forum also recommended that the Chair should be independent. We recognise that in England, statutory guidance favours a presumption of independence for increased ‘local challenge’ and some 80% are now independent. We recognise that it will take time to develop sufficient availability of suitable independent chairs, and also that there are resource implications – costs of around £15,000 – to the running costs of Boards.

4.2.13 We are presently of the view that the appointment of the Chair should be a matter for each Board to decide, and we are not persuaded that prescribing that independent chairs be appointed would offer any advantage in ensuring the effectiveness of safeguarding and protection arrangements. However we are content to seek the views of others before determining whether a requirement is the appropriate approach.

Consultation Questions

60) What do you think the functions of the Adult Protection Boards and Safeguarding Children Boards should be?

61) Do you agree that a funding formula is needed? What approach should be taken to devising this formula?

62) Do you think that the existing statutory membership of LSCBs is sufficient for Safeguarding Children Boards? What additional members should be included within the membership of Adult Protection Boards?
63) Should there be a requirement that all Safeguarding and Protection Boards have independent Chairs? Please explain your rationale.
4.3 Adult Protection – A new legal framework

What are the main issues?

4.3.1 The Bill will introduce a coherent legal framework for adult protection in Wales.

What is the current position?

4.3.2 There is currently no coherent legal framework for adult protection in Wales. In 2000, the Welsh Government issued *In Safe Hands* to help develop and implement multi-agency local arrangements for adult protection. Supplementary guidance issued in 2003 and in 2007 to address some gaps in the original guidance and to reflect developments.

4.3.3 This has been underpinned by the All-Wales Interim Policy and Procedures for the Protection of Vulnerable Adults that was commissioned by the four Adult Protection Fora in Wales and published in 2010.

Why are we proposing change?

4.3.4 There is widespread concern that adult protection has not received the same level of attention as arrangements for child protection, for which there is a very well-developed and understood legal framework. Many feel that agencies do not respond to alleged abuse against adults in the same consistent, co-ordinated and robust way as they would alleged abuse against a child. A legal framework for adult protection will address these concerns and will demonstrate the importance that Wales attaches to protecting adults at risk.

4.3.5 The Protection of Vulnerable Adults Project Board was established by the Deputy Minister for Children and Social Services in 2008 to review the Welsh Government’s adult protection policies and practice and it recommended that a review was needed for further legislation in the field of adult protection.

4.3.6 In 2010 a review of *In Safe Hands* carried out by the Welsh Institute for Health and Social Care and the University of Glamorgan concluded that there was a need to ensure that “safeguarding adults at risk from abuse who cannot protect their own interests must have the same legislative status and priority as protecting children”. In 2011 the Law Commission called for a far reaching reform of adult social care law including in relation to a legal framework for adult protection.
What changes are we proposing to make through this Bill?

ak. Legal definitions of “adult at risk” and “harm”

Explanation

4.3.7 There is a consensus that people do not like to be labelled as “vulnerable” because of the negative connotations of the term. We therefore propose to include in the Bill a definition of “adult at risk” which incorporates the groups In Safe Hands defines as a ‘vulnerable adult’ and identified in the Wales Interim Policy and Procedures for the Protection of Vulnerable Adults from Abuse. We propose to encompass people who:

- Have learning disabilities
- Have mental health problems, including dementia
- Are older people with support / care needs
- Are physically frail or have chronic illness
- Have a physical or sensory disability
- Misuse drugs or alcohol
- Have social or emotional problems, or
- Have an autistic spectrum disorder.

4.3.8 The Bill will also include a definition of “harm” that ensures the five main types of ‘abuse’ contained in ‘In Safe Hands’ are encompassed:

- Physical abuse
- Sexual abuse
- Financial abuse
- Emotional or psychological abuse; and
- Neglect

4.3.9 A person would be defined as being an “adult at risk” if they belong to one or more of the groups listed under paragraph 4.3.7 and are the victim, or potentially the victim, of one or more of the types of ‘harm’ listed under paragraph 4.3.8. We are also keen to explore whether in order to be defined as an adult at risk, a third category is needed that relates to where or in what circumstances that abuse has taken place, such as whether a person can be considered unable to safeguard themselves as a result of their health and social care needs. Once they are defined as an “adult at risk”, the Bill will provide various agencies with duties to protect that individual.
al. Place duties on a range of agencies

Explanation

4.3.10 The Bill will reinforce the key principle that safeguarding and protection is ‘everyone’s responsibility’ and this legal framework ensure that key statutory agencies accept equal responsibility to protect adults at risk. As far as practicable, the agencies encompassed will mirror the partners listed in the Children Act 2004. This will therefore include the health service and the police. We also intend to include the public housing sector, given their importance in the everyday life of adults at risk, and to explore requiring the Benefits Agency to become a partner agency. The full range of interests will be considered in establishing the proposed statutory Adult Protection Boards. This will require some negotiation with the UK Government because of the non-devolved interests.

am. Create a duty to ‘investigate’

Explanation

4.3.11 To overcome concerns that in some instances allegations of abuse towards adults at risk are not acted upon, the Bill will include a duty to investigate. The agencies encompassed in the legal framework will, upon being alerted to suspected abuse, be required to, or cause others to make enquiries and undertake appropriate action to protect an adult defined as being at risk. We will require local authorities to co-ordinate the investigation of an allegation that an individual is at risk.

an. Create a duty to co-operate

Explanation

4.3.12 The Bill will aim to set out that collaboration and multi-agency focus is essential to effectively protect adults at risk. Although all agencies encompassed within the framework will have a role as part of a multi-agency approach, social services will be the lead co-ordinating agency given their pivotal role and expertise. We intend that the duty to co-operate will be an ‘enhanced’ duty whereby social services can request the other agencies encompassed by the legal framework to provide assistance. This would go beyond a general duty to co-operate being placed on social services to make arrangements to promote co-operation with other relevant organisations.

4.3.13 The co-operation envisaged would include co-operating in undertaking an investigation, assessing an individuals needs and agreeing and implementing an approach to support and/or help that individual and ensure they are no longer at risk of harm. Agencies would also be required to co-operate in the operation of the proposed Adult Protection Boards, and we will be looking at similar arrangements for the Safeguarding Children Boards.
ao. Create a duty to share information

Explanation

4.3.14 The Bill will require agencies to share information. It is proposed that this will be a duty that ensures agencies can draw on the information that other agencies will have obtained in any engagement with an individual or their situation to allow for decisions on protecting adults at risk to be based on as complete a picture as possible. The exact processes and guidance as to how agencies should share personally identifiable information is something we will consider carefully in the future, but will be in line with the Wales Accord on the Sharing of Personal Information (WASPI), where appropriate. For the purposes of the overarching legal framework however, a duty to share information is a key principle we wish to enshrine.

ap. Create a duty to report

Explanation

4.3.15 There is concern that current whistle-blowing arrangements are not effective or trusted sufficiently. The Bill will ensure that staff – in any setting - working with adults at risk are required to report suspected abuse to social services. We therefore intend to impose a duty on staff working with adults at risk to report suspected abuse to social services. This duty would likely lead to increased reporting and would often act as a trigger mechanism to the proposed duty to investigate.

4.3.16 The legal framework for adult protection in Scotland extends beyond just staff working with adults at risk to any agency encompassed within their legal framework. Such a broad ranging duty as the Scottish model could prove contentious with those who may feel it restricts their ability to provide advice in confidence. We are very keen to seek stakeholders’ views on this point as part of this consultation.

aq. Provide a power to intervene and protect

Explanation

4.3.17 We intend to base the adult protection provisions in the Bill on a Human Rights based approach and are keen to promote the principle that an adult is the best person to determine their own well-being. There may be occasions where as a last resort it is appropriate to take action to intervene without a person’s consent because there is undue pressure that prevents that person expressing a true desire to be taken out of a harmful situation.
4.3.18 The Scottish Adult Support and Protection Act 2007 provides powers to authorities to seek various protection orders. These are in the form of assessment orders which grant social services the power to carry out an assessment; removal orders which allow for a person to be removed to a place of safety for a limited time and banning orders which prevent a suspected perpetrator contact with a victim. The Welsh Government is minded not to introduce similar powers in Wales at this time.

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<td>67) Is the range of agencies that the Bill will place duties on appropriate? Are there any other agencies that should be considered for inclusion in this framework, and if so why?</td>
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<td>68) Should a duty to report apply to all the agencies encompassed by the other duties? If not, why not? Who should the duty to apply to?</td>
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5. **Regulation and inspection**

What are the main issues?

5.1 We recognise that regulation and inspection of services and of the workforce must contribute to our core objective of maintaining and enhancing the well-being of people in need.

5.2 We believe that it is the primary responsibility of service providers, commissioners and professionals to promote people’s wellbeing; to safeguard people; ensure quality; and to deliver improvement. It is not in the first instance a matter for Government and the regulators. We want our system for regulation to reinforce local and corporate accountability for the quality and improvement both of services, and strengthen the professional contribution and confidence of staff. We want to see a new emphasis on organisational governance and quality assurance mechanisms, including recognition of the importance of the role of the employer and an emphasis on the professional responsibilities of the manager of individual service delivery points.

5.3 We also believe that people who use services and their families and carers have a role to play and we believe that that extends more widely to the general public and to communities. Our approach to regulation will continue to recognise that the experience of service users remains central. To help to achieve this, and to improve further the effectiveness of services, we want to increase the transparency and accessibility of information about services, staff and organisations.

5.4 We remain committed to the regulation and professionalisation of key staff in the workforce and to the regulation of training in order to ensure high standards and clear professional accountability.
5.1 Workforce registration

What is the current position?

5.1.1 The current regime for regulation of the social care and social work workforce derives from part IV of the Care Standards Act 2000 (“CSA 2000”).

5.1.2 The Care Council for Wales (“the Council”) maintains a register of social care workers. A social care worker is defined in section 55 of the Care Standards Act 2000 and includes social workers.

5.1.3 Social work has only been a fully regulated profession since 2004. In order for an individual to call themselves a social worker they must be on the register kept by the Council. Qualifying training for social workers is also regulated.

5.1.4 Student social workers are required to be registered with the Council.

5.1.5 In Wales, managers of care homes and managers and staff who work in children’s homes are also required to be registered with the Council.

5.1.6 In October we intend to introduce a requirement for managers of domiciliary care agencies to be registered by the Council.

5.1.7 At the moment social care workers who are not required by law to register may join the register on a voluntary basis.

5.1.8 Individuals registered with the Council are required to evidence continual personal and professional development and high standards of conduct and practice.

5.1.9 The Council can remove individuals from the register under rules made under section 59 of the Care Standards Act 2000.

Why are we proposing change?

5.1.10 In broad terms, we do not intend to make major changes to the regulatory regime for the workforce. We believe it has worked well and improved standards and conduct.

5.1.11 We do want to have in place a regime of workforce regulation which reflects the modernisation of service delivery and which reinforces the professional roles and responsibilities of key managers and staff.

5.1.12 We will close the current voluntary registers because we believe that these no longer serve a useful purpose, and indeed may confuse the public and allow practitioners of a low standard to fall through the net. Instead, we will use this Bill to provide, where necessary, for the extension of the current arrangements for registration and for the regulation of the training of the social care and social work workforce. In this way, we can ensure that greater
professionalism is introduced across the board and thereby raise the quality and safety of services.

What changes are we proposing to make through this Bill?

ar. We wish to extend professional regulation to other or new categories of social care workers, where necessary. Section 55(3) of the Care Standards Act 2000 already provides a power to make Regulations prescribing social care workers and we do not believe that the power is sufficiently wide to capture new or different types of social care workers.

Explanation

5.1.13 The Care Standards Act 2000 contains a specific definition of what categories of workers may be treated as social care workers for the purposes of the Council. We want to ensure that the definitions available are broad enough to capture social care workers if they work in new models of services, where appropriate.

as. We want to be able to extend existing powers of the Council regarding training of social care workers.

Explanation

5.1.14 Section 63 of the Care Standards Act 2000 Act requires the Council to approve courses for persons wishing to become social workers. Sections 65 and 66 contain provision for post registration training of social workers and for visits to be made to places where relevant courses or examinations are provided.

5.1.15 In order to underpin the further development and professionalisation of the workforce and improve the standards of training and qualification we want to give the Council equivalent powers in relation to courses for all types of social care workers.

5.1.16 We want to ensure that all social care workers are trained and qualified to a comparable standard. We want to ensure that training and qualification regimes for social care workers are set within the overall framework of workforce professionalisation.

at. We wish Welsh Ministers to have specific powers to make regulations that reserve certain activities – such as child protection or adult protection investigations – to staff with certain specified qualifications. We want this to link to the Council’s register.

Explanation
5.1.17 We want to underpin the professionalisation of the service and ensure that services are delivered by staff with the right skills and qualifications for the tasks that they perform.

5.1.18 In the first instance we would want to use this power in relation to social workers but we do not rule out applying it to key staff and managers in different types of service.

What outcomes do we anticipate?

5.1.19 We anticipate:

- Further professionalisation of the social work and social care workforce;
- Improved outcomes for people who use services;
- Improved consistency and standards of training; and
- Better use of resources on training and development.

Impact

5.1.20 The regulatory regime for the workforce including the regime of training and qualifications is very well embedded in service delivery. The changes set out above further develop the current arrangements.

5.1.21 We do not believe that there will be significant additional cost associated with these proposals. There may be an opportunity for costs saving through better targeting of resources on specific training and qualifications for staff groups rather than on the broad range of training and qualifications currently paid for by employers and accessed by staff.

5.1.22 There may also be an opportunity to deliver significant efficiencies in training provision by focussing on specific courses and having clarity about what courses are approved for the work of social care workers by the Council.

Consultation Questions

70) Do you believe that the current definitions of social care workers in the Care Standards Act 2000 are broad enough to capture workers in new models of service delivery?

71) Do you agree that the Care Council should have powers to regulate the training of all social care workers, not only social workers?

72) Do you agree that Welsh Ministers should have powers to make regulations that reserve certain activities to staff with certain specified qualifications?

73) Do you have views about what activities should be reserved to staff with certain specified qualifications?
5.2 Service Regulation

What is the current position?

5.2.1 The regime of service regulation is established in the Care Standards Act - 2000. It is based on a broad framework of registration, inspection and enforcement.

5.2.2 Part I of the Care Standards Act 2000 deals with the regulation of a range of social care services. It governs the regulation of care homes; children’s homes; residential family centres; domiciliary care agencies; fostering agencies; voluntary adoption agencies; adoption support agencies; and adult placement schemes. Whilst the Care Standards Act 2000 deals with the regulation of independent healthcare services and nurses agencies, they are not subject to the proposals being outlined in this consultation.

5.2.3 For the purposes of part II of the Care Standards Act 2000 Welsh Ministers are the registration authority.

5.2.4 We believe that since the implementation of the Care Standards Act 2000, there have been significant improvements in standards of services and care.

Why are we proposing change?

5.2.5 In broad terms we do not wish to alter the arrangements that are currently in place but we do want to make regulation more flexible and responsive to change in order that regulatory regimes are proportionate to risk and opportunities and match the service delivery models that will be developed in the future. We also want to make sure that we are able to focus appropriately on local and corporate accountability for the quality of and improvement of services in order to ensure that services are sustainable and improvement and quality is embedded in organisational culture.

5.2.6 We want to enable Welsh Ministers to extend the range of services that are regulated; to ensure that the regime of regulation can reflect the modernisation of services, and the definition of services set out in Section 1.2 of this document.

5.2.7 Overall we consider the powers of inspection and enforcement to be fit for purpose but we wish to revise the registration model to place a greater focus on organisational governance and introduce a system of time limited registration, where appropriate to provide greater flexibility to the regulator and to services themselves.

5.2.8 We want to ensure that the Register itself becomes a more transparent tool that can be used by the citizens to make decisions about care and support services they may wish to or currently use. It will also enable services to learn from each other and therefore help drive up performance.
5.2.9 We want to place a greater focus on organisational governance and quality assurance mechanisms to ensure that providers themselves work within an overall framework of continuous improvement and that information is transparently available to the public.

5.2.10 In parallel to the changes we are proposing here we will be taking forward other changes to the regulatory systems through powers already available to us. These changes will focus on streamlining the registration process and removing duplication to take account of the growing number of providers with more than one care setting/service. We particularly want to strengthen our approach to the assessment of financial viability of providers and ensure we have the ability to ensure that providers entering the service are financially robust and that the regulator has sufficient powers to take effective enforcement action.

5.2.11 We will work closely with Care and Social Services Inspectorate Wales; and other stakeholders, and consult on those changes as the draft regulations are developed.
5.2a Extending Regulation to new service categories

What changes are we proposing through the Bill?

au.We want Welsh Ministers to have powers to make Regulations to specify which categories of services are to be caught by the requirement to register with and be inspected by the regulator.

Explanation

5.2.12 Service delivery is dynamic, as citizen’s expectations change and as innovative ways of meeting needs emerge, services evolve. We do not believe that the current regulation making powers that allow Part II of the Care Standards Act 2000 to be applied to new or different services is wide enough to cover the scope of the new services that will be developed.

5.2.13 As services are modernised it is likely that they will not fit the current definition of services that are required to be registered within the Care Standards Act 2000 or within the scope of regulations that can currently be made under the 2000 Act. The current law only allows registration of services that are of a type that local authorities provide. As social enterprise, third sector and private sector services evolve and as the local authority increasingly see themselves as commissioners rather than service providers, tying the registration of a service to those the local authorities provide could lead to services for people in need falling outside the scope of regulation. We do not believe that is acceptable. We want to ensure that where new service models are developed they can be subject to regulation.

av.We will require social work services to be registered with the regulator. We intend that a social work service is one comprising social workers registered with the Care Council for Wales.

Explanation

5.2.14 We have already set out our intention to include social work as a service within the overall definition of social care services within this Bill.

5.2.15 This is an important and significant step and sits alongside actions we are taking to further professionalise social work. We are clear that we want social workers to be able to exercise professional judgement within a framework of professional governance.

5.2.16 We believe that having taken steps to define social work as a service we need to ensure that it operates within that framework of professional governance and that we should then bring that service into the protection of regulation.

5.2.17 This will mean that an organisation that provides social work services including a local authority will be required to register with the regulator and that the service itself will have to operate to prescribed standards.
5.2.18 It will have the effect that the regulator could take enforcement action against a social work service that was not performing to the required level. Where there are significant breaches of registration the regulator could cancel or suspend the registration. If this were the case we would need to ensure that statutory duties continue to be discharged appropriately and without detriment to service users and their carers. Ministers already have a range of intervention powers and these will need to underpin any action taken by the regulator.

5.2.19 In order to ensure the overall professional governance of the service we intend that the registered manager of the service will be required to be registered in the social work register of the Care Council for Wales.

What outcomes do we anticipate?

5.2.20 We anticipate:

- That new services will be developed within a consistent framework of standards and that the public will have assurance about those standards through registration, inspection and enforcement;

- That citizens will have a clear understanding of what a social work service will consist of; and

- That social work will be further professionalised and standards of practice will improve within a strengthened framework of professional governance and standards.

Impact

5.2.21 There will be an impact on both providers and the regulator of bringing additional services into the scope of the regulator in the future, as this will be achieved through regulations this will be subject to individual specific consultation.

5.2.22 We expect that there will be significant impact in relation to the regulation of social work services. We expect this impact to be cultural and organisational. There are already specific standards in place for social workers through the Care Council for Wales and expectations placed on employers of social workers through the Care Council codes of practice. In some cases Regulations already specify service standards to be delivered. We expect that this will support organisations in developing the framework for the delivery of social work as a registered service.

5.2.23 There may be some financial impact in the first instance as services are brought to the required standard but we do not anticipate this being significant as the workforce that will be brought into the service is already in place.
Consultation Questions

74) Do you agree that Welsh Ministers should be able to bring appropriate new service delivery models into the scope of the regulator?

75) Do you agree that social work services should become a regulated service?

76) Do you agree that the registered manager of the service must be registered in the social work register of the Care Council for Wales?
5.2b Revising the registration model for social care services

What changes are we proposing to make through this Bill?

aw. The power for the regulator to grant registrations on a time limited basis. It is anticipated that this will be accompanied by a regulation-making power enabling Welsh Ministers to specify:

- The services that will be subject to time limited registration (i.e. provision to apply variable requirements to different types of service provision to ensure proportionality); and

- The length of duration of registration.

Explanation

5.2.24 Currently, registrations granted under part II of the Care Standards Act are not time limited. Registrations will continue indefinitely until such time as the registered person takes action to terminate the registration or until action is taken by the registration authority to cancel the registration (such action being subject to appeal to the First Tier Tribunal).

5.2.25 A time limited model is one where registration will be granted for a particular period of time and prior to the expiry of that registration, the registered person will have to re-apply. If they do not do so, the registration will lapse. Continued operation by a person of a registerable service in such circumstances would be unlawful.

5.2.26 The ability to time limit registrations will provide greater flexibility to the registration authority to target particular types of services on the basis of both risk and opportunity. It will place the obligation on the registered person to demonstrate that they are suitable for continued registration by having to periodically re-apply for registration. The process of applying again for registration will ensure that providers of services have to demonstrate compliance with particular quality standards prior to registration being extended. Those who do not meet the required standard will no longer be registered.

5.2.27 We will not adopt an approach which will require all services to be subject to time limited registrations or for all services to have time limited registrations of the same duration. There will be rights of appeal afforded to registered persons about decisions not to renew registrations.

5.2.28 A provision to make regulations about such matters should provide the flexibility to adjust the registration model in the way that is most appropriate to the service being regulated.
What outcomes do we anticipate?

5.2.29 We expect that the ability to apply a model of time limited registration to some services will provide more flexibility and ensure that registration models are fitted to the service model. It will allow the regulator to adjust and adapt inspection regimes to take account of the re-registration process and ensure that regimes are proportionate to risk and opportunity.

Impact

5.2.30 The requirement for time limited registration would be introduced in a staged way and only to services where it was appropriate. This will ensure that any impact can be taken account of within the implementation plan.

Consultation Questions

77) Do you agree that there should be powers to make registration time limited? If so, should this be introduced in a staged way?

78) Should certain services, as a matter of principle, be exempt from this provision? If so, why?

79) What sectors/services do you believe would be particularly suited to this model?

80) What issues do you think this model would raise?
5.2.c The Register

What changes are we proposing to make through the Bill?

ax. We wish the social care services register to be defined on the face of the Bill and for Welsh Ministers to have a regulation-making power that would allow them to specify what is to be contained on the public register.

Explanation

5.2.31 Part II of the Care Standards Act 2000 provides no specific definition of the “register” although the existence of a register is inferred by the registration process and is expressly referred to in section 36. Section 36 of the Care Standards Act provides that “the registration authority shall secure that copies of any register kept for the purposes of this Part are available at its offices for inspection at all reasonable times by any person”. Copies of the register or extracts from them must be made available to any person who asks for them, although there are regulation making powers to dis-apply this. No regulations have been made.

5.2.32 We wish to ensure that the register is a powerful tool. We want to ensure that service users and carers and the general public as well as commissioners can access information in a consistent format.

5.2.33 We want to ensure that members of the public can access easily all the information they need to understand what type of services a provider is registered to provide, and what issues of concern they ought to be aware of in relation to that service. We intend to include information about enforcement action in the information held on the register. By making the register more transparent citizens will be able to link information about services to information about the professionals who work in them which will give them a more complete picture of the service being provided. We will put in place the safeguards that are needed to prevent inappropriate information being released, and to allow a “right of reply” in certain circumstances.

5.2.34 We believe that this will provide the public with much more useful information than the current system which, in the case of social care services, only provides members of the public with access to information contained in historic inspection reports.

Information Sharing

ay. We will place provision on the face of the Bill to enable the regulator to share information with other relevant regulators.
Explanation

5.2.35 We believe that this will enhance public assurance by enabling regulators to have relevant information about matters within their own respective remits.

What outcomes do we anticipate?

5.2.36 We anticipate:

- We anticipate that service users, their carers and the general public as well as commissioners will have up to date relevant information about care settings and services to support decisions that they make about services they use or may wish to use;

- We expect that the more transparent publication of information will contribute to the overall improvement of standards and services; and

- We expect that services will learn from each other and therefore drive up performance.

Impact

5.2.37 The information that we propose to make available on the register is currently made available to the regulator. There will be no additional burden on providers.

5.2.38 There will be significant gain to the citizen from placing information in the public domain.

Consultation Questions

81) Do you agree that the register should contain specified information?

82) Do you think that this approach will enable service users and their carers to make decisions about services they use or may wish to use?

83) Do you agree that there should be information sharing powers afforded to the regulator?

84) Do you agree that this approach will drive up improvement?
5.2.d Organisational Governance and Quality Assurance Mechanisms

What changes are we proposing to make through the Bill?

Az. Welsh Ministers to have a regulation-making power which requires registered providers to produce reports at specified times which they make publically available and make available to the regulator and Welsh Ministers. The regulations will specify what must be contained in the report and the format in which the report should be published.

Explanation

5.2.39 This means that all regulated services will be required to publish a report, probably annually, against factors set by the Government and in a set format.

5.2.40 We believe that requiring providers to report publically on common factors set at a national level, in a standard format will reinforce the primary responsibility of organisations themselves for promoting the wellbeing of people and safeguarding them, ensuring quality and delivering improvement.

5.2.41 It will strengthen the voice and control of people who use services by providing them with transparently accessible information and it will allow Welsh Ministers, commissioners and citizens to understand the contribution that services make to the overall wellbeing of people in need.

What outcomes do we anticipate?

5.2.42 We anticipate:

- We believe that this requirement will ensure that providers themselves introduce proper systems to manage the quality and improvement of their services;

- Information about services will become more transparent and standardised; and

- Government will be able to ensure that services themselves contribute to the overall outcomes framework for social services and social care.

Impact

5.2.43 Providers are currently required to provide information to the regulator, commissioners, service users (and their families). We wish to make this publically available. We expect that by specifying and standardising the reporting framework we will reduce the burden on providers.
Consultation Questions

85) Do you agree that these reports should be publically available?
86) Do you agree that we should specify matters for public reporting?
5.2.e National Minimum Standards

What changes are we proposing to make through the Bill?

ba. We propose to remove the word ‘minimum’ from sections 23 (1) and 49 of Part II of the CSA 2000 and to be able to publish statements of standards applicable to all regulated social care services.

Explanation

5.2.44 This will mean that the reference here is to national standards.

5.2.45 We believe that it remains important to underpin the regulatory framework with specific statements of standards which must be taken into account as currently set out in the Care Standards Act 2000. These statements provide important guidance to registered providers about how the requirement of regulations should be implemented. The notion that these statements are set at a minimum standard however, is no longer relevant to that overall regime.

5.2.46 As part of the overall need to modernise and update services we believe that we must move beyond a focus on minimum standards of service delivery. We want to ensure that new models of service brought into the scope of the regulator can be underpinned by these standards.

What outcomes do we anticipate?

5.2.47 We anticipate that this will contribute to the overall drive to modernise services and achieve high standards in service delivery.

Impact

5.2.48 We expect that the modernisation of current statements will have some impact on providers but this can only be framed within the current framework of regulations and therefore the impact should be minimal. The standards will be reviewed in a phased way and will be subject to consultation.

Consultation Questions

87) Do you agree that we should remove the word ‘minimum’ from sections 23 and 49 of the Care Standards Act 2000?
6. **Services**

6.1 The Establishment of a National Adoption Service

**What is the current position?**

6.1.1 Adoption is a complex process and requires considerable knowledge and understanding of children’s needs and problems. Social workers involved in planning, organising, and preparing a child and their birth family for adoption undertake a considerable task often against a background of difficult and combative care proceedings which impose timescales and require complex reports and care plans to be produced.

6.1.2 Historically the geographical split of local authorities provided a handful of very small agencies covering vast rural areas and only placing annually a handful of children and recruiting a small number of prospective adopters, such agencies have seen for themselves the merit of collaborating with each other to provide a more proficient and cost effective adoption service. Collaboration of these services on a wider scale would provide a National Adoption body, which will ensure the provision of a larger scale service handling some of the key tasks in the adoption process.

**Why are we proposing change?**

6.1.3 We want local authorities to act sooner, more efficiently and effectively to find permanency for those children for whom a return home is not in their interests and to enhance promotion of adoptions and increase the pool of adopters.

6.1.4 The Family Justice Review of family law proceedings criticised the lengthy time of adoption (between entry into care and adoption was 954 days - that is about 2 years 7 months) and the complexity of the panel system. One of the specific recommendations of the Family Justice Review in combating delay, is the introduction of specific timetables for cases and the removal of some panels, to eliminate unnecessary duplication. The legislative changes arising from the Family Justice Review will be taken forward as part of the implementation of that work.

6.1.5 Agencies, officials and the Adoption Register in the last 12 months have noted a reduction in the numbers of approved adopters. All have identified the urgent need to recruit, assess and approve potential adopters, a process which can take between 6-8 months to complete. The lack of potential adopters obviously has a huge impact on the delays being experienced by the looked after population. Evidence also suggests that post adoption services are patchy throughout Wales.

6.1.6 We believe that a National Adoption Service will reap greater benefits enabling the concentration of such specialised skilled persons which will enhance the efficiency and quality of the assessment process, provide equity in the arrangements for adoption and encourage the pooling of prospective
What changes are we proposing to make through the Bill?

**bb.** New powers in the Bill will enable Welsh Ministers to require all local authorities (adoption agencies) to come together to form a single National Adoption Service for the purpose of discharging certain adoption functions. Our current thinking is that the National Adoption Service would be responsible for:

- Providing National leadership & overview of adoption services (linking to standards & performance);
- Recruitment, Training & Assessment;
- A Framework for adoption approval (including panels);
- The promotion of adoption and building capacity in terms of prospective adopters and specialist workforce skills; and
- Commissioning of an adoption support service.

6.1.7 Each local authority would continue to be an adoption agency, to have responsibilities for applying to a court for a placement / adoption order; preparation and maintenance of the adoption plan; and for the placement arrangements for the child. The pooling of certain activities in the National Adoption Service should not affect these processes.

6.1.8 The detail of the arrangement for the National Adoption Service would be included in regulations.

**Explanation**

6.1.9 We want to transform adoption services, to prevent unnecessary delay and duplication which has such a negative impact on the outcomes for our looked after children. We want to identify aspects of the adoption process that are best performed at a National level, whilst recognising that there are functions that should remain the responsibility of individual local authorities.

6.1.10 The development of a National Adoption Service will ensure that skilled and experienced adoption workers are providing an economically viable and cost effective service, with a common understanding and strong professional base for adoption knowledge and best practice. These experienced practitioners will be the backbone of the new service and will have the ability to develop the framework in conjunction with the Welsh Government, by which the National Adoption Service will operate.

6.1.11 The National Adoption Service will not operate as an "adoption agency" as referred to in the Adoption and Children Act 2002 and in the Adoption Agencies (Wales) Regulations 2005 made under section 9 of the Adoption and Children Act 2002. The new body will, however, be inspected under the Care Standards Act 2000. Arrangements for the inspection of the National Adoption Service will be set out in regulations.
What outcomes do we anticipate?

6.1.12 We believe that the establishment of a National Adoption Service will:

- Enable the concentration of such specialised skilled persons which will enhance the efficiency and quality of the assessment process;
- Provide equity in the arrangements for adoption;
- Encourage the pooling of prospective adopters;
- Deliver an early referral mechanism for children with an adoption plan. Eradicating waiting lists for prospective adopters who routinely face substantive delays for training or for an adoption assessment. Reducing the waiting periods for approved prospective adopters who have not yet achieved a placement;
- Bring greater focus to authorities placement strategies, heighten the important role that adoption has in permanency for children where rehabilitation with the parents is unrealistic and not in the child’s best interest; and
- Ensure that the third sector agencies have a key role in supporting the national aim through improved partnership with local government in the delivery of adoption and adoption support services.

Impact

6.1.13 A National Adoption Service will have the potential to deliver these services in a more efficient and effective way. It will also allow individual adoption agencies to concentrate their area of expertise on placement arrangements for the child, preparation and maintenance of the adoption plan; and to focus on the thorough detailed work required by the courts for child reports and assessments, when applying for a placement/adoption order.

Consultation Questions

88) Do you agree the functions that a National Adoption Service will be responsible for, as set out in paragraph bb?

89) Do you suggest any additional functions that should be included?

90) Are there any other barriers to the current arrangements that should be considered in the development of the Social Services (Wales) Bill?

91) Do you have any other comments that you wish to make about our proposals for a National Adoption Service?
6.2 Transitions for Disabled Children and Young People

What is the current position?

6.2.1. There is significant evidence of the dip in service provision for disabled young people when they transfer to adult services and begin their preparations for independent living. Policies and programmes; including the National Service Framework for Children, Young People and Maternity Services, which has a standard with a number of key actions for transitional planning and the promotion of transition key workers, are aimed at supporting young people to make the transition into adulthood, but progress is limited.

6.2.2. Section 17(10) of the Children Act 1989 defines a child in need. This includes a disabled child and 17(11) defines what is meant by the term “disabled”. Schedule 2, paragraph 6 require local authorities to provide a range of services to minimise the effect on disabled children of their disability including short breaks. This is an aspect of the general duty owed to a child in need under section 17. Services are provided based on need and within available resources using the assessment for Children in Need and their families. Adults are assessed based on the ‘Fair access to Care’ or ‘Community Care Services for Adults’ criteria, but services are typically only provided if there is a ‘critical’ or ‘substantial’ threat to their independence.

Why are we proposing change?

6.2.3. We have committed to consult upon extending the entitlements for disabled children with assessed complex needs up to 21 years; and to require local authorities to appoint a personal advisor (transition key worker) at age17/18. (‘Sustainable Social Services for Wales: A Framework for Action’ - Actions 3.35 and 3.36).

6.2.4. There is no universal definition for ‘complex needs’ currently used by local authorities. Eligibility for services varies between authorities, as it does between children and adults’ services. Due to the current different assessments and eligibility criteria for children and adults, there is a subsequent difference in the range and level of services provided for disabled children and young people pre and post 18.

What changes are we proposing to make through the Bill?

bc. We propose a power for Welsh Ministers to make regulations to:

- specify categories of disabled children within the new people in need definition; and

- specify the transitional services and assistance which local authorities must provide to those in the higher categories of need, up to the age of 21 years.
Explanation

6.2.5 The benefit of these provisions will be felt by younger disabled adults with the most complex needs who will continue to reside with their parents/ carers or who may be independently supported but whose disability is so severe it is likely they will have enduring difficulties and continuing care needs. If these young people continue to be assessed in the same way and receive the same level of services as a child would, it could lessen the gap during transition. Deferring the actual transfer to adult services would give further time for plans to be put into place, enabling a smoother transition.

What outcomes do we anticipate?

6.2.6 The aim is to deliver a better transition arrangement for certain groups of young people, to assist them towards independent living and to take advantage of opportunities for education and work.

Impact

6.2.7 The policy is being refined and a key difficulty is finding a suitable definition or system to identify qualifying/eligible younger disabled people we wish to benefit without inadvertently extending entitlement to a broader group. We need to consider the impact on the service user and the potential for any unintended adverse affects particularly on an individual’s benefits or payments through the Department of Work and Pensions (DWP) given the evolving agenda for Welfare Reform which is non-devolved.

6.2.8 The impact will be determined based on the scope of the provisions in defining what entitlements are extended and to whom which will be developed and refined in developing and progressing secondary regulations and guidance as required.

Consultation Questions

92) Are there any key, identifiable entitlements that disabled children receive that would be of continued benefit beyond age 18 for those with the most complex needs?
   Please provide details and rationale.

93) Do you have any suggestions for how we might define “complex needs”?

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21 Children and Young People’s Continuing Care Guidance consultation is open until 13 March 2012 and is available at:
http://wales.gov.uk/consultations/healthsocialcare/?lang=en&status=open
7. **Implementation of proposed legislation**

**Impact assessment**

7.1 A full Regulatory Impact Assessment will be prepared in support of the Bill. Throughout this consultation document we have highlighted the impacts that we think each of our proposals will have.

**Impact on Business**

7.2 The Bill would have some impact on businesses, particularly those that provide social care services, either on behalf of local authorities or directly procured by individuals. There would also be implications in respect of private nursing and care staff. It is expected that businesses operating in the social care sector will appreciate the law in this area being clarified, this will save them time and resource that is currently focused on interpreting the current web of legislation.

**Impact on the Public Sector**

7.3 This Bill will have a significant impact on the public sector, specifically on local authorities. There will also be impacts on NHS organisations in areas such as safeguarding and protection. There will be both positive and negative impacts on the public sector. On the positive side there will be greater legal clarity on a system that has been variously described as “piecemeal”, “exceptionally tortuous” and “labyrinthine”. This will result in time savings and cost savings in terms of the provision of legal advice and time interpreting the legislation. The intention is for there to be more clarity over standards and a reduction in complaints as there will be less ambiguity. In terms of negative impacts, the Bill will introduce new duties and responsibilities on the public sector.

7.4 The introduction of a single eligibility framework and portable assessment of need should lead to greater efficiencies, for example in terms of removing duplication when an individual assessed as requiring social care services moves between local authorities. A broader duty to promote wellbeing and provision of better information and other support service should also reduce the number of adults requesting assessment for what is considered to be low or moderate needs.

7.5 The legislation would impact substantially on local government, amending existing duties and requirements placed upon them in their delivery of social services and placing new requirements upon them. There would be a substantial implementation project required with time for senior officers, lawyers, social work staff and contractors to become acquainted with the new legal framework. There will also be additional burdens in the short term in relation to the changes required to embed these changes e.g. ICT, business, public information, guidance, workforce and training requirements. It is intended that some of these impacts in workload will be mitigated by phased introduction of the planned changes.
Impact on the Third Sector

7.6 It is expected that the Third Sector will welcome this reform of the social care system. It will simplify and clarify the current legal position, which will enable Third Sector organisations to support individuals better to navigate it and to be clear as to what they are entitled to.

7.7 The legislation will also help address a number of concerns expressed by the Third Sector in relation to the current system, such as the variability of social care services provided across Wales (the so called ‘postcode lottery’) and issues associated with the transition from children’s to adult services.

7.8 There will be some impacts on Third Sector organisations that directly provide social care services (whether these services are delivered on behalf of local authorities or directly procured by individuals).

Other areas of impact

7.9 The Bill will have a positive impact in a number of other key areas:

- Sustainability: Central to the Welsh Government’s model of Sustainability is the concept of ‘wellbeing’. The Bill will have a positive impact on the wellbeing of services users and their carers, by ensuring that: their basic needs are met and they are supported to lead full lives that have a sense of purpose; and that they feel able to reach personal goals and participate in society.

- Human Rights and Equality: These reforms will help ensure that an individual’s rights to an assessment for social services, and the provision of services where someone is eligible for them, are upheld. It will have a direct impact in terms of the equality strands relating to: age and disability. The Bill will support the principles of the Equality Act (2010).

- Children’s rights: The legislation will contain a number of clauses directly aimed at supporting the rights of children. These include: the introduction of a rationalised statutory framework for Children’s Services, with a focus on facilitating and ensuring stability; improving consistency of standards for Looked After Children; and seeking to amend the definition of ‘wellbeing’ to include a child’s right to be heard. The legislation will build upon the Rights of Children and Young Persons (Wales) Measure.

- Impact on reducing poverty: Those receiving social services are often some of the poorest and most vulnerable in society, it is known that some older people and individuals with a disability are significantly more likely to live in poverty than the population as a whole. The creation of a clear and effective legislative framework for social services will help support these individuals.
Consultation Questions

94) Throughout this document we have identified the impacts of the proposals we would like to include in the Bill. Do you have any comments on the impacts that we have identified?

95) Do you agree with our analysis of the impacts? If not, why?

96) What do you think the potential cost implications are for the new proposals? Could the new duties be met through minor changes to current arrangements etc?

97) Are there other areas of impacts we should be considering?

Timetable

7.10 The consultation will close on 1 June 2012. Once the consultation has closed, we will publish a summary of the responses and the action that the Welsh Government will take in response.

7.11 The Bill will then be introduced into the National Assembly for Wales in October 2012, for scrutiny by Assembly Members. We anticipate this process taking around six months before Royal Assent is sought. Once the Bill has Royal Assent and becomes law, the process of developing Regulations and a Code of Practice to support the implementation of the Act will begin.

Broader implementation of Sustainable Social Services for Wales: A Framework for Action

7.12 There are other aspects of Sustainable Social Services for Wales: A Framework for Action that do not require new or amended legislation in order for them to be implemented. The strands of work that are being undertaken to implement these aspects will run in parallel to the introduction and passage of this Bill. Work is already well underway across Wales to take them forward, in particular by:

- Changing the focus of success from what we do, to what we achieve for people
- Professionalising our workforce, across all sectors
- Refreshing our regulation and inspection regimes
- Integrating services to make them more efficient and simpler for users
- Creating a stronger framework for safeguarding and protection of children and adults
- Creating new frameworks for citizens to get involved in the services they receive.
7.13 Working under new leadership arrangements established by the Deputy Minister in 2011, these changes are set out in detail within a coherent programme approach, with clear milestones for delivery over the next four years. The legislation described in this document will enable many of those changes to take place, and is best understood within that wider context.

**Final Consultation Question**

98) We have asked a number of specific questions. If you have any related issues that we have not specifically addressed, please let us know.
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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 tick here:

If you are responding on behalf of your organisation, please tick here:

This consultation runs from 12 March until 1 June 2012. Please send your responses to us by the deadline of the 1 June 2012.

You can send your completed response forms to us by e-mail, to socialservicesbill@wales.gsi.gov.uk, or by post, to Social Services Bill Team, Social Services Directorate, 4 Floor, Cathays Park, Cardiff, CF10 3NQ.

Responses can come from individuals or groups. The form is set out in the order of the consultation document and the questions are grouped into sections. You do not have to answer all of the questions if you do not wish to; you are welcome to only answer the questions that are relevant to you, and to continue your answers on additional sheets if required. There is however, a final question, (number 98), where you can feed back any other views you have on the Social Services (Wales) Bill, that are not covered by the other questions asked in the consultation document.
1. Maintaining and enhancing the wellbeing of people in need

1.1 Wellbeing of people in need

**Question 1** – Do you agree with our proposals to base this legislation on the concept of maintaining and enhancing the wellbeing of people in need?

**Question 2** – Do you agree with our working definitions of “wellbeing” and “people in need”? Do you wish to suggest alternatives?

**Question 3** – What are your views on the proposed general duty on local authorities and their partners to maintain and enhance the wellbeing of people in need in their local areas?

**Question 4** – What are your views on the proposals to provide guidance on this area through the Code of Practice?

**Response:**
### 1.2 Defining social care services

**Question 5** – What are your views on the proposed broad power for local authorities in Wales to provide or make arrangements for the provision of social care services?

**Question 6** – What are your views on our proposed definition of “social care services”?

**Response:**
2. A stronger voice and real control

2.1 Information, advice and assistance

**Question 7** – Do you agree that we need to make a significant step forward in making information, advice and assistance accessible?

**Question 8** – Do you think that the legislation should specify any particular organisational form for this, such as an information hub?

**Question 9** – Do you think that the legislation should specify more clearly how local government and the NHS should work more closely together in the provision of information, advice and assistance?

**Response:**
## 2.2 Assessment of need

**Question 10** – Do you agree there should be a single right of assessment?

**Question 11** – Do you agree the new system will benefit service users and their carers, as well as professionals in understanding their duties of assessment? If not, why?

**Question 12** – Do you agree that law and policy should provide for proportionate assessments i.e. a formal prescribed assessment for people who have social care needs?

**Question 13** – Is it helpful to prescribe the assessment process and who should be involved?

**Question 14** – What information do you think should be included within the “common core” of a new integrated assessment?

**Question 15** – Will the new system be more efficient and provide local authorities with greater flexibility?

**Question 16** – Do you see a role for self assessment and if so, how would this work?

**Response:**
### 2.3 Portability of assessments

**Question 17** – Should the Bill impose a general duty on local authorities and their partners to provide social care services to a person in need who resides in their area?

**Question 18** – Do you agree that portability of assessment will bring greater consistency of care for services users? Do you agree that it will lead to savings?

**Question 19** – When someone moves into a new local authority area, what do you think is an acceptable period for which to require that the new authority must maintain the assessment of a service user before it reviews the case?

**Question 20** – Do you agree with our proposals for notification and transfer of information?

**Response:**
### 2.4 Management and review of care plans

**Question 21** – Do you agree that the statutory duty changes we have outlined above are the right ones to improve care and support plan and review systems?

**Question 22** – Do you agree that it will be important to prescribe, in the regulations and guidance, the different arrangements for the different needs?

**Response:**
### 2.5 National eligibility framework

**Question 23** – Do you think that a new national eligibility framework will be beneficial?

**Question 24** – What do you see as the local authority’s role in setting criteria for eligibility and what do you see as the Welsh Government’s responsibilities?

**Question 25** – Do you believe that the current four-level definition of eligibility: “critical, substantial, moderate and low” is a helpful way of categorising eligible needs?

**Question 26** – Do you agree the new framework should extend to all categories of people in need – both children and adults?

**Question 27** – Do you envisage any particular barriers in operating a single eligibility threshold? How would you overcome these barriers?

**Question 28** – Should people be able to self assess for access to services? If so, how would you see this working?

| Response: |
### 2.6 Rights of Carers

**Question 29** – Do you agree that the proposed definition of a carer should be based on the one referred to in paragraph 2.6.8?

**Question 30** – Should we allow local authorities to include some carers who receive payments or have a contract for the care they provide within the definition of a carer, where the relationship is not a commercial or ordinary volunteering one? (In order that carers can receive an assessment and benefit from other support provided to unpaid carers.)

**Question 31** – Are there other groups of carers that are not covered but should be included?

**Question 32** – Should local authorities be allowed discretion to consider requests from Foster Carers or Adult Placement / Shared Lives Carers to be classified as a ‘carer’ and be entitled to request a carers’ needs assessment?

**Question 33** – Do you agree that there should be a duty placed on local authorities to publish information on carers’ rights and the services offered to carers in their local areas?

**Question 34** – Do you agree that local authorities should be required to offer a carer’s assessment to anyone who appears to the authority to be a carer with substantial caring responsibilities?

**Response:**
2.7 Direct Payments

**Question 35** – Do you agree with the proposal to use this Bill to bring together legislation regarding the provision of Direct Payments in Wales?

**Question 36** – Do you agree with the proposals to allow Welsh Ministers broad powers to extend the existing Direct Payments arrangements so that they can introduce an effective model of self-directed support and control that also encourages a greater uptake of Direct Payments arrangements in Wales?

**Question 37** – Do you have views on other ways in which Direct Payments could be extended beyond the current scheme? For example, should they be extended to allow the purchase of residential accommodation or to allow a local authority or independent organisation to be an agent or a broker for services and hold a budget on the service user’s behalf?

**Response:**
<table>
<thead>
<tr>
<th>Question</th>
<th>Text</th>
</tr>
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<tbody>
<tr>
<td><strong>38</strong></td>
<td>Do you agree with the proposal that people funding their own social care should have their complaints considered by the Public Services Ombudsman for Wales (PSOW)?</td>
</tr>
<tr>
<td><strong>39</strong></td>
<td>Do you agree that the PSOW’s remit should be extended to care homes and domiciliary care agencies only, or that a wider extension to his remit should be considered?</td>
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<tr>
<td><strong>40</strong></td>
<td>Do you agree that the PSOW’s remit should be extended to independent palliative care services?</td>
</tr>
<tr>
<td><strong>41</strong></td>
<td>Do you agree with the proposal to allow the PSOW to consider complaints about matters arising, prior to the PSOW’s powers being extended?</td>
</tr>
<tr>
<td><strong>42</strong></td>
<td>We are not proposing that “information sharing powers” between CSSIW and the PSOW be included in the proposal, and expect that a protocol between the two bodies will be established. Do you agree that this is sufficient, or should information sharing powers be considered?</td>
</tr>
<tr>
<td><strong>43</strong></td>
<td>Do you agree that individuals who have complaints about independent palliative care services should also be able to access advocacy services?</td>
</tr>
</tbody>
</table>

**Response:**


3. **Strong national direction and local accountability for delivery**

<table>
<thead>
<tr>
<th>3.1 National Outcomes Framework and Standards for Social Services</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Question 44</strong> – Do you agree that there should be a duty on Welsh Ministers to encourage improvement in social services and social care services (as defined in this Bill) in Wales?</td>
</tr>
<tr>
<td><strong>Question 45</strong> – Do you agree that Welsh Ministers should have a duty to publish (from time to time) and review (periodically) a statement of national outcomes for social services and social care services?</td>
</tr>
<tr>
<td><strong>Question 46</strong> – Should there be a power to specify performance standards to be met by local authorities and social care service providers to sit beneath the national outcomes framework?</td>
</tr>
<tr>
<td><strong>Question 47</strong> – Should the standards be measured through performance indicators?</td>
</tr>
</tbody>
</table>

**Response:**
### 3.2 Code of Practice

**Question 48** – Should there be a duty on Welsh Ministers to prepare a Code of Practice to bring together statutory guidance on social services matters?

**Question 49** – Should Welsh Ministers be required to consult on the contents of the Code of Practice before it is introduced?

**Question 50** – Should Welsh Minister be required to consult in advance on any substantial amendments that they propose to make to the Code of Practice?

**Question 51** – Should the Bill specify that the Code of Practice must be followed by authorities acting under the legislation and can only be deviated from where there are good reasons to do so (although this proviso would not give the freedom to take a substantially different course)?

**Question 52** – In addition to the Code of Practice, should Welsh Ministers retain their existing power to issue directions on certain matters, such as policy or practice guidance?

**Response:**
3.3 Directors of Social Services

**Question 53** – Do you agree that we should place the requirement to appoint a Director of Social Services on the face of the Bill and have powers to specify the competencies that a Director of Social Services should have?

**Question 54** – Do you agree that the local authorities should be able to share a Director of Social Services?

**Response:**
### 3.4 Collaboration in integrated Social Services

**Question 55** – Do you agree with the proposal to introduce a single consistent set of powers relating to the creation of formal partnerships in Wales, for the purpose of delivering integrated services?

**Question 56** – Do you agree with our proposal to introduce powers to define in Regulations and guidance the parameters for developing formal partnerships and pooled budgets and to set out how and when these will be used?

**Response:**
4. Safeguarding and protection

4.1 A National Independent Safeguarding Board

Question 57 – Do you agree with the view of the Welsh Safeguarding Children Forum on the role and function of the National Independent Safeguarding Board?

Question 58 – What type of organisation do you think the Board should be? How would the relationship and accountabilities with Welsh Ministers and Safeguarding and Protection Boards be constructed (see section 4.2 – Safeguarding and Protection Boards)?

Question 59 – How should the Welsh Government achieve service user representation on the Board?

Response:
### 4.2 – Safeguarding and Protection Boards

<table>
<thead>
<tr>
<th>Question 60 – What do you think the functions of the Adult Protection Boards and Safeguarding Children Boards should be?</th>
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<tr>
<th>Question 61 – Do you agree that a funding formula is needed? What approach should be taken to devising this formula?</th>
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<tr>
<th>Question 62 – Do you think that the existing statutory membership of LSCBs is sufficient for Safeguarding Children Boards? What additional members should be included within the membership of Adult Protection Boards?</th>
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<tr>
<th>Question 63 – Should there be a requirement that all Safeguarding and Protection Boards have independent Chairs? Please explain your rationale.</th>
</tr>
</thead>
</table>

Response:
### 4.3 Adult Protection – a new legal framework

**Question 64** – Is the scope of what would constitute an ‘adult at risk’ reasonable?

**Question 65** – Should the duties on agencies to protect adults at risk be based on someone being the victim, or potentially the victim of ‘harm’?

**Question 66** – Should the definition of an ‘adult at risk’ also take account of where, or in what circumstances, the abuse has taken place and whether someone is unable to safeguard themselves as a result of their health and social care needs (paragraph 4.3.9)?

**Question 67** – Is the range of agencies that the Bill will places duties on appropriate? Are there any other agencies that should be considered for inclusion in this framework, and if so why?

**Question 68** – Should a duty to report apply to all the agencies encompassed by other duties? If not, why not? Who should the duty apply to?

**Question 69** – Should the legislation include powers of intervention? If so, what should be the nature of these powers?

**Response:**
5. Regulation and Inspection

5.1 Workforce registration

**Question 70** – Do you believe that the current definitions of social care workers in the Care Standards Act 2000 are broad enough to capture workers in new models of service delivery?

**Question 71** – Do you agree that the Care Council should have powers to regulate the training of all social care workers, not only social workers?

**Question 72** – Do you agree that Welsh Ministers should have powers to make regulations that reserve certain activities to staff with certain specified qualifications?

**Question 73** – Do you have views about what activities should be reserved to staff with certain specified qualifications?

Response:
### 5.2 Service Regulation

#### 5.2a Extending regulation to new service categories

<table>
<thead>
<tr>
<th>Question 74 –</th>
<th>Do you agree that Welsh Ministers should be able to bring appropriate new service delivery models into the scope of the regulator?</th>
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<tbody>
<tr>
<td>Question 75 –</td>
<td>Do you agree that social work services should become a regulated service?</td>
</tr>
<tr>
<td>Question 76 –</td>
<td>Do you agree that the registered manager of the service must be registered in the social work register of the Care Council for Wales?</td>
</tr>
</tbody>
</table>

**Response:**
### 5.2b Revising the registration model for social care services

| **Question 77** – Do you agree that there should be powers to make registration time limited? If so, should this be introduced in a staged way? |
| **Question 78** – Should certain services, as a matter of principle, be exempt from this provision? If so, why? |
| **Question 79** – What sectors/services do you believe would be particularly suited to this model? |
| **Question 80** – What issues do you think this model would raise? |

**Response:**
5.2c The Register

**Question 81** – Do you agree that the register should contain specified information?

**Question 82** – Do you think that this approach will enable service users and their carers to make decisions about services they use or may wish to use?

**Question 83** – Do you agree that there should be information sharing powers afforded to the regulator?

**Question 84** – Do you agree that this approach will drive up improvement?

**Response:**
<table>
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<tr>
<th><strong>5.2d Organisational governance and quality assurance mechanisms</strong></th>
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</thead>
<tbody>
<tr>
<td><strong>Question 85</strong> – Do you agree that these reports should be publically available?</td>
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<tr>
<td><strong>Question 86</strong> – Do you agree that we should specify matters for public reporting?</td>
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**Response:**
<table>
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<tr>
<th><strong>5.2e National Minimum Standards</strong></th>
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<tr>
<td><strong>Question 87</strong> – Do you agree that we should remove the word ‘minimum’ from sections 23 and 49 of the Care Standards Act 2000</td>
</tr>
<tr>
<td><strong>Response:</strong></td>
</tr>
</tbody>
</table>
6. Services

6.1 Adoption

**Question 88** – Do you agree the functions that a National Adoption Service will be responsible for, as set out in paragraph bb?

**Question 89** – Do you suggest any additional functions that should be included?

**Question 90** – Are there any other barriers to the current arrangements that should be considered in the development of the Social Services (Wales) Bill?

**Question 91** – Do you have any other comments that you wish to make about our proposals for a National Adoption Service?

**Response:**
### 6.2 Transitions for disabled children and young people

**Question 92** – Are there any key, identifiable entitlements that disabled children receive that would be of continued benefit beyond age 18 for those with the most complex needs? Please provide details and rationale.

**Question 93** – Do you have any suggestions for how we might define “complex needs”?

**Response:**
## 7. Implementation of proposed legislation

### Question 94 – Throughout this document we have identified the impacts of the proposals we would like to include in the Bill. Do you have any comments on the impacts that we have identified?

### Question 95 – Do you agree with our analysis of the impacts? If not, why?

### Question 96 – What do you think the potential cost implications are for the new proposals? Could the new duties be met through minor changes to current arrangements etc?

### Question 97 – Are there other areas of impacts we should be considering?

### Response:
Final Consultation Question

**Question 98** – We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please let us know.

**Response:**